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OF THE

PHILIPPINES

FROM

NOVEMBER 25, 2013 TO DECEMBER 9, 2013

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MANILA
2015

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 171937. November 25, 2013]

CERILA J. CALANASAN, represented by TEODORA J. CALANASAN as attorney-in-fact, *petitioner, vs.* **SPOUSES VIRGILIO DOLORITO and EVELYN C. DOLORITO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF LOWER TRIBUNALS ARE GENERALLY FINAL AND BINDING ON THE SUPREME COURT.—** The Court is not a trier of facts. The Court cannot re-examine, review or re-evaluate the evidence and the factual review made by the lower courts. In the absence of compelling reasons, the Court will not deviate from the rule that factual findings of the lower tribunals are final and binding on this Court.
2. **ID.; ID.; ID.; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT BROUGHT TO THE ATTENTION OF THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.—** It has not escaped the Court's attention that this is the only time the petitioner raised the arguments that donation never materialized because the donee violated a condition of the donation when she had the title of the property transferred to her name. The petitioner never raised this issue before the lower courts. It can't be emphasized enough that the Court will not revisit the evidence presented below as

well as any evidence introduced for the first time on appeal. Aside from being a factual issue that is not proper for the present action, the Court dismisses this *new argument* for being procedurally infirm and violative of due process. As we have held in the past: "points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule."

3. **CIVIL LAW; MODES OF ACQUIRING OWNERSHIP; DONATION; CLASSIFICATIONS.—** In *Republic of the Phils. v. Silim,* we classified donations according to purpose. A pure/simple donation is the truest form of donation as it is based on pure gratuity. The remuneratory/compensatory type has for its purpose the rewarding of the donee for past services, which services do not amount to a demandable debt. A conditional/modal donation, on the other hand, is a consideration for future services; it also occurs where the donor imposes certain conditions, limitations or charges upon the donee, whose value is inferior to the donation given. Lastly, an onerous donation imposes upon the donee a reciprocal obligation; this is made for a valuable consideration whose cost is equal to or more than the thing donated.

4. **ID.; ID.; ID.; ONEROUS DONATION; PARTAKES OF THE NATURE OF AN ORDINARY CONTRACT AND GOVERNED BY THE RULES ON CONTRACT.—** In *De Luna v. Judge Abrigo,* we recognized the distinct, albeit old, characterization of onerous donations when we declared: "Under the old Civil Code, it is a settled rule that donations with an onerous cause are governed not by the law on donations but by the rules on contracts, as held in the cases of *Carlos v. Ramil,* L-6736, September 5, 1911, 20 Phil. 183, *Manalo v. de Mesa,* L-9449, February 12, 1915, 29 Phil. 495." In the same case, we emphasized the retention of the treatment of onerous types of donation, thus: "The same rules apply under the New Civil Code as provided in Article 733 thereof x x x. We agree with the CA that since the donation imposed on the donee the burden of redeeming the property for the ₱15,000.00, the donation was onerous. As an endowment for a valuable consideration, it partakes of the nature of an ordinary contract; hence, the rules of contract will govern and Article 765 of the

New Civil Code finds no application with respect to the onerous portion of the donation.

5. **ID.; ID.; ID.; REVOCATION OF DONATIONS; INGRATITUDE; THE UNGRATEFUL ACTS SHOULD BE COMMITTED BY THE DONEE AGAINST THE DONOR.—** Insofar as the value of the land exceeds the redemption price paid for by the donee, a donation exists and the legal provisions on donation apply. Nevertheless, despite the applicability of the provisions on donation to the gratuitous portion, the petitioner may not dissolve the donation. She has no factual and legal basis for its revocation, as aptly established by the RTC. *First*, the ungrateful acts were committed not by the donee; it was her husband who committed them. *Second*, the ungrateful acts were perpetrated not against the donor; it was the petitioner's sister who received the alleged ill treatments. These twin considerations place the case out of the purview of Article 765 of the New Civil Code.

APPEARANCES OF COUNSEL

Adriano S. Javier, Sr. for petitioner.
Jovencio Evangelista for respondents.

D E C I S I O N

BRION, *J.*:

Through a petition for review on *certiorari*,[1] filed under Rule 45 of the Rules of Court, petitioner Cerila J. Calanasan seeks the reversal of the decision[2] dated September 29, 2005, and the resolution[3] dated March 8, 2006 of the Court of Appeals *(CA)* in CA-G.R. CV No. 84031.

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[1] *Rollo*, pp. 3-19.

[2] Penned by Associate Justice Conrado M. Vasquez, and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Japar B. Dimaampao; *id*. at 26-30.

[3] *Id*. at 33.

THE FACTS

The petitioner, Cerila J. Calanasan (*Cerila*), took care of her orphan niece, respondent Evelyn C. Dolorito, since the latter was a child. In 1982, when Evelyn was already married to respondent Virgilio Dolorito, the petitioner donated to Evelyn a parcel of land which had earlier been mortgaged for ₱15,000.00. The donation was conditional: Evelyn must redeem the land and the petitioner was entitled to possess and enjoy the property as long as she lived. Evelyn signified her acceptance of the donation and its terms in the same deed. Soon thereafter, Evelyn redeemed the property, had the title of the land transferred to her name, and granted the petitioner usufructuary rights over the donated land.

On August 15, 2002, the petitioner, assisted by her sister Teodora J. Calanasan, complained with the Regional Trial Court (*RTC*) that Evelyn had committed acts of ingratitude against her. She prayed that her donation in favor of her niece be revoked; in their answer, the respondents denied the commission of any act of ingratitude.

The petitioner died while the case was pending with the RTC. Her sisters, Teodora and Dolores J. Calanasan, substituted for her.

After the petitioner had rested her case, the respondents filed a demurrer to evidence. According to them, the petitioner failed to prove that it was Evelyn who committed acts of ingratitude against the petitioner; thus, Article 765[4] of the New Civil Code found no application in the case.

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[4] Article 765. The donation may also be revoked at the instance of the donor, by reason of ingratitude in the following cases:

(1) **If the donee should commit some offense against the person, the honor or the property of the donor, or of his wife or children under his parental authority;**

(2) If the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even though he should prove it, unless the crime or the act has been committed against the donee himself, his wife or children under his authority;

THE RTC'S RULING

In its September 3, 2004 order,[5] the **RTC granted the demurrer to evidence and dismissed the complaint.** Article 765 of the New Civil Code did not apply because the ungrateful acts were committed against Teodora, the donor's sister, and not against the donor, the petitioner. Equally important, the perpetrator of the ungrateful acts was not Evelyn, but her husband Virgilio.

THE CA'S RULING

The petitioner challenged the RTC's ruling before the CA.

In its September 29, 2005 decision,[6] **the CA affirmed the RTC ruling but on a different legal ground.** The CA, after legal analysis, found that the donation was *inter vivos* and onerous. Therefore, the deed of donation must be treated as an ordinary contract and Article 765 of the New Civil Code finds no relevance.

On March 8, 2006, the CA rejected the petitioner's motion for reconsideration.

THE PARTIES' ARGUMENTS

The petitioner filed the present petition for review on *certiorari* with this Court to challenge the CA rulings. The petitioner insists that Evelyn committed acts of ingratitude against her. She argues that, if the donation was indeed onerous and was subject to the rules of contracts, then greater reason exists to revoke it. According to the petitioner, Evelyn violated all the terms of the contract, especially the provision enjoining the latter from acquiring ownership over the property during the lifetime of the donor.

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(3) If he unduly refuses him support when the donee is legally or morally bound to give support to the donor.

[5] Penned by Judge Alexander P. Tamayo, RTC, Branch 15, Malolos City, Bulacan; *rollo*, pp.22-24-A.

[6] *Supra* note 2.

The respondents, for their part, point out that the petitioner raises factual issues that a petition under Rule 45 of the Rules of Court does not allow. Furthermore, the petitioner misleads the Court in claiming that the deed of donation prohibited Evelyn from acquiring ownership of the land. In fact, the deed of donation confined the donation to only two conditions: 1) redemption of the mortgage; and 2) the petitioner's usufruct over the land as long as she lived. The respondents complied with these conditions. The respondents likewise remind the Court that issues not advanced before the lower courts should not be entertained – the objective that Teodora is now trying to accomplish. Finally, the respondents applaud the CA in finding that the donation, being *inter vivos* and onerous, is irrevocable under Article 765 of the New Civil Code.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

The petitioner may not raise factual issues; arguments not raised before the lower courts may not be introduced on appeal.

Teodora insists that Evelyn perpetrated ungrateful acts against the petitioner. Moreover, the donation never materialized because Evelyn violated a suspensive condition of the donation when she had the property title transferred to her name during the petitioner's lifetime.

As correctly raised by the respondents, these allegations are factual issues which are not proper for the present action. The Court is not a trier of facts.[7] The Court cannot re-examine, review or re-evaluate the evidence and the factual review made

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[7] *Co v. Vargas*, G.R. No. 195167, November 16, 2011, 660 SCRA 451, citing *Aliño v. Heirs of Angelica A. Lorenzo*, G.R. No. 159550, June 27, 2008, 556 SCRA 139; *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, G.R. Nos. 154885 and 154937, March 24, 2008, 549 SCRA 12.

by the lower courts.[8] In the absence of compelling reasons, the Court will not deviate from the rule that factual findings of the lower tribunals are final and binding on this Court.

It has not escaped the Court's attention that this is the only time the petitioner raised the arguments that donation never materialized because the donee violated a condition of the donation when she had the title of the property transferred to her name. The petitioner never raised this issue before the lower courts. It can't be emphasized enough that the Court will not revisit the evidence presented below as well as any evidence introduced for the first time on appeal.[9] Aside from being a factual issue that is not proper for the present action, the Court dismisses this *new argument* for being procedurally infirm and violative of due process. As we have held in the past: "points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule."[10]

Rules of contract govern the onerous portion of donation; rules of donation only apply to the excess, if any.

We now come to the appreciation of the legal incidents of the donation *vis-à-vis* the alleged ungrateful acts.

In *Republic of the Phils. v. Silim*,[11] we classified donations according to purpose. A pure/simple donation is the truest form

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[8] *Ibid*., citing *Alicer v. Compas*, G.R. No. 187720, May 30, 2011, 649 SCRA 473.

[9] *Ibid*., citing *China Banking Corporation v. Asian Construction and Development Corporation*, G.R. No. 158271, April 8, 2008, 550 SCRA 585.

[10] *Mark Anthony Esteban, etc. v. Spouses Rodrigo C. Marcelo and Carmen T. Marcelo*, G.R. No. 197725, July 31, 2013, citing *Nunez v. SLTEAS Phoenix Solutions, Inc.*, G.R. No. 180542, April 12, 2010, 618 SCRA 134, 145.

[11] 408 Phil. 69 (2001).

of donation as it is based on pure gratuity. The remuneratory/ compensatory type has for its purpose the rewarding of the donee for past services, which services do not amount to a demandable debt. A conditional/modal donation, on the other hand, is a consideration for future services; it also occurs where the donor imposes certain conditions, limitations or charges upon the donee, whose value is inferior to the donation given. Lastly, an onerous donation imposes upon the donee a reciprocal obligation; this is made for a valuable consideration whose cost is equal to or more than the thing donated.[12]

In *De Luna v. Judge Abrigo*,[13] we recognized the distinct, albeit old, characterization of onerous donations when we declared: "Under the old Civil Code, it is a settled rule that donations with an onerous cause are governed not by the law on donations but by the rules on contracts, as held in the cases of *Carlos v. Ramil*, L-6736, September 5, 1911, 20 Phil. 183, *Manalo vs. de Mesa*, L-9449, February 12, 1915, 29 Phil. 495."[14] In the same case, we emphasized the retention of the treatment of onerous types of donation, thus: "The same rules apply under the New Civil Code as provided in Article 733 thereof which provides:

> Article 733. Donations with an onerous cause shall be governed by the rules on contracts, and remuneratory donations by the provisions of the present Title as regards that portion which exceeds the value of the burden imposed."[15]

We agree with the CA that since the donation imposed on the donee the burden of redeeming the property for ₱15,000.00, the donation was onerous. As an endowment for a valuable consideration, it partakes of the nature of an ordinary contract; hence, the rules of contract will govern and Article 765 of the

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[12] *Id*. at 76.

[13] 260 Phil. 157 (1990).

[14] *Id*. at 164.

[15] *Ibid*.

New Civil Code finds no application with respect to the onerous portion of the donation.

Insofar as the value of the land exceeds the redemption price paid for by the donee, a donation exists, and the legal provisions on donation apply. Nevertheless, despite the applicability of the provisions on donation to the gratuitous portion, the petitioner may not dissolve the donation. She has no factual and legal basis for its revocation, as aptly established by the RTC. *First*, the ungrateful acts were committed not by the donee; it was her husband who committed them. *Second*, the ungrateful acts were perpetrated not against the donor; it was the petitioner's sister who received the alleged ill treatments. These twin considerations place the case out of the purview of Article 765 of the New Civil Code.

WHEREFORE, premises considered, the Court **DENIES** the petition for review on *certiorari*. The decision dated September 29, 2005, and the resolution dated March 8, 2006, of the Court of Appeals in CA-G.R. CV No. 84031 are hereby **AFFIRMED.** Costs against Cerila J. Calanasan, represented by Teodora J. Calanasan as Attorney-in-Fact.

SO ORDERED.

Carpio (Chairperson), del Castillo, Abad,[*] and *Perez, JJ.*, concur.

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[*] Designated as acting member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1619 dated November 22, 2013.

SECOND DIVISION

[G.R. No. 180200. November 25, 2013]

DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC., *petitioner, vs.* **JESSIE E. CANTOS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; THE DISMISSAL OF THE INDIRECT CONTEMPT CHARGE AMOUNTS TO AN ACQUITTAL WHICH EFFECTIVELY BARS A SECOND PROSECUTION.—** [C]ontempt is not a criminal offense. However, a charge for contempt of court partakes of the nature of a criminal action. Rules that govern criminal prosecutions strictly apply to a prosecution for contempt. In fact, Section 11 of Rule 71 of the Rules of Court provides that the appeal in indirect contempt proceedings may be taken as in criminal cases. This Court has held that an alleged contemner should be accorded the same rights as that of an accused. Thus, the dismissal of the indirect contempt charge against respondent amounts to an acquittal, which effectively bars a second prosecution.

2. **ID.; ID.; ID.; CONTEMPT OF COURT; DEFINED.— "**Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. It is a defiance of the authority, justice, or dignity of the court which tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice party-litigants or their witnesses during litigation."

3. **ID.; ID.; JUDGMENTS; *RES JUDICATA*; REQUISITES; NOT PRESENT IN CASE AT BAR.—** "*Res judicata* means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.'" For *res judicata* to apply there must among others be, between the first and the second

actions, identity of the parties, identity of subject matter, and identity of causes of action. Here, there is no identity of parties between Civil Case No. 3514 and the instant case. "Identity of parties exists 'where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity.'" In Civil Case No. 3514, the action was directed against Benjamin E. Martinez, Jr. and Francisco P. Martinez in their capacities as Mayor and Chief of the Permit and License Division of the Municipality of Balayan, Batangas, respectively. On the other hand, respondent, in the instant case, is being sued in his capacity as Provincial Treasurer of the Province of Batangas. While the defendants in both cases similarly sought to enforce the tax obligation of petitioner, they were sued under different capacities. Moreover, there is no identity in the causes of action between the two cases. In Civil Case No. 3514, the propriety of the municipal officials' closure/stoppage of petitioner's business operation in Balayan, Batangas was the one in question while what is involved in this case is respondent's act of issuing Warrants of Levy and proceeding with the auction sale of the real properties of petitioner. Clearly, the principle of *res judicata* does not apply.

4. **TAXATION; TAX EXEMPTIONS; MUST BE CLEAR AND UNEQUIVOCAL.—** In the later case of *Digital Telecommunications Philippines, Inc. v. City Government of Batangas*, the Court *en banc* speaking thru Senior Associate Justice Antonio T. Carpio pronounced: "Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the 'same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.' The heading of Section 5 is 'Tax Provisions,' not Tax exemptions. To reiterate, the phrase 'exemption from real estate tax' or other words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase

'exclusive of this franchise' in the first sentence of Section 5 merely qualifies the phrase 'personal property' to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the 'franchise tax.' Thus, there is no grant of tax exemption in the first sentence of Section 5. x x x Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer." As things now stand, petitioner's real properties, whether used in the furtherance of its franchise or not, are subject to real property tax.

APPEARANCES OF COUNSEL

Kathyrn Ang-Zarate for petitioner.
Ferdinand Allan U. Alda for respondent.

D E C I S I O N

DEL CASTILLO, *J*.:

"It is of the utmost importance x x x that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public."[1]

This Petition for Review on *Certiorari*[2] assails the July 24, 2007 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR

[1] *Lorenzo v. Posadas, Jr.,* 64 Phil. 353, 371 (1937) citing *Dows v. Chicago*, 11 Wall., 108; 20 Law. ed., 65, 66; and *Churchill and Tait v. Rafferty*, 32 Phil. 580 (1915).

[2] *Rollo,* pp. 3-25.

[3] CA *rollo,* pp. 161-168; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Vicente S. E. Veloso and Marlene Gonzales-Sison.

No. 29009 which affirmed the July 7, 2003 Decision[4] of the Regional Trial Court (RTC), Branch XI, Balayan, Batangas in Civil Case No. 4051 dismissing petitioner Digital Telecommunications, Philippines, Inc.'s (petitioner) Petition for Indirect Contempt/Prohibition against respondent Jessie E. Cantos (respondent) as Provincial Treasurer of Batangas. Also assailed is the October 11, 2007 CA Resolution[5] denying petitioner's Motion for Reconsideration.

Factual Antecedents

By virtue of Republic Act (RA) No. 7678,[6] petitioner was granted a legislative franchise to install, operate and maintain telecommunications systems throughout the Philippines on February 17, 1994.

Upon seeking the renewal of its Mayor's Permit to operate and provide telecommunications service in Balayan, Batangas, petitioner was informed by then Mayor Benjamin E. Martinez, Jr. that its business operation would be restrained should it fail to pay the assessed real property taxes on or before October 5, 1998. And as petitioner failed to pay, the Chief of the Permit and License Division of Balayan, Batangas, Mr. Francisco P. Martinez, issued on October 6, 1998 a Cease and Desist Order enjoining petitioner from further operating its business.

Petitioner thus promptly filed a case for Annulment of the Cease and Desist Order before the RTC of Balayan, Batangas against the Mayor and the Chief of the Permit and License Division. The case was docketed as Civil Case No. 3514 and raffled to Branch IX of said court.

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[4] Records, pp. 307-316; penned by Acting Presiding Judge Cristino E. Judit.

[5] CA *rollo*, pp. 197-198.

[6] AN ACT GRANTING THE DIGITAL TELECOMMUNICATIONS PHILIPPINES, INCORPORATED, A FRANCHISE TO INSTALL, OPERATE AND MAINTAIN TELECOMMUNICATIONS SYSTEMS THROUGHOUT THE PHILIPPINES AND FOR OTHER PURPOSES. Approved February 17, 1994.

In a Decision[7] dated July 15, 1999, Branch IX ruled in favor of petitioner and declared that the issuance of the Cease and Desist Order was without legal basis. It held that the enjoinment of petitioner's business operation is not one of the remedies available to enforce collection of real property taxes under existing laws. The RTC also ruled that petitioner is only liable to pay real property taxes on properties not used in connection with the operation of its franchise. In arriving at such conclusion, the RTC relied on Section 5 of RA 7678, which provides that:

Sec. 5. *Tax Provisions*. — **The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property <u>exclusive of this franchise</u> as other persons or corporations are now or hereafter may be required by law to pay**. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the audit and approval of the accounts, a franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under this franchise by the grantee; *provided*, that the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. (Boldfacing and underscoring supplied)

and construed the phrase "exclusive of this franchise" in the first sentence as limiting petitioner's exemption from paying real property tax only to properties used in furtherance of its legislative franchise to provide telecommunications services.

The dispositive portion of Branch IX's Decision reads:

WHEREFORE, the Cease and Desist Order dated October 6, 1998 is hereby declared null and void for lack of legal basis. The Court

[7] Records, pp. 15-44; penned by Presiding Judge Elihu A. Ybañez.

further declares that real properties of plaintiff [Digital] Telecommunications Philippines, Inc. (DIGITEL) which are used in the operation of its franchise are exempt from the payment of real property taxes, but those not used in connection thereto are subject to aforesaid taxes.

SO ORDERED.[8]

The then Mayor attempted to set aside the above Decision by filing a Petition for *Certiorari* before the CA. But his efforts were in vain as the CA outrightly dismissed the Petition.[9] The dismissal became final and executory as shown in an Entry of Judgment dated February 2, 2000.[10]

In June 2002, respondent, in his capacity as Provincial Treasurer of the Province of Batangas, issued seven Warrants of Levy[11] certifying that several real properties of petitioner situated in the Municipalities of Ibaan, San Juan, Sto. Tomas, Cuenca, Nasugbu, Balayan, and Lemery, all in the Province of Batangas, are delinquent in the payment of real property taxes. Hence, the properties would be advertised and sold at public auction within 30 days from petitioner's receipt of the warrants.

On July 1, 2002, petitioner wrote respondent to request the lifting of the Warrants of Levy and to refrain from proceeding with the public sale of its property located in Balayan, Batangas.[12] It invoked the final Decision in Civil Case No. 3514 decreeing petitioner's exemption from the payment of real property tax which it claimed to be binding upon respondent. But since the warrants remained unlifted, petitioner filed with the RTC a Petition for Indirect Contempt and Prohibition with prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary

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[8] Records, p. 43-44.

[9] See CA Resolution dated December 6, 1999 in CA-G.R. SP No. 55719, *id.* at. 46.

[10] See Transmittal letter of CA Clerk of Court to RTC, Branch 9, Balayan, Batangas dated January 8, 2002, *id.* at 47.

[11] *Id.* at 8-14.

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

Restraining Order (TRO)[13] on July 5, 2002. The case was docketed as Civil Case No. 4051.

Proceedings before the Regional Trial Court

For his defense, respondent averred that he cannot be held liable for contempt or for having disobeyed the Decision in Civil Case No. 3514 since the same relates to an action *in personam* and, therefore, binds only the parties impleaded therein and their successors in interest.[14] He also asserted that petitioner's claim for tax exemption could not be collaterally presented and resolved in a contempt proceeding and that petitioner should have resorted instead to the remedies provided under the Local Government Code (LGC) in order to prevent the public sale of its delinquent properties.

On July 25, 2002, the RTC granted[15] petitioner's prayer for TRO. Respondent, however, manifested that when said TRO was served upon him, he had already effected the public auction of petitioner's real properties.[16] Thus, petitioner filed a Very Urgent Manifestation and Motion[17] to recall and nullify the auction sale and to order respondent and his counsel to explain why they should not be held in contempt for their blatant defiance of the TRO. It also thereafter asserted that respondent is bound by the final Decision rendered in Civil Case No. 3514 under the principle of *res judicata*.[18] It maintained that respondent has a shared interest with the defendants in Civil Case No. 3514

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[13] *Id*. at 1-7; raffled to Branch IX of RTC Balayan but later transferred to Branch XI after the Judge in the former branch inhibited himself from handling the case.

[14] See respondent's Opposition to the Motion for the Issuance of a TRO and Writ of Preliminary Injunction, *id.* at 66-76 and Answer, *id.* at 99-105.

[15] See RTC Order dated July 25, 2002, *id*. at 80-81.

[16] See respondent's Manifestation, *id*. at 86.

[17] *Id*. at 89-92.

[18] See petitioner's Reply (to Respondent's Opposition to the Motion for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction dated July 22, 2002), *id*. at 93-98.

in that they are all interested in the levy, imposition and collection of real property tax and that the Province of Batangas, including respondent, is estopped from denying privity because of the Province's active participation in both proceedings by virtue of the representation of the same counsel. Petitioner likewise contended that the declaration in Civil Case No. 3514 that it is exempt from real property tax for properties used in the operation of its franchise is considered *in rem* and binds the property itself.

On August 14, 2002, the RTC issued an Order[19] denying petitioner's prayer for the issuance of a Writ of Preliminary Injunction. It held that the issuance of the writ prayed for had already become moot and academic since the public auction sale sought to be enjoined was already consummated. It further noted that the writ as a provisional remedy is unavailing to petitioner's case as it should have availed of the remedy provided under Section 260 of the LGC in order to stop the scheduled auction sale, that is, to pay the delinquent tax and interest due thereon under protest.

Petitioner filed a Joint Motion for Reconsideration and Motion to Declare Null and Void the Sale Conducted on July 25, 2002[20] which was, however, denied in an Order[21] dated September 3, 2002. When petitioner elevated the denial to the CA via a Petition for *Certiorari*,[22] the same was dismissed in a Resolution[23] dated November 18, 2002.

Meanwhile, acting on petitioner's Motion for Judgment on the Pleadings,[24] the RTC rendered its Decision[25] dated July 7, 2003 dismissing petitioner's Petition for Indirect Contempt and

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[19] *Id.* at 135-136.

[20] *Id.* at 139-147.

[21] *Id.* at 173-174.

[22] *Id.* at 193-208.

[23] *Id.* at 294-295.

[24] *Id.* at 186-187.

[25] *Id.* at 307-316.

Prohibition against respondent (Civil Case No. 4051). The RTC ruled that since respondent was not a party in Civil Case No. 3514, he had no duty to render obedience to the Decision therein. Furthermore, there being no identity of causes of action between Civil Case No. 3514 and Civil Case No. 4051, the former being an action *in personam,* the Decision in said case binds only the parties impleaded therein and their successors in interest, which do not include the respondent. The said court refused to rule on petitioner's claim for exemption from payment of realty taxes ratiocinating that any case pertaining thereto should be filed directly with the local government unit concerned.

The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the instant petition is dismissed, with costs against the petitioner.

IT IS SO ORDERED.[26]

As petitioner's Motion for Reconsideration[27] was denied by the RTC in a Resolution[28] dated September 17, 2004, it appealed to the CA.[29]

Proceedings before the Court of Appeals

In a Decision[30] dated July 24, 2007, the CA found no merit in the appeal. First, it noted that the dismissal of the case for indirect contempt by the RTC amounted to an acquittal from which an appeal is not allowed. In any case, respondent's act of issuing the warrants of levy did not constitute indirect contempt in Civil Case No. 3514 since the final Decision issued in said case was not directed against him but to the Mayor and the Chief of the Permit and License Division of Balayan, Batangas. The CA also concurred with the trial court's ruling that

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[26] *Id*. at 316.

[27] *Id*. at 323-334.

[28] *Id*. at 363-365.

[29] See Notice of Appeal dated October 12, 2004, *Id*. at 368.

[30] CA *rollo*, pp. 161-168.

petitioner's claim for tax exemption could not be presented and resolved in an indirect contempt case and opined that the correct remedy is for petitioner to file an independent action for annulment of sale against the Province of Batangas and there invoke its exemption from real property taxes.

The dispositive portion of the Decision reads:

> **WHEREFORE,** premises considered, the assailed Decision dated July 7, 2003 and the Resolution dated September 17, 2004, rendered by the Regional Trial Court, Branch XI, Balayan, Batangas in Civil Case No. 4051 are **AFFIRMED.**
>
> **SO ORDERED.**[31]

Petitioner's Motion for Reconsideration[32] was denied by the CA in a Resolution[33] dated October 11, 2007.

Issues

Petitioner, thence, filed this Petition on the following grounds:

> (a) The Honorable Court of Appeals erred in ruling that Civil Case No. 4051 is simply a case for indirect contempt so much [so] that its dismissal by the lower court would amount to acquittal from which an appeal would not lie;
>
> (b) The Honorable Court of Appeals erred in ruling that respondent, not being a party to Civil Case No. 3514, cannot be held in contempt for refusing to abide by the decision there[in];
>
> (c) The Honorable Court of Appeals erred in ruling that the claim of Digitel for real property tax exemption cannot be presented and resolved in the indirect contempt case; and
>
> (d) The Honorable Court of Appeals erred in ruling that the "proper remedy is for Digitel to file an independent action for annulment of sale against the Province of Batangas, invoking its exemption from payment of real property taxes.[34]

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[31] *Id*. at 167. Emphases in the original.

[32] *Id*. at 171-186.

[33] *Id*. at 197-198.

[34] *Rollo,* pp. 10-11.

Petitioner takes exception to the CA's ruling that an appeal will not lie since the RTC Decision essentially amounts to respondent's acquittal. It posits that the CA can still take cognizance of the appeal since the same is also a Petition for Prohibition. It is well within the authority of the said court to rule on the claim for tax exemption like in the case of *The City Government of Quezon City v. Bayan Telecommunications, Inc.*[35] wherein the claim for realty tax exemption of another telecommunications company, Bayantel, was resolved through a Petition for Prohibition. Petitioner likewise insists that respondent cannot defy the final ruling in Civil Case No. 3514 and also the pronouncement of this Court in *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*[36] that petitioner is exempted from paying real property tax. Also, in consonance with said rulings, the sale by public auction of petitioner's properties is void *ab initio,* the same having been made under a mistaken premise that petitioner's properties are not exempt from realty taxes. Thus, an independent action to annul the sale of the properties, contrary to the CA's intimation, is not the proper remedy. Petitioner therefore prays for the nullification and setting aside of the auction sale conducted by respondent against its real properties.

Our Ruling

The Petition has no merit.

Respondent is not guilty of indirect contempt.

At the outset, the Court shall address the issue on double jeopardy as discussed by petitioner in its Memorandum.

In his Comment, respondent reiterated the CA's ruling that the RTC Decision amounts to an acquittal, hence, an appeal does not lie. Arguing against it, petitioner contends that the rule on double jeopardy will not bar it from pursuing its appeal

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[35] 519 Phil. 159 (2006).

[36] 545 Phil. 436 (2007).

because this is not a criminal case and respondent is not tried as an accused.

The Court is not persuaded. Indeed, contempt is not a criminal offense.[37] However, a charge for contempt of court partakes of the nature of a criminal action.[38] Rules that govern criminal prosecutions strictly apply to a prosecution for contempt.[39] In fact, Section 11 of Rule 71[40] of the Rules of Court provides that the appeal in indirect contempt proceedings may be taken as in criminal cases. This Court has held that an alleged contemner should be accorded the same rights as that of an accused.[41] Thus, the dismissal of the indirect contempt charge against respondent amounts to an acquittal, which effectively bars a second prosecution.[42]

Be that as it may, respondent is not guilty of indirect contempt. "Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity. It signifies not only a willful disregard or disobedience of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. It is a defiance of the authority, justice, or dignity of the court which tends to bring the authority and administration of the law into disrespect

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[37] *Nazareno v. Barnes,* 220 Phil. 451, 462 (1985).

[38] *Benedicto v. Cañada,* 129 Phil. 298, 303 (1967).

[39] *Esperida v. Jurado, Jr.*, G.R. No. 172538, April 25, 2012, 671 SCRA 66, 74.

[40] Section 11. *Review of judgment or final order*; *bond for stay*. – The judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases. But execution of the judgment or final order shall not be suspended until a bond is filed by the person adjudged in contempt, in an amount fixed by the court from which the appeal is taken, conditioned that if the appeal be decided against him he will abide by and perform the judgment or final order.

[41] *Soriano v. Court of Appeals*, G.R. No. 128938, June 4, 2004, 431 SCRA 1, 8-9.

[42] *Atty. Santiago v. Hon. Anunciacion, Jr.*, 262 Phil 980, 985 (1990).

or to interfere with or prejudice party-litigants or their witnesses during litigation."[43]

In this case, the acts of respondent in issuing the Warrants of Levy and in effecting the public auction sale of petitioner's real properties, were neither intended to undermine the authority of the court nor resulted to disobedience to the lawful orders of Branch IX. He merely performed a ministerial function which he is bound to perform under Sections 176 and 177 of RA 7160,[44] *viz*:

Section 176. *Levy on Real Property.* — After the expiration of the time required to pay the delinquent tax, fee, or charge, real property may be levied on before, simultaneously, or after the distraint of personal property belonging to the delinquent taxpayer. To this end, the provincial, city or municipal treasurer, as the case may be, shall prepare a duly authenticated certificate showing the name of the taxpayer and the amount of the tax, fee, or charge, and penalty due from him. Said certificate shall operate with the force of a legal execution throughout the Philippines. Levy shall be effected by writing upon said certificate the description of the property upon which levy is made. At the same time, written notice of the levy shall be mailed to or served upon the assessor and the Register of Deeds of the province or city where the property is located who shall annotate the levy on the tax declaration and certificate of title of the property, respectively, and the delinquent taxpayer or, if he be absent from the Philippines, to his agent or the manager of the business in respect to which the liability arose, or if there be none, to the occupant of the property in question.

In case the levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the taxpayer is not sufficient to satisfy his delinquency, the provincial, city or municipal treasurer, as the case may be, shall within thirty (30) days after execution of the distraint, proceed with the levy on the taxpayer's real property.

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[43] *Bank of the Philippine Islands v. Calanza,* G.R. No. 180699, October 13, 2010, 633 SCRA 186, 192-193.

[44] AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991. Approved October 10, 1991.

A report on any levy shall, within ten (10) days after receipt of the warrant, be submitted by the levying officer to the *sanggunian* concerned.

Section 177. *Penalty for Failure to Issue and Execute Warrant.* — Without prejudice to criminal prosecution under the Revised Penal Code and other applicable laws, any local treasurer who fails to issue or execute the warrant of distraint or levy after the expiration of the time prescribed, or who is found guilty of abusing the exercise thereof by competent authority shall be automatically dismissed from the service after due notice and hearing.

Noteworthy at this point is that there is nothing in the records which would show that petitioner availed of the tax exemption or submitted the requirements to establish that it is exempted from paying real property taxes. Section 206 of RA 7160 outlines the requirements for real property tax exemption, *viz.*:

Sec. 206. *Proof of Exemption of Real Property from Taxation.* — Every person by or for whom real property is declared, who shall claim tax exemption for such property under this Title shall file with the provincial, city or municipal assessor within thirty (30) days from the date of the declaration of real property sufficient documentary evidence in support of such claim including corporate charters, title of ownership, articles of incorporation, by-laws, contracts, affidavits, certifications and mortgage deeds, and similar documents.

If the required evidence is not submitted within the period herein prescribed, the property shall be listed as taxable in the assessment roll. However, if the property shall be proven to be tax exempt, the same shall be dropped from the assessment roll.

Neither did petitioner avail of the remedy of paying the assessed real property tax under protest as prescribed in Section 252[45]

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[45] SEC. 252. *Payment Under Protest.* — (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

of RA 7160. Suffice it to say that the availment of these remedies could have prevented respondent's issuance of the Warrants of Levy and the conduct of the subsequent public auction sale of petitioner's properties. Due to petitioner's non-availment of these remedies, respondent therefore remained duty bound to perform such acts, otherwise, he may be subjected to the penalties prescribed for non-performance of his ministerial duties as provincial treasurer.

Respondent is not bound by the Decision in Civil Case No. 3514.

Petitioner avers that respondent blatantly defied a final and binding Decision rendered in Civil Case No. 3514 declaring it exempt from paying taxes on its real properties. It argues that there is a shared identity of interest between the defendants in Civil Case No. 3514 and respondent. Therefore, respondent is barred by the Decision in the said case under the principle of *res judicata*.

The contention is specious. "*Res judicata* means 'a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment.'"[46] For *res judicata* to apply there must among others be, between the first and the second actions, identity of the parties, identity of subject matter, and identity

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(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

[46] *Heirs of Panfilo F. Abalos v. Bucal*, 569 Phil. 582, 602 (2008); *Alamayri v. Pabale*, 576 Phil. 146, 157 (2008); *Garcia v. Philippine Airlines*, G.R. No. 162868, July 14, 2008, 558 SCRA 171, 186-187; *Layos v. Fil-Estate Golf and Development, Inc.,* G.R. No. 150470, August 6, 2008, 561 SCRA 75, 102.

of causes of action.[47] Here, there is no identity of parties between Civil Case No. 3514 and the instant case. "Identity of parties exists 'where the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity.'"[48] In Civil Case No. 3514, the action was directed against Benjamin E. Martinez, Jr. and Francisco P. Martinez in their capacities as Mayor and Chief of the Permit and License Division of the Municipality of Balayan, Batangas, respectively. On the other hand, respondent, in the instant case, is being sued in his capacity as Provincial Treasurer of the Province of Batangas. While the defendants in both cases similarly sought to enforce the tax obligation of petitioner, they were sued under different capacities. Moreover, there is no identity in the causes of action between the two cases. In Civil Case No. 3514, the propriety of the municipal officials' closure/stoppage of petitioner's business operation in Balayan, Batangas was the one in question while what is involved in this case is respondent's act of issuing Warrants of Levy and proceeding with the auction sale of the real properties of petitioner. Clearly, the principle of *res judicata* does not apply. The RTC and the CA are therefore correct in ruling that respondent, not being a party thereto, is not bound by the Decision rendered in Civil Case No. 3514.

Petitioner's reliance on the rulings in Civil Case No. 3514 and Digital Telecommunications Philippines, Inc. v. Province of Pangasinan is misplaced.

In support of its prayer to annul the auction sale of its real properties, petitioner heavily relies on the Decision rendered in

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[47] The requisites of *res juricata* are: 1. The former judgment or order is final; 2. It is rendered by a court having jurisdiction over the subject matter and the parties; 3. It is a judgment or an order on the merits; and 4. There is between the first and the second action identity of parties, identity of subject matter, and identity of causes of action (*Taganas v. Hon. Emuslan*, 457 Phil. 305, 311-312 [2003]).

[48] *Ceron v. Commission on Elections,* G.R. No. 199084, September 11, 2012, 680 SCRA 441, 461-462.

Civil Case No. 3514 declaring that it is exempt from paying real property tax. In addition, it invokes *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*[49] wherein it was ruled that petitioner's real properties located within the territorial jurisdiction of Pangasinan that are actually, directly and exclusively used in its franchise are exempt from realty tax.

As in Civil Case No. 3514, this Court's Third Division in *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*[50] has interpreted the phrase "exclusive of this franchise" in the first sentence of Section 5 of RA 7678 as limiting petitioner's exemption from realty tax to real properties used in the pursuit of its legislative franchise. It was then held that RA 7678 exempted petitioner's properties that are actually, directly, and exclusively used in the conduct and operation of its franchise from real property tax.

But this ruling has already been abandoned.

In the later case of *Digital Telecommunications Philippines, Inc. v. City Government of Batangas,*[51] the Court *en banc* speaking thru Senior Associate Justice Antonio T. Carpio pronounced:

> Nowhere in the language of the first sentence of Section 5 of RA 7678 does it expressly or even impliedly provide that petitioner's real properties that are actually, directly and exclusively used in its telecommunications business are exempt from payment of realty tax. On the contrary, the first sentence of Section 5 specifically states that the petitioner, as the franchisee, shall pay the 'same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay.'
>
> The heading of Section 5 is 'Tax Provisions,' not Tax Exemptions. To reiterate, the phrase 'exemption from real estate tax' or other

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[49] *Supra* note 36.

[50] *Id*.

[51] G.R. No. 156040, December 11, 2008, 573 SCRA 605.

words conveying exemption from realty tax do not appear in the first sentence of Section 5. The phrase 'exclusive of this franchise' in the first sentence of Section 5 merely qualifies the phrase 'personal property' to exclude petitioner's legislative franchise, which is an intangible personal property. Petitioner's franchise is subject to tax in the second sentence of Section 5 which imposes the 'franchise tax.' Thus, there is no grant of tax exemption in the first sentence of Section 5.

The interpretation of the phrase 'exclusive of this franchise' in the *Bayantel* and *Digitel* cases goes against the basic principle in construing tax exemptions. In *PLDT v. City of Davao*, the Court held that 'tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.'

Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer.[52]

As things now stand, petitioner's real properties, whether used in the furtherance of its franchise or not, are subject to real property tax. Hence, its reliance on the rulings in Civil Case No. 3514 and *Digital Telecommunications Philippines, Inc. v. Province of Pangasinan*[53] becomes unavailing.

WHEREFORE, the Petition is **DENIED.** The assailed Decision dated July 24, 2007 and the Resolution dated October 11, 2007 of the Court of Appeals in CA-G.R. CR No. 29009 are **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), Brion, Abad,[*] and *Perez, JJ.,* concur.

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[52] *Id.* at 631-632.

[53] *Supra* note 36.

[*] Per Special Order No. 1619 dated November 22, 2013.

SECOND DIVISION

[G.R. No. 191756. November 25, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONAS GUILLEN *y* ATIENZA,** *accused-appellant.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO REMAIN SILENT; THE ACCUSED'S SILENCE WHILE UNDER CUSTODIAL INVESTIGATION SHOULD NOT BE DEEMED AS AN IMPLIED ADMISSION OF GUILT; CASE AT BAR.—** It should be borne in mind that when appellant was brought to the police station, he was already a suspect to the crime of rape. As such, he was already under custodial investigation. x x x Clearly, when appellant remained silent when confronted by the accusation of "AAA" at the police station, he was exercising his basic and fundamental right to remain silent. At that stage, his silence should not be taken against him. Thus, it was error on the part of the trial court to state that appellant's silence should be deemed as implied admission of guilt. In fact, this right cannot be waived except in writing and in the presence of counsel and any admission obtained in violation of this rule shall be inadmissible in evidence.

2. **CRIMINAL LAW; RAPE; DULY ESTABLISHED IN CASE AT BAR.—** Article 266-A of the Revised Penal Code specifically provides that rape may be committed by a man who shall have carnal knowledge of a woman through force, threats or intimidation. In this case, "AAA" categorically testified that appellant forcibly undressed her, poked a knife at her neck, and inserted his penis into her vagina without her consent and against her will. Thus, all the elements of the crime of rape were duly established from the testimony of "AAA". Moreover, "AAA" positively identified appellant as her assailant.

3. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PROSPER AS A DEFENSE WHEN THE ACCUSED FAILED TO PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE CRIME SCENE AT THE TIME OF**

ITS COMMISSION.— [A]ppellant failed to prove that it was physically impossible for him to be at the crime scene at the time of its commission. Aside from claiming that he was at Galas, Quezon City when the rape incident happened, he failed to submit any proof to show that it is physically impossible for him to be at Sampaloc, Manila where and when the rape happened. Besides, appellant's alibi crumbles in the face of his apprehension near the scene of the crime immediately after "AAA" reported the incident to the police authorities.

4. **CRIMINAL LAW; RAPE; MAY BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE.—** We are not persuaded by appellant's contention that he could not have raped "AAA" inside her room as the discovery of the crime would have been more likely considering its proximity to the room of "AAA's" sister-in-law. Jurisprudence teaches us that rape may be committed even in places where people congregate. Thus, it is not impossible or unlikely that rape is perpetrated inside a room adjacent to a room occupied by other persons, as in this case.

5. **ID.; ID.; THE VICTIM'S FAILURE TO SHOUT FOR HELP AND SEEK ASSISTANCE SHOULD NOT BE CONSTRUED AS CONSENT OR AS VOLUNTARILY ENGAGING IN AN ILLICIT RELATIONSHIP WITH THE ACCUSED.—** [T]he failure of "AAA" to shout for help should not be taken against her. People react differently when confronted with a shocking or startling situation. Some may show aggressive resistance while others may opt to remain passive. The failure of "AAA" to shout for help and seek assistance should not be construed as consent, or as voluntarily engaging in an illicit relationship with the appellant, as implied by the defense. It would be recalled that appellant poked a knife at "AAA's" neck. Such threat of immediate danger to her life cowed "AAA" to submit to the carnal desires of the appellant. However, immediately after appellant left, "AAA" lost no time in seeking the help of her sister-in-law and in reporting the incident to the police authorities. In fact, the police authorities were able to apprehend appellant because "AAA" immediately reported the incident to them.

6. **ID.; ID.; HYMENAL LACERATION, WHETHER FRESH OR HEALED, IS NOT AN ELEMENT OF THE CRIME**

OF RAPE.— Hymenal laceration, whether fresh or healed, is not an element of the crime of rape. Even a medical examination is not necessary as it is merely corroborative. x x x [T]he fact of rape in this case was satisfactorily established by the testimony of "AAA" alone.

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 November 26, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03476 which affirmed the June 10, 2008 Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 48 finding appellant Jonas Guillen *y* Atienza guilty beyond reasonable doubt of the crime of rape.

On May 31, 2002, an Information[3] was filed charging appellant with the crime of rape, the accusatory portion of which reads as follows:

That on or about May 20, 2002, in the City of Manila, Philippines, the said accused, by means of force, violence and intimidation, by entering the room of "AAA",[4] poking a balisong at her neck[,] forcing

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[1] CA *rollo*, pp. 89-99; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Vicente S.E. Veloso and Stephen C. Cruz.

[2] Records, pp. 170-176; penned by Judge Silverio Q. Castillo.

[3] *Id*. at 1.

[4] "The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004)"; *People v. Teodoro*, G.R. No. 175876, February 20, 2013.

her to lie down [on] the floor, pressing her with his thighs and removing her duster and panty and thereafter pulling down his brief and shorts, did then and there wilfully, unlawfully and feloniously [insert] his penis into her vagina and succeeded in having carnal knowledge of "AAA" against the latter's will and consent, thereby gravely endangering [her] growth and development to the damage and prejudice of the said "AAA".

Contrary to law.

When arraigned on July 11, 2002, appellant pleaded not guilty.[5]

Factual Antecedents

The version of the prosecution as summarized by the Office of the Solicitor General (OSG) are as follows:

On May 20, 2002, around 12 midnight, x x x "AAA" was inside her room on the second floor of a two-storey house located at x x x Sampaloc, Manila. At that time "AAA" was playing cards x x x while waiting for her common-law husband to arrive. Momentarily, someone knocked at the door. When "AAA" opened the door, appellant Jonas Guillen *y* Atienza, who was her neighbor, entered the room and suddenly poked a *balisong* on her neck. Appellant then turned off the lights, removed his clothes, placed himself on top of "AAA," and inserted his penis inside her private parts. After the rape was consummated, appellant stood up and casually left the room.

x x x "AAA" immediately went out and x x x sought assistance from her sister-in-law. After being told of the incident, "AAA's" sister-in-law contacted the police. When the responding police officers arrived, appellant, who was readily identified by "AAA" since he was her neighbor, was immediately arrested.

Per request for a medico legal examination prepared by P/Sr. Supt. Amador Serrano Pabustan of the Western Police District, "AAA" was brought to the National Bureau of Investigation (NBI) for physical examination. Dra. Annabelle Soliman, NBI medico-legal officer, conducted medical and genital examinations on "AAA". The Preliminary Report dated May 20, 2002 issued by Dra. Soliman shows the following findings: 1) With extragenital physical injury

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[5] Records, p. 13.

noted; 2) Healed hymenal laceration present; and 3) Pending laboratory examination result.

The Medico-Legal Report Number MG-02-366 issued by Dra. Soliman shows that private complainant's hymen had "deep healed laceration at 7 o'clock position;" positive for spermatozoa; and that there was "evident sign of extragenital physical injury noted on the body of the subject at the time of the examination.[6]

Appellant denied the charge against him. He claimed that he had a drinking spree at Galas, Quezon City and went home to Sampaloc, Manila at around 1:00 o'clock in the morning of May 20, 2002. He surmised that "AAA" filed the charge against him because of his prior altercation with "AAA's" husband.

Ruling of the Regional Trial Court

In a Decision dated June 10, 2008, the trial court found appellant guilty as charged. The dispositive portion of the Decision reads:

WHEREFORE, the Court finds accused JONAS GUILLEN *Y* ATIENZA guilty beyond reasonable doubt for the felony of RAPE and pursuant to law, he is sentenced to suffer [a] prison term of *reclusion perpetua* and to pay victim the following:

₱50,000.00 as moral damages;
₱30,000.00 as exemplary damages; and
To pay the cost.

The BJMP of the Manila City Jail is ordered to commit the accused to the National Bilibid Prison without unnecessary delay.

SO ORDERED.[7]

Aggrieved, appellant filed a Notice of Appeal[8] which was given due course by the trial court in its Order[9] dated June 13, 2008.

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[6] CA *rollo*, pp. 64-66.

[7] Records, p. 183.

[8] *Id*. at 184.

[9] *Id*. at 186.

Ruling of the Court of Appeals

After the filing of the parties' briefs, the CA rendered its Decision disposing as follows:

WHEREFORE, in the light of all the foregoing, the instant appeal is DISMISSED for lack of merit. The decision of the trial court dated June 10, 2008 is AFFIRMED.

SO ORDERED.[10]

Hence, this appeal.

ISSUE

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE DESPITE THE PROSECUTION'S FAILURE TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR.[11]

Appellant claims that the trial court gravely erred when it deemed his silence at the police station immediately after his arrest as an implied admission of guilt. He also argues that aside from being incredible, "AAA's" testimony is insufficient to establish his guilt beyond reasonable doubt. Moreover, he insists that "AAA's" healed lacerations do not prove that he indeed raped "AAA."

OUR RULING

The appeal lacks merit.

Indeed, records show that appellant remained silent and passive despite being confronted by "AAA" with the rape charge at the police station immediately after his arrest. In taking appellant's silence as an implied admission of guilt, the RTC ratiocinated that:

Owing to the complaint of the victim, the accused was apprehended by responding police officer[s] of the Sampaloc Police Station. At

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[10] CA *rollo*, p. 99.

[11] *Id*. at 29.

the police precinct, the accused was presented to the victim and [he] was positively identified as the person who raped her. At this juncture, the accused after he was positively identified as the malefactor who sexually molested and raped the victim x x x just [remained] SILENT. In other words, he did not DENY the accusation lodged against him by the victim much less register any vehement PROTEST at the station.

The aforesaid blatant FAILURE of the accused to deny victim's complaint against him is equivalent to an IMPLIED ADMISSION of guilt. Assuming *arguendo* that he is innocent of the accusation filed against him, he should have stood firm in his contention that he didn't rape/abuse the victim and should have stressed at the police station that on the date and time of the incident he was having a drinking spree with his friends.

A person who is accused of a felony/offense which he did not commit should be as BOLD and FEROCIOUS as a LION in protecting the trampled rights as an innocent person.[12]

Appellant claims that his silence should not be used against him as he was just exercising his constitutional right to remain silent.

We agree with the appellant.

It should be borne in mind that when appellant was brought to the police station, he was already a suspect to the crime of rape. As such, he was already under custodial investigation. Section 12, Article III of the Constitution explicitly provides, *viz*:

Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

Clearly, when appellant remained silent when confronted by the accusation of "AAA" at the police station, he was exercising

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[12] Records, pp. 181-182.

his basic and fundamental right to remain silent. At that stage, his silence should not be taken against him. Thus, it was error on the part of the trial court to state that appellant's silence should be deemed as implied admission of guilt. In fact, this right cannot be waived except in writing and in the presence of counsel and any admission obtained in violation of this rule shall be inadmissible in evidence.[13]

In any case, we agree with the Decision of the trial court, as affirmed by the CA, finding appellant guilty of the crime of rape. The trial court's Decision convicting appellant of rape was anchored not solely on his silence and so-called implied admission. More importantly, it was based on the testimony of "AAA" which, standing alone, is sufficient to establish his guilt beyond reasonable doubt.

Article 266-A of the Revised Penal Code specifically provides that rape may be committed by a man who shall have carnal knowledge of a woman through force, threats or intimidation. In this case, "AAA" categorically testified that appellant forcibly undressed her, poked a knife at her neck, and inserted his penis into her vagina without her consent and against her will. Thus, all the elements of the crime of rape were duly established from the testimony of "AAA". Moreover, "AAA" positively identified appellant as her assailant.

Appellant could only offer alibi and denial as his defenses. However, alibi and denial are weak defenses especially when measured up against the positive identification made by the victim pointing to appellant as the malefactor. Besides, appellant failed to prove that it was physically impossible for him to be at the crime scene at the time of its commission. Aside from claiming that he was at Galas, Quezon City when the rape incident happened, he failed to submit any proof to show that it is physically impossible for him to be at Sampaloc, Manila where and when the rape happened. Besides, appellant's alibi crumbles

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[13] Section 12(3), Article III of the Constitution provides:

Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him.

in the face of his apprehension near the scene of the crime immediately after "AAA" reported the incident to the police authorities.

We are not persuaded by appellant's contention that he could not have raped "AAA" inside her room as the discovery of the crime would have been more likely considering its proximity to the room of "AAA's" sister-in-law. Jurisprudence teaches us that rape may be committed even in places where people congregate. Thus, it is not impossible or unlikely that rape is perpetrated inside a room adjacent to a room occupied by other persons, as in this case.

Likewise, the failure of "AAA" to shout for help should not be taken against her. People react differently when confronted with a shocking or startling situation. Some may show aggressive resistance while others may opt to remain passive. The failure of "AAA" to shout for help and seek assistance should not be construed as consent, or as voluntarily engaging in an illicit relationship with the appellant, as implied by the defense. It would be recalled that appellant poked a knife at "AAA's" neck. Such threat of immediate danger to her life cowed "AAA" to submit to the carnal desires of the appellant. However, immediately after appellant left, "AAA" lost no time in seeking the help of her sister-in-law and in reporting the incident to the police authorities. In fact, the police authorities were able to apprehend appellant because "AAA" immediately reported the incident to them.

Anent appellant's contention that "AAA's" healed hymenal laceration does not prove rape, we find the same irrelevant and immaterial. Hymenal laceration, whether fresh or healed, is not an element of the crime of rape. Even a medical examination is not necessary as it is merely corroborative. As we mentioned before, the fact of rape in this case was satisfactorily established by the testimony of "AAA" alone.

All the elements of rape having been established beyond reasonable doubt, both the trial court and the CA properly found

appellant guilty as charged and correctly imposed on him the penalty of *reclusion perpetua.*[14]

The RTC, as affirmed by the CA, awarded "AAA" moral damages of ₱50,000.00, exemplary damages of ₱30,000.00 and cost of suit. In line with prevailing jurisprudence, "AAA" is also entitled to an award of civil indemnity of ₱50,000.00. In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of judgment until fully paid.

WHEREFORE, the appeal is **DISMISSED.** The November 26, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03476 which affirmed the June 10, 2008 Decision of the Regional Trial Court of Manila, Branch 48 finding appellant Jonas Guillen *y* Atienza guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATIONS** that appellant is further ordered to pay "AAA" civil indemnity in the amount of ₱50,000.00 and interest on all damages awarded at the rate of 6% *per annum* from date of finality of judgment until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, Abad,[*] and *Perez, JJ.,* concur.

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[14] REVISED PENAL CODE, Art. 266-B.

[*] Per Special Order No. 1619 dated November 22, 2013.

THIRD DIVISION

[G.R. No. 200289. November 25, 2013]

WESTWIND SHIPPING CORPORATION, *petitioner, vs.* **UCPB GENERAL INSURANCE CO., INC. and ASIAN TERMINALS, INC.,** *respondents.*

[G.R. No. 200314. November 25, 2013]

ORIENT FREIGHT INTERNATIONAL, INC., *petitioner, vs.* **UCPB GENERAL INSURANCE CO., INC. and ASIAN TERMINALS, INC.,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; COMMON CARRIERS; VIGILANCE OVER GOODS; THE EXTRAORDINARY RESPONSIBILITY OF THE COMMON CARRIER LASTS UNTIL THE TIME THE GOODS ARE ACTUALLY OR CONSTRUCTIVELY DELIVERED BY THE CARRIER TO THE CONSIGNEE OR TO THE PERSON WHO HAS THE RIGHT TO RECEIVE THEM.—** The case of *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.* applies, as it settled the query on which between a common carrier and an arrastre operator should be responsible for damage or loss incurred by the shipment *during* its unloading. x x x In R*egional Container Lines (RCL) of Singapore v. The Netherlands Insurance Co. (Philippines), Inc.* and *Asian Terminals, Inc. v. Philam Insurance Co., Inc.,* the Court echoed the doctrine that cargoes, while being unloaded, generally remain under the custody of the carrier. x x x [T]he extraordinary responsibility of the common carrier lasts until the time the goods are actually or constructively delivered by the carrier to the consignee or to the person who has a right to receive them. There is actual delivery in contracts for the transport of goods when possession has been turned over to the consignee or to his duly authorized agent and a reasonable time is given him to remove the goods. In this case, since the discharging of the containers/skids, which were covered by only one bill of lading, had not yet been completed at the time the damage occurred,

there is no reason to imply that there was already delivery, actual or constructive, of the cargoes to ATI.

2. **ID.; ID.; ID.; CUSTOMS BROKER; REGARDED AS A COMMON CARRIER BECAUSE TRANSPORTATION OF GOODS IS AN INTEGRAL PART OF ITS BUSINESS.—** A customs broker has been regarded as a common carrier because transportation of goods is an integral part of its business. x x x That OFII is a common carrier is buttressed by the testimony of its own witness, Mr. Loveric Panganiban Cueto, that part of the services it offers to clients is cargo forwarding, which includes the delivery of the shipment to the consignee. Thus, for undertaking the transport of cargoes from ATI to SMC's warehouse in Calamba, Laguna, OFII is considered a common carrier. As long as a person or corporation holds itself to the public for the purpose of transporting goods as a business, it is already considered a common carrier regardless of whether it owns the vehicle to be used or has to actually hire one.

3. **ID.; ID.; ID.; VIGILANCE OVER GOODS; IN THE EVENT THAT GOODS ARE LOST, DESTROYED OR DETERIORATED, THE COMMON CARRIER IS PRESUMED TO HAVE BEEN AT FAULT OR TO HAVE ACTED NEGLIGENTLY, UNLESS IT PROVES THAT IT EXERCISED EXTRAORDINARY DILIGENCE IN THE CARRIAGE THEREOF.—** As a common carrier, OFII is mandated to observe, under Article 1733 of the Civil Code, extraordinary diligence in the vigilance over the goods it transports according to the peculiar circumstances of each case. In the event that the goods are lost, destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence. In the case at bar, it was established that, except for the six containers/skids already damaged, OFII received the cargoes from ATI in good order and condition; and that upon its delivery to SMC, additional nine containers/skids were found to be in bad order, as noted in the Delivery Receipts issued by OFII and as indicated in the Report of Cares Marine & Cargo Surveyors. Instead of merely excusing itself from liability by putting the blame to ATI and SMC, it is incumbent upon OFII to prove that it actively took care of the goods by exercising extraordinary diligence in the carriage thereof. It failed to do

so. Hence, its presumed negligence under Article 1735 of the Civil Code remains unrebutted.

APPEARANCES OF COUNSEL

Alampay & Tamase Law Office for Westwind Shipping Corp.

Leaño Leaño & Leaño III Law Office for UCPB General Insurance Co., Inc.

Poblador Bautista & Reyes for Asian Terminals, Inc.

Mangaoil Law Office for Orient Freight International, Inc.

D E C I S I O N

PERALTA, *J.*:

These two consolidated cases challenge, by way of petition for *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, the September 13, 2011 Decision[1] and January 19, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 86752, which reversed and set aside the January 27, 2006 Decision[3] of the Manila City Regional Trial Court Branch (RTC) 30.

The facts, as established by the records, are as follows:

On August 23, 1993, Kinsho-Mataichi Corporation shipped from the port of Kobe, Japan, 197 metal containers/skids of tin-free steel for delivery to the consignee, San Miguel Corporation (SMC). The shipment, covered by Bill of Lading No. KBMA-1074,[4] was loaded and received clean on board M/V Golden Harvest Voyage No. 66, a vessel owned and operated by Westwind Shipping Corporation (Westwind).

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[1] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Estela M. Perlas-Bernabe (now Supreme Court Associate Justice) and Remedios Salazar-Fernando, concurring; *rollo* (G.R. 200289), pp. 7-29, (G.R. 200314), pp. 25-47.

[2] *Rollo* (G.R. 200289), pp. 31-33; *rollo* (G.R. 200314), pp. 49-51.

[3] *Id.* at 79-88, *id.* at 59-68.

[4] *Rollo* (G.R. 200289), p. 63.

SMC insured the cargoes against all risks with UCPB General Insurance Co., Inc. (UCPB) for US Dollars: One Hundred Eighty-Four Thousand Seven Hundred Ninety-Eight and Ninety-Seven Centavos (US$184,798.97), which, at the time, was equivalent to Philippine Pesos: Six Million Two Hundred Nine Thousand Two Hundred Forty-Five and Twenty-Eight Centavos (₱6,209,245.28).

The shipment arrived in Manila, Philippines on August 31, 1993 and was discharged in the custody of the arrastre operator, Asian Terminals, Inc. (ATI), formerly Marina Port Services, Inc.[5] During the unloading operation, however, six containers/skids worth Philippine Pesos: One Hundred Seventeen Thousand Ninety-Three and Twelve Centavos (₱117,093.12) sustained dents and punctures from the forklift used by the stevedores of Ocean Terminal Services, Inc. (OTSI) in centering and shuttling the containers/skids. As a consequence, the local ship agent of the vessel, Baliwag Shipping Agency, Inc., issued two Bad Order Cargo Receipt dated September 1, 1993.

On September 7, 1993, Orient Freight International, Inc. (OFII), the customs broker of SMC, withdrew from ATI the 197 containers/skids, including the six in damaged condition, and delivered the same at SMC's warehouse in Calamba, Laguna through J.B. Limcaoco Trucking (JBL). It was discovered upon discharge that additional nine containers/skids valued at Philippine Pesos: One Hundred Seventy-Five Thousand Six Hundred Thirty-Nine and Sixty-Eight Centavos (₱175,639.68) were also damaged due to the forklift operations; thus, making the total number of 15 containers/skids in bad order.

Almost a year after, on August 15, 1994, SMC filed a claim against UCPB, Westwind, ATI, and OFII to recover the amount corresponding to the damaged 15 containers/skids. When UCPB paid the total sum of Philippine Pesos: Two Hundred Ninety-Two Thousand Seven Hundred Thirty-Two and Eighty Centavos (₱292,732.80), SMC signed the subrogation receipt. Thereafter, in the exercise of its right of subrogation, UCPB instituted on

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[5] Records, p. 343.

August 30, 1994 a complaint for damages against Westwind, ATI, and OFII.[6]

After trial, the RTC dismissed UCPB's complaint and the counterclaims of Westwind, ATI, and OFII. It ruled that the right, if any, against ATI already prescribed based on the stipulation in the 16 Cargo Gate Passes issued, as well as the doctrine laid down in *International Container Terminal Services, Inc. v. Prudential Guarantee & Assurance Co. Inc.*[7] that a claim for reimbursement for damaged goods must be filed within 15 days from the date of consignee's knowledge. With respect to Westwind, even if the action against it is not yet barred by prescription, conformably with Section 3 (6) of the Carriage of Goods by Sea Act (COGSA) and Our rulings in *E.E. Elser, Inc., et al. v. Court of Appeals, et al.*[8] and *Belgian Overseas Chartering and Shipping N.V. v. Phil. First Insurance Co., Inc.,*[9] the court *a quo* still opined that Westwind is not liable, since the discharging of the cargoes were done by ATI personnel using forklifts and that there was no allegation that it (Westwind) had a hand in the conduct of the stevedoring operations. Finally, the trial court likewise absolved OFII from any liability, reasoning that it never undertook the operation of the forklifts which caused the dents and punctures, and that it merely facilitated the release and delivery of the shipment as the customs broker and representative of SMC.

On appeal by UCPB, the CA reversed and set aside the trial court. The *fallo* of its September 13, 2011 Decision directed:

> **WHEREFORE,** premises considered, the instant appeal is hereby **GRANTED.** The Decision dated January 27, 2006 rendered by the court *a quo* is **REVERSED AND SET ASIDE.** Appellee Westwind Shipping Corporation is hereby ordered to pay to the appellant UCPB General Insurance Co., Inc., the amount of One Hundred Seventeen Thousand and Ninety-Three Pesos and Twelve Centavos

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[6] *Id*. at 1-8; *rollo* (G.R. 200289), pp. 59-62.

[7] 377 Phil. 1082 (1999).

[8] 96 Phil. 264 (1954).

[9] 432 Phil. 567 (2002).

(Php117,093.12), while Orient Freight International, Inc. is hereby ordered to pay to UCPB the sum of One Hundred Seventy-Five Thousand Six Hundred Thirty-Nine Pesos and Sixty-Eight Centavos (Php175,639.68). Both sums shall bear interest at the rate of six (6%) percent per annum, from the filing of the complaint on August 30, 1994 until the judgment becomes final and executory. Thereafter, an interest rate of twelve (12%) percent per annum shall be imposed from the time this decision becomes final and executory until full payment of said amounts.

SO ORDERED.[10]

While the CA sustained the RTC judgment that the claim against ATI already prescribed, it rendered a contrary view as regards the liability of Westwind and OFII. For the appellate court, Westwind, not ATI, is responsible for the six damaged containers/skids at the time of its unloading. In its rationale, which substantially followed *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.,*[11] it concluded that the common carrier, not the arrastre operator, is responsible during the unloading of the cargoes from the vessel and that it is not relieved from liability and is still bound to exercise extraordinary diligence at the time in order to see to it that the cargoes under its possession remain in good order and condition. The CA also considered that OFII is liable for the additional nine damaged containers/skids, agreeing with UCPB's contention that OFII is a common carrier bound to observe extraordinary diligence and is presumed to be at fault or have acted negligently for such damage. Noting the testimony of OFII's own witness that the delivery of the shipment to the consignee is part of OFII's job as a cargo forwarder, the appellate court ruled that Article 1732 of the New Civil Code (NCC) does not distinguish between one whose principal business activity is the carrying of persons or goods or both and one who does so as an ancillary activity. The appellate court further ruled that OFII cannot excuse itself from liability by insisting that JBL undertook the delivery of

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[10] *Rollo* (G.R. 200289), pp. 27-28, *rollo* (G.R. 200314), pp. 45-46. (Emphasis in the original)

[11] G.R. No. 165647, March 26, 2009, 582 SCRA 457.

the cargoes to SMC's warehouse. It opined that the delivery receipts signed by the inspector of SMC showed that the containers/skids were received from OFII, not JBL. At the most, the CA said, JBL was engaged by OFII to supply the trucks necessary to deliver the shipment, under its supervision, to SMC.

Only Westwind and OFII filed their respective motions for reconsideration, which the CA denied; hence, they elevated the case before Us via petitions docketed as G.R. Nos. 200289 and 200314, respectively.

Westwind argues that it no longer had actual or constructive custody of the containers/skids at the time they were damaged by ATI's forklift operator during the unloading operations. In accordance with the stipulation of the bill of lading, which allegedly conforms to Article 1736 of the NCC, it contends that its responsibility already ceased from the moment the cargoes were delivered to ATI, which is reckoned from the moment the goods were taken into the latter's custody. Westwind adds that ATI, which is a completely independent entity that had the right to receive the goods as exclusive operator of stevedoring and arrastre functions in South Harbor, Manila, had full control over its employees and stevedores as well as the manner and procedure of the discharging operations.

As for OFII, it maintains that it is not a common carrier, but only a customs broker whose participation is limited to facilitating withdrawal of the shipment in the custody of ATI by overseeing and documenting the turnover and counterchecking if the quantity of the shipments were in tally with the shipping documents at hand, but without participating in the physical withdrawal and loading of the shipments into the delivery trucks of JBL. Assuming that it is a common carrier, OFII insists that there is no need to rely on the presumption of the law – that, as a common carrier, it is presumed to have been at fault or have acted negligently in case of damaged goods – considering the undisputed fact that the damages to the containers/skids were caused by the forklift blades, and that there is no evidence presented to show that OFII and Westwind were the owners/operators of the forklifts. It asserts that the loading to the trucks were made by way of

forklifts owned and operated by ATI and the unloading from the trucks at the SMC warehouse was done by way of forklifts owned and operated by SMC employees. Lastly, OFII avers that neither the undertaking to deliver nor the acknowledgment by the consignee of the fact of delivery makes a person or entity a common carrier, since delivery alone is not the controlling factor in order to be considered as such.

Both petitions lack merit.

The case of *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*[12] applies, as it settled the query on which between a common carrier and an arrastre operator should be responsible for damage or loss incurred by the shipment *during* its unloading. We elucidated at length:

> Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods transported by them. Subject to certain exceptions enumerated under Article 1734 of the Civil Code, common carriers are responsible for the loss, destruction, or deterioration of the goods. The extraordinary responsibility of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them.
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> For marine vessels, Article 619 of the Code of Commerce provides that the ship captain is liable for the cargo from the time it is turned over to him at the dock or afloat alongside the vessel at the port of loading, until he delivers it on the shore or on the discharging wharf at the port of unloading, unless agreed otherwise. In *Standard Oil Co. of New York v. Lopez Castelo,* the Court interpreted the ship captain's liability as ultimately that of the shipowner by regarding the captain as the representative of the shipowner.
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> Lastly, Section 2 of the COGSA provides that under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Act. Section

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[12] *Id.*

3 (2) thereof then states that among the carriers' responsibilities are to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

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

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

In *Fireman's Fund Insurance Co. v. Metro Port Service, Inc.,* the Court explained the relationship and responsibility of an arrastre operator to a consignee of a cargo, to quote:

> The legal relationship between the consignee and the arrastre operator is akin to that of a depositor and warehouseman. The relationship between the consignee and the common carrier is similar to that of the consignee and the arrastre operator. Since it is the duty of the ARRASTRE to take good care of the goods that are in its custody and to deliver them in good condition to the consignee, such responsibility also devolves upon the CARRIER. **Both the ARRASTRE and the CARRIER are therefore charged with and obligated to deliver the goods in good condition to the consignee**. (Emphasis supplied) (Citations omitted)

The liability of the arrastre operator was reiterated in *Eastern Shipping Lines, Inc. v. Court of Appeals* with the clarification that the arrastre operator and the carrier are not always and necessarily solidarily liable as the facts of a case may vary the rule.

Thus, in this case, the appellate court is correct insofar as it ruled that an arrastre operator and a carrier may not be held solidarily liable at all times. But the precise question is which entity had custody of the shipment during its unloading from the vessel?

The aforementioned Section 3 (2) of the COGSA states that among the carriers' responsibilities are to properly and carefully load, care for and discharge the goods carried. The bill of lading covering the subject shipment likewise stipulates that the carrier's liability for loss or damage to the goods ceases after its discharge from the vessel. Article 619 of the Code of Commerce holds a ship captain liable for the cargo from the time it is turned over to him until its delivery at the port of unloading.

In a case decided by a U.S. Circuit Court, *Nichimen Company v. M/V Farland,* it was ruled that like the duty of seaworthiness, the duty of care of the cargo is non-delegable, and the carrier is accordingly responsible for the acts of the master, the crew, the stevedore, and his other agents. It has also been held that it is ordinarily the duty of the master of a vessel to unload the cargo and place it in readiness for delivery to the consignee, and there is an implied obligation that this shall be accomplished with sound machinery, competent hands, and in such manner that no unnecessary injury shall be done thereto. And the fact that a consignee is required to furnish persons to assist in unloading a shipment may not relieve the carrier of its duty as to such unloading.

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It is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier x x x.[13]

In *Regional Container Lines (RCL) of Singapore v. The Netherlands Insurance Co. (Philippines), Inc.*[14] and *Asian Terminals, Inc. v. Philam Insurance Co., Inc.*,[15] the Court echoed the doctrine that cargoes, while being unloaded, generally remain under the custody of the carrier.

We cannot agree with Westwind's disputation that "the carrier in *Wallem* clearly exercised supervision during the discharge of the shipment and that is why it was faulted and held liable

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[13] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, *supra* note 11, at 466-472. (Emphasis supplied)

[14] G.R. No. 168151, September 4, 2009, 598 SCRA 304.

[15] G.R. Nos. 181163, 181262 and 181319, July 24, 2013.

for the damage incurred by the shipment during such time." What Westwind failed to realize is that the extraordinary responsibility of the common carrier lasts until the time the goods are actually or constructively delivered by the carrier to the consignee or to the person who has a right to receive them. There is actual delivery in contracts for the transport of goods when possession has been turned over to the consignee or to his duly authorized agent and a reasonable time is given him to remove the goods.[16] In this case, since the discharging of the containers/skids, which were covered by only one bill of lading, had not yet been completed at the time the damage occurred, there is no reason to imply that there was already delivery, actual or constructive, of the cargoes to ATI. Indeed, the earlier case of *Delsan Transport Lines, Inc. v. American Home Assurance Corp.*[17] serves as a useful guide, thus:

> Delsan's argument that it should not be held liable for the loss of diesel oil due to backflow because the same had already been actually and legally delivered to Caltex at the time it entered the shore tank holds no water. It had been settled that the subject cargo was still in the custody of Delsan because the discharging thereof has not yet been finished when the backflow occurred. Since the discharging of the cargo into the depot has not yet been completed at the time of the spillage when the backflow occurred, there is no reason to imply that there was actual delivery of the cargo to the consignee. Delsan is straining the issue by insisting that when the diesel oil entered into the tank of Caltex on shore, there was legally, at that moment, a complete delivery thereof to Caltex. To be sure, the extraordinary responsibility of common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by, the carrier for transportation until the same are delivered, actually or constructively, by the carrier to the consignee, or to a person who has the right to receive them. The discharging of oil products to Caltex Bulk Depot has not yet been finished, Delsan still has the duty to guard and to preserve the cargo. The carrier

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[16] *Samar Mining Company, Inc. v. Nordeutscher Lloyd and C.F. Sharp & Company, Inc.*, 217 Phil. 497, 506 (1984), citing 11Words and Phrases 676, citing *Yazoo & MVR Company v. Altman*, 187 SW 656, 657.

[17] 530 Phil. 332 (2006).

still has in it the responsibility to guard and preserve the goods, a duty incident to its having the goods transported.

To recapitulate, common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case. The mere proof of delivery of goods in good order to the carrier, and their arrival in the place of destination in bad order, make out a *prima facie* case against the carrier, so that if no explanation is given as to how the injury occurred, the carrier must be held responsible. It is incumbent upon the carrier to prove that the loss was due to accident or some other circumstances inconsistent with its liability.[18]

The contention of OFII is likewise untenable. A customs broker has been regarded as a common carrier because transportation of goods is an integral part of its business.[19] In *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.,*[20] the Court already reiterated:

It is settled that under a given set of facts, a customs broker may be regarded as a common carrier. Thus, this Court, in *A.F. Sanchez Brokerage, Inc. v. The Honorable Court of Appeals* held:

The appellate court did not err in finding petitioner, a customs broker, to be also a common carrier, as defined under Article 1732 of the Civil Code, to wit,

Art. 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air, for compensation, offering their services to the public.

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Article 1732 does not distinguish between one whose principal business activity is the carrying of goods and one who does

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[18] *Delsan Transport Lines, Inc. v. American Home Assurance Corp., supra*, at 340-341.

[19] *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corporation,* G.R. No. 179446, January 10, 2011, 639 SCRA 69, 80.

[20] 496 Phil. 437 (2005).

such carrying only as an ancillary activity. The contention, therefore, of petitioner that it is not a common carrier but a customs broker whose principal function is to prepare the correct customs declaration and proper shipping documents as required by law is bereft of merit. It suffices that petitioner undertakes to deliver the goods for pecuniary consideration.

And in *Calvo v. UCPB General Insurance Co. Inc.*, this Court held that as the transportation of goods is an integral part of a customs broker, the customs broker is also a common carrier. For to declare otherwise "would be to deprive those with whom [it] contracts the protection which the law affords them notwithstanding the fact that the obligation to carry goods for [its] customers, is part and parcel of petitioner's business."[21]

That OFII is a common carrier is buttressed by the testimony of its own witness, Mr. Loveric Panganiban Cueto, that part of the services it offers to clients is cargo forwarding, which includes the delivery of the shipment to the consignee.[22] Thus, for undertaking the transport of cargoes from ATI to SMC's warehouse in Calamba, Laguna, OFII is considered a common carrier. As long as a person or corporation holds itself to the public for the purpose of transporting goods as a business, it is already considered a common carrier regardless of whether it owns the vehicle to be used or has to actually hire one.

As a common carrier, OFII is mandated to observe, under Article 1733 of the Civil Code,[23] extraordinary diligence in the vigilance over the goods[24] it transports according to the peculiar circumstances of each case. In the event that the goods are lost,

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[21] *Schmitz Transport & Brokerage Corporation v. Transport Venture, Inc.*, *supra,* at 450-551.

[22] TSN, February 1, 1999, p. 11.

[23] Art. 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

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[24] In *Compania Maritima v. Court of Appeals* (G.R. No. L-31379, August 29, 1958, 164 SCRA 685, 692), the meaning of "extraordinary diligence in the vigilance over goods" was explained, thus:

destroyed or deteriorated, it is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence.[25] In the case at bar, it was established that, except for the six containers/skids already damaged, OFII received the cargoes from ATI in good order and condition; and that upon its delivery to SMC, additional nine containers/skids were found to be in bad order, as noted in the Delivery Receipts issued by OFII and as indicated in the Report of Cares Marine & Cargo Surveyors. Instead of merely excusing itself from liability by putting the blame to ATI and SMC, it is incumbent upon OFII to prove that it actively took care of the goods by exercising extraordinary diligence in the carriage thereof. It failed to do so. Hence, its presumed negligence under Article 1735 of the Civil Code remains unrebutted.

WHEREFORE, premises considered, the petitions of Westwind and OFII in G.R. Nos. 200289 and 200314, respectively, are **DENIED.** The September 13, 2011 Decision and January 19, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 86752, which reversed and set aside the January 27, 2006 Decision of the Manila City Regional Trial Court, Branch 30, are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Bersamin,[*] *Abad,* and *Mendoza, JJ.,* concur.

The extraordinary diligence in the vigilance over the goods tendered for shipment requires the common carrier to know and to follow the required precaution for avoiding damage to, or destruction of the goods entrusted to it for safe carriage and delivery. It requires common carriers to render service with the greatest skill and foresight and "to use all reasonable means to ascertain the nature and characteristic of goods tendered for shipment, and to exercise due care in the handling and stowage, including such methods as their nature requires."

[25] Art. 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required on Article 1733.

[*] Designated as Acting Member in lieu of Associate Justice Marvic Mario Victor F. Leonen, per Special Order No. 1605 dated November 20, 1013.

SECOND DIVISION

[G.R. No. 201105. November 25, 2013]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NATALIO HILARION *y* LALIAG,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS.—** For a charge of rape under Article 266-A of the RPC, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.

2. **ID.; ID.; CARNAL KNOWLEDGE; THERE IS SUFFICIENT BASIS TO CONCLUDE THAT CARNAL KNOWLEDGE HAS TAKEN PLACE WHEN THE TESTIMONY OF A RAPE VICTIM IS CONSISTENT WITH THE MEDICAL FINDINGS.—** [T]he appellant had carnal knowledge of the victim. AAA was steadfast in her assertion that the appellant inserted his penis into her vagina, and her testimony was corroborated by the medical findings of Dr. Winston Tan. "We have held that when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that carnal knowledge has taken place."

3. **ID.; ID.; FORCE, THREAT OR INTIMIDATION; NEED NOT BE IRRESISTIBLE, BUT JUST ENOUGH TO BRING ABOUT THE DESIRED RESULT.—** [T]he appellant employed threat, force and intimidation to satisfy his lust. As an element of rape, force, threat or intimidation need not be irresistible, but just enough to bring about the desired result." In the present case, AAA testified that she cried when the appellant inserted his penis into her vagina. As a child of tender years, she could not reasonably be expected to resist in the same manner that an adult would under the same or similar circumstances. Nonetheless, AAA's act of crying during the rape is sufficient indication that the appellant's act was *against*

her will. AAA also revealed that the appellant threatened to kill her parents if she disclosed the incident to anyone.

4. **ID.; STATUTORY RAPE; THE VICTIM'S AGE IS AN ESSENTIAL ELEMENT OF STATUTORY RAPE WHICH MUST BE PROVED WITH EQUAL CERTAINTY AND CLARITY AS THE CRIME ITSELF.—** It is not lost on us that the victim's age had been properly alleged in the Information which stated that AAA was a minor and six (6) years of age at the time of the rape. We cannot, however, sustain the appellant's conviction for statutory rape since the prosecution failed to sufficiently prove the victim's age. In *People v. Buado, Jr.,* the Court reiterated the guidelines in appreciating the victim's "age," either as an element of the crime or as a qualifying circumstance x x x. In the present case, the records are completely devoid of evidence that the certificates recognized by law have been lost or destroyed or were otherwise unavailable. The mother simply testified without prior proof of the unavailability of the recognized primary evidence. Thus, proof of the victim's age cannot be recognized, following the rule that all doubts should be interpreted in favor of the accused. Accordingly, as the Court did in *Buado*, we can only sustain the accused's conviction for simple rape, as the victim's and her mother's testimonies to prove the victim's minority are insufficient x x x. To reiterate, while AAA's mother, BBB, testified that her daughter was six (6) years old at the time of the rape**, it had not been previously established that the certificate of live birth or other similar authentic document such as the baptismal certificate or school records have been lost or destroyed or otherwise unavailable.** Even AAA's own testimony on cross examination that she was six (6) years old at the time of the incident would not suffice to prove her minority since her age was not expressly and clearly admitted by the accused. We stress that age is an essential element of statutory rape; hence the victim's age must be proved with equal certainty and clarity as the crime itself.

APPEARANCES OF COUNSEL

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

DECISION

BRION, *J.*:

We decide the appeal, filed by appellant Natalio Hilarion, from the decision[1] of the Court of Appeals (*CA*) dated October 12, 2011 in CA-G.R. CR-HC No. 03104. The CA decision affirmed *in toto* the October 25, 2007 judgment[2] of the Regional Trial Court (*RTC*), Branch 260, Parañaque City, finding the appellant guilty beyond reasonable doubt of the crime of rape, and sentencing him to suffer the penalty of *reclusion perpetua*.

In its October 25, 2007 judgment, the RTC found the appellant guilty beyond reasonable doubt of the crime of rape under Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended (*RPC*). It gave credence to the testimony of AAA[3] that the appellant inserted his penis into her vagina in the afternoon of November 15, 2002. It further held that AAA's testimony was corroborated by the medical findings of the Philippine National Police medico-legal officer stating that the victim had "deep healing laceration at 3 o'clock position"[4] on her hymen. The RTC sentenced the appellant to suffer the penalty of *reclusion perpetua*, and ordered him to pay AAA ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

On appeal, the CA affirmed the RTC judgment *in toto*. The CA held that AAA positively identified the appellant as the person who inserted his penis into her vagina in a grassy area on November 15, 2002; her testimony was corroborated by Medico-Legal Report No. 3472-02 showing that AAA had deep-healing hymenal lacerations, and that her posterior fourchette had been "abraded." It further held that the victim's age had

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[1] *Rollo*, pp. 2-22; penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Associate Justice Fernanda Lampas-Peralta and Associate Justice Priscilla J. Baltazar-Padilla.

[2] CA *rollo*, pp. 17-27.

[3] See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] CA *rollo,* p. 22.

been sufficiently proven by the written and oral testimonies of AAA's mother, BBB. The CA also rejected the appellant's denial for his failure to substantiate his defense.

In his brief,[5] the appellant maintained that the prosecution failed to prove the elements of force and intimidation; he also claimed that the victim's age had not been proven with certainty.

OUR RULING

We **DENY** the appeal, but modify the designation of the crime committed and the awarded indemnities.

For a charge of rape under Article 266-A of the RPC, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.

The prosecution in the present case positively established the elements of rape required under Article 266-A of the RPC.

First, the appellant had carnal knowledge of the victim. AAA was steadfast in her assertion that the appellant inserted his penis into her vagina, and her testimony was corroborated by the medical findings of Dr. Winston Tan. "We have held that when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that carnal knowledge has taken place."[6]

"*Second*, the appellant employed threat, force and intimidation to satisfy his lust. As an element of rape, force, threat or intimidation need not be irresistible, but just enough to bring about the desired result."[7] In the present case, AAA testified that she cried when the appellant inserted his penis into her

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[5] *Id.* at 41-56.

[6] *People v. Mercado*, G.R. No. 189847, May 30, 2011, 649 SCRA 499, 503.

7 See *People v. Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 392.

vagina. As a child of tender years, she could not reasonably be expected to resist in the same manner that an adult would under the same or similar circumstances. Nonetheless, AAA's act of crying during the rape is sufficient indication that the appellant's act was *against her will*. AAA also revealed that the appellant threatened to kill her parents if she disclosed the incident to anyone.

In addition, the appellant did not impute any improper motive on AAA or on any other prosecution witnesses on why they would falsely testify against him.

We additionally note that while the CA's dispositive portion affirmed *in toto* the RTC's decision (which found the appellant guilty beyond reasonable doubt of the crime of rape under Article 266-A, in relation with Article 266-B, of the Revised Penal Code, as amended), the body of the appellate court's decision showed that it was convicting the appellant of statutory rape.

It is not lost on us that the victim's age had been properly alleged in the Information[8] which stated that AAA was a minor and six (6) years of age at the time of the rape. We cannot, however, sustain the appellant's conviction for statutory rape since the prosecution failed to sufficiently prove the victim's age.

In *People v. Buado, Jr.*,[9] the Court reiterated the guidelines in appreciating the victim's "age," either as an element of the crime or as a qualifying circumstance, thus:

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[8] CA *rollo*, p. 13. The Information in Criminal Case No. 02-01364 reads:

That on or about the 15th day of November, 2002, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant [AAA], a minor, 6 years of age, against her will and consent.

[9] G.R. No. 170634, January 8, 2013, 688 SCRA 82, 104-105, citing *People v. Pruna*, G.R. No. 138471, October 10, 2002, 390 SCRA 577; emphasis ours.

In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.

> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
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> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. **If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable**, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
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> a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than years old;
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> b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old
>
> c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
>
> 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.
>
> 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.

In the present case, the records are completely devoid of evidence that the certificates recognized by law have been lost or destroyed or were otherwise unavailable. The mother simply testified without prior proof of the unavailability of the recognized primary evidence. Thus, proof of the victim's age cannot be recognized, following the rule that all doubts should be interpreted in favor of the accused.

Accordingly, as the Court did in *Buado*, we can only sustain the accused's conviction for simple rape,[10] as the victim's and her mother's testimonies to prove the victim's minority are insufficient:

> In Criminal Case No. 912-V-99, the amended information alleged that AAA was only ten years old when the rape was committed in April 1999 and that she was the daughter of the accused. **During the trial, however, the Prosecution adduced no evidence to establish her minority save her testimony and that of her mother's**. In the absence of proof of AAA's minority in accordance with the guidelines set in *People v. Pruna*, we concur with the CA's conclusion that he could not be properly found guilty of qualified rape. Indeed, his substantial right to be informed of the nature and cause of the accusation against him would be nullified otherwise. Accordingly, the CA correctly prescribed *reclusion perpetua* as the penalty.[11]

To reiterate, while AAA's mother, BBB, testified that her daughter was six (6) years old at the time of the rape, **it had not been previously established that the certificate of live birth or other similar authentic document such as the baptismal**

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[10] There were two victims in this case, AAA and BBB. The Court sustained the imposition of the death penalty (which it reduced to *reclusion perpetua without eligibility for parole* by virtue of the passage of R.A. No. 9346) in Criminal Case No. 974-V-99 for the rape committed by the accused against her other daughter, BBB, since the prosecution was able to present the latter's birth certificate.

[11] *People v. Buado, Jr., supra* note 9, at 105-106; emphases ours, italics supplied, citation omitted.

certificate or school records have been lost or destroyed or otherwise unavailable.[12] Even AAA's own testimony on cross examination that she was six (6) years old at the time of the incident would not suffice to prove her minority since her age was not expressly and clearly admitted by the accused. We stress that age is an essential element of statutory rape; hence the victim's age must be proved with equal certainty and clarity as the crime itself.

The trial and appellate courts correctly sentenced the appellant to suffer the penalty of *reclusion perpetua*, as none of the circumstances that qualify the rape under Article 266-B of the Revised Penal Code, as amended, had been proven. However, we direct the appellant to further pay AAA ₱30,000.00 as exemplary damages to conform to prevailing jurisprudence on simple rape cases.[13]

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.[14]

WHEREFORE, the decision of the Court of Appeals dated October 12, 2011 in CA-G.R. CR HC No. 03104 is **AFFIRMED** with the following **MODIFICATIONS:** (1) the appellant is found guilty beyond reasonable doubt of simple rape; and (2) he is further ordered to pay AAA ₱30,000.00 as exemplary damages, plus legal interest on all damages awarded at the legal rate of 6% from the date of finality of this Decision until full payment.

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[12] See *People v. Lupac*, G.R. No. 182230, September 19, 2012, 681 SCRA 390, 396-398, citing *People v. Pruna*, G.R. No. 138471, October 10, 2002, 390 SCRA 577.

[13] See *People v. Monticalvo*, G.R. No. 193507, January 30, 2013, 689 SCRA 715, 743; and *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 258.

[14] See *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 600.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 206095. November 25, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO GARCIA *Y* PADIERNOS,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE BY SEXUAL ASSAULT; ELEMENTS.—** Rape by sexual assault, otherwise known as "instrument or object rape or gender free rape," is punishable under Article 266-A, paragraph 2 of the Revised Penal Code (*RPC*), as amended by R.A. No. 8353. x x x In *People v. Soria,* the Court enumerated the elements of this crime, to wit: (1) That the offender commits an act of sexual assault; (2) That the act of sexual assault is committed by any of the following means: (a) By inserting his penis into another person's mouth or anal orifice; or (b) By inserting any instrument or object into the genital or anal orifice of another person; (3) That the act of sexual assault is accomplished under any of the following circumstances: (a) By using force or intimidation; (b) When the woman is deprived of reason or otherwise unconscious; or (c) By means of fraudulent machination or grave abuse of authority; or (d) When the woman is under 12 years of age or demented.

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* Designated as acting member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1619 dated November 22, 2013.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE REVIEWING COURT IS GENERALLY BOUND BY THE TRIAL COURT'S ASSESSMENT THEREOF.—** Jurisprudence has been consistent that the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying. Absent any substantial reason to justify the reversal of the trial court's assessment and conclusion, the reviewing court is generally bound by the former's findings, particularly when no significant fact or circumstance is shown to have been overlooked or disregarded, which if considered would have affected the outcome of the case. The rule finds an even more stringent application where said findings are sustained by the CA.

3. **ID.; ID.; ID.; WHERE THERE IS NO EVIDENCE TO SHOW IMPROPER MOTIVE ON WHY A PROSECUTION WITNESS WOULD TESTIFY FALSELY AGAINST AN ACCUSED IN A HEINOUS CRIME, THE TESTIMONY IS WORTHY OF FULL FAITH AND CREDIT.—** Garcia failed to show any ill motive on the part of AAA which could have impelled her to falsely accuse him of committing such a reprehensible crime. Where there is no evidence to show any dubious reason or improper motive on why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit. This failure on the part of Garcia all the more strengthens the credibility of AAA and the validity of her charge. Time and again, this Court has held that no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter testify about her ordeal in a public trial, if she had not been impelled to seek justice for the wrong done to her.

4. **CRIMINAL LAW; QUALIFIED RAPE; QUALIFYING CIRCUMSTANCE OF MINORITY; CANNOT BE APPRECIATED AGAINST THE ACCUSED IN CASE AT BAR.—** Well-settled is the rule that qualifying circumstances must be specifically alleged in the Information and duly proven with equal certainty as the crime itself. The victim's minority

must be proved conclusively and indubitably as the crime itself. In *People v. Arpon*, the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance x x x. In this case, there is nothing on record to prove the qualifying circumstance that "the victim is a child below 7 years old." The testimony of AAA anent her age and the absence of denial on the part of Garcia are not sufficient evidence of her age. On the other hand, the information regarding the age of AAA as indicated in Medico Legal Report No. M-4356-04 is not reliable because there was no showing who supplied the same. Lamentably, her age was not one of the subjects of stipulation during the pre-trial conference. It bears stressing that the prosecution did not adduce any independent and competent documentary evidence such as AAA's original or duly certified birth certificate, baptismal certificate, school records or any authentic documents indicating her date of birth, to show that the commission of the crime was attended by the subject qualifying circumstance of minority. The prosecution also failed to establish that the documents referred to above were lost, destroyed, unavailable, or otherwise totally absent. Her mother or any member of her family, by affinity or consanguinity, never testified on her age or date of birth. Further, there is no showing that the testimony of AAA as to her age at the time of the commission of the crime was expressly and clearly admitted by Garcia. In the light of the foregoing, the subject qualifying circumstance cannot be appreciated against Garcia.

5. **ID.; SIMPLE RAPE; PENALTY.—** In the absence of any qualifying circumstance, the crime committed by Garcia is Simple Rape by Sexual Assault and the penalty should be *prision mayor* as provided in Art. 266-B par. 7 of the RPC. Considering that there is neither aggravating nor mitigating circumstances, the penalty should be imposed in its medium period pursuant to Article 64(1) of the RPC. Applying the Indeterminate Sentence Law, Garcia should be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, that is, *prision correccional* (6 months and 1 day to 6 years) and the maximum of which should be within the range of *prision mayor* in its medium period (8 years and 1 days to 10 years). Accordingly, the Court imposes the indeterminate penalty

ranging from six (6) years *of prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.

6. **CIVIL LAW; DAMAGES; MORAL DAMAGES; AUTOMATICALLY AWARDED TO RAPE VICTIMS WITHOUT NEED OF PLEADING OR PROOF.—** AAA is entitled to moral damages as they are automatically awarded to rape victims without need of pleading or proof.

7. **ID.; ID.; CIVIL INDEMNITY; MANDATORY UPON THE FINDING OF THE FACT OF RAPE.—** The award of civil indemnity is x x x proper in the light of the ruling that civil indemnity, which is distinct from moral damages, is mandatory upon the finding of the fact of rape.

8. **ID.; ID.; EXEMPLARY DAMAGES; CAN BE AWARDED WHERE THE CIRCUMSTANCES OF THE CASE SHOW THE HIGHLY REPREHENSIBLE CONDUCT OF THE OFFENDER.—** The award of exemplary damages finds basis in Art. 2229 of the Civil Code as it pertinently provides that exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. Being corrective in nature, exemplary damages can be awarded where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. The circumstances of the present case show the high degree of perversity and depravity of Garcia in sexually assaulting his neighbor's child. To deter such behavior, exemplary damages must be imposed on the accused as a warning to those persons who would be similarly disposed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J*.:

This is an appeal from the August 1, 2012 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 04814, which affirmed with modification the March 22, 2010 Decision[2] of the Regional Trial Court, Branch 68, Binangonan, Rizal *(RTC)*, in Criminal Case No. 05-012, finding accused Roberto Garcia *y* Padiernos *(Garcia)* guilty beyond reasonable doubt of the crime of Qualified Rape committed against AAA.[3]

Garcia was charged with Qualified Rape in the Information,[4] dated November 18, 2004, the accusatory portion of which reads:

> That in or about and during the month of May, 2004, in the Municipality of Binangonan, 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 commit sexual assault upon the person of one AAA, a three (3)(-year) old minor, by then and there inserting his finger into the genital organ of the said AAA, against her will and consent; the crime having been attended by the qualifying circumstance of minority, the victim AAA, three (3) years of age at the time of the commission of the crime; thereby raising the crime of QUALIFIED RAPE which is aggravated by the circumstances of

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[1] Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justice Mariflor P. Punzalan Castillo and Associate Justice Rodil V. Zalameda, concurring. *Rollo*, p. 2-15.

[2] Penned by Judge John C. Quirante. Records, pp. 144-146.

[3] Per this Court's Resolution, dated September 2006, in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 or the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead. Likewise, the exact addresses of the victims are to be deleted.

[4] Records, pp. 1-2.

treachery, evident premeditation, and abuse of superior strength, to the damage and prejudice of the victim.

CONTRARY TO LAW.

When arraigned, Garcia entered a plea of "Not Guilty" to the offense charged. During the pre-trial, the parties stipulated as to: 1] the identity of the accused being one Roberto Garcia *y* Padiernos; and 2] the jurisdiction of the lower court to try the case.[5] Thereafter, trial on the merits ensued. As synthesized by the CA, the facts of the case are as follows:

AAA x x x testified, *viz*: she was 3 years old when appellant inserted his index finger into her vagina sometime in 2004; it hurt and she bled; appellant's finger went inside and it was painful; the two of them were the only people outside; she was wearing panties and a pair of shorts, both of which he took off; he lived in the house beside hers and the incident happened outside her house; he and his wife often called and gave her bread; after the incident, she just stood where she was and later went home; it was only after appellant and his wife left their house that she told her mother about the incident; when she urinated, blood oozed out of her vagina which prompted her mother to bring her to the doctor; and the incident happened only once.

Dr. Joseph Palmero, Medico-Legal Officer of Camp Crame Crime Laboratory Office, testified that he examined AAA on October 7, 2004. He summarized his findings in his Medico Legal Report No. M-4356-04, *viz*:

FINDINGS:

GENERAL AND EXTRAGENITAL:

PHYSICAL BUILT:	light
MENTAL STATUS:	coherent
BREAST:	undeveloped/light brown
ABDOMEN:	soft and flat
PHYSICAL INJURIES:	NONE

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[5] Order dated March 16, 2006; *id*. at 47-48.

GENITAL:

PUBIC HAIR:	ABSENT
LABIA MAJORA:	coaptated
LABIA MENORA:	light brown/non-hypertrophied
HYMEN:	deep healed laceration at 9 o'clock position

POSTERIOIR FOURCHETTE: sharp

EXTERNAL VAGINAL ORIFICE: n/a

VAGINAL CANAL: n/a

CERVIX: n/a

PERIURETHRAL AND VAGINAL SMEARS: negative

CONCLUSION: **Definite evidence of abuse.**[6] [Emphasis supplied]

The prosecution also adduced the following documentary evidence: 1] Sworn Statement of AAA; 2] Initial Medico Legal Report executed by Dr. Joseph Palmero *(Dr. Palmero)*; 3] Medico Legal Report No. M-4356-04; and 4] AAA's Sexual Crime Protocol.

When it was the turn of the defense to present evidence, Garcia failed to appear despite the directive of the trial court. Thus, by Order, dated March 9, 2010, the RTC granted the motion of the prosecution to forfeit his cash bond and submit the case for decision.[7]

Ruling of the RTC

On March 22, 2010, the RTC rendered its judgment convicting Garcia of simple rape. It held that the accused committed object rape when he inserted his finger into the vagina of AAA by force and intimidation. The dispositive portion of the said decision reads:

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[6] *Rollo,* pp. 3-4.

[7] *Id.* at 5.

WHEREFORE, judgment is rendered finding the accused guilty of Simple Rape under par. (2) Article 266-A of the Revised Penal Code, and he is hereby sentenced to *Reclusion Perpetua*.

SO ORDERED.[8]

Garcia appealed the RTC judgment of conviction before the CA.

Ruling of the CA

On August 1, 2012, the CA found Garcia guilty of qualified rape based on the testimony of AAA which the appellate court found credible and sufficient to sustain his conviction. According to the CA, the RTC erred in not appreciating the qualifying circumstance that "the victim is a child below seven (7) years old." It was of the view that since the minority of AAA was alleged in the Information and proven during trial, through her testimony and Medico Legal Report No. M-4356-04, the imposition of the death penalty was warranted. In view of the passage, however, of Republic Act *(R.A.)* No. 9346 on June 24, 2006, proscribing the imposition of the capital punishment, the CA held that Garcia should suffer the penalty of *reclusion perpetua* only. It further ordered him to pay AAA civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; and exemplary damages of ₱30,000.00. The dispositive portion of the CA decision reads:

ACCORDINGLY, the Decision dated July 30, 2010[9] is AFFIRMED with MODIFICATION, pronouncing appellant ROBERTO GARCIA *y* PADIERNOS GUILTY of QUALIFIED RAPE and ORDERING him to PAY AAA ₱75,000.00 as moral damages, ₱75,000.00, civil indemnity; and ₱30,000.00, exemplary damages.

SO ORDERED.[10]

Garcia appealed the August 1, 2012 decision of the CA to the Court. In its Resolution,[11] dated June 5, 2013, the Court

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[8] Records, p. 146.

[9] Should be March 22, 2010.

[10] *Rollo*, pp. 14-15.

[11] *Id*. at 21.

notified the parties regarding the submission of their respective supplemental briefs. On July 29, 2013, Garcia manifested that he would no longer file a supplemental brief and would just adopt the defenses and arguments in the Appellant's Brief he filed before the CA.[12] Later, the Office of the Solicitor General manifested that it was submitting the case on the basis of the record on hand.[13]

The Issues

Professing innocence, Garcia assails the CA decision and presents for the Court's review the following

ASSIGNMENT OF ERRORS:

I

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE AFFIDAVIT OF DESISTANCE EXECUTED IN FAVOR OF THE ACCUSED-APPELLANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[14]

The Court's Ruling

The conviction of Garcia must be affirmed.

Rape by sexual assault, otherwise known as "instrument or object rape or gender free rape,"[15] is punishable under Article 266-A, paragraph 2 of the Revised Penal Code (*RPC*), as amended by R.A. No. 8353. The said law provides:

Art. 266-A. Rape*; when and how committed.* — Rape is committed –

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[12] *Id*. at 23-24.

[13] *Id*. at 31-32.

[14] Brief for the Accused-Appellant, CA *rollo*, p. 40.

[15] *People v. Abulon*, 557 Phil. 428, 454 (2007).

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.

In *People v. Soria,*[16] the Court enumerated the elements of this crime, to wit:

(1) That the offender commits an act of sexual assault;

(2) That the act of sexual assault is committed by any of the following means:

(a) By inserting his penis into another person's mouth or anal orifice; or

(b) By inserting any instrument or object into the genital or anal orifice of another person;

(3) That the act of sexual assault is accomplished under any of the following circumstances:

(a) By using force or intimidation;

(b) When the woman is deprived of reason or otherwise unconscious; or

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

(d) When the woman is under 12 years of age or demented.

All these elements are present in the case at bench. Upon review, the Court finds AAA's testimony as credible, clear, categorical and convincing. AAA's ordeal was narrated in a manner the Court deems sufficient to establish the following facts: a) that Garcia took off her clothes and panty; b) that he inserted his index finger into her vagina; c) that she suffered excruciating pain; and d) that blood oozed from her vagina when she urinated after the sexual molestation. Without hesitation, she pointed to Garcia as her molestor.

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[16] G.R. No. 179031, November 14, 2012, 685 SCRA 483, 504.

Jurisprudence has been consistent that the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying. Absent any substantial reason to justify the reversal of the trial court's assessment and conclusion, the reviewing court is generally bound by the former's findings, particularly when no significant fact or circumstance is shown to have been overlooked or disregarded, which if considered would have affected the outcome of the case.[17] The rule finds an even more stringent application where said findings are sustained by the CA.[18]

In the case at bench, the Court finds no cogent reason to merit a departure from the findings of the RTC and its calibration of AAA's credibility. Her account of the ordeal she suffered in the hands of Garcia was straightforward and forthright, without any artificiality or pretension that would tarnish the veracity of her testimony. Despite her answers not being as complete and coherent as would be desired, considering her age, AAA was able to convincingly narrate her harrowing experience. Her natural innocence and naivete belied any attempt to characterize her testimony as a lie. Hence, there is neither cause nor reason to deny credence to what she had recounted on the witness stand.

Moreover, Garcia failed to show any ill motive on the part of AAA which could have impelled her to falsely accuse him of committing such a reprehensible crime. Where there is no evidence to show any dubious reason or improper motive on why a prosecution witness would testify falsely against an accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[19] This failure on the part of Garcia all the more strengthens the credibility of AAA and the validity of her charge. Time and again, this Court has held that

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[17] *People v. Dominguez, Jr.,* G.R. No. 180914, November 24, 2010, 636 SCRA 134, 161.

[18] *People v. Boisan Cabugatan*, 544 Phil. 468, 479 (2007).

[19] *People v. Ferrer*, 356 Phil. 497, 508 (1998).

no young woman, especially one of tender age, would concoct a story of defloration, allow an examination of her private parts and thereafter testify about her ordeal in a public trial, if she had not been impelled to seek justice for the wrong done to her.[20]

In a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, which the prosecution in this case was able to prove beyond reasonable doubt. The testimony of AAA on the sexual assault was amply corroborated by Medico-Legal Report No. M-4356-04 executed by Dr. Palmero stating that there was evidence of sexual abuse in view of the presence of hymenal laceration in her private part. Verily, the prosecution evidence is sufficient to sustain the conviction of Garcia.

In a futile attempt to produce reasonable doubt on his criminal culpability, Garcia highlights the statement of Dr. Palmero that there was only an attempt to insert an object into the hymen of AAA.[21] He argues that such inconsistency in the prosecution evidence effectively taints the credibility of AAA and casts doubt on the truthfulness of her charge. Garcia is grasping at straws.

Garcia then puts in issue the alleged error committed by the RTC when it failed to act on the affidavit of desistance filed before it. The Court need not belabor this matter. The Court agrees with the CA when it wrote:

> We first address the affidavit of desistance allegedly executed by AAA's parents. This document is not found in the record, nor attached to any of the pleadings filed before this Court. Hence, all arguments pertaining to this inexistent document must fail. At any rate, affidavits of desistance, especially those extracted from poor, unlettered, young and gullible witnesses, are generally frowned upon. Testimony solemnly given before a court of justice and subjected to the test of cross-examination cannot just be set aside. The credibility of trials and the pursuit of truth cannot be placed at the unilateral disposal

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[20] *People v. Cañada,* G.R. No. 175317, October 2, 2009, 602 SCRA 378, 391.

[21] CA *rollo*, p. 41.

of timorous witnesses or made dependent on one-sided statements prepared by notaries (*People v. Garcia,* G.R. No. 120387-88, March 31, 1998).[22]

Having established with certitude the guilt of Garcia for the crime of rape by sexual assault, the Court will now proceed to the determination of the proper imposable penalty and award of damages.

Article 266-B of the RPC, as amended by R.A. No. 8353, provides:

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

x x x x x x x x x

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

x x x x x x x x x

5. When the victim is a child below seven (7) years old.

x x x x x x x x x

Rape under paragraph 2 of the next preceding article shall be punished by ***prision mayor***.

x x x x x x x x x

Reclusion temporal shall also be imposed if the rape is committed by any of the ten aggravating/qualifying circumstances mentioned in this article. (Emphases supplied)

In the case at bench, the CA held that the qualifying circumstance of minority was proven beyond reasonable doubt. According to the CA, the unrefuted testimony of AAA that she was 3 years old when the incident happened, and Medico-Legal Report No. M-4356-04, which stated that AAA was 3 years old when she was examined for any evidence of sexual abuse, had established the qualifying circumstance that "the victim is

[22] *Rollo*, p. 7.

a child below 7 years old." It further declared that since AAA was under 7 years old at the time of the commission of the object rape, Garcia should be convicted of qualified rape and meted the death penalty.[23]

The Court has to disagree.

Well-settled is the rule that qualifying circumstances must be specifically alleged in the Information and duly proven with equal certainty as the crime itself.[24] The victim's minority must be proved conclusively and indubitably as the crime itself.[25]

In *People v. Arpon,*[26] the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, as follows:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

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[23] *Id.* at 14.

[24] *People v. Eduardo Limos*, 465 Phil. 66, 96 (2004), citing *People v. Ocumen*, 458 Phil. 111, 128 (2003).

[25] *People v. Albalate, Jr.*, G.R. No. 174480, December 18, 2009, 608 SCRA 535, 546.

[26] G.R. No. 183563, December 14, 2011, 662 SCRA 506, 530-531, citing *People v. Pruna*, 439 Phil. 440, 470-471 (2002).

b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. **In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.**

5. It is the prosecution that has the burden of proving the age of the offended party. **The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.** (Emphases supplied.)

In this case, there is nothing on record to prove the qualifying circumstance that "the victim is a child below 7 years old." The testimony of AAA anent her age and the absence of denial on the part of Garcia are not sufficient evidence of her age. On the other hand, the information regarding the age of AAA as indicated in Medico Legal Report No. M-4356-04 is not reliable because there was no showing who supplied the same. Lamentably, her age was not one of the subjects of stipulation during the pre-trial conference.

It bears stressing that the prosecution did not adduce any independent and competent documentary evidence such as AAA's original or duly certified birth certificate, baptismal certificate, school records or any authentic documents indicating her date of birth, to show that the commission of the crime was attended by the subject qualifying circumstance of minority. The prosecution also failed to establish that the documents referred to above were lost, destroyed, unavailable, or otherwise totally absent. Her mother or any member of her family, by affinity or consanguinity, never testified on her age or date of birth. Further, there is no showing that the testimony of AAA as to her age at the time of the commission of the crime was expressly and clearly admitted by Garcia. In the light of the foregoing, the subject qualifying circumstance cannot be appreciated against Garcia.

In the absence of any qualifying circumstance, the crime committed by Garcia is Simple Rape by Sexual Assault and the penalty should be *prision mayor* as provided in Art. 266-B par. 7 of the RPC. Considering that there is neither aggravating nor mitigating circumstances, the penalty should be imposed in its medium period pursuant to Article 64(l)[27] of the RPC. Applying the Indeterminate Sentence Law, Garcia should be sentenced to an indeterminate penalty the minimum of which should be within the range of the penalty next lower in degree than that prescribed by law for the offense, that is, *prision correccional* (6 months and 1 day to 6 years) and the maximum of which should be within the range of *prision mayor* in its medium period (8 years and 1 day to 10 years). Accordingly, the Court imposes the indeterminate penalty ranging from six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum.

On the damages, the Court agrees with the CA that AAA is entitled to moral damages as they are automatically awarded to rape victims without need of pleading or proof.[28] The award of civil indemnity is likewise proper in the light of the ruling that civil indemnity, which is distinct from moral damages, is mandatory upon the finding of the fact of rape.[29]

The award of exemplary damages finds basis in Art. 2229 of the Civil Code as it pertinently provides that exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to moral, temperate, liquidated or compensatory damages. Being corrective in nature, exemplary

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[27] Art. 64. Rule for application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, x x x, the courts shall observe for application of the penalty the following rules, x x x:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period. xxx

[28] *People v. Orande*, 461 Phil. 403, 421 (2003).

[29] *People v. Tablang*, G.R. No. 174859. October 30, 2009, 604 SCRA 757, 774.

damages can be awarded where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.[30] The circumstances of the present case show the high degree of perversity and depravity of Garcia in sexually assaulting his neighbor's child. To deter such behavior, exemplary damages must be imposed on the accused as a warning to those persons who would be similarly disposed.

In line with prevailing jurisprudence,[31] the award of damages would be ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages and ₱30,000.00 as exemplary damages.

WHEREFORE, the August 1, 2012 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04814 is **AFFIRMED** with **MODIFICATION** in that accused Roberto Garcia *y* Padiernos is found **GUILTY** of Simple Rape by Sexual Assault and sentenced to suffer the indeterminate penalty ranging from six (6) years of *prision correccional*, as minimum, to ten (10) years of *prision mayor*, as maximum. He is also ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Abad, JJ.,* concur.

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[30] *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807, 820.

[31] *People v. Lindo*, G.R. No. 189818, August 9, 2010, 627 SCRA 519, 534; *People v. Dominguez*, G.R. No. 191065, June 13, 2011, 651 SCRA 791, 807.

[*] Designated Acting Member in lieu of Associate Justice Marvic Mario Victor F. Leonen per Special Order No. 1605 dated November 20, 2013.

EN BANC

[A.M. No. P-12-3063. November 26, 2013]
(Formerly A.M. OCA IPI No. 09-3082-P)

ELEANOR P. OLIVAN, *complainant, vs.* **ARNEL JOSE A. RUBIO, Deputy Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Naga City,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; LEGAL FEES; SHERIFF'S EXPENSES IN ENFORCING WRITS; RULE.—** The deposit and payment of expenses incurred in enforcing writs are governed by Section 10, Rule 141 of the Rules of Court, as revised by A.M. No. 04-2-04-SC x x x. The rule clearly requires that the sheriff executing a writ shall provide an estimate of the expenses to be incurred, and such estimated amount must be approved by the court. Upon approval, the interested party shall then deposit the amount with the clerk of court and *ex officio* sheriff. The expenses shall be disbursed to the assigned deputy sheriff to execute the writ, subject to liquidation upon the return of the writ. Any amount unspent shall be returned to the interested party.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY; DEFINED.—** Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of one's duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.

3. **ID.; ID.; ID.; MISCONDUCT; DEFINED .—** [M]isconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. The term "grave" means "very serious; involving or resulting in serious consequences: likely to produce real harm or damage."

4. **ID.; ID.; ID.; ISSUANCE OF A HANDWRITTEN RECEIPT VIOLATES THE NATIONAL ACCOUNTING AND**

AUDITING MANUAL; CASE AT BAR.— [R]espondent's issuance of a handwritten receipt dated April 27, 2006 also constitutes a violation of Section 113, Article III, Chapter V of the National Accounting and Auditing Manual which provides "*that no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof.*"

5. **ID.; ID.; ID.; COURT PERSONNEL; SHERIFFS; HIGH STANDARDS ARE EXPECTED OF SHERIFFS WHO PLAY AN IMPORTANT ROLE IN THE ADMINISTRATION OF JUSTICE.—** Time and again we have ruled that high standards are expected of sheriffs who play an important role in the administration of justice. We have constantly reminded our sheriffs and deputy sheriffs of our admonition in *Vda. de Abellera v. Dalisay* x x x.

6. **ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; GRAVE MISCONDUCT AND DISHONESTY; CONSIDERED GRAVE OFFENSES PUNISHABLE BY DISMISSAL EVEN ON THE FIRST OFFENSE; MITIGATING, AGGRAVATING AND ALTERNATIVE CIRCUMSTANCES ARE CONSIDERED IN THE IMPOSITION OF THE APPROPRIATE PENALTY. —** As to the appropriate penalty, grave misconduct and dishonesty are grave offense each punishable by dismissal even on the first offense under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. The penalty of dismissal further carries with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits [except leave credits pursuant to Rule 140, Section 11 (1) of the Rules of Court] and disqualification from reemployment in the government service. However, inasmuch as Section 53, Rule IV of the Uniform Rules allows the disciplining authority the discretion to consider mitigating circumstances in the imposition of the appropriate penalty, it is likewise imperative that aggravating and alternative circumstances attendant to the commission of the offense be considered.

7. **ID.; ID.; ID.; ID.; PENALTY IN CASE AT BAR.—** [T]his Court in many instances has mitigated the imposable penalty for humanitarian reasons; considered length of service in the

judiciary; and viewed the family circumstances, among others, in determining the proper penalty x x x. However, we note that this is not the first time that respondent has been administratively sanctioned. x x x His conduct in this case and his prior infractions are grossly prejudicial to the best interest of the service. Leniency is of no moment for doing so would give the public the impression that incompetence and repeat offenders are tolerated in the judiciary. The frequency of respondent's offenses only demonstrates his propensity to violate the Rules of Court and the Code of Conduct for Court Personnel. With two cases decided against him, and taking the substantive merits of this case, respondent has clearly demonstrated his incorrigibility and unfitness to be in the service. Consequently, the imposition of the ultimate administrative penalty of dismissal from service is warranted.

APPEARANCES OF COUNSEL

Jeaneth C. Gaminde-San Joaquin for complainant.

D E C I S I O N

***PER CURIAM*:**

Before us is a sworn administrative complaint[1] dated February 11, 2009, filed by complainant Eleanor[2] P. Olivan against respondent Arnel Jose A. Rubio, Deputy Sheriff IV, Office of the Clerk of Court (OCC), Regional Trial Court (RTC), Naga City, for malversation.

The facts, as culled from the records, follow:

Complainant is the daughter-in-law and representative of the applicants in a land registration case, docketed as Land Registration Case No. N-594, GLRC Record No. N-8109 entitled, "*Domingo P. Olivan and Venancia R. Olivan, Applicants v. Municipality of Pasacao, Camarines Sur, Oppositor*." She

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[1] *Rollo*, pp. 2-3.

[2] Also referred to as Eleonor, Elonor and Elenor in some parts of the records.

averred that the case was decided in their favor by the Court of Appeals whose decision became final and executory. Hence, a writ of execution[3] was issued in favor of the applicants. Subsequently, an *Alias* Writ of Execution[4] (*Alias* Writ) was issued on September 29, 2005 and respondent was tasked to enforce the same.

On April 27, 2006, respondent received ₱20,000 from complainant as partial payment for the sheriff's incidental expenses for the implementation of the *Alias* Writ, as evidenced by a handwritten receipt[5] signed by respondent.

On May 10, 2006, respondent filed a Manifestation[6] pursuant to Rule 141 of the Rules of Court, detailing the Sheriff's Expenses in the amount of ₱150,000 as incidental expenses and ₱3,000 as the court's commission fee, or a total of ₱153,000 for the implementation of said writ. The Manifestation was with the conformity of complainant, the recommending approval of Atty. Egmedio C. Blacer, Clerk of Court VI and *Ex Officio* Sheriff of the RTC, and was approved by Judge Pablo M. Paqueo, Jr., then Executive Judge of the RTC. On the same day, complainant deposited ₱153,000 with the OCC of the RTC as evidenced by Official Receipt No. 3453158.[7] Also on the same day, respondent withdrew the full amount of ₱153,000.[8]

Complainant averred that to her damage and prejudice, respondent failed to execute the decision despite receipt of a total sum of ₱173,000. She also averred that respondent failed to return to the OCC or to her the remaining cash of ₱22,866 as indicated in his Liquidation of Sheriff's Expenses[9] dated

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[3] *Rollo*, pp. 147-148.

[4] *Id*. at 65-67.

[5] *Id*. at 4.

[6] *Id*. at 73-74.

[7] *Id*. at 5.

[8] *Id.* at 47.

[9] *Id*. at 6-9.

December 20, 2008. Said report showed that the total amount spent was only ₱150,134, thereby leaving a balance of ₱22,866.

In his Comment[10] dated April 7, 2009, respondent stated that implementing the *Alias* Writ required the delivery of the material possession of the subject property to the applicants and the service of the said writ to more than 40 residents in the area. He informed complainant of the expenses that will be needed to implement the writ considering the number of residents affected and their opposition thereto, the location of the subject property and the need for additional assistance from other court sheriffs. Thus, on April 27, 2006, complainant gave him the aforementioned amount of ₱20,000.

He adds that on April 24, 2006 Atty. Fiel V. Bagalacsa-Abad, Clerk of Court V of the OCC issued a Travel Order[11] to him and other assisting sheriffs namely, Pelagio Papa, Jr., Edgar Surtida II[12] and the late Donn Valenciano. Together with said other sheriffs, he went to the subject property several times to serve the writ.

On May 10, 2006, he filed the aforementioned Manifestation and submitted a Partial Return of *Alias* Writ of Execution[13] on May 11, 2006 reporting the actions he had undertaken in the implementation of the writ. He also requested that a precision survey be conducted for the purpose of identifying the actual occupants of the subject property so that they may be duly served in person with the notice to vacate and the *alias* writ. He also requested that the survey be conducted with the assistance of the members of the Philippine Army or the Philippine National Police (PNP) to maintain peace and security. In an Order[14] dated May 16, 2006, the RTC duly took note of the said Partial Return and ordered the conduct of the precision survey. The

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[10] *Id.* at 34-36.

[11] *Id.* at 68.

[12] Also referred to as Edgar Surtida IV in some parts of the records.

[13] *Rollo*, pp. 69-70.

[14] *Id.* at 71-72.

RTC also directed the PNP Provincial Commander of Camarines Sur to provide respondent at least ten PNP personnel to maintain peace and order during the said survey.

Subsequently, Travel Orders were issued in his favor and in favor of his companions for the periods May 18 to 19, 2006;[15] May 23 to 24, 2006;[16] and June 20 to 23, 2006.[17]

On June 26, 2006, he submitted a Sheriff's Report[18] stating the actions he pursued and the events that transpired during the service of the RTC's Order dated May 16, 2006. Respondent alleged therein that the occupants resisted and refused to obey the *Alias* Writ and that respondent and his companions were met with threats and violence. Thus, respondent opined that a precision survey and a writ of demolition were proper under the circumstances. Respondent claimed that complainant's counsel filed a motion for issuance of a writ of demolition but the court had not yet resolved the motion. Respondent also claimed that complainant would oftentimes visit him, insisting that he demolish the houses erected on the subject property but he refused as there was no writ of demolition yet.

On November 30, 2008, he received a letter[19] from complainant, copy furnished Judge Jaime E. Contreras (Judge Contreras), Executive Judge of the RTC, asking for an accounting of the expenses he incurred in the implementation of the *Alias* Writ. Judge Contreras treated the letter as an administrative complaint and met the parties for a conference. As a result, he was ordered to return the full amount or make a full and detailed liquidation, which he did on January 13, 2009, through the aforementioned Liquidation of Sheriff's Expenses. However, complainant manifested to Judge Contreras that she was not satisfied with the accounting rendered. Complainant was then informed by

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[15] *Id*. at 77.

[16] *Id*. at 78.

[17] *Id*. at 79.

[18] *Id*. at 80-82.

[19] *Id*. at 83.

Judge Contreras that the matter was properly within the jurisdiction of the Office of the Court Administrator (OCA).[20]

In her Opposition to Respondent's Comment,[21] complainant maintained that respondent's liquidation report contained bloated expenses. She submitted that respondent malversed a portion of the total amount he received. In his Reply,[22] respondent countered that the expenses he incurred were all legitimate.

Considering the conflicting allegations of the parties and the gravity of the charges which required a full-blown investigation, the OCA referred the matter to Judge Contreras for investigation, report and recommendation.[23]

In his Report and Recommendation[24] dated December 5, 2010, Judge Contreras concluded that respondent incurred unnecessary and/or unsubstantiated expenses. He found that respondent's claim for expenses regarding police assistance was refuted by the Certifications issued by Police Superintendent Marlon Celetaria Tejada of the PNP Camarines Sur Provincial Office[25] and Police Senior Inspector Venerando Flor Ramirez of the Pasacao Municipal Police Station[26] stating that their respective offices based on record did not deploy any PNP personnel to assist respondent in implementing the *alias* writ covering the period of April 28 to June 22, 2006. Said police officers confirmed the veracity of these Certifications in their respective testimonies made before Judge Contreras.[27] Judge Contreras further noted that respondent submitted his liquidation of expenses only after almost two years. Thus, Judge Contreras made the following conclusion and recommendation:

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[20] *Id*. at 61.

[21] *Id*. at 90-91.

[22] *Id*. at 94-95.

[23] *Id*. at 112-115, 118-119 and 119-A.

[24] *Id*. at 179-193.

[25] *Id*. at 129.

[26] *Id*. at 131.

[27] TSN, June 1, 2010, pp. 2-13; *rollo*, pp. 284-295.

CONCLUSION AND RECOMMENDATION

In view of all the foregoing, the undersigned Investigating Judge respectfully recommends to hold respondent Sheriff Jose Arnel Rubio liable for Serious Misconduct for having committed the following acts, to wit:

1. For having received from the complainant Php20,000.00 out of his demand for Php100,000.00 in consideration of his services which allegedly entailed risk;

2. For having directly received from complainant [a] sum of money as sheriff's expense, without following the appropriate procedure;

3. For having knowingly or unknowingly failed to exercise proper prudence thereby incurring unnecessary expenses or financial losses, under the guise of implementing the writ, to the prejudice of the complainant;

4. For having presented questionable and falsified receipts to justify his bloated expenses; and

5. For having enlisted the assistance of several sheriffs, and in the process involved them in complicity in implementing the writ.

Likewise, it is respectfully recommended that he be **suspended** for six (6) months without pay.[28]

As a related matter, in the course of the investigation, Judge Contreras found that other employees of the RTC, namely, Patricia De Leon, Sheriff Edgar Hufancia, Sheriff Edgar Surtida II and Sheriff Pelagio Papa, Jr. were likewise involved in anomalous or shady transactions which enabled them to collect certain sums of money from complainant under the guise of helping her in her case. Thus, Judge Contreras recommended that a case for Conduct Prejudicial to the Best Interest of the Service be filed against said employees. His recommendation was approved by this Court in its Resolution[29] dated June 13, 2012 and the matter is now separately docketed as A.M. OCA IPI No. 12-3896-P.[30]

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[28] *Rollo*, pp. 192-193.

[29] *Id.* at 595-596.

[30] *Id.* at 601.

In its Memorandum[31] dated March 14, 2012, the OCA found that the conclusions of fact of Judge Contreras are duly supported by evidence on record. The OCA agreed with said findings except for the recommended penalty. Invoking our ruling in *Anico v. Pilipiña*,[32] the OCA opined that respondent's act of soliciting money from complainant constituted serious misconduct. The OCA added that such was further aggravated by respondent's act of receiving the amount of ₱20,000 and his failure to turn over said amount to the OCC, which is an act of misappropriation of funds amounting to dishonesty. Thus, the OCA recommended, among others, that respondent be found guilty of Serious Misconduct and Dishonesty and be ordered dismissed from the service with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Court adopts in full the factual findings and the recommendation of the OCA.

The deposit and payment of expenses incurred in enforcing writs are governed by Section 10, Rule 141 of the Rules of Court, as revised by A.M. No. 04-2-04-SC,[33] *viz*:

SEC. 10. *Sheriffs, PROCESS SERVERS and other persons serving processes*. —

x x x x x x x x x

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometer of travel, guards' fees, warehousing and similar charges, **the interested party shall pay said expenses in an amount estimated by the sheriff**, **subject to the approval of the court**. **Upon approval of said estimated expenses, the interested party shall deposit such**

[31] *Id*. at 588-594.

[32] A.M. No. P-11-2896 (Formerly OCA I.P.I. No. 08-2977-P), August 2, 2011, 655 SCRA 42.

[33] Effective August 16, 2004.

amount with the clerk of court and *ex officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering a return on the process. THE LIQUIDATION SHALL BE APPROVED BY THE COURT. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor. (Emphasis supplied.)

The rule clearly requires that the sheriff executing a writ shall provide an estimate of the expenses to be incurred, and such estimated amount must be approved by the court. Upon approval, the interested party shall then deposit the amount with the clerk of court and *ex officio* sheriff. The expenses shall be disbursed to the assigned deputy sheriff to execute the writ, subject to liquidation upon the return of the writ. Any amount unspent shall be returned to the interested party.[34]

In this case, respondent failed to comply with the prescribed procedure. His admitted act of receiving ₱20,000 for expenses to be incurred in the execution of the writ on April 27, 2006[35] as evidenced by a mere handwritten receipt, without having made an estimate and without securing prior approval of the court, is a violation of the above rules. Respondent's explanation that he merely received the ₱20,000 because complainant was very insistent to implement the *Alias* Writ, is not acceptable. The rules are clear. Respondent should not have received any money from complainant without first providing an estimate of the expenses to be incurred and submitting the same for approval of the court.[36] He did not even advise complainant that he was not authorized to receive any amount from her and that the money for expenses should be deposited with the OCC.[37] Neither does

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[34] *Aprieto v. Lindo*, A.M. No. P-07-2356, May 21, 2009, 588 SCRA 19, 25.

[35] TSN, June 17, 2010, pp. 44-45; *rollo*, pp. 502-503.

[36] See *Argoso v. Regalado II*, A.M. No. P-09-2735 (Formerly OCA I.P.I. No. 07-2614-P), October 12, 2010, 632 SCRA 692, 696.

[37] See *Aprieto v. Lindo*, *supra* note 34.

it appear that he deposited the amount with the Clerk of Court and *Ex officio* Sheriff. In fact, the money which respondent had demanded and received from complainant was not among those prescribed and authorized by the Rules of Court as it was not even accounted for earlier in his Manifestation. He merely reported his receipt of the ₱20,000 in his liquidation of expenses only after complainant demanded an accounting and in compliance to Judge Contreras' directive. This Court has ruled that any amount received by the sheriff in excess of the lawful fees allowed by the Rules of Court is an unlawful exaction and renders him liable for grave misconduct and gross dishonesty.[38]

Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of one's duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.[39] On the other hand, misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. The term "grave" means "very serious; involving or resulting in serious consequences: likely to produce real harm or damage."[40]

We concur with Judge Contreras' findings that respondent indeed incurred unnecessary and/or unsubstantiated expenses. It is evident from the aforementioned certifications and the police officers' testimonies that respondent was not assisted by PNP personnel in the implementation of the writ contrary to his claim, as contained in his liquidation of expenses where for May 18, 2006 alone, respondent reported expenses for PNP/Military

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[38] *De Guzman, Jr. v. Mendoza*, 493 Phil. 690, 697 (2005) and *Alvarez, Jr. v. Martin*, 458 Phil. 85, 95-96 (2003).

[39] *Philippine Amusement and Gaming Corporation (PAGCOR) v. Ariel R. Marquez*, G.R. Nos. 191877 & 192287, June 18, 2013, p. 10.

[40] *PNP Supt. Gonzalo v. Mejia*, 479 Phil. 239, 248 (2004).

assistance in the substantial amount of ₱36,000.[41] Judge Contreras thus stated:

Furthermore, Sheriff Rubio and his assisting sheriffs kept on proceeding to the place subject of the writ since 28 April until 9 May 2006 which entailed the total expense of Php 35,900.00 even if he had not yet filed his Manifestation of Estimated Sheriff's Expense and no money was deposited yet by the prevailing party to the court except the Php 20,000.00 he demanded from complainant on account of the risk involved in implementing the writ . . .[42]

It bears stressing that respondent's issuance of a handwritten receipt[43] dated April 27, 2006 also constitutes a violation of Section 113, Article III, Chapter V of the National Accounting and Auditing Manual which provides "*that no payment of any nature shall be received by a collecting officer without immediately issuing an official receipt in acknowledgment thereof*."[44]

Time and again we have ruled that high standards are expected of sheriffs who play an important role in the administration of justice. We have constantly reminded our sheriffs and deputy sheriffs[45] of our admonition in *Vda. de Abellera v. Dalisay,*[46] to wit:

At the grassroots of our judicial machinery, sheriffs and deputy sheriffs are indispensably in close contact with the litigants, hence,

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[41] *Rollo*, p. 8.

[42] *Id*. at 186.

[43] *Id*. at 4.

[44] *Peña, Jr. v. Regalado II*, A.M. No. P-10-2772 (Formerly A.M. OCA I.P.I No. 07-2615-P), February 16, 2010, 612 SCRA 536, 545; *Lopez v. Ramos*, 500 Phil. 408, 417 (2005); and *Sandoval v. Ignacio, Jr.*, 480 Phil. 698, 708 (2004).

[45] As reiterated in *Office of the Court Administrator v. Ramano*, A.M. No. P-90-488, January 25, 2011, 640 SCRA 370, 374; *Atty. Legaspi v. Tobillo*, 494 Phil. 229, 240-241 (2005); *Judge Balanag*, *Jr. v. Osita*, 437 Phil. 452, 460 (2002); and *Danao v. Franco*, *Jr.*, 440 Phil. 181, 186 (2002).

[46] 335 Phil. 527, 530-531 (1997).

their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel; hence, it becomes the imperative sacred duty of each and everyone in the court to maintain its good name and standing as a temple of justice.

As to the appropriate penalty, grave misconduct and dishonesty are grave offenses each punishable by dismissal even on the first offense under Section 52,[47] Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.[48] The penalty of dismissal further carries with it the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits [except leave credits pursuant to Rule 140, Section 11 (1) of the Rules of Court] and disqualification from reemployment in the government service.[49] However, inasmuch as Section 53, Rule IV of the Uniform Rules allows the disciplining authority the discretion to consider mitigating circumstances in the imposition of the appropriate penalty, it is likewise imperative that aggravating and alternative circumstances attendant to the commission of the offense be considered.[50]

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[47] SEC. 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

1st Offense — Dismissal

x x x x x x x x x

3. Grave Misconduct

1st Offense — Dismissal

x x x x x x x x x

[48] *Beltran v. Monteroso*, A.M. No. P-06-2237, December 4, 2008, 573 SCRA 1, 6.

[49] *Civil Service Commission v. Ismael A. Hadji Ali*, A.M. No. SCC-08-11-P, June 18, 2013, p. 7.

[50] See *Ramas-Uypitching, Jr. v. Magalona*, A.M. No. P-07-2379 (Formerly OCA I.P.I. No. 03-1742-P), November 17, 2010, 635 SCRA 1, 12.

Verily, this Court in many instances has mitigated the imposable penalty for humanitarian reasons; considered length of service in the judiciary; and viewed the family circumstances, among others, in determining the proper penalty.[51] In *Francisco v. Bolivar*,[52] this Court enumerated cases wherein respondent sheriffs therein being first-time offenders — *De Guzman, Jr. v. Mendoza*[53] for grave misconduct and dishonesty; *Adoma v. Gatcheco*[54] for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service; *Apuyan, Jr. v. Sta. Isabel*[55] for grave misconduct, dishonesty and conduct grossly prejudicial to the best interest of the service; and *Albello v. Galvez*[56] for dishonesty — were meted the penalty of one year suspension instead of dismissal.

However, we note that this is not the first time that respondent has been administratively sanctioned. In *Manaog v. Rubio*,[57] respondent was found guilty of simple misconduct for which he was suspended from the service for one month and one day without pay. The Court held therein that respondent together with his co-respondent had shown lack of decorum, propriety, and respect in their dealings with other people. Subsequently, in *Sales v. Rubio*,[58] the Court also found respondent, then Sheriff of the Municipal Circuit Trial Court of Magarao-Canaman, Camarines Sur, guilty of violation of Section 10, Rule 141 of the Rules of Court and of Discourtesy, and was again suspended

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[51] *Office of the Court Administrator v. Nelson P. Magbanua*, A.M. No. P-12-3048 (formerly A.M. No. 11-3-29-MCTC), June 5, 2013, p. 7.

[52] A.M. No. P-06-2212, July 14, 2009, 592 SCRA 591, 609.

[53] *Supra* note 38, at 699.

[54] 489 Phil. 273, 281 & 282 (2005).

[55] A.M. No. P-01-1497 (Formerly AM-OCA-IPI-00-837-P), May 28, 2004, 430 SCRA 1, 18.

[56] 443 Phil. 323, 329 (2003).

[57] A.M. No. P-08-2521(Formerly OCA I.P.I. No. 05-2329-P), February 13, 2009, 579 SCRA 10, 15.

[58] A.M. No. P-08-2570 (Formerly A.M. OCA IPI No. 07-2547-P) September 4, 2009, 598 SCRA 195, 201-202.

for six months without pay. In both instances, this Court sternly warned respondent that a repetition of the same or similar offense or offenses shall be dealt with more severely.

This Court doubts if respondent indeed took to heart and heeded seriously these previous warnings. His conduct in this case and his prior infractions are grossly prejudicial to the best interest of the service. Leniency is of no moment for doing so would give the public the impression that incompetence and repeat offenders are tolerated in the judiciary.[59] The frequency of respondent's offenses only demonstrates his propensity to violate the Rules of Court and the Code of Conduct for Court Personnel. With two cases decided against him, and taking the substantive merits of this case, respondent has clearly demonstrated his incorrigibility and unfitness to be in the service.[60] Consequently, the imposition of the ultimate administrative penalty of dismissal from service is warranted.

WHEREFORE, respondent Arnel Jose A. Rubio, Deputy Sheriff IV, Office of the Clerk of Court, Regional Trial Court of Naga City, is found **GUILTY** of Dishonesty and Grave Misconduct and is ordered **DISMISSED** from the service with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

This Decision is **IMMEDIATELY EXECUTORY.**

SO ORDERED.

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

Perlas-Bernabe and *Leonen, JJ.,* on official leave.

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[59] *Marcos v. Pamintuan*, A.M. No. RTJ-07-2062, January 18, 2011, 639 SCRA 658, 669.

[60] *Hofer v. Tan*, 555 Phil. 168, 185 (2007).

EN BANC

[G.R. No. 206794. November 26, 2013]

BANKERS ASSOCIATION OF THE PHILIPPINES and PERRY L. PE, *petitioners, vs.* **THE COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LIMITED TO ACTUAL CASES OR CONTROVERSIES.—** The power of judicial review is limited to actual cases or controversies. The Court, as a rule, will decline to exercise jurisdiction over a case and proceed to dismiss it when the issues posed have been mooted by supervening events. Mootness intervenes when a ruling from the Court no longer has any practical value and, from this perspective, effectively ceases to be a justiciable controversy. "[W]ithout a justiciable controversy, the [petition would] become a [plea] for declaratory relief, over which the Supreme Court has no *original* jurisdiction."
2. **ID.; ID.; ID.; MOOT AND ACADEMIC PRINCIPLE; EXCEPTIONS.—** While the Court has recognized exceptions in applying the "moot and academic" principle, these exceptions relate only to situations where: (1) there is a grave violation of the Constitution; (2) the situation is of exceptional character and paramount public interest is involved; (3) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for petitioners.

The Solicitor General for respondent.

RESOLUTION

BRION, *J*.:

The petitioners, Bankers Association of the Philippines and Perry L. Pe, assail the constitutionality and legality of the respondent Commission on Elections' (*Comelec*'s) **Resolution No. 9688**[1] dated May 7, 2013, entitled *"In the Matter of Implementing a Money Ban to Deter and Prevent Vote-Buying in Connection with the May 13, 2013 National and Local Elections"* (*Money Ban Resolution*).[2] The petitioners included

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[1] *Rollo,* pp. 82-85.

[2] In the *Whereas* clauses of the Money Ban Resolution, the Comelec justified the restrictions on the following provisions of law:

WHEREAS, under Article IX-C, Section 2.1 of the Constitution, one of the Commission on Election's (COMELEC) powers and functions is to *"enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall"*;

WHEREAS, the COMELEC has the power under Article IX-C, Section 2.4 of the same Constitution to *"[d]eputize, with the concurrence of the President, law enforcement agencies and instrumentalities of the Government, including the Armed Forces of the Philippines, for the exclusive purpose of ensuring free, orderly, honest, peaceful, and credible elections"*;

x x x x x x x x x

WHEREAS, under Article IX-C, Section 4, the COMELEC, during the election period, has the power to *"supervise or regulate ... all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary"*, which supervisory and regulatory authority cover all banks and quasi-banking institutions operating under the authority granted by the *Bangko Sentral ng Pilipinas*;

WHEREAS, *"vote buying"* is a criminal offense defined by and penalized under the Omnibus Election Code, xxx.

x x x x x x x x x

WHEREAS, COMELEC takes cognizance of the prevalence of vote-buying throughout the country. The Commission, in pursuit of its constitutional mandate to ensure honest and credible elections, finds it necessary to adopt a multi-tiered approach to prevent and apprehend vote-buyers, particularly the regulation and control of the flow of cash, which is the primary medium used in vote-buying[.] [*Id*. at 82-83; italics supplied.]

a prayer for the issuance of a status *quo ante*/temporary restraining order and/or writ of preliminary injunction to enjoin its implementation.

THE ASSAILED RESOLUTION

Under the Money Ban Resolution, the Comelec resolved:

1. **To prohibit the withdrawal of cash, encashment of checks and conversion of any monetary instrument into cash from May 8 to 13, 2013 exceeding One Hundred Thousand Pesos (₱100,000.00)** or its equivalent in any foreign currency, per day in banks, finance companies, quasi-banks, pawnshops, remittance companies and institutions performing similar functions. However, all other non-cash transactions are not covered.

For this purpose, the Bangko Sentral ng Pilipinas and other financial agencies of the government are hereby deputized to implement with utmost dispatch and ensure strict compliance with this resolution without violating the provisions of Republic Act No. 1405, as amended, and Republic Act No. 6426[.]

2. **To prohibit the possession, transportation and/or carrying of cash exceeding Five Hundred Thousand Pesos (₱500,000.00)** or its equivalent in any foreign currency from May 8 to May 13, 2013. For this purpose, *all cash being transported and carried exceeding such amount shall be presumed for the purpose of vote-buying and electoral fraud in violation of the money ban*. x x x.

3. **All withdrawals of cash or encashment of checks or series of withdrawals or encashment of checks in cash involving a total amount exceeding Five Hundred Thousand Pesos (₱500,000.00) within one (1) banking day from date of the publication of this resolution until May 13, 2013 shall be presumed to be for the purpose of accumulating funds for vote-buying and election fraud and shall therefore be treated as a "suspicious transaction" under Republic Act No. 9160** or the "Anti-Money Laundering Act of 2001" as amended by Republic Act No. 9194. For this purpose, the Anti-Money Laundering Council (AMLC) is hereby deputized to monitor and initiate investigations, and if necessary, inquire into and examine the deposit and related accounts involved in the suspected transaction pursuant to procedure and requirements of Republic Act No. 10167.[3]

[3] *Id*. at 83-84; citations omitted, emphases and italics ours.

The Comelec's Resolution No. 9688-A,[4] issued on May 9, 2013, amended the Money Ban Resolution by:

1. exempting withdrawals that are routine, regular and made in the ordinary course of business of the withdrawing client on the basis of the prevailing "Know-Your-Client/Customer" policy of the Bangko Sentral ng Pilipinas (*BSP*), which requires banks "not only to establish the identity of their clients but also to have background knowledge of their normal business transactions,"[5] and

2. presuming that the possession or transportation of cash in excess of ₱500,000.00 from May 8 to 13, 2013 was for the purpose of vote-buying and electoral fraud when the same was without tenable justification or whenever attended by genuine reason engendering belief that the money would be used for vote-buying.

The Comelec issued Resolution No. 9688-A on the same day that the petitioners filed the present petition.

On May 10, 2013, the Court issued a *Status Quo Ante* Order,[6] enjoining the parties to maintain the *status quo* prevailing before the issuance of the Money Ban Resolution.

THE PARTIES' ARGUMENTS

The petitioners invoke the Court's power of judicial review to strike down the Money Ban Resolution.

They contend that the Comelec's Money Ban Resolution was issued without jurisdiction since the Comelec's power to supervise and regulate the enjoyment or utilization of franchises or permits under Section 4, Article IX-C of the Constitution does not extend to the BSP which is not a holder of any special privilege from the government. The BSP's power to regulate and supervise banking operations stems from its mandate under the

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[4] *Id*. at 86-88.

[5] Citing the Circular Letter of BSP Deputy Governor Alberto Reyes dated April 11, 2003; BSP Circular No. 706, series of 2011.

[6] *Rollo,* pp. 53-54.

Constitution[7] and Republic Act (*RA*) No. 8791 (*The General Banking Law of 2000*).[8] Section 4, Article IX-C of the Constitution states –

> Section 4. The Commission may, during the election period, supervise or regulate the enjoyment or utilization of **all franchises or permits for the operation of transportation and other public utilities, media of communication or information**, **all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary**. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections. [emphasis ours]

They thus conclude that the Comelec's power of supervision and regulation cannot be exercised over the BSP and the Anti-Money Laundering Council (*AMLC*) as they can exercise authority only over public transportation and communication entities given special privileges by the government.

The petitioners also posit that the Comelec's power to deputize extends only to law enforcement agencies and only if the President concurs. Section 2(4), Article IX-C of the Constitution states:

> Section 2. The Commission on Elections shall exercise the following powers and functions:
>
> x x x x x x x x x
>
> 4. Deputize, **with the concurrence of the President, law enforcement agencies and instrumentalities of the Government**, including the Armed Forces of the Philippines, for the exclusive

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[7] Section 20, Article XII of the Constitutions grants the BSP "supervision over the operations of banks and exercise such regulatory powers xxx over the operations of finance companies and other institutions performing similar functions."

[8] Section 5 of The General Banking Law of 2000 vests the Monetary Board power to "prescribe ratios, ceilings, limitations, or other forms of regulation on the different types of accounts and practices of banks[.]"

purpose of ensuring free, orderly, honest, peaceful, and credible elections. [emphasis ours]

They argue that the BSP and the AMLC are not law enforcement agencies unlike the National Bureau of Investigation and the Philippine National Police. Assuming they may be considered as such, the Comelec failed to secure the concurrence of the President to the deputation.

The petitioners note that paragraph 3 of the Money Ban Resolution effectively amended RA No. 9160 (*Anti-Money Laundering Act of 2001 or AMLA*) by treating the withdrawal of cash or encashment of checks exceeding ₱500,000.00 within one banking day from May 8 to 13, 2013 as a "suspicious transaction," thus authorizing the AMLC to monitor, initiate investigations, inquire into and examine the deposit. This type of transaction, however, is not among those enumerated as suspicious under Section 3(b) of the AMLA. As an administrative issuance, the Money Ban Resolution cannot amend a law enacted by Congress.

The petitioners also claim that the Money Ban Resolution violates a number of constitutional rights.

The Constitution guarantees that no person shall be deprived of life, liberty and property without due process of law.[9] The Money Ban Resolution violates an individual's due process rights because it unduly and unreasonably restricts and prohibits the withdrawal, possession, and transportation of cash. The prohibition effectively curtails a range of legitimate activities, and hampers and prejudices property rights. Though the intent (*i.e.*, to curb vote-buying and selling) is laudable, the means employed is not reasonably necessary and is oppressive on an individual's rights. The limitation on withdrawal also goes against the non-impairment clause because the prohibitions and restrictions impair the banks' contractual obligations with their depositors.

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[9] CONSTITUTION, Article III, Section 1.

Finally, the petitioners claim that the Money Ban Resolution violates the constitutional presumption of innocence because it declares that "all cash being transported and carried exceeding [₱500,000.00] shall be presumed for the purpose of vote-buying and electoral fraud in violation of the money ban."[10] There is no logical connection between the proven fact of possession and transportation of an amount in excess of ₱500,000.00 and the presumed act of vote-buying because there are many other legitimate reasons for the proven fact.

The Comelec, through the Office of the Solicitor General, filed its Comment on the petition, insisting on the validity of the Money Ban Resolution and its amendment.

The Comelec argues that it has the constitutional authority to supervise and regulate banks and other financial entities, citing Section 4, Article IX-C of the Constitution. It alleges that its power to regulate covers banks and other finance companies, since these entities operate under an "authority" granted by the BSP under Section 6 of RA No. 8791. This authority is of the same nature as "grants, special privileges, or concessions" under Section 4, Article IX-C of the Constitution; thus, it may be validly regulated by the Comelec.

The Comelec also claims that it may validly deputize the BSP, since the latter is a government instrumentality covered by Section 2(4), Article IX-C of the Constitution. Contrary to the petitioners' claim, the Comelec's power to deputize is not limited to law enforcement agencies, but extends to instrumentalities of the government. The constitutional intent is to give the Comelec unrestricted access to the full machinery of the State to ensure free, orderly, honest, peaceful, and credible elections.

The Comelec further contends that Presidential concurrence with the exercise of the Comelec's deputation power is required only if it involves agencies and instrumentalities within the Executive Department, of which the BSP is not a part. Even assuming that Presidential concurrence is required, this has been

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[10] *Rollo,* p. 83.

secured through Memorandum Order No. 52,[11] s. 2013, where the President gave his blanket concurrence to the deputation of all "law enforcement agencies and instrumentalities of the Government[.]"[12]

That the BSP is constitutionally and statutorily tasked to provide "policy direction in the areas of money, banking, and credit," and vested with "supervision over the operations of bank," does not preclude the Comelec from exercising its power to supervise and regulate banks during the election period. Notably, the Comelec's power is limited in terms of purpose and duration, and should prevail in this specific instance.

If the Comelec deems the supervision and regulation of banks necessary to curb vote-buying, this is a political question that the Court may not inquire into. The choice of the measures that the Comelec may undertake to ensure the conduct of a free, orderly, honest, peaceful, and credible election is a policy question beyond the scope of judicial review.

The Comelec lastly defends the Money Ban Resolution as a reasonable measure that is not unduly oppressive on individuals. It merely limits transactions involving cash (withdrawal, encashment, possession, *etc*.), but does not affect other non-cash transactions such as those involving checks and credit cards. Hence, only the medium or instrument of the transaction is

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[11] *Id*. at 89.

[12] *Id*. at 72. The pertinent portion of which states:

NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by law, do hereby concur with COMELEC Resolution No. 9589 deputizing law enforcement agencies and instrumentalities of the Government, including the AFP, to assist the COMELEC in ensuring the free, orderly, honest, peaceful, and credible conduct of the 13 May 2013 Automated National and Local Elections.

The foregoing law enforcement agencies and other concerned agencies are hereby directed to coordinate and cooperate with the COMELEC in the performance of their duties and functions.

This Memorandum Order shall take effect immediately.

DONE, in the City of Manila, this 9th of January, in the year of our Lord, Two Thousand and Thirteen.

affected; the transaction may proceed using non-cash medium or instrument. There is, therefore, no impairment of rights and contracts that would invalidate the Money Ban Resolution.

THE COURT'S RULING

We resolve to dismiss the petition for being moot and academic.

By its express terms, the Money Ban Resolution was effective only for a specific and limited time during the May 13, 2013 elections, *i.e.*, from May 8 to 13, 2013. The Court issued a *Status Quo Ante* Order on May 10, 2013; thus, the Money Ban Resolution was not in force during the most critical period of the elections – from May 10, 2013 to actual election day. With the May 13, 2013 elections over, the Money Ban Resolution no longer finds any application so that the issues raised have become moot and academic.

The power of judicial review is limited to actual cases or controversies. The Court, as a rule, will decline to exercise jurisdiction over a case and proceed to dismiss it when the issues posed have been mooted by supervening events. Mootness intervenes when a ruling from the Court no longer has any practical value and, from this perspective, effectively ceases to be a justiciable controversy.[13] "[W]ithout a justiciable controversy, the [petition would] become a [plea] for declaratory relief, over which the Supreme Court has no *original* jurisdiction."[14]

While the Court has recognized exceptions in applying the "moot and academic" principle, these exceptions relate only to situations where: (1) there is a grave violation of the Constitution; (2) the situation is of exceptional character and paramount public interest is involved; (3) the constitutional issue raised requires formulation of controlling principles to guide the bench, the

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[13] *Mendoza v. Villas*, G.R. No. 187256, February 23, 2011, 644 SCRA 347, 356-357, citing *Gunsi, Sr. v. Commissioners, The Commission on Elections,* G.R. No. 168792, February 23, 2009, 580 SCRA 70, 76.

[14] Separate Opinion of Chief Justice A. V. Panganiban in *SANLAKAS v. Executive Secretary Reyes*, 466 Phil. 482, 525 (2004).

bar, and the public; and (4) the case is capable of repetition yet evading review.[15]

In the present case, we find it unnecessary to consider the presence of the *first*, *second* and *third* requirements when nothing in the facts and surrounding circumstances indicate the presence of the *fourth* requirement, *i.e.*, the case is capable of repetition yet evading review.

We note that the Comelec did not make any parallel move on or about the May 13, 2013 elections to address the evil that its Money Ban Resolution sought to avoid and, in fact, it did not issue a similar resolution for the October 28, 2013 *barangay* elections. If the May 13, 2013 elections had come and gone without any need for the measures the assailed Resolution put in place and if no such measure was necessary in the elections that immediately followed (*i.e.,* the October 28, 2013 *barangay* elections), we believe that it is now premature for the Court to assume that a similar Money Ban Resolution would be issued in the succeeding elections such that we now have to consider the legality of the Comelec measure that is presently assailed.

We consider it significant that the BSP and the Monetary Board continue to possess full and sufficient authority to address the Comelec's concerns and to limit banking transactions to legitimate purposes without need for any formal Comelec resolution if and when the need arises. Congress, too, at this point, should have taken note of this case and has the plenary authority, through its lawmaking powers, to address the circumstances and evils the Money Ban Resolution sought to address. In other words, Congress can very well act to consider the required measures for future elections, thus rendering unnecessary further action on the merits of the assailed Money Ban Resolution at this point.

WHEREFORE, we hereby **DISMISS** the petition for having become moot and academic. The *Status Quo Ante* Order issued by the Court on May 10, 2013, having been rendered *functus oficio* by the May 13, 2013 elections, is hereby formally **LIFTED.**

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[15] *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006)

SO ORDERED.

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

Del Castillo, J., no part.

Perlas-Bernabe and *Leonen, JJ.,* on official leave.

Reyes, J., on leave.

SECOND DIVISION

[A.C. No. 7329. November 27, 2013]

SPOUSES DAVID AND MARISA WILLIAMS, *complainants, vs.* **ATTY. RUDY T. ENRIQUEZ,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; INTEGRATED BAR OF THE PHILIPPINES (IBP); THE RESOLUTIONS OF THE IBP BOARD OF GOVERNORS ARE ONLY RECOMMENDATORY AND ALWAYS SUBJECT TO THE SUPREME COURT'S REVIEW.—** The IBP Board of Governors' 5 June 2008 and 26 June 2011 Resolutions did not become final. Resolutions of the IBP Board of Governors are only recommendatory and always subject to the Court's review.

2. **ID.; ID.; THE ONLY ISSUE WITHIN THE AMBIT OF THE SUPREME COURT'S DISCIPLINARY AUTHORITY IS WHETHER A LAWYER IS FIT TO REMAIN A MEMBER OF THE BAR.—** In administrative cases, the only issue within the ambit of the Court's disciplinary authority is whether a lawyer is fit to remain a member of the Bar. Other issues are

proper subjects of judicial action. x x x The issue of ownership of real property must be settled in a judicial, not administrative, case. In *Virgo v. Amorin*, the Court dismissed without prejudice a complaint against a lawyer because it could not determine his fitness to remain a member of the Bar without delving into issues which are proper subjects of judicial action.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is a complaint[1] dated 12 September 2006 filed by complainants Spouses David and Marisa Williams (Spouses Williams) against respondent Atty. Rudy T. Enriquez (Atty. Enriquez), a retired judge. The Spouses Williams charge Atty. Enriquez of dishonesty. In his 22 April 2008 Report,[2] Integrated Bar of the Philippines (IBP) Commissioner Ronald Dylan P. Concepcion (Commissioner Concepcion) found that Atty. Enriquez knowingly made untruthful statements in the complaint he filed against the Spouses Williams and recommended that he be suspended from the practice of law for one year. In its 5 June 2008 Resolution,[3] the IBP Board of Governors adopted and approved the findings and recommendation of Commissioner Concepcion and, in its 26 June 2011 Resolution,[4] denied Atty. Enriquez's motion for reconsideration.

The Facts

Josephine L. Verar (Verar) owned a 13,432-square meter parcel of land described as Lot No. 2920, situated in San Miguel, Bacong, Negros Oriental and covered by Transfer Certificate of Title (TCT) No. T-19723. Around June 2002, the Spouses

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[1] *Rollo*, Vol. 1, pp. 2-3.

[2] *Id.*, Vol. V, pp. 37-40.

[3] *Id.*, Vol. VII.

[4] *Id.*

Williams bought a 2,000-square meter portion of the property. The sale was annotated on TCT No. T-19723.

On 4 December 2002, Atty. Enriquez, representing his clients Desiderio B. Ventolero (Desiderio), Francisco B. Ventolero (Francisco), Ramon Verar (Ramon), Martin Umbac (Umbac), and Lucia Briones (Briones), filed with the Municipal Circuit Trial Court (MCTC), Bacong, Negros Oriental, a complaint[5] against the Spouses Williams for forcible entry, which was docketed as Civil Case No. 390. The Spouses Williams failed to answer the complaint within the prescribed period. In its 5 May 2003 Decision,[6] the MCTC held that:

In the case at bar, the defendant David Williams undisputedly received the summons and copy of the complaint on February 19, 2003. Pursuant to Section 6, Rule 70 of the Rules of Civil Procedure, as amended, defendant had until February 29, 2003 within which to file an answer to the complaint. But it was only on March 4, 2003 that said defendant actually filed his Answer. Under [Section 7], this Court is mandated to render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein.

x x x x x x x x x

Through co-plaintiff Desiderio Briones Ventolero who has been tilling and plowing the said parcel of land since time immemorial, plaintiffs have been exercising the attributes of ownership thereof such as the right to possess, abuse and enjoy. Said lot is surrounded by a barbed wire fence nailed to bamboo posts (go-od) to prevent and deter animals from eating the seasonal corn plants and other improvement introduced therein by plaintiffs.

On May 23, 2002, in the presence of plaintiffs Desiderio Briones Ventolero and Francisco Briones Ventolero, defendant David Williams, an American national, without any authority of law and legal basis, destroyed the barbed wire fence that surrounded the subject property by means of force and violence, by tying it with a chain attached to his pick-up vehicle and dragged it away. Defendant

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[5] *Id*., Vol. 1, pp. 4-13.

[6] *Id*. at 35-40.

also struck and ball-hammered the bamboo posts (go-od) and uprooted them. Not contented, and motivated by malice, defendant detached the "No Trespassing" signboard placed in the premises of the lot in question and handed it over to the Judge in open court. Although shaken with fear, plaintiff Francisco Briones Ventolero mustered enough courage to approach and ask defendant David Williams why he destroyed the fence. Williams angrily replied that he had bought the property.

x x x x x x x x x

In the case at bar, the plaintiffs have sufficiently established that they had been in prior possession of Lot 2920 subject of this case. They had been cultivating the same through plaintiff Desiderio Briones Ventolero since time immemorial until defendant David Williams, an American national, who claims to have bought the property, forcibly and violently destroyed on May 23, 2002 the barbed wire fence that surrounded the subject lot to protect plaintiffs' seasonal corn plants and other improvement from stray animals. Since then defendant Williams and his spouse, Marisa Bacatan, have been occupying a portion of said Lot No. 2920, thereby depriving plaintiffs of their physical possession and use thereof. For which reason, they have asked this Court to restore to them such possession.

Evidently, the plaintiffs, who had been in prior, peaceable, quiet possession of Lot 2920, had been ousted therefrom by the defendants through force on May 23, 2002 or within one (1) year from the filing of the Complaint on December 04, 2002. Thus, it behooves this Court to restore possession thereof to the plaintiffs.[7]

As a result of the forcible entry suit filed against them, the Spouses Williams filed the present complaint against Atty. Enriquez, charging him of committing falsehood and of misleading the MCTC. They alleged that Atty. Enriquez (1) falsely claimed that the property was covered by an OCT, not a TCT; (2) falsely claimed that Veran, not Verar, was the registered owner of the property; (3) falsely claimed that Desiderio, Francisco, Ramon, Umbac and Briones were the owners of the property; (4) falsely claimed that Veran was not the real owner but a trustee of Desiderio, Francisco, Ramon, Umbac and Briones; and (5) fraudulently

[7] *Id*. at 36-39.

withheld the pages of TCT No. T-19723 bearing the annotation of the sale of the 2,000-square meter portion of the property to the Spouses Williams.

In his comment[8] dated 26 January 2007, Atty. Enriquez prayed that the complaint against him be dismissed because (1) the Spouses Williams had filed four other administrative cases against him; (2) Desiderio verified the complaint he filed against the Spouses Williams; (3) Francisco executed an affidavit of ownership over the property; (4) the MCTC decided Civil Case No. 390 in favor of Desiderio, Francisco, Ramon, Umbac and Briones; (5) the sale of the 2,000-square meter portion of the property to the Spouses Williams was invalid; and (6) the causes of action against him arose from the complaint he filed with the MCTC which was a privileged communication and, thus, unactionable.

In its 21 March 2007 Resolution,[9] the Court referred the matter to the IBP for investigation, report and recommendation.

The IBP's Ruling

In his 22 April 2008 report, Commissioner Concepcion found that Atty. Enriquez knowingly made untruthful statements in the complaint he filed against the Spouses Williams and recommended that he be suspended from the practice of law for one year. Commissioner Concepcion stated that:

> While respondent enumerates and discusses the merits of the pending cases filed by or against the complainants herein, the latter [sic] are not the concern of this Commission. It is unfortunate that he sidestepped the issue of this administrative case.
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> x x x x x x x x x
>
> After comparing the allegations in the complaint which the respondent filed with the MCTC and the attachments thereto, the following facts come to light:
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> 1. The complaint in Civil Case No. 390 states that Desiderio Briones Ventolero, Francisco Briones Ventolero, Ramon Verar, Martin Umbac

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[8] *Id.* at 28-31.

[9] *Id.* at 51.

and Lucia Briones are the lawful owners in fee simple of Lot No. 2920 of the Bacong Cadastre of Bacong, Negros Oriental. It further claims that Josephine L. Veran in whose name Original Certificate of Title No. T-19723 was issued is the trustee for all the other co-heirs/co-owners.

2. However, it is very clear even from the copy of the Transfer Certificate of Title attached to the complaint that it is Josephine L. Verar who is the owner in fee simple of the property described in the said Transfer Certificate of Title (not Original Certificate of Title, as maintained by the respondent) No. T-19723. To claim a right thereunder under false declarations is indeed actionable.

3. It is likewise clear that respondent did not attach the other pages of the said TCT to the complaint which could have attested to the fact of purchase by the complainants of a portion of Lot No. 2920 and which could have proved crucial in the disposition of the case by the MCTC. The complete copy of the TCT attached by the complainants in their complaint is very telling in this case.

x x x x x x x x x

It cannot be denied that respondent knew that Josephine L. Verar was not merely a trustee of the respondent's clients but the owner in fee simple; that the ownership is evidenced by the Transfer Certificate of Title T-19723 and not by any other Original or Transfer Certificate of Title; and that a 2,000-square meter portion was validly sold to the complainants herein.

Respondent thus knowingly made untruthful statements in his complaint with the MCTC. The fact that the complaint was verified by respondent's clients does not exculpate the respondent from liability.

Such misconduct of the respondent is a clear violation of his oath that he will do no falsehood nor consent to the doing of any in court. Respondent violated his oath when he resorted to deception.

RECOMMENDATION

Wherefore, premises considered, it is most respectfully recommended that respondent be suspended for a period of one (1) year from the practice of law with a warning that similar acts in the future would be dealt with more severely.[10]

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[10] *Id.*, Vol. V, pp. 39-40.

In its 5 June 2008 Resolution, the IBP Board of Governors adopted and approved the findings and recommendation of Commissioner Concepcion and, in its 26 June 2011 Resolution, denied Atty. Enriquez's motion for reconsideration.

On 10 October 2011, Atty. Enriquez filed with the Court a petition[11] for review dated 19 August 2011 challenging the IBP Board of Governors' 5 June 2008 and 26 June 2011 Resolutions. In his 19 August 2011 petition, Atty. Enriquez raised as issues:

ASSIGNMENT OF ERRORS

1. That the Honorable Investigating IBP Commissioner CONCEPCION grossly erred when he ruled and [sic] pursuant to the JOINT-COMPLAINT-AFFIDAVIT that the Complaint in Civil Case No. 390, stating "the HRS. OF AUREA BRIONES" and CIRIACO VENTOLERO are the lawful owners in fee simple of LOT 2920, though registered in the name of JOSEPHINE L. VERAR under ORIGINAL CERTIFICATE OF TITLE NO. T-19723, is a "TRUSTEE for all the other co-heirs/co-owners" x x x;

2. That the Honorable IBP Commissioner CONCEPCION patently erred when he ruled "To claim a right thereunder FALSE DECLARATION is entirely actionable." x x x;

3. That [sic] the Honorable IBP Commissioner CONCEPCION patently erred when he ruled that Petitioner "did not attach the other pages of the said TCT in [sic] the Complaint which could have attested to the fact of purchase by the Complainants of a portion of LOT 2920 x x x[;]

4. That the Honorable IBP Investigating Commissioner CONCEPCION patently erred and without factual and legal basis [sic] when he unilaterally concluded that the allegations in the "Complaint (CIVIL CASE NO. 390) were false and that Petitioner knew them to be so. In other words the Respondent (Petitioners [sic]) MUST HAVE BEEN MOVED BY MALICE or BAD FAITH." x x x[;]

5. That IBP Investigating Commissioner CONCEPCION grossly erred and falsely concluded that Respondent

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[11] *Id.*, Vol. VII.

> (Petitioner) "knowingly made untruthful statement in his Complaint."[12]

The Spouses Williams filed an opposition[13] to Atty. Enriquez's petition for review. They prayed that the petition be denied for being filed out of time.

The Issue

The main issue is whether Atty. Enriquez is guilty of dishonesty warranting his suspension from the practice of law.

The Court's Ruling

The Court sets aside the recommendation of the IBP Board of Governors.

The IBP Board of Governors' 5 June 2008 and 26 June 2011 Resolutions did not become final. Resolutions of the IBP Board of Governors are only recommendatory and always subject to the Court's review. In *Ylaya v. Gacott*,[14] the Court held that:

> We remind all parties that resolutions from the IBP Board of Governors are merely recommendatory and do not attain finality without a final action from this Court. Section 12, Rule 139-B is clear on this point that:
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> > Section 12. *Review and decision by the Board of Governors.* —
> >
> > x x x x x x x x x
> >
> > (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.

The Supreme Court exercises exclusive jurisdiction to regulate the practice of law. It exercises such disciplinary functions through

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[12] *Id.*

[13] *Id.*

[14] A.C. No. 6475, 30 January 2013, 689 SCRA 452.

the IBP, but it does not relinquish its duty to form its own judgment. Disbarment proceedings are exercised under the sole jurisdiction of the Supreme Court, and the IBP's recommendations imposing the penalty of suspension from the practice of law or disbarment are always subject to this Court's review and approval.[15]

In administrative cases, the only issue within the ambit of the Court's disciplinary authority is whether a lawyer is fit to remain a member of the Bar. Other issues are proper subjects of judicial action. In *Anacta v. Resurreccion*,[16] the Court held that:

> x x x Thus, it is imperative to first determine whether the matter falls within the disciplinary authority of the Court or whether the matter is a proper subject of judicial action against lawyers. If the matter involves violations of the lawyer's oath and code of conduct, then it falls within the Court's disciplinary authority. However, if the matter arose from acts which carry civil or criminal liability, and which do not directly require an inquiry into the moral fitness of the lawyer, then the matter would be a proper subject of a judicial action which is understandably outside the purview of the Court's disciplinary authority.[17]

On its face, the 12 September 2006 complaint filed by the Spouses Williams against Atty. Enriquez does not merit an administrative case. In order for the Court to determine whether Atty. Enriquez is guilty of dishonesty, the issue of ownership must first be settled. The Spouses Williams alleged that Verar was the owner of the property and that she sold a portion of it to them. On the other hand, Atty. Enriquez alleged that Desiderio, Francisco, Ramon, Umbac and Briones were the real owners of the property and that Verar was only a trustee. This was precisely the issue in Civil Case No. 390. Unfortunately, the MCTC was not able to make a definite ruling because the Spouses Williams failed to file their answer within the prescribed period.

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[15] *Id*. at 482.

[16] A.C. No. 9074, 14 August 2012, 678 SCRA 352.

[17] *Id*. at 365-366.

The issue of ownership of real property must be settled in a judicial, not administrative, case. In *Virgo v. Amorin*,[18] the Court dismissed without prejudice a complaint against a lawyer because it could not determine his fitness to remain a member of the Bar without delving into issues which are proper subjects of judicial action. The Court held that:

> While it is true that disbarment proceedings look into the worthiness of a respondent to remain as a member of the bar, and need not delve into the merits of a related case, the Court, in this instance, however, cannot ascertain whether Atty. Amorin indeed committed acts in violation of his oath as a lawyer concerning the sale and conveyance of the Virgo Mansion without going through the factual matters that are subject of the aforementioned civil cases, particularly Civil Case No. 01-45798.[19]

The allegations that Atty. Enriquez wrote "OCT" instead of "TCT" but with the same number T-19723, and "Veran" instead of "Verar," are too trivial to give rise to administrative sanction. Besides, these mistakes could have been made inadvertently. Atty. Enriquez's failure to attach the pages of TCT No. T-19723 bearing the annotation of the sale to the Spouses Williams did not prejudice the Spouses Williams because in forcible entry the issue is the fact of prior possession, not ownership.

WHEREFORE, the Court **SETS ASIDE** the IBP Board of Governors' 5 June 2008 and 26 June 2011 Resolutions and **DISMISSES** without prejudice **A.C. No. 7329.**

SO ORDERED.

Brion, del Castillo, Abad, and *Perez, JJ.,* concur.

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[18] A.C. No. 7861, 30 January 2009, 577 SCRA 188.

[19] *Id*. at 199.

FIRST DIVISION

[A.M. No. MTJ-03-1505. November 27, 2013]
(Formerly OCA IPI No. 03-1363-MTJ)

MAMASAW SULTAN ALI, *complainant, vs.* **HON. BAGUINDA-ALI PACALNA, Presiding Judge, HON. PUNDAYA A. BERUA, Acting Presiding Judge, HADJI IBRA DARIMBANG, Clerk of Court and MANDAG U. BATUA-AN, Court Stenographer, all of the Municipal Circuit Trial Court, Municipality of Balindong, Province of Lanao del Sur,** *respondents.*

In the Matter of: Petition for Absolute Judicial Clemency of Former Judge Baguinda-Ali A. Pacalna, MTCC, Marawi City

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; JUDICIAL CLEMENCY; GUIDELINES IN RESOLVING REQUESTS FOR JUDICIAL CLEMENCY.—** This Court in *A.M. No. 07-7-17-SC (Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency)* laid down the following guidelines is resolving requests for judicial clemency, to wit: "1. There must **be proof of remorse and reformation.** These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation. 2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation. 3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself. 4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other

relevant skills), as well as potential for public service. 5. There must be **other relevant factors and circumstances that may justify clemency**."

2. **ID.; ID.; ID.; THE GRANT OF JUDICIAL CLEMENCY REQUIRES PROOF OF REMORSE AND REFORMATION; CASE AT BAR.—** Respondent's petition is not supported by any single proof of his professed repentance. x x x Apart from respondent's own declarations, there is no independent evidence or relevant circumstances to justify clemency. Applying the standards set by this Court in *A.M. No. 07-7-17-SC*, respondent's petition for judicial clemency must be denied. x x x Given the gravity of respondent's transgressions, it becomes more imperative to require factual support for respondent's allegations of remorse and reform. As this Court previously declared: "x x x **Clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. The Court will grant it only if there is a showing that it is merited. Proof of reformation and a showing of potential and promise are indispensable**."

R E S O L U T I O N

VILLARAMA, JR., *J*.:

Before the Court is a Petition[1] for judicial clemency filed by Baguinda-Ali A. Pacalna (respondent), former Presiding Judge of the Municipal Circuit Trial Court (MCTC) of Balindong in Lanao del Sur.

In the Decision[2] dated September 25, 2007, respondent was found administratively liable for dishonesty, serious misconduct and gross ignorance of the law or procedure, and also violated the Code of Judicial Conduct which enjoins judges to uphold the integrity of the judiciary, avoid impropriety or the appearance of impropriety in all activities and to perform their official duties honestly and diligently. This Court thus decreed:

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[1] *Rollo* (A.M. No. MTJ-03-1505), pp. 545-550.

[2] *Sultan Ali v. Judge Pacalna*, 560 Phil. 275 (2007).

WHEREFORE, for dishonesty, gross misconduct constituting violation of the Code of Judicial Conduct and gross ignorance of the law, respondent Judge Baguinda Ali Pacalna, Presiding Judge of the Municipal Circuit Trial Court, Municipality of Balindong, Lanao Del Sur, is *ORDERED* to *PAY* a fine of ₱20,000.00, with *WARNING* that a repetition of the same or similar acts shall be dealt with more severely.

Court Stenographer Mandag Batua-an of the same court is hereby *REPRIMANDED* with similar *WARNING* that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.[3]

Respondent did not file any motion for reconsideration and paid the ₱20,000.00 fine on December 3, 2007.

Just one week after the decision in this case was rendered, another administrative complaint[4] (*A.M. No. MTJ-11-1791, formerly OCA IPI No. 08-1958-MTJ)* was filed against the respondent by members of the Marawi City Police, namely: PO2 Ricky C. Gogo, PO2 Mamintal B. Osop, PO2 Casan A. Imam, PO1 Agakhan A. Tomawis, PO1 Anowar C. Modasir, PO1 Alano D. Osop, PO1 Alnasser D. Ali, and PO1 Casanali M. Lawi. On August 17, 2011, this Court's First Division resolved to adopt and approve the findings and recommendations of the Office of the Court Administrator (OCA). Respondent was held liable for grave misconduct and meted the penalty of six (6) months suspension, converted to forfeiture of the corresponding amount of his salary which was ordered withheld by Resolution of the Court dated February 16, 2011. Said administrative matter was further indorsed to the OCA Legal Office for the commencement of criminal charges against respondent for violation of P.D. No. 1829 (Obstruction of Justice).[5]

Respondent filed a motion for reconsideration which was denied under Resolution[6] dated January 23, 2013 of this Court's Second

[3] *Id.* at 295.

[4] *Rollo* (AM. No. MTJ-11-1791), pp. 1-5.

[5] *Id.* at 156.

[6] *Id.* at 176-177.

Division. On September 4, 2013, a criminal complaint for Obstruction of Justice was filed by the OCA with the Office of the Ombudsman for Mindanao. As per Certification dated October 25, 2013 issued by the OCA, the amount of ₱209,810.70 corresponding to six months salary of respondent, was deducted from his terminal leave benefits.

Respondent resigned on December 1, 2009 while he was being investigated by the OCA in his second administrative case *(A.M. No. MTJ-11-1791 formerly A.M. OCA IPI No. 08-1958-MTJ)*. He now seeks to rejoin the judiciary and filed his application for the Regional Trial Court (RTC) of Marawi City, Branch 9. He informs this Court that he was already interviewed by the Judicial and Bar Council (JBC) in Cagayan de Oro City in November 2012 and that the only hindrance to his nomination for the said judicial position was the penalty imposed on him in the present case. Respondent thus pleads for compassion, at the very least for this Court to reduce to ₱10,000.00 the penalty imposed under our September 25, 2007 Decision.

This Court in *A.M. No. 07-7-17-SC* (*Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency)*[7] laid down the following guidelines in resolving requests for judicial clemency, to wit:

1. There must **be proof of remorse and reformation**. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.

2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation.

3. The age of the person asking for clemency must show that he still has productive years ahead of him that can

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[7] 560 Phil. 1, 5-6 (2007).

be put to good use by giving him a chance to redeem himself.

4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service.

5. There must be **other relevant factors and circumstances that may justify clemency.** (Emphasis supplied.)

Respondent's petition is not supported by any single proof of his professed repentance. His appeal for clemency is solely anchored on his avowed intention to go back to the judiciary on his personal belief that "he can be x x x an effective instrument in the delivery of justice in the Province of Lanao del Sur because of his seventeen (17) years of experience," and on his "promise before the Almighty God and the High Court that he will never repeat the acts or omissions that he had committed as a Judge." He claims having learned "enough lessons" during the three years he became jobless and his family had "suffered so much because of his shortcoming."[8]

Apart from respondent's own declarations, there is no independent evidence or relevant circumstances to justify clemency. Applying the standards set by this Court in *A.M. No. 07-7-17-SC*, respondent's petition for judicial clemency must be denied.

In the present case, the Court held that respondent exhibited gross ignorance of procedure in the conduct of election cases in connection with petitions for inclusion of voters in the *barangay* elections, resulting in delays such that complainant's name was not timely included in the master list and consequently he was not considered a candidate for *barangay* chairman. Such failure to observe fundamental rules relative to the petitions for inclusion cannot be excused. Further, respondent was found to have intentionally fabricated an order which supposedly granted a

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[8] *Rollo* (A.M. No. MTJ-03-1505), pp. 549-550.

motion for intervention by the counsel for the incumbent mayor whose re-election complainant and his co-petitioners were allegedly not willing to support. Respondent's act of fabricating an order to cover up his official shortcomings constitutes dishonesty, a reprehensible act that will not be sanctioned by this Court.

In the subsequent administrative case (*A.M. No. MTJ-11-1791*), respondent was found to have misused his authority when he, over the vigorous objection of complainants police officers, took custody of an accused then detained in jail for carnapping charges, by merely issuing a signed handwritten acknowledgment receipt with an undertaking to present the said accused to the court when ordered. Said accused was never returned to jail and while the case against him was dismissed, there was no order for release issued by the court. Respondent endeavored to justify his act in aiding the accused by virtue of his position as Sultan in his hometown, but the Court found him liable for Grave Misconduct, warranting his dismissal from the service. But since the penalty of dismissal can no longer be imposed on account of respondent's resignation, he was meted the penalty of six months suspension converted to forfeiture of the corresponding amount of his salary. This second administrative offense committed by respondent also led to the OCA's filing of a criminal complaint for obstruction of justice against him.

Given the gravity of respondent's transgressions, it becomes more imperative to require factual support for respondent's allegations of remorse and reform. As this Court previously declared:

> Concerned with safeguarding the integrity of the judiciary, this Court has come down hard and wielded the rod of discipline against members of the judiciary who have fallen short of the exacting standards of judicial conduct. This is because a judge is the visible representation of the law and of justice. He must comport himself in a manner that his conduct must be free of a whiff of impropriety, not only with respect to the performance of his official duties but also as to his behavior outside his sala and as a private individual. His character must be able to withstand the most searching public scrutiny because the ethical principles and sense of propriety of a

judge are essential to the preservation of the people's faith in the judicial system.

Clemency, as an act of mercy removing any disqualification, should be balanced with the preservation of public confidence in the courts. The Court will grant it only if there is a showing that it is merited. Proof of reformation and a showing of potential and promise are indispensable.[9] (Emphasis supplied.)

WHEREFORE, the Petition for Judicial Clemency filed by respondent Baguinda-Ali A. Pacalna is **DENIED** for lack of merit.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 168951 & 169000. November 27, 2013]

DR. ROGER R. POSADAS and DR. ROLANDO P. DAYCO, *petitioners, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; SECTION 3(e) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); BAD FAITH; IMPUTES A DISHONEST PURPOSE, SOME MORAL OBLIQUITY, AND A CONSCIOUS DOING OF A WRONG.—** The bad faith that Section 3(e) of Republic 3019 requires, said this Court, does not simply connote bad judgment or negligence. It imputes a dishonest purpose,

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

some moral obliquity and a conscious doing of a wrong. Indeed, it partakes of the nature of fraud. Here, admittedly, Dr. Dayco appears to have been taken advantage of his brief designation as OIC Chancellor to appoint the absent Chancellor, Dr. Posadas, as Director and consultant of the TMC Project. But it cannot be said that Dr. Dayco made those appointments and Dr. Posadas accepted them, fraudulently, knowing fully well that Dr. Dayco did not have that authority as OIC Chancellor. All indications are that they acted in good faith. They were scientists, not lawyers, hence unfamiliar with Civil service rules and regulations. The world of the academe is usually preoccupied with studies, researches, and lectures. Thus, those appointments appear to have been taken for granted at UP.

2. **ID.; ID.; MANIFEST PARTIALITY; NOT ESTABLISHED IN CASE AT BAR.—** There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. Here, the prosecution presented no evidence whatsoever that others, more qualified than Dr. Posadas, deserve the two related appointments. The fact is that he was the best qualified for the work x x x. In the world of the academe, that project was the equivalent of Dr. Posadas' thesis. Thus, since he was a natural choice to head the same, it beats the mind that such choice could be regarded as one prompted by "manifest partiality."

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; THE MISSTEP COMMITTED IN CASE AT BAR SHOULD BE TREATED AS A MERE ADMINISTRATIVE OFFENSE.—** The worst that could be said of Dr. Dayco and Dr. Posadas is they showed no sensitivity to the fact that, although Dr. Dayco may have honestly believed that he had the authority to make those appointments, he was actually appointing his own superior, the person who made him OIC Chancellor, however qualified he might be, to those enviable positions. But this should have been treated as a mere administrative offense for: First. No evidence was adduced to show that UP academic officials were prohibited from receiving compensation for work they render outside the scope of their normal duties as administrators or faculty professors. Second. COA disallowances of benefits given to government personnel for extra services rendered are normal occurrences in government offices. They can hardly be regarded

as cause for the filing of criminal charges of corruption against the authorities that granted them and those who got paid. x x x Third. In other government offices, the case against Dr. Dayco and Dr. Posadas would have been treated as purely of an administrative character. The problem in their case, however, is that other factors have muddled it. x x x Fourth. The fault of Dr. Dayco and Dr. Posadas, who spent the best parts of their lives serving UP, does not warrant their going to jail for nine to twelve years for what they did. They did not act with manifest partiality or evident bad faith. Indeed, the UP Board of Regents, the highest governing body of that institution and the most sensitive to any attack upon its revered portals, did not believe that Dr. Dayco and Dr. Posadas committed outright corruption.

4. **CRIMINAL LAW; SECTION 3(e) OF REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); UNDUE INJURY; MUST BE ACTUALLY PROVED WITH A REASONABLE DEGREE OF CERTAINTY.—** This Court has always interpreted "undue injury" as "actual damage." What is more, such "actual damage" must not only be capable of proof; it must be actually proved with a reasonable degree of certainty. A finding of "undue injury" cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture, or guesswork. The Court held in *Llorente v. Sandiganbayan* that the element of undue injury cannot be presumed even after the supposed wrong has been established. It must be proved as one of the elements of the crime.

APPEARANCES OF COUNSEL

Gener C. Sansaet for Dr. Roger Posadas.

De Castro & Cagampang-De Castro Law Firm for Dr. Rolando Dayco.

The Solicitor General for respondents.

RESOLUTION

ABAD,[*] ***J.*:**

This resolves the separate Motions for Reconsideration of petitioners, Dr. Roger R. Posadas and Dr. Rolando P. Dayco of the Court's Decision dated July 17, 2013.

The Facts and the Case

To recall the facts culled from the decision of the Sandiganbayan, Dr. Posadas was Chancellor of the University of the Philippines (UP) Diliman when on September 19, 1994 he formed a *Task Force on Science and Technology Assessment, Management and Policy*. The Task Force was to prepare the needed curricula for masteral and doctoral programs in "technology management, innovation studies, science and technology and related areas." On June 6, 1995, acting on the Task Force's proposal, UP established the *UP Technology Management Center* (UP TMC) the members of which nominated Dr. Posadas for the post of Center Director. He declined the nomination, however, resulting in the designation of Professor Jose B. Tabbada as acting UP TMC Director.

Shortly after, Dr. Posadas worked for the funding of the ten new graduate courses of UP TMC. With the help of the Philippine Institute of Development Studies/Policy, Training and Technical Assistance Facility and the National Economic Development Authority, there came into being the *Institutionalization of Management and Technology in the University of the Philippines in Diliman* (the TMC Project), funded at Dr. Posadas' initiative by the Canadian International Development Agency.

Meantime, on October 5, 1995 Malacanang granted Dr. Posadas and fifteen other UP Diliman officials authority to attend the foundation day of the state university in Fujian, China, from October 30 to November 6, 1995. Before he left, Dr. Posadas formally designated Dr. Dayco, then UP Diliman Vice-Chancellor for Administration, as Officer-in-Charge (OIC) in his absence.

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[*] Designated additional member, in lieu of Chief Justice Maria Lourdes P. A. Sereno, per Raffle dated July 1, 2013.

On November 7, 1995, his last day as OIC Chancellor, Dr Dayco appointed Dr. Posadas as "Project Director of the TMC Project from September 18, 1995 to September 17, 1996." In an undated letter, Dr. Dayco also appointed Dr. Posadas consultant to the project. The appointments were to retroact to September 18, 1995 when the project began.

About a year later or on August 22, 1996 the Commission on Audit (COA) Resident Auditor issued a Notice of Suspension of payments made to UP TMC personnel, including the second payment to Dr. Posadas of ₱36,000.00 for his services as TMC Project's Local Consultant. On August 23 the Resident Auditor further suspended payment of ₱30,000.00 honorarium per month to Dr. Posadas as Project Director from September 18 to October 17, 1995.

On September 16, 1996, however, the UP Diliman Legal Office issued a Memorandum to the COA Resident Auditor, pointing out that the amounts paid the TMC Project personnel "were legal, being in the nature of consultancy fees." The legal office also "confirmed the authority of Dr. Dayco, while he was OIC Chancellor, to appoint Dr. Posadas as project director and consultant of the TMC Project." Finding this explanation "acceptable," the COA Resident Auditor lifted his previous notices of suspension.

Notwithstanding the lifting of the suspension, UP President Javier constituted an *Administrative Disciplinary Tribunal* to hear and decide the administrative complaint that he himself filed against Dr. Posadas and Dr. Dayco for grave misconduct and abuse of authority. On August 18, 1998 the Tribunal recommended the dismissal of the two from the service. The UP Board of Regents modified the penalty, however, to "forced resignation" with right to reapply after one year provided they publicly apologize. Still, the UP General-Counsel filed with the Sandiganbayan the present criminal cases.

On June 28, 2005 the Sandiganbayan found both Dr. Posadas and Dr. Dayco guilty of violation of Section 3(e) of Republic Act 3019 and imposed on them an indeterminate penalty of imprisonment for 9 years and one day as minimum and 12 years

as maximum, with the accessory penalty of perpetual disqualification from public office. The court also found them guilty of violation of Section 7(b) of Republic Act 6713 and imposed on them the penalty of imprisonment for 5 years with the same disqualification. They were further ordered to indemnify the government in the sum of ₱336,000.00.[1]

In its decision of July 17, 2013, the Court affirmed the decisions of the Sandiganbayan in the two cases.

Discussion

1. The appointments were in good faith

The bad faith that Section 3(e) of Republic 3019 requires, said this Court, does not simply connote bad judgment or negligence. It imputes a dishonest purpose, some moral obliquity, and a conscious doing of a wrong. Indeed, it partakes of the nature of fraud.[2]

Here, admittedly, Dr. Dayco appears to have taken advantage of his brief designation as OIC Chancellor to appoint the absent Chancellor, Dr. Posadas, as Director and consultant of the TMC Project. But it cannot be said that Dr. Dayco made those appointments and Dr. Posadas accepted them, fraudulently, knowing fully well that Dr. Dayco did not have that authority as OIC Chancellor.

All indications are that they acted in good faith. They were scientists, not lawyers, hence unfamiliar with Civil Service rules and regulations. The world of the academe is usually preoccupied with studies, researches, and lectures. Thus, those appointments appear to have been taken for granted at UP. It did not invite any immediate protest from those who could have had an interest in the positions. It was only after about a year that the COA

[1] *Rollo*, pp. 48-70.

[2] *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670. See also *Marcelo v. Sandiganbayan*, G.R. No. 69983, May 14, 1990, 185 SCRA 346, cited in *Sidro v. People*, G.R. No. 149685, April 28, 2004, 428 SCRA 182, 194.

Resident Auditor issued a notice of suspension covering payments out of the Project to all UP personnel involved, including Dr. Posadas.

Still, in response to this notice, the UP Diliman Legal Office itself rendered a legal opinion that "confirmed the authority of Dr. Dayco, while he was OIC Chancellor, to appoint Dr. Posadas as project director and consultant of the TMC Project." Not only this, the COA Resident Auditor, who at first thought that the OIC Chancellor had no power to make the designations, later accepted the Legal Office's opinion and withdrew the Notices of Suspension of payment that he issued. All these indicate a need for the Court to reexamine its position that Dr. Dayco and Dr. Posadas acted in bad faith in the matter of those appointments.

2. Dr. Dayco chose the most qualified for the project

The next question is whether Dr. Dayco, believing in good faith that he had the authority to make the questioned designations, acted with "manifest partiality" in choosing Dr. Posadas among all possible candidates as TMC Director and Consultant. The answer is no.

There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.[3] Here, the prosecution presented no evidence whatsoever that others, more qualified than Dr. Posadas, deserve the two related appointments. The fact is that he was the best qualified for the work:

<u>First</u>, Dr. Posadas originated the idea for the project and so he had every reason to want it to succeed.

<u>Second</u>, he worked hard to convince the relevant government offices to arrange funding for the project, proof that he was familiar with the financial side of it as well.

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[3] *People of the Philippines v. Aristeo E. Atienza*, G.R. No. 171671, June 18, 2012.

Third, the members of the *Task Force on Science and Technology Assessment, Management and Policy*—his own peers—nominated Dr. Posadas as Director of the UP Technology Management Center.

Fourth. The work fell within his area of expertise—technical management—ensuring professionalism in the execution of the project.

In the world of the academe, that project was the equivalent of Dr. Posadas' thesis. Thus, since he was a natural choice to head the same, it beats the mind that such choice could be regarded as one prompted by "manifest partiality."

3. The misstep was essentially of the administrative kind

The worst that could be said of Dr. Dayco and Dr. Posadas is they showed no sensitivity to the fact that, although Dr. Dayco may have honestly believed that he had the authority to make those appointments, he was actually appointing his own superior, the person who made him OIC Chancellor, however qualified he might be, to those enviable positions. But this should have been treated as a mere administrative offense for:

First. No evidence was adduced to show that UP academic officials were prohibited from receiving compensation for work they render outside the scope of their normal duties as administrators or faculty professors.

Second. COA disallowances of benefits given to government personnel for extra services rendered are normal occurrences in government offices. They can hardly be regarded as cause for the filing of criminal charges of corruption against the authorities that granted them and those who got paid.

Section 4 of the COA Revised Rules of Procedure merely provides for an order to return what was improperly paid. And, only if the responsible parties refuse to do so, may the auditor then (a) recommend to COA that they be cited for contempt; (b) refer the matter to the Solicitor General for the filing of the appropriate civil action; and (c) refer it to the Ombudsman for

the appropriate administrative or criminal action.[4] Here, Dr. Dayco and Dr. Posadas were not given the chance, before they were administratively charged, to restore what amounts were paid since the Resident Director withdrew his notice of disallowance after considering the view of the UP Diliman Legal Office.

If the Court does not grant petitioners' motions for reconsideration, the common disallowances of benefits paid to government personnel will heretofore be considered equivalent to criminal giving of "unwarranted advantage to a private party," an element of graft and corruption. This is too sweeping, unfair, and unwise, making the denial of most benefits that government employees deserve the safer and better option.

Third. In other government offices, the case against Dr. Dayco and Dr. Posadas would have been treated as purely of an administrative character. The problem in their case, however, is that other factors have muddled it. The evidence shows that prior to the incident Dr. Posadas caused the administrative investigation of UP Library Administrative Officer Ofelia del Mundo for grave abuse of authority, neglect of duty, and other wrong-doings. This prompted Professor Tabbada, the Acting UP TMC Director, to resign his post in protest. In turn, Ms. Del Mundo instigated the UP President to go after Dr. Posadas and Dr. Dayco. Apparently, the Office of the Ombudsman played into the intense mutual hatred and rivalry that enlarged what was a simple administrative misstep.

Fourth. The fault of Dr. Dayco and Dr. Posadas, who spent the best parts of their lives serving UP, does not warrant their going to jail for nine to twelve years for what they did. They did not act with manifest partiality or evident bad faith. Indeed, the UP Board of Regents, the highest governing body of that institution and the most sensitive to any attack upon its revered portals, did not believe that Dr. Dayco and Dr. Posadas committed outright corruption. Indeed, it did not dismiss them from the service; it merely ordered their forced resignation and the accessory penalties that went with it.

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[4] *Id.*

The Board did not also believe that the two deserved to be permanently expelled from UP. It meted out to them what in effect amounts to mere suspension for one year since the Board practically invited them to come back and teach again after one year provided they render a public apology for their actions. The Board of Regents did not regard their offense so morally detestable as to totally take away from them the privilege of teaching the young.

4. The prosecution did not prove unwarranted benefit or undue injury

Section 3(e) of Republic Act 3019 requires the prosecution to prove that the appointments of Dr. Posadas caused "undue injury" to the government or gave him "unwarranted benefits."

This Court has always interpreted "undue injury" as "actual damage." What is more, such "actual damage" must not only be capable of proof; it must be actually proved with a reasonable degree of certainty. A finding of "undue injury" cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture, or guesswork.[5] The Court held in *Llorente v. Sandiganbayan*[6] that the element of undue injury cannot be presumed even after the supposed wrong has been established. It must be proved as one of the elements of the crime.

Here, the majority assumed that the payment to Dr. Posadas of ₱30,000.00 monthly as TMC Project Director caused actual injury to the Government. The record shows, however, that the ₱247,500.00 payment to him that the COA Resident Auditor disallowed was deducted from his terminal leave benefits.[7]

The prosecution also failed to prove that Dr. Dayco gave Dr. Posadas "unwarranted advantage" as a result of the appointments in question. The *honoraria* he received cannot be considered "unwarranted" since there is no evidence that he

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[5] *Rollo*, p. 406.

[6] G.R. No. 122166, March 11, 1998.

[7] *Rollo*, p. 406.

did not discharge the additional responsibilities that such appointments entailed.

WHEREFORE, the Court resolves to **GRANT** the motions for reconsideration of the petitioners and to vacate their conviction on the ground of failure of the State to prove their guilt beyond reasonable doubt.

SO ORDERED.

Bersamin (Acting Chairperson), and *Reyes, JJ.,* concur.

Villarama, Jr., J., for reasons stated in the July 17, 2013 decision — He dissents. He therefore votes to deny MR with finality.

Mendoza,[**] *J.,* joins the dissent with *J*. Villarama, Jr.

FIRST DIVISION

[G.R. No. 171282. November 27, 2013]

SKM ART CRAFT CORPORATION, *petitioner, vs.* **EFREN BAUCA, PATRICIO OLMILLA, ZALDY ESCALARES, PEDRITO OLMILLA, PEDRO BERAY, DANILO SOLDE, NOEL PALARCA, JULIUS CESAR MIGUELA, OCTAVIO OBIAS, ARVIN ABINES, RADDY TERENCIO, FE RANIDO, EDNA MANSUETO, SANDRO RODRIGUEZ, RENATO TANGO, HERMOGENES OBIAS, DOMINGO LAROCO, DANTE AQUINO, ARMANDO VILLA, ROGELIO DELOS REYES, NOMER MANAGO, ANTONIO BALUDCAL and LUDIVICO STA. CLARA,** *respondents.*

[**] Designated additional member, in lieu of Associate Teresita J. Leonardo-De Castro, per Raffle dated May 27, 2013.

[G.R. No. 183484. November 27, 2013]

SKM ART CRAFT CORPORATION, *petitioner, vs.* **EFREN BAUCA, PATRICIO OLMILLA, ZALDY ESCALARES, PEDRITO OLMILLA, PEDRO BERAY, DANILO SOLDE, NOEL PALARCA, JULIUS CESAR MIGUELA, OCTAVIO OBIAS, ARVIN ABINES, RADDY TERENCIO, FE RANIDO, EDNA MANSUETO, SANDRO RODRIGUEZ, RENATO TANGO, HERMOGENES OBIAS, DOMINGO LAROCO, DANTE AQUINO, ARMANDO VILLA and ROGELIO DELOS REYES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTS OF A PLEADING; VERIFICATION REQUIREMENT; SUBSTANTIALLY COMPLIED WITH WHEN THE SIGNATORIES SHARE A COMMON INTEREST AND CAUSE OF ACTION IN THE CASE.—** We hold that the verification signed by nine of the respondents substantially complied with the verification requirement since respondents share a common interest and cause of action in the case. The apparent merit of respondents' CA petition and the conflicting findings of the Labor Arbiter and the NLRC also justified the CA's decision to rule on the merits of the case. The CA aptly noted that in *Torres v. Specialized Packaging Development Corporation*, only two of the 25 petitioners therein signed the verification and certification against forum shopping. We said that the problem is not the lack of a verification, but the adequacy of one executed by only two of the 25 petitioners. These two signatories, we added, are unquestionably real parties in interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition. This verification is enough assurance that the matters alleged therein have been made in good faith or are true and correct, not merely speculative. Hence, we ruled that the requirement of verification was substantially complied with. In *Altres v. Empleo*, we also ruled that the verification requirement is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs

the verification, and when matters alleged in the petition have been made in good faith or are true and correct, as in this case.

2. **ID.; ID.; ID.; CERTIFICATION AGAINST FORUM SHOPPING; WHEN ALL THE PLAINTIFFS OR PETITIONERS SHARE A COMMON INTEREST AND INVOKE A COMMON CAUSE OF ACTION OR DEFENSE, THE SIGNATURE OF ONLY ONE OF THEM THEREIN SUBSTANTIALLY COMPLIES WITH THE CERTIFICATION REQUIREMENT.—** In *Altres*, we likewise stated the general rule that the certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. We also said, however, that under reasonable or justifiable circumstances, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, as in this case, the signature of only one of them in the certification against forum shopping substantially complies with the certification requirement. In *Torres*, we also considered the apparent merits of the case as a special circumstance or compelling reason for allowing the petition. We noted the conflicting findings of the NLRC and the Labor Arbiter and held this as ample justification for the CA's review of the merits.

3. **ID.; RULES OF PROCEDURE; MUST BE USED TO ACHIEVE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE, NOT TO DERAIL IT.—** [R]ules of procedure are established to secure substantial justice. Being instruments of the speedy and efficient administration of justice, they must be used to achieve such end, not to derail it. Technical requirements may thus be dispensed with in meritorious appeals.

4. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SUSPENSION OF OPERATIONS EXCEEDING SIX MONTHS TERMINATES EMPLOYMENT; CASE AT BAR.—** [P]etitioner's suspension of operations is valid because the fire caused substantial losses to petitioner and damaged its factory. x x x The list of materials burned was not the only evidence submitted by petitioner. It was corroborated by pictures and the fire investigation report, and they constitute substantial evidence of petitioner's losses. Under Article 286 of the Labor Code, the *bona fide* suspension

of the operations of a business or undertaking for a period not exceeding six months shall not terminate employment. x x x In this case, however, we agree with the Labor Arbiter and the CA that respondents were already considered illegally dismissed since petitioner failed to recall them after six months, when its *bona fide* suspension of operations lapsed. We stress that under Article 286 of the Labor Code, the employment will not be deemed terminated if the *bona fide* suspension of operations does not exceed six months. But if the suspension of operations exceeds six months, the employment will be considered terminated.

APPEARANCES OF COUNSEL

Esguerra & Blanco Law Office for petitioner.
Lily S. Dayaon-Ireno for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

For our resolution is the petition for review on *certiorari* in G.R. No. 171282 which assails the November 9, 2005 Decision[1] and January 24, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 76670. The petition was earlier consolidated with the petition docketed as G.R. No. 183484, but said petition was denied on October 10, 2011 and said denial has become final on January 25, 2012, per the entry of judgment[3] in G.R. No. 183484.

The facts of the case follow:

The 23 respondents in G.R. No. 171282 were employed by petitioner SKM Art Craft Corporation which is engaged in the handicraft business. On April 18, 2000, around 1:12 a.m., a

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[1] *Rollo* (G.R. No. 171282), pp. 32-59. Penned by Associate Justice Celia C. Librea-Leagogo with the concurrence of Associate Justices Renato C. Dacudao and Lucas P. Bersamin (now a Member of this Court).

[2] *Id.* at 60-62.

[3] *Rollo* (G.R. No. 183484), pp. 366-367.

fire occurred at the inspection and receiving/repair/packing area of petitioner's premises in Intramuros, Manila. The fire investigation report[4] stated that the structure and the beach rubber building were totally damaged. Also burned were four container vans and a trailer truck. The estimated damage was ₱22 million.

On May 8, 2000, petitioner informed respondents that it will suspend its operations for six months, effective May 9, 2000.[5]

On May 16, 2000, only eight days after receiving notice of the suspension of petitioner's operations, the 23 respondents (and other co-workers) filed a complaint for illegal dismissal, docketed as NLRC NCR (South) Case No. 30-05-03012-00, 30-05-03028-00 and 30-05-03045-00. They alleged that there was discrimination in choosing the workers to be laid off and that petitioner had discovered that most of them were members of a newly-organized union.[6]

Petitioner denied the claim of illegal dismissal and said that Article 286[7] of the Labor Code allows the *bona fide* suspension of a business or undertaking for a period not exceeding six months. Petitioner claimed that the fire cost it millions in losses and that it is impossible to resume its normal operations for a significant period of time.[8]

In her Decision[9] dated June 29, 2001, the Labor Arbiter ruled that respondents were illegally dismissed and ordered petitioner

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[4] *Rollo* (G.R. No. 171282), pp. 99-100.

[5] *Id.* at 34, 139.

[6] *Id.* at 34.

[7] **ART. 286. When employment not deemed terminated.** – The *bona fide* suspension of the operations of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment.

In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[8] *Rollo* (G.R. No. 171282), p. 35.

[9] *Id.* at 101-112.

to reinstate them and pay them back wages of ₱59,918.41 each, the amount being subject to further computation up to the date of their actual reinstatement. The Labor Arbiter ruled that the fire that burned a part of petitioner's premises may validate the suspension of respondents' employment, but the suspension must not exceed six months. Since petitioner failed to recall respondents after the lapse of six months, the Labor Arbiter held that respondents were illegally dismissed. The *fallo* of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of **[respondents] Efren Bauca**, **Patricio Olmilla**, **Zaldy Esc[a]lares**, Gaudencio Gutierrez, **Pedrito Olmilla**, **Pedro B[er]ay**, Edwin Penasa, **Danilo Solde**, **Noel P[a]larca**, **Julius [Cesar] Miguela**, Raul Baray, **Octa[v]io Obias**, Marcelo Balbuena, **Arvin Abines**, **Raddy O. [Terencio]**, **Fe Ranido**, **Edna Mansueto**, **Lud[i]vico Sta. Clara**, **Sandro Rodriguez**, **Antonio Baludcal**, **Nomer Manago**, **Renato Tango**, **Hermogenes [Obias]**, **Domingo Laroco**, [Wenceslao] Ranido, **Dante Aquino**, **Armando Villa**, Ramir Sevilla and Danili Portes, **R[o]gelio [delos] Reyes**, Luciano T. Obias, illegal and ordering the [petitioner] SKM Art Craft Corp[oration] to reinstate them to their former position without loss of seniority rights and privileges and to pay the following amount representing . . . back wages.

x x x x x x x x x

1) Basic:	
x x x	54,498.73
2) 13th Month Pay: x x x	4,541.56
3) Service Incentive Leave Pay: x x x	878.12
TOTAL BACK WAGES	**₱59,918.41**

The amount of back wages shall be subject to further computation up to the date of their actual reinstatement.

The [complaint as to] Gaudencio Gutierrez, Danilo Portes, Wenceslao Ranido, Lucino Obias, Edwin Penaso, Marcelo Balbuena, Raul Beray, Ramir Sevilla [is] dismissed with prejudice in view of the execution of their Release, Waiver and Quitclaim[s].

SO ORDERED.[10]

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[10] *Id*. at 111-112. Emphasis supplied.

The National Labor Relations Commission (NLRC) set aside the Labor Arbiter's Decision and ruled that there was no illegal dismissal. The NLRC ordered that respondents be reinstated to their former positions but it deleted the award of back wages. The NLRC noted that the fire caused millions in damages to petitioner. Thus, petitioner's suspension of operations is valid under Article 286 of the Labor Code. It was not meant to remove respondents because they were union members. The NLRC added that the illegal dismissal complaint filed by respondents was premature for it was filed during the six-month period of suspension of operations. The *fallo* of the NLRC's Decision[11] dated July 30, 2002 reads:

WHEREFORE, premises considered, the assailed decision of the Labor Arbiter is hereby SET ASIDE and a new judgment is hereby rendered ordering the reinstatement of [respondents] to their former x x x position[s] without payment of backwages. If reinstatement is no longer feasible for reasons already stated herein, [petitioner is] hereby ordered to pay the remaining [respondents] with the exclusion of all those who have already executed quitclaims and release[s], the equivalent of one month pay for every year of service[,] a fraction of at least six months [being] considered as one whole year.

The [complaint as to] Nomer Manago, Ludivico Sta. Clara and Antonio Baludcud are dismissed [as said complainants have already] executed quitclaims and release[s].

The award of proportionate 13th month pay is hereby GRANTED while the award of service incentive leave pay is DISMISSED for lack of basis.

SO ORDERED.[12]

The NLRC denied the parties' motions for reconsideration in its Resolution dated January 27, 2003.[13]

In the assailed Decision, the CA set aside the NLRC Decision and Resolution and reinstated the Labor Arbiter's Decision.

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[11] *Id*. at 136-147.

[12] *Id*. at 146.

[13] *Id*. at 43.

The CA considered the merits of the petition for *certiorari* filed by respondents and the conflicting findings of the Labor Arbiter and the NLRC as justification for its decision to decide the case on the merits even if only nine of the respondents had signed the verification and certification against forum shopping attached to the petition.

The CA ruled that petitioner failed to prove that its suspension of operations is *bona fide*. The CA noted that the proof of alleged losses – the list of items and materials allegedly burned – was not even certified or signed by petitioner's accountant or comptroller. And even if the suspension of operations is considered *bona fide*, the CA said that respondents were not reinstated after six months. Thus, respondents are deemed to have been illegally dismissed. The CA also noted that petitioner's manifestation that it is willing to admit the respondents if they return to work was belatedly made after almost one year from the expiration of the suspension of operations.

The CA also held that the NLRC committed grave abuse of discretion in dismissing the complaints of Nomer Manago, Ludivico Sta. Clara and Antonio Baludcal since the Release, Waiver and Quitclaims executed by them pertain to another case, NLRC-NCR Case No. 00-02-01495. In fact, their quitclaims were executed on July 28, 1999 or long before the fire occurred on April 18, 2000. The *fallo* of the assailed CA Decision reads:

> **WHEREFORE,** premises considered, the Petition is **GRANTED**. The Decision dated 30 July 2002 and Resolution dated 27 January 2003 of the NLRC (Second Division) in NLRC NCR 30-05-03012-00 (CA No. 029182-01) are **REVERSED and SET ASIDE** and the Decision dated 29 June 2001 of Labor Arbiter Dolores M. Peralta-Beley is hereby **REINSTATED.** Costs against [petitioner].
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> **SO ORDERED**.[14]

In the assailed Resolution, the CA denied petitioner's motion for reconsideration.

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[14] *Id.* at 57.

Petitioner in G.R. No. 171282 raised the following issues:

I.

Whether the CA gravely erred in not summarily dismissing the [CA] petition insofar as x x x Patricio Olmilla [*et al*., or those who did not sign the verification and certification against forum shopping,] are concerned.

II.

Whether the CA gravely erred in invalidating the quitclaims executed by Nomer Manago, Ludivico Sta. Clara and Antonio Baludcal.

III.

Whether the CA gravely erred in not dismissing the claims of Edna Mansueto, Rogelio Delos Reyes, Pedro Beray and Raddy Terencio, as they have already executed valid quitclaims in favor of the petitioner.

IV.

Whether the CA gravely erred in reversing and setting aside the [NLRC Decision and Resolution] and in reinstating the Decision of [the Labor Arbiter.][15]

We will address first the first two issues raised by petitioner. Then, we will resolve the conflicting rulings on the issue of illegal dismissal and the quitclaims executed by almost all of the respondents.

On the first issue, we disagree with petitioner that the CA erred in giving due course to the petition filed by respondents even if only nine of them signed the verification and certification against forum shopping.[16] We hold that the verification signed by nine of the respondents substantially complied with the verification requirement since respondents share a common interest and cause of action in the case. The apparent merit of respondents' CA petition and the conflicting findings of the Labor Arbiter and the NLRC also justified the CA's decision to rule on the merits of the case.

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[15] *Id*. at 11-12.

[16] *Id*. at 15.

The CA aptly noted that in *Torres v. Specialized Packaging Development Corporation*,[17] only two of the 25 petitioners therein signed the verification and certification against forum shopping. We said that the problem is not the lack of a verification, but the adequacy of one executed by only two of the 25 petitioners. These two signatories, we added, are unquestionably real parties in interest, who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition. This verification is enough assurance that the matters alleged therein have been made in good faith or are true and correct, not merely speculative. Hence, we ruled that the requirement of verification was substantially complied with. In *Altres v. Empleo*,[18] we also ruled that the verification requirement is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct, as in this case.

In *Altres*, we likewise stated the general rule that the certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. We also said, however, that under reasonable or justifiable circumstances, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, as in this case, the signature of only one of them in the certification against forum shopping substantially complies with the certification requirement.[19] In *Torres*, we also considered the apparent merits of the case as a special circumstance or compelling reason for allowing the petition. We noted the conflicting findings of the NLRC and the Labor Arbiter and held this as ample justification for the CA's review of the merits. We stressed that rules of procedure are established to secure substantial justice. Being instruments of the speedy and efficient administration of justice, they must

[17] G.R. No. 149634, July 6, 2004, 433 SCRA 455, 464.

[18] G.R. No. 180986, December 10, 2008, 573 SCRA 583, 597.

[19] *Id.*

be used to achieve such end, not to derail it. Technical requirements may thus be dispensed with in meritorious appeals.[20]

On the second issue, we likewise disagree with petitioner. The CA properly rejected the Release, Waiver and Quitclaims[21] executed by Nomer Manago, Ludivico Sta. Clara and Antonio Baludcal. Said quitclaims are irrelevant to this case for they pertain to another case, NLRC-NCR Case No. 00-02-01495-99, and were executed on July 28, 1999, long before the fire occurred on April 18, 2000.

On the issue of illegal dismissal, while we agree with the NLRC that the suspension of petitioner's operation is valid, the Labor Arbiter and the CA are correct that respondents were illegally dismissed since they were not recalled after six months, after the *bona fide* suspension of petitioner's operations.

It is admitted that petitioner's premises was burned on April 18, 2000.[22] Petitioner also submitted pictures[23] of its premises after the fire, the certification[24] by the *Barangay* Chairman that petitioner's factory was burned, and the fire investigation report[25] of the Bureau of Fire Protection. To prove the damages, petitioner submitted a list[26] of burned machines, its inventory[27] for April 2000 and the fire investigation report which stated that the estimated damage is ₱22 million.

We therefore agree with the NLRC that petitioner's suspension of operations is valid because the fire caused substantial losses to petitioner and damaged its factory. On this point, we disagree with the CA that petitioner failed to prove that its suspension of operations is *bona fide*. The list of materials burned was not

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[20] *Supra* note 17, at 467.

[21] *Rollo* (G.R. No. 171282), pp. 193-195.

[22] *Id*. at 34.

[23] *Id*. at 65-70.

[24] *Id*. at 64.

[25] *Id*. at 99-100.

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

[27] *Id*. at 74-98.

the only evidence submitted by petitioner. It was corroborated by pictures and the fire investigation report, and they constitute substantial evidence of petitioner's losses.

Under Article 286 of the Labor Code, the *bona fide* suspension of the operations of a business or undertaking for a period not exceeding six months shall not terminate employment. Article 286 provides,

> **ART. 286. When employment not deemed terminated.** – The bona fide suspension of the operations of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment.
>
> In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

The NLRC correctly noted that the complaint for illegal dismissal filed by respondents was premature since it was filed only eight days after petitioner announced that it will suspend its operations for six months. In *Nippon Housing Phil., Inc. v. Leynes*,[28] we said that a complaint for illegal dismissal filed prior to the lapse of said six months is generally considered as prematurely filed.

In this case, however, we agree with the Labor Arbiter and the CA that respondents were already considered illegally dismissed since petitioner failed to recall them after six months, when its *bona fide* suspension of operations lapsed. We stress that under Article 286 of the Labor Code, the employment will not be deemed terminated if the *bona fide* suspension of operations does not exceed six months. But if the suspension of operations exceeds six months, the employment will be considered terminated. In *Valdez v. NLRC*,[29] we explained:

> Under Article 286 of the Labor Code, the *bona fide* suspension of the operation of a business or undertaking for a period not exceeding

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[28] G.R. No. 177816, August 3, 2011, 655 SCRA 77, 88.

[29] 349 Phil. 760, 765-766 (1998).

six months shall not terminate employment. Consequently, when the *bona fide* suspension of the operation of a business or undertaking exceeds six months, then the employment of the employee shall be deemed terminated. By the same token and applying said rule by analogy, if the employee was forced to remain without work or assignment for a period exceeding six months, then he is in effect constructively dismissed.

In *Waterfront Cebu City Hotel v. Jimenez*,[30] we also said:

Under Art. 286 of the Labor Code, a *bona fide* suspension of business operations for not more than six (6) months does not terminate employment. After six (6) months, the employee may be recalled to work or be permanently laid off. In this case, more than six (6) months have elapsed from the time the Club ceased to operate. Hence, respondents' termination became permanent.

Indeed, petitioner's manifestation[31] dated October 2, 2001 that it is willing to admit respondents if they return to work was belatedly made, almost one year after petitioner's suspension of operations expired in November 2000. We find that petitioner no longer recalled, nor wanted to recall, respondents after six months.

Petitioner claims now that despite its liberality and gesture of goodwill, none of the respondents reported for work, and that aside from respondents' self-serving claims made in the form of manifestations filed before the Labor Arbiter, nothing on record will show that respondents actually presented themselves to petitioner for reinstatement.[32]

We seriously doubt petitioner's liberality or goodwill. In its manifestation, petitioner even opposed the motion filed by respondents for execution of the reinstatement aspect of the Labor Arbiter's Decision, to wit:

1. [Petitioner] vehemently oppose[s] the Motion for Execution on the Reinstatement Aspect filed by [respondents]....[33]

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[30] G.R. No. 174214, June 13, 2012, 672 SCRA 185, 192-193.

[31] *Rollo* (G.R. No. 171282), pp. 129-132.

[32] *Id*. at 25.

[33] *Id*. at 129.

And when the Labor Arbiter granted the motion for execution of the reinstatement aspect of her decision, petitioner filed a manifestation and motion to quash the writ of execution.[34] In this motion to quash, petitioner claimed that none of the respondents indicated their desire to return to work either through the office of the Labor Arbiter or through their counsel, by filing the appropriate notice or manifestation.[35] Notably, petitioner wanted the Labor Arbiter to believe that no manifestation was filed by respondents. But now, petitioner admits that manifestations were in fact filed by respondents before the Labor Arbiter. Petitioner's lack of candor to the Labor Arbiter is unfair. Petitioner's declaration that it is willing to reinstate respondents also lacks credence because it was in fact opposing such reinstatement.

Now, petitioner and almost all of the respondents have agreed to settle this case. To recall our February 27, 2012 Resolution,[36] 17 of the 23 respondents have opted to settle the case, to wit:

> For the reasons explained below, we deny petitioner's prayer in its manifestation and motion for clarification dated January 20, 2012 that we consider these petitions closed and terminated in view of the amicable settlement entered into by <u>all the parties</u>.
>
> As regards **G.R. No. 171282**, there are 23 named respondents but only 17 of them, based on our records, have opted to settle the case. In this case, we received a manifestation and motion dated January 16, 2007 filed by Esguerra and Blanco Law Office as counsel for petitioner and Atty. Lily S. Dayaon-Ireno as counsel for respondents. Counsels stated that petitioner and 15 respondents have arrived at a compromise agreement and that the 15 respondents have executed a Release, Waiver and Quitclaim. Counsels named these 15 respondents as: (1) Efren Bauca, (2) Noel Palarca, (3) Patricio Olmilla, (4) Pedrito Olmilla, (5) Zaldy Escalares, (6) Danilo Solde, (7) Julius [Cesar] Miguela, (8) Fe R. Ranido-Miguela, (9) Hermogenes T. Obias, (10) Antonio Baludcal, (11) Renato Tango, (12) Armando Villa, (13) Arvin Abines, (14) the heirs of Lud[i]vico Sta. Clara, and (15) Octavio T. Obias. Another manifestation and motion dated June 13, 2007 was later filed involving respondent Dante Aquino.

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[34] *Id*. at 133-135.

[35] *Id*. at 134.

[36] *Id*. at 651-654.

Thus, in our Resolution dated September 19, 2007 in G.R. No. 171282, we granted the two motions that the petition be dismissed insofar as the aforenamed 16 respondents are concerned. On October 11, 2011, we also considered these cases (G.R. No. 171282 and G.R. No. 183484) closed and terminated as to respondent Sandro Rodriguez who executed his own Release, Waiver and Quitclaim. Nonetheless, nothing prevents petitioner from withdrawing its own petition if it is convinced that it has settled its dispute with all 23 respondents. If it decides to do so, we can consider the petition withdrawn. And if it turns out that some of the 23 respondents have not agreed to settle this case, then they can have succor from the favorable judgment of the Court of Appeals.[37]

In our Resolution dated January 7, 2013,[38] we noted that petitioner did not file a motion to withdraw the petition in G.R. No. 171282. Hence, we said that our doubt remains regarding the claim that all 23 respondents have entered into an amicable settlement with petitioner. We repeated that nothing prevents petitioner from withdrawing its petition in G.R. No. 171282 if it is convinced that it has settled its dispute with all the respondents. We added that if it decides to do so, we will willingly consider the petition withdrawn for then our action will not prejudice any respondent. Nonetheless, we gave the parties a chance to prove the claim. Thus, we suspended for 90 days the period to file the parties' memoranda, to wit:

WHEREFORE, we **DENY** the prayer in the joint manifestation and motion dated September 24, 2012 that we consider the petition in G.R. No. 171282 closed and terminated, without prejudice to the filing by petitioner of an appropriate motion to withdraw its petition in G.R. No. 171282, or to the submission of verified admissions by all the 23 respondents in G.R. No. 171282 that they have entered into a settlement agreement with the petitioner or of original copies of their Release, Waiver and Quitclaim.

Accordingly, the period to file the parties' memoranda in G.R. No. 171282 is **SUSPENDED** for 90 days only, counted from receipt of this Resolution.[39]

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[37] *Id*. at 652.

[38] *Id*. at 689-696.

[39] *Id*. at 693.

Still, no motion to withdraw the petition in G.R. No. 171282 was filed. Nor did we receive the verified admissions by the 23 respondents that they have entered into a settlement agreement with petitioner, or the original copies of their Release, Waiver and Quitclaims.

On October 23, 2013, we dispensed with the filing of the parties' memoranda and considered the case submitted for resolution.

On the issue of validity of the Release, Waiver and Quitclaims signed by Edna Mansueto, Rogelio delos Reyes, Pedro Beray and Raddy O. Terencio, we note that the CA did not rule on the validity of their quitclaims. While no original copies of their quitclaims were submitted to us despite our Resolution dated January 7, 2013, the copies[40] attached to the petition are not disowned by respondents. And copies of the identification cards of Mansueto, delos Reyes, Beray and Terencio are attached to these quitclaims which were subscribed and sworn to before NLRC Commissioner Raul T. Aquino. To our mind, they have signed these quitclaims voluntarily and we affirm their validity.

In sum, while we agree with the CA in setting aside the NLRC Decision and Resolution and in reinstating the Labor Arbiter's Decision, the CA and Labor Arbiter's Decisions will now be subject to the settlement agreements entered into by petitioner and almost all of the respondents.

WHEREFORE, we **DENY** the petition in G.R. No. 171282 and **AFFIRM** the Decision dated November 9, 2005 and Resolution dated January 24, 2006 of the Court of Appeals in CA-G.R. SP No. 76670, subject to the settlement agreements and quitclaims signed by almost all of the respondents.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Carpio, Leonardo-de Castro, and *Reyes, JJ.,* concur.

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[40] *Id.* at 196-208.

THIRD DIVISION

[G.R. No. 171464. November 27, 2013]

SPOUSES ELISEO R. BAUTISTA AND EMPERATRIZ C. BAUTISTA, *petitioners, vs.* **SPOUSES MILA JALANDONI AND ANTONIO JALANDONI and MANILA CREDIT CORPORATION,** *respondents.*

[G.R. No. 199341. November 27, 2013]

MANILA CREDIT CORPORATION, *petitioner, vs.* **SPOUSES MILA AND ANTONIO JALANDONI, and SPOUSES ELISEO AND EMPERATRIZ C. BAUTISTA,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; AGENCY; A WRITTEN AUTHORITY IS REQUIRED WHEN THE SALE OF A PIECE OF LAND IS THROUGH AN AGENT.—** [Article 1874 and Article 1878 paragraph 5 of the Civil Code] explicitly require a written authority when the sale of a piece of land is through an agent, whether the sale is gratuitously or for a valuable consideration. Absent such authority in writing, the sale is null and void. In the case at bar, it is undisputed that the sale of the subject lots to Spouses Bautista was void. Based on the records, Nasino had no written authority from Spouses Jalandoni to sell the subject lots.
2. **ID.; ID.; SALES; BUYER IN GOOD FAITH AND FOR VALUE, DEFINED; CONDITIONS TO PROVE GOOD FAITH.—** "A buyer in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property. He is a buyer for value if he pays a full and fair price at the time of the purchase or before he has notice of the claim or interest of some other person in the property." "Good faith connotes an honest intention to abstain from taking unconscientious advantage of another." To prove good faith, the following conditions must be present: (a) the seller is the registered owner of the land; (b) the owner

is in possession thereof; and (3) at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property. All these conditions must be present, otherwise, the buyer is under obligation to exercise extra ordinary diligence by scrutinizing the certificates of title and examining all factual circumstances to enable him to ascertain the seller's title and capacity to transfer any interest in the property.

3. **ID.; DAMAGES; MORAL DAMAGES; NATURE.—** Moral damages are treated as compensation to alleviate physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury resulting from a wrong. Though moral damages are not capable of pecuniary estimation, the amount should be promotional to and in approximation of the suffering inflicted.

4. **ID.; ID.; EXEMPLARY DAMAGES; IMPOSED TO SERVE AS A DETERRENT AGAINST OR AS A NEGATIVE INCENTIVE TO CURB SOCIALLY DELETERIOUS ACTIONS.—** [E]xemplary damages may be imposed by way of example or correction for the public good. They are "imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions."

5. **ID.; LAND REGISTRATION; CERTIFICATES OF TITLE; THE LAW PROTECTS AND PREFERS THE LAWFUL HOLDER OF REGISTERED TITLE OVER THE TRANSFEREE OF A VENDOR BEREFT OF ANY TRANSMISSIBLE RIGHTS.—** Generally, the law does not require a person dealing with registered land to go beyond the certificate of title to determine the liabilities attaching to the property. In the absence of suspicion, a purchaser or mortgagee has a right to rely in good faith on the certificates of title of the mortgagor and is not obligated to undertake further investigation. For indeed the Court in several cases declared that a void title may be the source of a valid title in the hands of an innocent purchaser for value. Where the owner, however, could not be charged with negligence in the keeping of its duplicate certificates of title or with any act which could have brought about the issuance of another title relied upon

by the purchaser or mortgagee for value, then the innocent registered owner has a better right over the mortgagee in good faith. For "the law protects and prefers the lawful holder of registered title over the transferee of a vendor bereft of any transmissible rights."

APPEARANCES OF COUNSEL

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Pelaez Gregorio Sipin Bala & Robles for Sps. Jalandoni.
Marlon B. Mercado for Manila Credit Corp.

D E C I S I O N

MENDOZA, *J.*:

Before the Court are two consolidated petitions for review under Rule 45 assailing the January 27, 2006 Amended Decision[1] of the Court of Appeals *(CA)* in CA G.R. CV No. 84648 and its October 12, 2011 Resolution[2] denying the motion for reconsideration filed by Manila Credit Corporation *(MCC).* The controversy stemmed from a complaint[3] for cancellation of titles with damages filed by Spouses Mila and Antonio Jalandoni *(Spouses Jalandoni)* against Spouses Eliseo and Emperatriz Bautista *(Spouses Baustista)*, the Register of Deeds of Makati City,[4] Spouses Eduardo and Ma. Teresa Tongco *(Spouses Tongco),* and Manila Credit Corporation *(MCC)*.

Spouses Jalandoni were the registered owners of two *(2)* parcels of land, covered by Transfer Certificate of Title *(TCT)* Nos. 201048[5]

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[1] CA *rollo*, pp. 706-715.

[2] *Rollo* (G.R. No. 199341), pp. 92-93.

[3] Records, pp. 1-6.

[4] In view of the creation of the Register of Deeds of Muntinlupa City, the Register of Deeds of Makati was substituted by the Register of Deeds of Muntinlupa City, which had custody over the titles of the subject properties.

[5] Annex "A" of the Complaint, records, p. 8.

and 201049.[6] The two lots were located in Muntinlupa City, each parcel of land containing an area of Six Hundred (600) square meters, more or less, amounting to ₱1,320,000.00 per lot.

In May 1997, the Spouses Jalandoni applied for a loan with a commercial bank and, as a security thereof, they offered to constitute a real estate mortgage over their two lots. After a routine credit investigation, it was discovered that their titles over the two lots had been cancelled and new TCT Nos. 206091 and 205624 were issued in the names of Spouses Baustista. Upon further investigation, they found out that the bases for the cancellation of their titles were two deeds of absolute sale,[7] dated April 4, 1996 and May 4, 1996, purportedly executed and signed by them in favor of Spouses Baustista.

Aggrieved, Spouses Jalandoni filed a complaint for cancellation of titles and damages claiming that they did not sell the subject lots and denied having executed the deeds of absolute sale. They asserted that the owner's duplicate certificates of title were still in their possession; that their signatures appearing on the deeds of absolute sale were forged and that said deeds were null and void and transferred no title in favor of Spouses Bautista; that they never met the Spouses Bautista; that they did not appear before the notary public who notarized the deeds of absolute sale; that the community tax certificates indicated in the deeds of absolute sale were not issued to them and that the entries therein were forged and falsified; that Spouses Bautista paid a grossly inadequate price of only ₱600,000.00 per lot; and that the Spouses Bautista were aware of the true value of the lots because they mortgaged one lot to Spouses Tongco for ₱1,700,000.00 and the other lot for ₱3,493,379.82 to MCC.

In their answer,[8] Spouses Bautista claimed that in March 1996, a certain Teresita Nasino *(Nasino)* offered to Eliseo

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[6] Annex "B" of the Complaint, *id.* at 9.

[7] Annexes "E" and "F", *id.* at 14-18.

[8] Records, pp. 76-80.

Baustista *(Eliseo)* two parcels of land located in Muntinlupa City; that the parcels of land were sold at a bargain price because the owners were in dire need of money; that upon their request, Nasino showed them the photocopies of the titles covering the subject lands; that Nasino told them that she would negotiate with the Spouses Jalandoni, prepare the necessary documents and cause the registration of the sale with the Register of Deeds; and that since Nasino was a wife of a friend, Spouses Baustista trusted her and gave her the authority to negotiate with Spouses Jalandoni on their behalf.

Spouses Bautista further alleged that in April 1996, Nasino informed Eliseo that the deeds of sale had been prepared and signed by Spouses Jalandoni; that they, in turn, signed the deeds of sale and gave Nasino the amount of ₱1,200,000.00; that TCT Nos. 206091 and 205624 were issued to them; that since they needed funds for a new project, Eliseo contracted a loan with Spouses Tongco using as a security the parcel of land covered by TCT No. 205624; that he also contracted a loan with MCC in the amount of ₱3,493,379.82 and used as a security the lot covered by TCT No. 206091; that they eventually paid the loan with the Spouses Tongco, thus, the real estate mortgage was cancelled; and that since they were having difficulty paying the interests of their loan with the MCC, they also mortgaged the lot covered by TCT No. 205624.

For its part, MCC reiterated its claim in its motion to dismiss that the venue of the case was improperly laid and that the complaint failed to state a cause of action against it as there was no allegation made in the complaint as to its participation in the alleged falsification. MCC averred that they found no indication of any defect in the titles of Spouses Bautista; that it exercised due diligence and prudence in the conduct of its business and conducted the proper investigation and inspection of the mortgaged properties; and that its mortgage lien could not be prejudiced by the alleged falsification claimed by Spouses Jalandoni.[9]

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[9] *Id.* at 125-130.

On December 17, 2004, the RTC rendered judgment[10] declaring the sale of the subject lots void. The RTC explained that Nasino had no authority to negotiate for the Spouses Jalandoni, much less to receive the consideration of the sale. Spouses Bautista were not innocent purchasers in good faith and for value for their failure to personally verify the original copies of the titles of the subject properties and to ascertain the authority of Nasino since they were not dealing with the registered owner. The RTC, nonetheless, found MCC a mortgagee in good faith and upheld the validity of the mortgage contract between Spouses Bautista and MCC. The dispositive portion reads:

WHEREFORE, in view of all the foregoing, the Court hereby renders judgment declaring:

1. The mortgage lien of defendant Manila Credit Corp. over the Transfer Certificate of Title No. 205624 and 206091 and/or Transfer Certificates of Title No. 201048 and 201049 valid, legal and enforceable;

2. Ordering defendant Eliseo and Emperatriz Bautista jointly and severally to pay the plaintiff Antonio and Mila Jalandoni the amount of ₱1,320,000.00 for each lot by way of actual damages;

3. Ordering defendant Eliseo and Emperatriz Bautista jointly and severally to pay the plaintiff Antonio and Mila Jalandoni the amount of ₱100,000.00 by way of moral damages;

4. Ordering defendant Eliseo and Emperatriz Bautista jointly and severally to pay the plaintiff Antonio and Mila Jalandoni the amount of ₱50,000.00 by way of exemplary damages; and

5. Ordering defendant Eliseo and Emperatriz Bautista jointly and severally to pay plaintiff Antonio and Mila Jalandoni the amount of ₱50,000.00 by way of attorney's fees.

6. No pronouncement as to costs.

SO ORDERED.[11]

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[10] *Id*. at 645-658.

[11] *Id*. at 657-658.

Both not satisfied, Spouses Jalandoni and Spouses Bautista appealed the RTC decision before the CA.

In their appellants brief,[12] Spouses Jalandoni prayed that (1) the TCT Nos. 205624 and 201061 in the names of Spouses Bautista be declared null and void; (2) the real estate mortgage constituted on TCT Nos. 205624 and 201061 in favor of Manila Credit Corporation be nullified; and (3) the Register of Deeds of Muntinlupa City be ordered to reinstate TCT Nos. 201048 and 201049 in their names.

On the other hand, Spouses Bautista asked for the reversal of the RTC decision and the dismissal of the complaint for lack of merit.[13]

With leave of court,[14] MCC filed its brief[15] praying for the affirmation of the RTC decision or in the event that the title of Spouses Bautista over the subject lots would be cancelled, they be adjudged to pay MCC their total obligation under the promissory notes.

The CA, in its Decision,[16] dated September 30, 2005, modified the RTC decision, ordering Spouses Bautista to pay Spouses Jalandoni actual damages in the amount of ₱1,700,000.00 for the property covered by TCT No. 205624 and ₱3,493,379.82 for the property covered by TCT No. 206091.

Spouses Bautista filed a motion for reconsideration, whereas Spouses Jalandoni filed a partial motion for reconsideration.

On January 27, 2006, the CA, in an *Amended Decision*,[17] denied Spouses Bautista's motion for reconsideration and ruled

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[12] CA *rollo*, pp. 38-62.

[13] *Id*. at 87-98.

[14] CA Resolution dated August 17, 2005, *id.* at 141.

[15] CA *rollo*, pp. 143-183.

[16] *Id*. at 207-231. Penned by then Associate Justice Mariano C. Del Castillo (now a member of this Court) and concurred in by Associate Justices Portia Aliño-Hormachuelos and Magdangal M. De Leon.

[17] *Id*. at 345-354.

in favor of Spouses Jalandoni. The CA held that MCC's purported right over the subject properties could not be greater than that of Spouses Jalandoni, who remained the lawful owners of the subject lots. The dispositive portion reads:

WHEREFORE, except for the dismissal of the appeal instituted by defendants-appellants spouses Eliseo Bautista and Emperatriz Bautista, the dispositive portion of Our Decision dated September 30, 2005 is hereby amended to read as follows:

1. Declaring null and void Transfer Certificates of Titles Nos. 205624 and 201061 in the name of defendants-appellants Spouses Eliseo Bautista and Emperatriz Bautista;

2. Nullifying the Real Estate Mortgages constituted on the lots covered by Transfer Certificates of Titles Nos. 205624 and 201061 by defendant-appellant Eliseo Bautista in favor of defendant-appellee Manila Credit Corporation;

3. Ordering the Register of Deeds of Muntinlupa City to reinstate Transfer Certificates of Title Nos. 201048 and 201049 in the name of plaintiffs-appellants Spouses Mila Jalandoni and Antonio Jalandoni, free from any mortgage or lien;

4. Defendants-appellants Spouses Eliseo Bautista and Emperatriz Bautista are liable to pay their obligation under the Promissory Notes they executed in favor of defendant-appellee Manila Credit Corporation;

5. Ordering defendants-appellants jointly and severally to pay plaintiffs-appellants the amount of Fifty Thousand Pesos (₱50,000.00) by way of moral damages;

6. Ordering defendants-appellants jointly and severally to pay plaintiffs-appellants the amount of Twenty Five Thousand Pesos (₱25,000.00) by way of exemplary damages; and

7. Ordering defendants-appellants jointly and severally to pay plaintiffs-appellants the amount of Twenty Five Thousand Pesos (₱25,000.00) by way of attorney's fees.

SO ORDERED.[18]

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[18] *Id.* at 353-354.

On February 24, 2006, MCC filed a motion for reconsideration[19] praying for the reinstatement of the CA's September 30, 2005 decision.

The Spouses Bautista, in turn, filed a petition for review before the Court docketed as G.R. No. 171464. In view thereof, the CA held in abeyance the resolution on MCC's motion for reconsideration.[20]

On September 26, 2007, the Court gave due course to the petition.[21] Seeing the need, however, to first resolve the motion for reconsideration of the MCC, the Court directed the CA to resolve the motion.

Consequently, the CA, in a Resolution,[22] dated October 12, 2011, denied the petition.

On December 6, 2011, the MCC filed a petition for review before this Court assailing the January 27, 2006 Amended Decision and October 12, 2011 Resolution of the CA in CA G.R. CV No. 84648.

Considering that G.R. No. 171464 and G.R. No. 199341 are both questioning the January 27, 2006 Amended Decision and October 12, 2011 Resolution of the CA and that the issues raised are intertwined, the Court consolidated the two petitions.

In G.R. No. 171464, Spouses Bautista anchored their petition on the following

ARGUMENTS:

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN FINDING THAT PETITIONERS ARE NOT BUYERS IN GOOD FAITH.

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[19] *Id.* at 368-378.

[20] *Id.* at 396.

[21] Resolution, *rollo*, pp. 481-482.

[22] *Rollo* (G.R .No. 199341), pp. 92-93. Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Mario V. Lopez and Socorro B. Inting.

THE COURT OF APPEALS ERRED IN RULING THAT (A) THE TCTs ISSUED UNDER PETITIONERS' NAMES SHOULD BE ANNULLED; AND (B) THEY ARE LIABLE TO THE SPOUSES JALANDONI FOR ACTUAL, MORAL AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES.[23]

Whereas, in G.R. No. 199341, MCC presented the following

ASSIGNMENT OF ERRORS/ GROUNDS/ISSUES

WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR IN NULLIFYING THE REAL MORTGAGE CONSTITUTED ON THE SUBJECT PROPERTIES.

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY COMMITTED AN ERROR IN FAILING TO APPLY THE CASES OF *PINEDA VS. COURT OF APPEALS, CABUHAT VS. COURT OF APPEALS, REPUBLIC VS. UMALI, PHILIPPINE NATIONAL BANK VS. COURT OF APPEALS, PENULLAR VS. PHILIPPINE NATIONAL BANK* AND SUCH OTHER CASES UPHOLDING THE RIGHT OF AN INNOCENT MORTGAGEE FOR VALUE.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR IN APPLYING THE CASE OF *TORRES VS. COURT OF APPEALS*.[24]

The issues to be resolved are (1) whether or not the Spouses Bautista were buyers in good faith and for value; and, (2) in case they were not, whether or not Spouses Jalandoni have a better right than MCC.

Before resolving the issue on whether Spouses Bautista were purchasers in good faith for value, the Court shall first discuss the validity of the sale.

Articles 1874 of the Civil Code provides:

> Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

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[23] *Rollo* (G.R. No. 171464), p. 9.

[24] *Rollo* (G.R. No. 199341), p. 11.

Likewise, Article 1878 paragraph 5 of the Civil Code specifically mandates that the authority of the agent to sell a real property must be conferred in writing, to wit:

> Art. 1878. Special powers of attorney are necessary in the following cases:
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> (1) x x x
>
> x x x x x x x x x.
>
> (5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;
>
> x x x x x x x x x.

The foregoing provisions explicitly require a written authority when the sale of a piece of land is through an agent, whether the sale is gratuitously or for a valuable consideration. Absent such authority in writing, the sale is null and void.[25]

In the case at bar, it is undisputed that the sale of the subject lots to Spouses Bautista was void. Based on the records, Nasino had no written authority from Spouses Jalandoni to sell the subject lots. The testimony of Eliseo that Nasino was empowered by a special power of attorney to sell the subject lots was bereft of merit as the alleged special power attorney was neither presented in court nor was it referred to in the deeds of absolute sale.[26] Bare allegations, unsubstantiated by evidence, are not equivalent to proof under the Rules of Court.[27]

Spouses Bautista insist that they were innocent purchasers for value, entitled to the protection of the law. They stress that their purchase of the subject properties were all coursed through Nasino, who represented that she knew Spouses Jalandoni and that they were selling their properties at a bargain price because

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[25] *Spouses Alcantara v. Nido*, G.R. No. 165133, April 19, 2010, 618 SCRA 333, 340.

[26] TSN dated July 17, 2003, Records, Volume II, pp. 1000-1005.

[27] *Rosaroso v. Soria*, G.R. No. 194846, June 19, 2013.

they were in dire need of money. Considering that the Register of Deeds cancelled the titles of Spouses Jalandoni and subsequently issued new titles in their names, they assert that these were regularly and validly issued in their names. Moreover, they aver that they were not privy to any fraud committed in the sale of the subject properties.[28]

The Court finds no merit in their arguments.

"A buyer in good faith is one who buys the property of another without notice that some other person has a right to or interest in such property. He is a buyer for value if he pays a full and fair price at the time of the purchase or before he has notice of the claim or interest of some other person in the property."[29] "Good faith connotes an honest intention to abstain from taking unconscientious advantage of another."[30] To prove good faith, the following conditions must be present: (a) the seller is the registered owner of the land; (b) the owner is in possession thereof; and (3) at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property. All these conditions must be present, otherwise, the buyer is under obligation to exercise extra ordinary diligence by scrutinizing the certificates of title and examining all factual circumstances to enable him to ascertain the seller's title and capacity to transfer any interest in the property.[31]

Tested by these conditions, Spouses Bautista cannot be deemed purchasers in good faith. There were several circumstances that should have placed them on guard and prompted them to conduct an investigation that went beyond the face of the title of the subject lots. Their failure to take the necessary steps to determine the status of the subject lots and the extent of Nasino's authority puts them into bad light. As correctly observed by the RTC:

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[28] Memorandum, G.R No. 171464, *rollo,* pp. 491-510.

[29] *Orquiolo v. Court of Appeals,* 435 Phil. 323, 331 (2002).

[30] *Rosencor Development Corporation v. Inquing*, 406 Phil. 565, 580 (2001).

[31] *Bautista v. Silva*, 533 Phil. 627, 639 (2006).

As a general rule, every person dealing with registered land may safely rely on the correctness of the certificate of title and is under no obligation to look beyond the certificate itself to determine the actual owner or the circumstances of its ownership. However, there might be circumstance apparent on the face of the certificate of title or situation availing which would excite suspicion as a reasonable prudent man to promptly inquire as in the instant case where the transfer is being facilitated by a person other than the registered owner.

In his testimony, defendant Eliseo Bautista admitted not having met the plaintiffs except when the instant case was filed in court (TSN, July 17, 2003, p. 32.). He also testified that a Special Power of Attorney was executed by the plaintiffs in favor of Nasino. However, such Special Power of Attorney was not presented in evidence much less the tenor thereof referred to in the Deeds of Sale purportedly executed by the plaintiffs with Bautista. Hence, this Court cannot sustain Bautista's allegation that Nasino was specifically authorized to transact for and in behalf of the plaintiffs over the vehement denial of the latter to the contrary.

The foregoing fact alone would have prompted suspicion over the transaction considering that the same involves a valuable consideration. In addition, the following circumstances would have placed Bautista on guard and should have behooved himself to inquire further considering: (1) the non-presentation of the owner's duplicate certificate, where only photocopies of the certificates of title were presented to defendant Bautista; (2) the price at which the subject lots were being sold; and (2) the continued failure and/or refusal of the supposed sellers to meet and communicate with him.

While it may be true that Bautista's participation over the transaction was merely limited to the signing of the Deeds of Sale, and there is no evidence on record that he was party to the forgery or the simulation of the questioned contracts. Nevertheless, failing to make the necessary inquiry under circumstances as would prompt a reasonably prudent man to do so as in the instant case, is hardly consistent with any pretense of good faith, which defendant Bautista invokes to claim the right to be protected as innocent purchaser for value.[32]

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[32] Records, pp. 649-650.

Spouses Bautista's claim of good faith is negated by their failure to verify the extent and nature of Nasino's authority. Since Spouses Bautista did not deal with the registered owners but with Nasino, who merely represented herself to be their agent, they should have scrutinized all factual circumstances necessary to determine her authority to insure that there are no flaws in her title or her capacity to transfer the land.[33] They should not have merely relied on her verbal representation that she was selling the subject lots on behalf of Spouses Jalandoni. Moreover, Eliseo's claim that he did not require Nasino to give him a copy of the special power of attorney because he trusted her is unacceptable. Well settled is the rule that persons dealing with an assumed agency are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it.[34] As stated, Spouses Bautista's failure to observe the required degree of caution in ascertaining the genuineness and extent of Nasino's authority is tantamount to bad faith that precludes them from claiming the rights of a purchaser in good faith.[35]

Spouses Bautista next argue that they could not be held liable for moral and exemplary damages.

In light of the foregoing circumstances, the Court finds the award of moral and exemplary damages in order.

Moral damages are treated as compensation to alleviate physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury resulting from a wrong.[36] Though moral damages are not capable of pecuniary estimation, the

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[33] *Abad v. Guimba*, 503 Phil. 321, 332 (2005).

[34] *Litonjua v. Fernandez*, 471 Phil. 440, 458 (2004).

[35] *Mathay v. Court of Appeals,* 356 Phil. 870, 892 (1998).

[36] *Expert Travel and Tours, Inc. v. Court of Appeals*, 368 Phil. 444, 448 (1999).

amount should be proportional to and in approximation of the suffering inflicted.[37]

On the other hand, exemplary damages may be imposed by way of example or correction for the public good.[38] They are "imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions."[39]

Coming now to the petition of MCC, it claims to be a mortgagee in good faith and asserts that it had no participation in the forgery of the deeds of sale. It argues that since the mortgaged lots were registered lands, it is not required to go beyond their titles to determine the condition of the property and may rely on the correctness of the certificates of title.

Generally, the law does not require a person dealing with registered land to go beyond the certificate of title to determine the liabilities attaching to the property.[40] In the absence of suspicion, a purchaser or mortgagee has a right to rely in good faith on the certificates of title of the mortgagor and is not obligated to undertake further investigation.[41] For indeed the Court in several cases declared that a void title may be the source of a valid title in the hands of an innocent purchaser for value.[42]

Where the owner, however, could not be charged with negligence in the keeping of its duplicate certificates of title or with any act which could have brought about the issuance of another title relied upon by the purchaser or mortgagee for value, then the innocent registered owner has a better right over the

[37] *Queensland-Tokyo Commodities, Inc. v. George*, G.R. No. 172727, September 8, 2010, 630 SCRA 304, 318.

[38] Article 2229, Civil Code.

[39] *Id*.

[40] *Bank of Commerce v. San Pablo, Jr.,* 550 Phil. 805, 821 (2007).

[41] *Clemente v. Razo*, 493 Phil. 119, 128 (2005).

[42] *Tan v. De la Vega,* 519 Phil. 515, 529 (2006), *Philippine National Bank v. Court of Appeals,* G.R. No. L-43972, July 24, 1990, 187 SCRA 735, 740.

mortgagee in good faith.[43] For "the law protects and prefers the lawful holder of registered title over the transferee of a vendor bereft of any transmissible rights."[44]

In the case of *C.N. Hodges v. Dy Buncio & Co., Inc.*[45] which was relied upon by the Court in the cases of *Baltazar v. Court of Appeals,*[46] *Torres v. Court of Appeals,*[47] and in the more recent case of *Sanchez v. Quinio,*[48] the Court held that:

The claim of indefeasibility of the petitioner's title under the Torrens land title system would be correct if previous valid title to the same parcel of land did not exist. The **respondent had a valid title** x x x It **never parted with it**; **it never handed** or **delivered to anyone** its owner's duplicate of the transfer certificate of title; it **could not be charged with negligence** in the keeping of its duplicate certificate of title or with any act which could have brought about the issuance of another certificate upon which a purchaser in good faith and for value could rely. If the petitioner's contention as to indefeasibility of his title should be upheld, then registered owners without the least fault on their part could be divested of their title and deprived of their property. Such disastrous results which would shake and destroy the stability of land titles had not been foreseen by those who had endowed with indefeasibility land titles issued under the Torrens system. [Emphases supplied]

Thus, in the case of *Tomas v. Philippine National Bank*,[49] the Court stated that:

We, indeed, find more weight and vigor in a doctrine which recognizes a better right for the innocent original registered owner who obtained his certificate of title through perfectly legal and regular proceedings, than one who obtains his certificate from a totally void

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[43] *Sanchez v. Quinio*, 502 Phil. 40, 48 (2005), citing *C.N. Hodges v. Dy Buncio & Co., Inc.*, 116 Phil. 595, 601.

[44] *Baltazar v. Court of Appeals*, 250 Phil. 349, 371 (1988).

[45] 116 Phil. 595, 601 (1962).

[46] 250 Phil. 349, 371 (1988).

[47] 264 Phil. 1062, 1068 (1990).

[48] 502 Phil. 40, 48 (2005).

[49] 187 Phil. 183, 189 (1980).

one, as to prevail over judicial pronouncements to the effect that one dealing with a registered land, such as a purchaser, is under no obligation to look beyond the certificate of title of the vendor, for in the latter case, good faith has yet to be established by the vendee or transferee, being the most essential condition, coupled with valuable consideration, to entitle him to respect for his newly acquired title even as against the holder of an earlier and perfectly valid title.

Similarly, Spouses Jalandoni had not been negligent in any manner and indeed had not performed any act which gave rise to any claim by a third person. As a matter of fact, Spouses Jalandoni never relinquished their title over the subject lots. They had in their possession the owner's duplicate of title all this time and they never handed it to anyone. Imagine their surprise when they learned that the copy of their certificates of title with the Registry of Deeds had been cancelled and new ones issued in the names of Spouses Bautista. Thus, whatever rights MCC may have acquired over the subject lots cannot prevail over, but must yield to the superior rights of Spouses Jalandoni as no one can acquire a better right that the transferor has.[50]

Accordingly, the CA was correct and fair when it ordered Spouses Bautista to pay its obligation to MCC. At any rate, in its petition before the CA, MCC precisely asked, in the alternative, that Spouses Bautista be adjudged to pay its total obligation under the promissory note.[51]

WHEREFORE, the petitions of Spouses Bautista in G.R. No. 171464 and the Manila Credit Corporation in G.R. No. 199341 are both **DENIED.** The January 27, 2006 Amended Decision and October 12, 2011 Resolution of the Court of Appeals in CA G.R. CV No. 84648 are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Abad, JJ.,* concur.

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[50] *Sanchez v. Quinio*, *supra* note 48.

[51] CA *rollo*, p. 183.

[*] Designated Acting Member in lieu of Associate Justice Marvic Mario Victor F. Leonen per Special Order No. 1605 dated November 20, 2013.

FIRST DIVISION

[G.R. No. 176419. November 27, 2013]

GMA NETWORK, INC., *petitioner, vs.* **CARLOS P. PABRIGA, GEOFFREY F. ARIAS, KIRBY N. CAMPO, ARNOLD L. LAGAHIT and ARMAND A. CATUBIG,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; SOCIAL JUSTICE AND HUMAN RIGHTS; LABOR; LABOR CONTRACTS, BEING IMBUED WITH PUBLIC INTEREST, ARE PLACED ON A HIGHER PLANE THAN ORDINARY CONTRACTS AND ARE SUBJECT TO THE POLICE POWER OF THE STATE.—** [T]he nature of the employment is determined by law, regardless of any contract expressing otherwise. The supremacy of the law over the nomenclature of the contract and the stipulations contained therein is to bring to life the policy enshrined in the Constitution to afford full protection to labor. Labor contracts, being imbued with public interest, are placed on a higher plane than ordinary contracts and are subject to the police power of the State.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; CLASSIFICATIONS OF EMPLOYMENT.—** The terms ***regular employment*** and ***project employment*** are taken from Article 280 of the Labor Code, which also speaks of ***casual*** **and** ***seasonal employment*** x x x. A fifth classification, that of a ***fixed term employment***, is not expressly mentioned in the Labor Code. Nevertheless, this Court ruled in *Brent School, Inc. v. Zamora*, that such a contract, which specifies that employment will last only for a definite period, is not *per se* illegal or against public policy. x x x Pursuant to the above-quoted Article 280 of the Labor Code, employees performing activities which are usually necessary or desirable in the employer's usual business or trade can either be **regular, project or seasonal employees**, while, as a general rule, those performing activities *not* usually necessary or desirable in the employer's usual business or trade are **casual employees**. The reason for this distinction may not be readily comprehensible

to those who have not carefully studied these provisions: only employers who constantly need the specified tasks to be performed can be justifiably charged to uphold the constitutionally protected security of tenure of the corresponding workers. The consequence of the distinction is found in Article 279 of the Labor Code x x x.

3. **ID.; ID.; ID.; PROJECT EMPLOYMENT; ELUCIDATED.—** [T]he activities of project employees **may or may not** be usually necessary or desirable in the usual business or trade of the employer, as we have discussed in *ALU-TUCP v. National Labor Relations Commission*, and recently reiterated in *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation.* In said cases, we clarified the term "project" in the test for determining whether an employee is a regular or project employee x x x. [I]n order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove *that the duration and scope of the employment was specified at the time they were engaged*, but also *that there was indeed a project*. x x x [T]he project could either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation. As it was with regard to the distinction between a regular and casual employee, the purpose of this requirement is to delineate whether or not the employer is in constant need of the services of the specified employee. If the particular job or undertaking is within the regular or usual business of the employer company *and* it is not identifiably distinct or separate from the other undertakings of the company, there is clearly a constant necessity for the performance of the task in question, and therefore said job or undertaking should not be considered a project.

4. **ID.; ID.; ID.; FIXED-TERM EMPLOYMENT; DETERMINED NOT BY THE ACTIVITY THAT THE EMPLOYEE IS CALLED UPON TO PERFORM BUT THE DAY CERTAIN AGREED UPON BY THE PARTIES FOR THE COMMENCEMENT**

AND TERMINATION OF THE EMPLOYMENT RELATIONSHIP.— [P]etitioner interchangeably characterizes respondents' service as *project* and *fixed term* employment. These types of employment, however, are not the same. While the former requires a *project* as restrictively defined x x x, the duration of a fixed-term employment agreed upon by the parties may be any *day certain*, which is understood to be "that which must necessarily come although it may not be known when." The decisive determinant in fixed-term employment is not the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of the employment relationship.

5. **ID.; ID.; ID.; ID.; CRITERIA UNDER WHICH "TERM EMPLOYMENT" CANNOT BE SAID TO BE IN CIRCUMVENTION OF THE LAW ON SECURITY OF TENURE.—** Cognizant of the possibility of abuse in the utilization of fixed-term employment contracts, we emphasized in *Brent* that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals. We thus laid down indications or criteria under which "term employment" cannot be said to be in circumvention of the law on security of tenure, namely: "1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter." These indications, which must be read together, make the *Brent* doctrine applicable only in a few special cases wherein the employer and employee are on more or less in equal footing in entering into the contract. The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee.

6. **ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; THE EMPLOYER HAS THE BURDEN OF PROVING WITH CLEAR, ACCURATE, CONSISTENT, AND CONVINCING EVIDENCE THAT THE DISMISSAL WAS VALID.—** [I]n illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid. It is therefore the employer which must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee.

7. **ID.; LABOR STANDARDS; NIGHT SHIFT DIFFERENTIAL; EMPLOYMENT RECORDS NECESSARY FOR THE COMPUTATION THEREOF SHOULD BE PRODUCED BY THE EMPLOYER; CASE AT BAR.—** As regards night shift differential, the Labor Code provides that every employee shall be paid not less than ten percent (10%) of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning. As employees of petitioner, respondents are entitled to the payment of this benefit in accordance with the number of hours they worked from 10:00 p.m. to 6:00 a.m., if any. x x x It is also worthwhile to note that in the NLRC Decision, it was herein petitioner GMA Network, Inc. (respondent therein) which was tasked to produce additional documents necessary for the computation of the night shift differential. This is in accordance with our ruling in *Dansart Security Force & Allied Services Company v. Bagoy*, where we held that it is entirely within the employer's power to present such employment records that should necessarily be in their possession, and that failure to present such evidence must be taken against them.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion & Lucila for petitioner.
Armando M. Alforque for respondents.

DECISION

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* filed by petitioner GMA Network, Inc. assailing the Decision[1] of the Court of Appeals dated September 8, 2006 and the subsequent Resolution[2] dated January 22, 2007 denying reconsideration in CA-G.R. SP No. 73652.

The Court of Appeals summarized the facts of the case as follows:

On July 19, 1999, due to the miserable working conditions, private respondents were forced to file a complaint against petitioner before the National Labor Relations Commission, Regional Arbitration Branch No. VII, Cebu City, assailing their respective employment circumstances as follows:

NAME	DATE HIRED	POSITION
Carlos Pabriga	2 May 1997	Television Technicians
Geoffrey Arias	2 May 1997	Television Technicians
Kirby Campo	1 Dec. 1993	Television Technicians
Arnold Laganit	11 Feb. 1996	Television Technicians
Armand Catubig	2 March 1997	Television Technicians

Private respondents were engaged by petitioner to perform the following activities, to wit:

1) Manning of Technical Operations Center:

(a) Responsible for the airing of local commercials; and

(b) Logging/monitoring of national commercials (satellite)

2) Acting as Transmitter/VTR men:

(a) Prepare tapes for local airing;

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[1] *Rollo*, pp. 9-23; penned by Associate Justice Priscilla Baltazar-Padilla with Associate Justices Isaias P. Dicdican and Romeo F. Barza, concurring.

[2] *Id*. at 25-26.

(b) Actual airing of commercials;

(c) Plugging of station promo;

(d) Logging of transmitter reading; and

(e) In case of power failure, start up generator set to resume program;

3) Acting as Maintenance staff;

(a) Checking of equipment;

(b) Warming up of generator;

(c) Filling of oil, fuel, and water in radiator; and

4) Acting as Cameramen

On 4 August 1999, petitioner received a notice of hearing of the complaint. The following day, petitioner's Engineering Manager, Roy Villacastin, confronted the private respondents about the said complaint.

On 9 August 1999, private respondents were summoned to the office of petitioner's Area Manager, Mrs. Susan Aliño, and they were made to explain why they filed the complaint. The next day, private respondents were barred from entering and reporting for work without any notice stating the reasons therefor.

On 13 August 1999, private respondents, through their counsel, wrote a letter to Mrs. Susan Aliño requesting that they be recalled back to work.

On 23 August 1999, a reply letter from Mr. Bienvenido Bustria, petitioner's head of Personnel and Labor Relations Division, admitted the non-payment of benefits but did not mention the request of private respondents to be allowed to return to work.

On 15 September 1999, private respondents sent another letter to Mr. Bustria reiterating their request to work but the same was totally ignored. On 8 October 1999, private respondents filed an amended complaint raising the following additional issues: 1) Unfair Labor Practice; 2) Illegal dismissal; and 3) Damages and Attorney's fees.

On 23 September 1999, a mandatory conference was set to amicably settle the dispute between the parties, however, the same proved to be futile. As a result, both of them were directed to file their respective position papers.

On 10 November 1999, private respondents filed their position paper and on 2 March 2000, they received a copy of petitioner's position paper. The following day, the Labor Arbiter issued an order considering the case submitted for decision.[3]

In his Decision dated August 24, 2000, the Labor Arbiter dismissed the complaint of respondents for illegal dismissal and unfair labor practice, but held petitioner liable for 13th month pay. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered dismissing the complaints for illegal dismissal and unfair labor practice.

Respondents are, however, directed to pay the following complainants their proportionate 13th month pay, to wit:

1. Kirby Campo	₱ 7,716.04
2. Arnold Lagahit	7,925.98
3. Armand Catubig	4,233.68
4. Carlos Pabriga	4,388.19
5. Geoffrey Arias	4,562.01
	₱28,826.14
10% Attorney's fees	2,882.61
GRAND TOTAL	₱31,708.75

All other claims are, hereby, dismissed for failure to substantiate the same.[4]

Respondents appealed to the National Labor Relations Commission (NLRC). The NLRC reversed the Decision of the Labor Arbiter, and held thus:

WHEREFORE, we make the following findings:

a) All complainants are regular employees with respect to the particular activity to which they were assigned, until it ceased to exist. As such, they are entitled to payment of separation pay computed at one (1) month salary for every year of service;

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[3] *Id*. at 10-12.

[4] *Id*. at 188-189.

b) They are not entitled to overtime pay and holiday pay; and

c) They are entitled to 13th month pay, night shift differential and service incentive leave pay.

For purposes of accurate computation, the entire records are REMANDED to the Regional Arbitration Branch of origin which is hereby directed to require from respondent the production of additional documents where necessary.

Respondent is also assessed the attorney's fees of ten percent (10%) of all the above awards.[5]

Petitioner elevated the case to the Court of Appeals *via* a Petition for *Certiorari*. On September 8, 2006, the appellate court rendered its Decision denying the petition for lack of merit.

Petitioner filed the present Petition for Review on *Certiorari*, based on the following grounds:

I.

THE COURT OF APPEALS GRAVELY ERRED FINDING RESPONDENTS ARE REGULAR EMPLOYEES OF THE PETITIONER AND ARE NOT PROJECT EMPLOYEES.

II.

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING SEPARATION PAY TO RESPONDENTS ABSENT A FINDING THAT RESPONDENTS WERE ILLEGALLY DISMISSED.

III.

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING NIGHT SHIFT DIFFERENTIAL PAY CONSIDERING THE ABSENCE OF EVIDENCE WHICH WOULD ENTITLE THEM TO SUCH AN AWARD.

IV.

THE COURT OF APPEALS GRAVELY ERRED IN AWARDING ATTORNEY'S FEES TO RESPONDENTS.[6]

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[5] *Id*. at 175-176.

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

The parties having extensively elaborated on their positions in their respective memoranda, we proceed to dispose of the issues raised.

Five Classifications of Employment

At the outset, we should note that the nature of the employment is determined by law, regardless of any contract expressing otherwise. The supremacy of the law over the nomenclature of the contract and the stipulations contained therein is to bring to life the policy enshrined in the Constitution to afford full protection to labor. Labor contracts, being imbued with public interest, are placed on a higher plane than ordinary contracts and are subject to the police power of the State.[7]

Respondents claim that they are *regular* employees of petitioner GMA Network, Inc. The latter, on the other hand, interchangeably characterize respondents' employment as *project* and *fixed period/ fixed term* employment. There is thus the need to clarify the foregoing terms.

The terms ***regular employment*** and ***project employment*** are taken from Article 280 of the Labor Code, which also speaks of ***casual*** **and** ***seasonal employment***:

ARTICLE 280. *Regular and casual employment*. – The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has

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[7] *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation*, G.R. No. 170351, March 30, 2011, 646 SCRA 658, 665.

rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity actually exist.

A fifth classification, that of a ***fixed term employment***, is not expressly mentioned in the Labor Code. Nevertheless, this Court ruled in *Brent School, Inc. v. Zamora*,[8] that such a contract, which specifies that employment will last only for a definite period, is not *per se* illegal or against public policy.

Whether respondents are regular or project employees

Pursuant to the above-quoted Article 280 of the Labor Code, employees performing activities which are usually necessary or desirable in the employer's usual business or trade can either be **regular, project or seasonal employees**, while, as a general rule, those performing activities *not* usually necessary or desirable in the employer's usual business or trade are **casual employees**. The reason for this distinction may not be readily comprehensible to those who have not carefully studied these provisions: only employers who constantly need the specified tasks to be performed can be justifiably charged to uphold the constitutionally protected security of tenure of the corresponding workers. The consequence of the distinction is found in Article 279 of the Labor Code, which provides:

ARTICLE 279. *Security of tenure.* — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

On the other hand, the activities of project employees **may or may not** be usually necessary or desirable in the usual business

[8] 260 Phil. 747 (1990).

or trade of the employer, as we have discussed in *ALU-TUCP v. National Labor Relations Commission*,[9] and recently reiterated in *Leyte Geothermal Power Progressive Employees Union-ALU-TUCP v. Philippine National Oil Company-Energy Development Corporation.*[10] In said cases, we clarified the term "project" in the test for determining whether an employee is a regular or project employee:

It is evidently important to become clear about the meaning and scope of the term "project" in the present context. The "project" for the carrying out of which "project employees" are hired would ordinarily have some relationship to the usual business of the employer. Exceptionally, the "project" undertaking might not have an ordinary or normal relationship to the usual business of the employer. In this latter case, the determination of the scope and parameters of the "project" becomes fairly easy. It is unusual (but still conceivable) for a company to undertake a project which has absolutely no relationship to the usual business of the company; thus, for instance, it would be an unusual steel-making company which would undertake the breeding and production of fish or the cultivation of vegetables. From the viewpoint, however, of the legal characterization problem here presented to the Court, there should be no difficulty in designating the employees who are retained or hired for the purpose of undertaking fish culture or the production of vegetables as "project employees," as distinguished from ordinary or "regular employees," so long as the duration and scope of the project were determined or specified at the time of engagement of the "project employees." For, as is evident from the provisions of Article 280 of the Labor Code, quoted earlier, **the principal test for determining whether particular employees are properly characterized as "project employees" as distinguished from "regular employees," is** ***whether or not the "project employees" were assigned to carry out a "specific project or undertaking," the duration (and scope) of which were specified at the time the employees were engaged for that project.***

In the realm of business and industry, we note that **"project" could refer to one or the other of at least two (2) distinguishable types of activities.** **<u>Firstly</u>, a project could refer to a particular**

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[9] G.R. No. 109902, August 2, 1994, 234 SCRA 678, 684-686.

[10] *Supra* note 7 at 668-669.

job or undertaking that is *within the regular or usual business* of the employer company, *but which is distinct and separate, and identifiable as such*, from the other undertakings of the company. Such job or undertaking begins and ends at determined or determinable times. The typical example of this first type of project is a particular construction job or project of a construction company. A construction company ordinarily carries out two or more [distinct] identifiable construction projects: *e.g.*, a twenty-five-storey hotel in Makati; a residential condominium building in Baguio City; and a domestic air terminal in Iloilo City. Employees who are hired for the carrying out of one of these separate projects, the scope and duration of which has been determined and made known to the employees at the time of employment, are properly treated as "project employees," and their services may be lawfully terminated at completion of the project.

The term "project" could also refer to, secondly, a particular job or undertaking that is *not within the regular business of the corporation*. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times. x x x.[11] (Emphases supplied, citation omitted.)

Thus, in order to safeguard the rights of workers against the arbitrary use of the word "project" to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove *that the duration and scope of the employment was specified at the time they were engaged*, but also *that there was indeed a project*. As discussed above, the project could either be (1) a particular job or undertaking that is within the regular or usual business of the employer company, but which is distinct and separate, and identifiable as such, from the other undertakings of the company; or (2) a particular job or undertaking that is not within the regular business of the corporation. As it was with regard to the distinction between a regular and casual employee, the purpose of this requirement is to delineate whether or not the employer is in constant need of the services of the

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[11] *ALU-TUCP v. National Labor Relations Commission*, *supra* note 9 at 684-685.

specified employee. If the particular job or undertaking is within the regular or usual business of the employer company *and* it is not identifiably distinct or separate from the other undertakings of the company, there is clearly a constant necessity for the performance of the task in question, and therefore said job or undertaking should not be considered a project.

Brief examples of what may or may not be considered identifiably distinct from the business of the employer are in order. In *Philippine Long Distance Telephone Company v. Ylagan*,[12] this Court held that accounting duties were not shown as distinct, separate and identifiable from the usual undertakings of therein petitioner PLDT. Although essentially a telephone company, PLDT maintains its own accounting department to which respondent was assigned. This was one of the reasons why the Court held that respondent in said case was not a project employee. On the other hand, in *San Miguel Corporation v. National Labor Relations Commission*,[13] respondent was hired to repair furnaces, which are needed by San Miguel Corporation to manufacture glass, an integral component of its packaging and manufacturing business. The Court, finding that respondent is a project employee, explained that San Miguel Corporation is not engaged in the business of repairing furnaces. Although the activity was necessary to enable petitioner to continue manufacturing glass, the necessity for such repairs arose only when a particular furnace reached the end of its life or operating cycle. Respondent therein was therefore considered a project employee.

In the case at bar, as discussed in the statement of facts, respondents were assigned to the following tasks:

1) Manning of Technical Operations Center:

   (a) Responsible for the airing of local commercials; and

   (b) Logging/monitoring of national commercials (satellite)

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[12] 537 Phil. 840 (2006).

[13] 357 Phil. 954 (1998).

2) Acting as Transmitter/VTR men:

(a) Prepare tapes for local airing;
(b) Actual airing of commercials;
(c) Plugging of station promo;
(d) Logging of transmitter reading; and
(e) In case of power failure, start up generator set to resume program;

3) Acting as Maintenance staff;

(a) Checking of equipment;
(b) Warming up of generator;
(c) Filling of oil, fuel, and water in radiator; and

4) Acting as Cameramen[14]

These jobs and undertakings are clearly within the regular or usual business of the employer company *and* are not identifiably distinct or separate from the other undertakings of the company. There is no denying that the manning of the operations center to air commercials, acting as transmitter/VTR men, maintaining the equipment, and acting as cameramen are not undertakings separate or distinct from the business of a broadcasting company.

Petitioner's allegation that respondents were merely substitutes or what they call pinch-hitters (which means that they were employed to take the place of regular employees of petitioner who were absent or on leave) does not change the fact that their jobs cannot be considered projects within the purview of the law. Every industry, even public offices, has to deal with securing substitutes for employees who are absent or on leave. Such tasks, whether performed by the usual employee or by a substitute, cannot be considered separate and distinct from the other undertakings of the company. While it is management's prerogative to device a method to deal with this issue, such prerogative is not absolute and is limited to systems wherein employees are not ingeniously and methodically deprived of their constitutionally protected right to security of tenure. We

[14] *Rollo*, pp. 10-11.

are not convinced that a big corporation such as petitioner cannot device a system wherein a sufficient number of technicians can be hired with a regular status who can take over when their colleagues are absent or on leave, especially when it appears from the records that petitioner hires so-called pinch-hitters regularly every month.

In affirming the Decision of the NLRC, the Court of Appeals furthermore noted that if respondents were indeed project employees, petitioner should have reported the completion of its projects and the dismissal of respondents in its finished projects:

> There is another reason why we should rule in favor of private respondents. Nowhere in the records is there any showing that petitioner reported the completion of its projects and the dismissal of private respondents in its finished projects to the nearest Public Employment Office as per Policy Instruction No. 20[15] of the Department of Labor and Employment [DOLE]. Jurisprudence abounds with the consistent rule that the failure of an employer to report to the nearest Public Employment Office the termination of its workers' services everytime a project or a phase thereof is completed indicates that said workers are not project employees.
>
> In the extant case, petitioner should have filed as many reports of termination as there were projects actually finished if private respondents were indeed project employees, considering that the latter were hired and again rehired from 1996 up to 1999. Its failure to submit reports of termination cannot but sufficiently convince us further that private respondents are truly regular employees. Important to note is the fact that private respondents had rendered more than one (1) year of service at the time of their dismissal which overturns petitioner's allegations that private respondents were hired for a specific or fixed undertaking for a limited period of time.[16] (Citations omitted.)

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[15] This has been superseded by Department Order No. 19, series of 1993, which likewise imposed on the employer a duty to report terminations of project employment in the construction industry to the DOLE.

[16] *Rollo*, p. 17.

We are not unaware of the decisions of the Court in *Philippine Long Distance Telephone Company v. Ylagan*[17] and *ABS-CBN Broadcasting Corporation v. Nazareno*[18] which held that the employer's failure to report the termination of employees upon project completion to the DOLE Regional Office having jurisdiction over the workplace within the period prescribed militates against the employer's claim of project employment, even outside the construction industry. We have also previously stated in another case that the Court should not allow circumvention of labor laws in industries not falling within the ambit of Policy Instruction No. 20/Department Order No. 19, thereby allowing the prevention of acquisition of tenurial security by project employees who have already gained the status of regular employees by the employer's conduct.[19]

While it may not be proper to revisit such past pronouncements in this case, we nonetheless find that petitioner's theory of project employment fails the principal test of demonstrating that the alleged project employee was assigned to carry out a specific project or undertaking, the duration and scope of which were specified at the time the employee is engaged for the project.[20]

The Court of Appeals also ruled that even if it is assumed that respondents are project employees, they would nevertheless have attained regular employment status because of their continuous rehiring:

> Be that as it may, a project employee may also attain the status of a regular employee if there is a continuous rehiring of project employees after the stoppage of a project; and the activities performed are usual [and] customary to the business or trade of the employer. The Supreme Court ruled that a project employee or a member of a work pool may acquire the status of a regular employee when the following concur:

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[17] *Supra* note 12.

[18] 534 Phil. 306 (2006).

[19] *Maraguinot, Jr. v. National Labor Relations Commission*, 348 Phil. 580, 606 (1998).

[20] *Pasos v. Philippine National Construction Corporation*, G.R. No. 192394, July 3, 2013.

1) There is a continuous rehiring of project employees even after cessation of a project; and

2) The tasks performed by the alleged project employee are vital, necessary and indispensable to the usual business or trade of the employer.

The circumstances set forth by law and the jurisprudence is present in this case. In fine, even if private respondents are to be considered as project employees, they attained regular employment status, just the same.[21] (Citation omitted.)

Anent this issue of attainment of regular status due to continuous rehiring, petitioner advert to the fixed period allegedly designated in employment contracts and reflected in vouchers. Petitioner cites our pronouncements in *Brent*, *St. Theresa's School of Novaliches Foundation v. National Labor Relations Commission*,[22] and *Fabela v. San Miguel Corporation*,[23] and argues that respondents were fully aware and freely entered into agreements to undertake a particular activity for a specific length of time.[24] Petitioner apparently confuses project employment from fixed term employment. The discussions cited by petitioner in *Brent*, *St. Theresa's* and *Fabela* all refer to fixed term employment, which is subject to a different set of requirements.

<u>Whether the requisites of a valid fixed term employment are met</u>

As stated above, petitioner interchangeably characterizes respondents' service as *project* and *fixed term* employment. These types of employment, however, are not the same. While the former requires a *project* as restrictively defined above, the duration of a fixed-term employment agreed upon by the parties may be any *day certain*, which is understood to be "that which must necessarily come although it may not be known when."[25] The

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[21] *Rollo*, pp. 17-18.

[22] 351 Phil. 1038 (1998).

[23] 544 Phil. 223 (2007).

[24] *Rollo*, pp. 378-382.

[25] *Brent School, Inc. v. Zamora*, *supra* note 8 at 757.

decisive determinant in fixed-term employment is not the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and termination of the employment relationship.[26]

Cognizant of the possibility of abuse in the utilization of fixed-term employment contracts, we emphasized in *Brent* that where from the circumstances it is apparent that the periods have been imposed to preclude acquisition of tenurial security by the employee, they should be struck down as contrary to public policy or morals.[27] We thus laid down indications or criteria under which "term employment" cannot be said to be in circumvention of the law on security of tenure, namely:

> 1) The fixed period of employment was knowingly and voluntarily agreed upon by the parties without any force, duress, or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent; or
>
> 2) It satisfactorily appears that the employer and the employee dealt with each other on more or less equal terms with no moral dominance exercised by the former or the latter.[28] (Citation omitted.)

These indications, which must be read together, make the *Brent* doctrine applicable only in a few special cases wherein the employer and employee are on more or less in equal footing in entering into the contract. The reason for this is evident: when a prospective employee, on account of special skills or market forces, is in a position to make demands upon the prospective employer, such prospective employee needs less protection than the ordinary worker. Lesser limitations on the parties' freedom of contract are thus required for the protection of the employee. These indications were applied in *Pure Foods Corporation v. National Labor Relations Commission*,[29] where

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[26] *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, 471 Phil. 355, 372 (2004).

[27] *Id*.

[28] *Romares v. National Labor Relations Commission*, 355 Phil. 835, 847 (1998); *Philips Semiconductors (Phils.), Inc. v. Fadriquela*, *id.* at 372-373.

[29] 347 Phil. 434, 444 (1997).

we discussed the patent inequality between the employer and employees therein:

[I]t could not be supposed that private respondents and all other so-called "casual" workers of [the petitioner] KNOWINGLY and VOLUNTARILY agreed to the 5-month employment contract. Cannery workers are never on equal terms with their employers. Almost always, they agree to any terms of an employment contract just to get employed considering that it is difficult to find work given their ordinary qualifications. Their freedom to contract is empty and hollow because theirs is the freedom to starve if they refuse to work as casual or contractual workers. Indeed, to the unemployed, security of tenure has no value. It could not then be said that petitioner and private respondents "dealt with each other on more or less equal terms with no moral dominance whatever being exercised by the former over the latter.

To recall, it is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid.[30] It is therefore the employer which must satisfactorily show that it was not in a dominant position of advantage in dealing with its prospective employee. Thus, in *Philips Semiconductors (Phils.), Inc. v. Fadriquela*,[31] this Court rejected the employer's insistence on the application of the *Brent* doctrine when the sole justification of the fixed terms is to respond to temporary albeit frequent need of such workers:

We reject the petitioner's submission that it resorted to hiring employees for fixed terms to augment or supplement its regular employment "for the duration of peak loads" during short-term surges to respond to cyclical demands; hence, it may hire and retire workers on fixed terms, *ad infinitum*, depending upon the needs of its customers, domestic and international. Under the petitioner's submission, any worker hired by it for fixed terms of months or years can never attain regular employment status. x x x.

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[30] *Dacuital v. L.M. Camus Engineering Corporation*, G.R. No. 176748, September 1, 2010, 629 SCRA 702, 716.

[31] *Supra* note 25 at 373.

Similarly, in the case at bar, we find it unjustifiable to allow petitioner to hire and rehire workers on fixed terms, *ad infinitum*, depending upon its needs, never attaining regular employment status. To recall, respondents were repeatedly rehired in several fixed term contracts from 1996 to 1999. To prove the alleged contracts, petitioner presented cash disbursement vouchers signed by respondents, stating that they were merely hired as pinch-hitters. It is apparent that respondents were in no position to refuse to sign these vouchers, as such refusal would entail not getting paid for their services. Plainly, respondents as "pinch-hitters" cannot be considered to be in equal footing as petitioner corporation in the negotiation of their employment contract.

In sum, we affirm the findings of the NLRC and the Court of Appeals that respondents are regular employees of petitioner. As regular employees, they are entitled to security of tenure and therefore their services may be terminated only for just or authorized causes. Since petitioner failed to prove any just or authorized cause for their termination, we are constrained to affirm the findings of the NLRC and the Court of Appeals that they were illegally dismissed.

Separation Pay, Night Shift Differential and Attorney's Fees

Petitioner admits that respondents were not given separation pay and night shift differential. Petitioner, however, claims that respondents were not illegally dismissed and were therefore not entitled to separation pay. As regards night shift differential, petitioner claims that its admission in its August 23, 1999 letter as to the nonpayment thereof is qualified by its allegation that respondents are not entitled thereto. Petitioner points out that respondents failed to specify the period when such benefits are due, and did not present additional evidence before the NLRC and the Court of Appeals.[32]

In light, however, of our ruling that respondents were illegally dismissed, we affirm the findings of the NLRC and the Court of Appeals that respondents are entitled to separation pay in

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[32] *Rollo*, pp. 384-387.

lieu of reinstatement. We quote with approval the discussion of the Court of Appeals:

> However, since petitioner refused to accept private respondents back to work, reinstatement is no longer practicable. Allowing private respondents to return to their work might only subject them to further embarrassment, humiliation, or even harassment.
>
> Thus, in lieu of reinstatement, the grant of separation pay equivalent to one (1) month pay for every year of service is proper which public respondent actually did. Where the relationship between private respondents and petitioner has been severely strained by reason of their respective imputations of accusations against each other, to order reinstatement would no longer serve any purpose. In such situation, payment of separation pay instead of reinstatement is in order.[33] (Citations omitted.)

As regards night shift differential, the Labor Code provides that every employee shall be paid not less than ten percent (10%) of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning.[34] As employees of petitioner, respondents are entitled to the payment of this benefit in accordance with the number of hours they worked from 10:00 p.m. to 6:00 a.m., if any. In the Decision of the NLRC affirmed by the Court of Appeals, the records were remanded to the Regional Arbitration Branch of origin for the computation of the night shift differential and the separation pay. The Regional Arbitration Branch of origin was likewise directed to require herein petitioner to produce additional documents where necessary. Therefore, while we are affirming that respondents are entitled to night shift differential in accordance with the number of hours they worked from 10:00 p.m. to 6:00 a.m., it is the Regional Arbitration Branch of origin which should determine the computation thereof for each of the respondents, and award no night shift differential to those of them who never worked from 10:00 p.m. to 6:00 a.m.

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[33] *Id*. at 20.

[34] LABOR CODE, Article 86.

It is also worthwhile to note that in the NLRC Decision, it was herein petitioner GMA Network, Inc. (respondent therein) which was tasked to produce additional documents necessary for the computation of the night shift differential. This is in accordance with our ruling in *Dansart Security Force & Allied Services Company v. Bagoy*,[35] where we held that it is entirely within the employer's power to present such employment records that should necessarily be in their possession, and that failure to present such evidence must be taken against them.

Petitioner, however, is correct that the award of attorney's fees is contrary to jurisprudence. In *De los Santos v. Jebsen Maritime, Inc.*,[36] we held:

> Likewise legally correct is the deletion of the award of attorney's fees, the NLRC having failed to explain petitioner's entitlement thereto. As a matter of sound policy, an award of attorney's fees remains the exception rather than the rule. It must be stressed, as aptly observed by the appellate court, that it is necessary for the trial court, the NLRC in this case, to make express findings of facts and law that would bring the case within the exception. In fine, the factual, legal or equitable justification for the award must be set forth in the text of the decision. The matter of attorney's fees cannot be touched once and only in the *fallo* of the decision, else, the award should be thrown out for being speculative and conjectural. In the absence of a stipulation, attorney's fees are ordinarily not recoverable; otherwise a premium shall be placed on the right to litigate. They are not awarded every time a party wins a suit. (Citations omitted.)

In the case at bar, the factual basis for the award of attorney's fees was not discussed in the text of NLRC Decision. We are therefore constrained to delete the same.

WHEREFORE, the Decision of the Court of Appeals dated September 8, 2006 and the subsequent Resolution denying reconsideration dated January 22, 2007 in CA-G.R. SP No. 73652, are hereby **AFFIRMED,** with the **MODIFICATION**

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[35] G.R. No. 168495, July 2, 2010, 622 SCRA 694.

[36] 512 Phil. 301, 315-316 (2005).

that the award of attorney's fees in the affirmed Decision of the National Labor Relations Commission is hereby **DELETED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181873. November 27, 2013]

SPOUSES PIO DATO and SONIA Y. SIA, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; CONCLUSIONS AND FINDINGS OF FACT OF THE TRIAL COURT ARE GENERALLY NOT DISTURBED ON APPEAL.—** The Court finds no cause to deviate from the factual findings of both the RTC and the CA. "The settled rule is that conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as observe the demeanor of the witnesses while testifying in the case. The fact that the CA adopted the findings of fact of the trial court makes the same binding upon this Court."

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CREDIT LINE FACILITY AGREEMENT; CREDIT LINE; DEFINED.—** The Court has previously defined a credit line as the following: "[A] credit line is 'that amount money or merchandise which a banker, merchant, or supplier agrees to supply to a person on credit and generally agreed to in advance.' **It is the <u>fixed limit of credit granted by a bank, retailer,</u>**

or credit card issuer to a customer, to the full extent of which the latter may avail himself of his dealings with the former but which he must not exceed and is usually intended to cover a series of transactions in which case, when the customer's line of credit is nearly exhausted, he is expected to reduce his indebtedness by payments before making any further drawings." Thus, contrary to the belief and understanding of Spouses Sia, BPI does not have to require the execution of promissory note of the entire ₱5.7 Million since a credit line as stated above, is merely a **fixed limit of credit**. Furthermore, still applying the above quoted definition, a credit line usually presupposes **a series of transactions** until the credit line is nearly exhausted. BPI is not obliged to release the amount of ₱5.7 Million to Spouses Sia all at once, in a single transaction.

3. **MERCANTILE LAW; REAL ESTATE MORTGAGE LAW; EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; PROPER WHEN THE DEBTORS ARE IN DEFAULT OF THE PAYMENT OF THEIR OBLIGATION; CASE AT BAR.—** It is a settled rule of law that foreclosure is proper when the debtors are in default of the payment of their obligation. As the CA had appositely considered, due to Spouses Sia's failure to pay their loans covered by Promissory Notes (PN) Nos. 90/98 and 90/152, the extrajudicial foreclosure of the real estate mortgage is valid and binding against them x x x.

4. **ID.; ID.; ID.; A PENDING SUIT QUESTIONING THE VALIDITY THEREOF DOES NOT WARRANT THE SUSPENSION OF THE ISSUANCE OF WRIT OF POSSESSION.—** The pending suit questioning the validity of the extrajudicial foreclosure of mortgage does not entitle Spouses Sia to a suspension of the issuance of writ of possession x x x. [T]he Court holds that there is no basis for the issuance of a Temporary Restraining Order/Writ of Preliminary Injunction to enjoin the enforcement of the third notice to vacate dated October 8, 2013.

5. **ID.; ID.; ID.; THE BUYER IN AN EXTRAJUDICIAL FORECLOSURE SALE BECOMES THE ABSOLUTE OWNER OF THE PROPERTY PURCHASED IF IT IS NOT REDEEMED DURING THE PERIOD OF ONE YEAR**

AFTER THE REGISTRATION OF THE SALE.— The Court is in consonance with the CA and RTC that BPI is entitled to receive rental fees as the new owner of the property covered by TCT No. 102434 (Now TCT No. 130468), following the Court's ruling in *F. David Enterprises v. Insular Bank of Asia and America,* that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale.

6. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES AND LITIGATION EXPENSES; MAY BE RECOVERED BY A PARTY WHEN AN ACT OR OMISSION HAS COMPELLED HIM TO LITIGATE WITH THIRD PERSONS OR TO INCUR EXPENSES TO PROTECT HIS RIGHTS.—** [T]he Court agrees with the RTC and CA that the award of attorney's fees and litigation expenses is warranted owing to the fact that BPI was compelled to engage the services of a counsel to protect its rights. It is so stated under Article 2208 of the Civil Code that attorney's fees and expenses of litigation may be recovered by a party when an act or omission has compelled him to litigate with third persons or to incur expenses to protect his interest. However, the Court deems the award of ₱500,000.00 as attorney's fees and ₱50,000 for litigation expenses, as excessive, considering the nature of this case. Award of attorney's fees, being part of a party's liquidated damages, may be equitably reduced.

APPEARANCES OF COUNSEL

Florido & Largo Law Offices, E.V. Ramirez Law Office and *Torregosa Galeon Gravador & Tomaneng Law Offices* for petitioners.

Bathan & Associates Law Firm and *Calderon Davide Trinidad Tolentino & Castillo* for respondent.

DECISION

REYES, *J*.:

This is a petition for review on *certiorari*[1] of the Decision[2] dated July 25, 2007 and Resolution[3] dated February 8, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 61289, affirming with modifications the Decision[4] dated December 15, 1997 of the Regional Trial Court (RTC) of Cebu City, Branch 18. The RTC dismissed herein petitioners' complaint and declared the extrajudicial foreclosure sale, the subject of this petition valid and binding.

Antecedent Facts

On May 23, 1990, petitioners Spouses Pio Dato (Pio) and Sonia Y. Sia (Spouses Sia) applied for a ₱240,000.00 loan which was granted by the Bank of the Philippine Islands (BPI) with a term of six months and secured by a real estate mortgage over a parcel of land owned by Spouses Sia denominated as Lot 1, situated in Labangon, Cebu, covered by Transfer Certificate of Title (TCT) No. 102434. Subsequently, on August 8, 1990, Spouses Sia availed of a ₱4 Million Revolving Promissory Note Line with a term of one year, secured by the same real estate mortgage over TCT No. 102434.[5]

Spouses Sia alleged that their loan was "precipitated by the representation of the [BPI] that the same will be indorsed to [Industrial Guarantee and Loan Fund] (IGLF) [in order] for the spouses to be able to avail of a much lower interest rate and longer payment terms."[6]

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[1] *Rollo*, pp. 4-22.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Stephen C. Cruz, concurring; *id*. at 118-148.

[3] *Id*. at 197-198.

[4] Issued by Presiding Judge Galicano C. Arriesgado; *id*. at 68-116.

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

[6] *Id*.

Before the ₱240,000.00 and ₱4 Million loans matured, Spouses Sia approached BPI through Mona Padilla (Padilla), account officer of BPI for additional loans. One was for ₱2 Million, and another was for ₱2.8 Million. After some discussion with Padilla, Spouses Sia agreed to obtain a Credit Facility of ₱5.7 Million using the same collaterals offered in their previous loans and four additional parcels of land, namely, TCT Nos. 87010, 102435, 102436 and 102437.[7]

On November 23, 1990, Spouses Sia obtained ₱800,000.00 from their Credit Facility of ₱5.7 Million which was credited to their current account with BPI after executing a Promissory Note for the same amount. While Spouses Sia paid some of the interest on their loans, the amount was insufficient to cover the principal amount of said loans.[8]

On February 13, 1991, Padilla sent a written reminder to Spouses Sia to settle all unpaid interest before February 22, 1991. Yet the spouses failed to pay the same. Their principal loans of ₱240,000.00 and ₱4 Million loan also remained unsettled. BPI, through Padilla and Assistant Vice President, Danilo A. Quinto sent another demand letter to them requesting payment of the outstanding loan.[9]

Spouses Sia still failed to pay the principal amount of ₱4,240,000.00 exclusive of interest, penalties and other charges. But the amount of ₱800,000.00 from the ₱5.7 Million Credit Facility was paid through a Letter of Credit. As the ₱240,000.00 and ₱4 Million loans of Spouses Sia were not yet settled, BPI cancelled the ₱5.7 Million Credit facility. To facilitate and assist Spouses Sia in paying off their loans, the four lots which secured the ₱5.7 Million Credit Line Facility were released. Spouses Sia agreed to sell the lots and use the proceeds thereof to make partial payments of their loans. Consequently, BPI issued a cancellation of the

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[7] *See* respondent BPI's Comment, *id*. at 205.

[8] *Id*.

[9] *Id*.

real estate mortgage over the four lots which secured the ₱5.7 Million Credit Line Facility.[10]

Despite the cancellation of the real estate mortgage, Spouses Sia failed to make good their promise to sell the lots to pay off their loans. BPI, through Padilla, sent a follow-up demand letter to Spouses Sia dated July 11, 1991 requesting payment of the principal loan amounting to ₱4,240,000.00 as well as all unpaid interests, penalties and charges thereon on or before July 30, 1991.[11] Spouses Sia, through a letter dated July 19, 1991, acknowledged their account to BPI and stated therein that they are "seriously considering selling some of their 'choiced' real estate properties to service their debt to BPI x x x."[12]

On August 3, 1993, Spouses Sia filed a complaint[13] with the RTC of Cebu City praying for the issuance of a temporary restraining order (TRO) to maintain status *quo*, award of moral and exemplary damages, attorney's fees and litigation costs. In the said complaint, Spouses Sia alleged that BPI "deliberately refused to comply with the condition/undertaking of the loan for IGLF endorsement and approval" until the maturity date of the loan lapsed to their great prejudice and irreparable damage.[14]

Spouses Sia failed to pay notwithstanding the numerous demands made by BPI, leading to the extrajudicial foreclosure of the real estate mortgage covered by TCT No. 102434 which secured Spouses Sia's loans of ₱240,000.00 and ₱4 Million. The lot was sold at a public auction held on August 9, 1993, with BPI as the sole bidder in the amount of ₱10,060,080.20.[15] The certificate of sale was issued on August 10, 1993 upon payment of all the required registration fees.[16]

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[10] *Id*. at 206.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 23-35.

[14] *Id*. at 26.

[15] *Id*. at 6.

[16] *Id*. at 79.

In the course of the trial proceedings, Spouses Sia alleged that they discovered that the document embodying the cancellation of the real estate mortgage presented by BPI (over the four lots previously released by BPI for the Credit Line Agreement Facility), stated the following:

[T]he consideration for this cancellation being the full and complete payment made by the said debtor/s- mortgagor/s to the creditor-mortgagee of the obligation secured thereby in the principal amount of FIVE MILLION SEVEN HUNDRED THOUSAND ONLY PESOS ([₱]5,700,000.00) Philippine Currency, together with the corresponding interest thereon up to this date.[17]

Spouses Sia thereafter amended their complaint claiming that the bank inserted and annotated a falsified/illegal Real Estate Mortgage of ₱5.7 Million, purportedly availed of by Spouses Sia.[18] They alleged "that TCT No. 102434 was never intended to secure a fabricated and falsified loan of ₱5,700,000.00 or for any loan [by] whomsoever, accommodated by [BPI] using [Spouses Sia's] collaterals[.]"[19]

Lastly, the spouses claimed extinguishment of their obligation. They alleged that as BPI credited the payment of ₱5.7 Million to their account, which is more than sufficient to cover their promissory notes of ₱240,000.00 and ₱4 Million, their obligation with the BPI was totally extinguished as of August 5, 1991 and that the foreclosure proceedings on TCT No. 102343 is illegal and baseless for they have the right as of August 5, 1991 to secure full release of said lot by such payment of ₱5.7 Million.[20]

Spouses Sia prayed for ₱5 Million as moral damages, ₱2 Million as exemplary damages, attorney's fees equivalent to 25% of the adjudged amount plus ₱350.00 per court appearance but not less than ₱350,000.00 and for whatever proven damages of not less than ₱500,000.00. In their Second Supplemental

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[17] *Id*. at 52.

[18] *Id*. at 60.

[19] *Id*. at 60-61.

[20] *Id*. at 61.

Complaint, Spouses Sia prayed for additional ₱25 Million as moral damages, ₱6 Million as exemplary damages and 25% attorney's fees based on the additional damages but not less than ₱200,000.00.[21]

During the pendency of the instant case, the one-year redemption period had lapsed without Spouses Sia exercising their right to redeem the subject property. Thus on January 27, 1995, BPI filed a supplemental answer with counterclaim, alleging therein that with the expiration of the period of redemption, BPI is entitled to a writ of possession over the foreclosed property and the occupancy of Spouses Sia on the foreclosed property entitles BPI to a reasonable compensation which is conservatively pegged at ₱10,000.00 per month from the date of the issuance of the certificate of sale in favor of BPI.[22]

The RTC Ruling

On December 15, 1997, the RTC rendered its judgment in favor of BPI and against Spouses Sia, the dispositive portion of which states:

WHEREFORE, premises all considered, JUDGMENT is hereby rendered in favor of [BPI] and against [Spouses Sia] as follows:

1. Dismissing [Spouses Sia's] complaint, supplemental and amended complaint for lack of merit;

2. Declaring the extrajudi[c]ial foreclosure sale conducted on August 8, 1993 as valid and binding;

3. Declaring defendant [BPI] as absolute and legal owner of Lot No. 1 covered by TCT No. 102434 as well as the residential house and all improvements thereon;

4. Ordering [Spouses Sia] to pay defendant [BPI's] counsel the sum of ₱500,000.00 as attorney's fees; ordering to pay defendant [BPI] the sum of ₱10,000.00 per month from August 10, 1994 for use and occupancy of the foreclosed properties until the same are vacated and possession delivered

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[21] *Id*. at 123-124.

[22] *Id*. at 125.

to defendant [BPI]; to pay the sum of ₱1,000,000.00 as exemplary damages so as to prevent others from following [Spouses Sia's] filing a suit to prevent payment of a just and valid debt; the sum of ₱2,000,000.00 as compensatory damages; the sum of ₱50,000.00 as litigation expenses as well as costs of the suit.

SO ORDERED.[23]

The RTC found that "there is no logical and valid reason to support the allegations in the complaint for Breach of Contract, Rescission and Cancellation of Contract with Damages."[24]

The RTC also found that BPI could not be held guilty of delay in endorsing the loan to IGLF because BPI, through Padilla, never committed itself to make such endorsement. There was no contract, either oral or written, which would prove that there was any agreement between BPI and Spouses Sia to endorse their loans to the IGLF. Petitioner Pio asked for the restructuring of his loans after he failed to pay his ₱240,000.000 and ₱4 Million loans. As petitioner Pio wanted to obtain an industrial loan for a longer period, Padilla merely suggested to them to obtain loans through IGLF of the Development Bank of the Philippines, if qualified to do so. Spouses Sia could not however, qualify because their loans were on the "past due status' and there was also a diversion of the proceeds of their loans.[25]

The alleged verbal agreement between [Spouses Sia] and [BPI] that the latter would endorse the ₱4 Million to IGLF is a clear violation of the parol evidence rule which provides that "[w]hen the terms of an agreement have been reduced to writing[,] it is to be considered as containing all such terms and therefore, there can be between the parties and the successors in interest no evidence of the terms of the agreement other than the contents of the writing" (Rule 130, Section 7 of the Rules of Court).[26]

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[23] *Id*. at 115-116.

[24] *Id*. at 106.

[25] *Id*. at 109-110.

[26] *Id*.

As regards the testimony of petitioner Pio that the real estate mortgage covering the ₱5.7 Million credit facility was falsified, the RTC also found no legal and factual basis therein because petitioner Pio admitted the authenticity of their signatures appearing on the Promissory Notes and Real Estate Mortgages evidencing the various loans and credit facility from BPI. Spouses Sia admitted under oath that their signatures appearing on the Real Estate Mortgage document (Exh. "23") to secure the ₱5.7 Million Credit facility are their signatures. They in effect admitted the authenticity of those documents as well as the correctness of the matters incorporated therein. As held by this Court in the case of *Heirs of Amparo del Rosario v. Aurora Santos, et al.*,[27] "when a party admits the genuineness of a document, he also admits that the words and figures of the documents are set out correctly."[28]

On the topic of extinguishment of obligation, Spouses Sia failed to sway the RTC to their assertions of payment by way of donation by an unknown third party. The RTC considered the explanation of the bank as worthy of credence, as it had extensively discussed, to wit:

Culled from the evidence on record, [Spouses Sia] in addition to the ₱240,000.00 and ₱4,000,000.00 loans, sometime in November 1990 requested for additional loans from defendant bank. Plaintiff Pio Dato Sia applied for ₱2,000,000.00 loan sometime in November, 1990 and ₱2.8 Million per loan application dated December 8, 1990 (Exh. "25"). **As there were several loans which Pio Dato Sia applied for, Mona Padilla advised him that it would be more practical to obtain Credit Facility or Credit Line to cover contingent financial requirements of his business. Plaintiff Pio Dato agreed to obtain a Credit Facility of ₱5.7 Million. To cover such facility, plaintiff Pio Dato Sia submitted four (4) additional collaterals covered by titles. Subsequently, he executed a Real Estate Mortgage to secure the Credit Line of ₱5.7 Million, dated November 22, 1990 (Exh. "23-C"). The signatures of [Spouses Sia] on this document are admitted by [Spouses Sia] to be genuine.**

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[27] 194 Phil. 670 (1981).

[28] *Rollo*, p. 108, citing *Heirs of Amparo del Rosario v. Aurora Santos, et al*, *id.* at 684.

On the same date November 22, 1993, [Spouses Sia] made an initial availment from the ₱5.7 Million Credit Facility as evidenced by Exhibit "23". **The amount of ₱800,000.00 was credited to [Spouses Sia's] Current Account No. 1303-2188-97 per Credit Memo (Exh. "27"). Such availment was fully paid by [Spouses Sia].** After the first availment, [Spouses Sia] wanted to obtain another availment from said Credit facility but [BPI] could no longer approve such application due to [Spouses Sia's] failure to pay the principal loan of ₱240,000.00 and interest thereof which matured on November 11, 1990. As clearly setforth in the agreement, [BPI] can suspend availments from the Credit Facility in the event of [Spouses Sia's] default in the payment of any other existing loans with [BPI]. Thereafter, [Spouses Sia] also failed to pay their ₱4,000,000.00 loan with [BPI]. **As no additional loan could be granted to [Spouses Sia], the latter requested the release of their four (4) collaterals which were used to secure the ₱5.7 Million Credit Facility and per loan documents all other existing loans with [BPI]. x x x [Spouses Sia] admitted having received the four titles which were released by [BPI] upon [Spouses Sia's] request as well as the cancellation of the mortgage on the ₱5.7 Million Credit Facility after [Spouses Sia's] payment of the ₱800,000.00 availment.** It is this cancellation of mortgage which [Spouses Sia] are trying to use to escape payment of their ₱240,000.00 and ₱4 Million loans as well as unpaid interest, penalties and charges. [BPI] argued that it is the distorted concept of [Spouses Sia] that since the cancellation of the Real Estate Mortgage mentions the Credit facility of ₱5.7 Million, that someone paid [BPI] the sum of ₱5.7 Million. x x x.[29] (Emphasis and underscoring ours)

The RTC further explained:

It is a mistaken notion of [Spouses Sia] that the cancellation of Real Estate Mortgage presupposed an alleged payment made by a third person to [BPI] of the sum of ₱5.7 Million. **There is no iota of evidence establishing any payment in the sum of ₱5.7 Million from [Spouses Sia] or from any third persons to [BPI] to settle any account of [Spouses Sia]. x x x [Spouses Sia] admitted that they have not paid their ₱240,000.00 and ₱4 Million loans to [BPI].** The cancellation of mortgage refers only to the Real Estate Mortgage covering the Credit Facility.[30] (Emphasis ours)

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[29] *Id*. at 110-112.

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

Spouses Sia timely filed a Motion for Reconsideration which was denied by the RTC.[31] Spouses Sia next filed an appeal before the CA.

The CA Ruling

The CA rendered its Decision on July 25, 2007, affirming the RTC Decision with Modification, as follows:

> **WHEREFORE,** in view of the foregoing, the instant appeal is **PARTLY GRANTED**. The Decision of the Regional Trial Court is hereby **AFFIRMED with MODIFICATIONS** by deleting the award to BPI of compensatory and exemplary damages.
>
> **SO ORDERED.**[32]

After the denial of their Motion for Reconsideration in the CA Resolution dated February 8, 2008, Spouses Sia raised a myriad of issues[33] before this Court *via* the instant petition for review on *certiorari* dated March 3, 2008.

Pending the resolution of this case, Spouses Sia filed on September 20, 2013 an Urgent Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction[34] alleging that in an Order[35] dated December 5, 2011, Judge Sylva G. Aguirre-Paderanga of the RTC of Cebu City, Branch 16, ordered the issuance of a Writ of Possession over TCT No. 130468 (Formerly TCT No. 102434) after BPI filed an *Ex-Parte* Motion for Issuance of a Writ of Possession.[36]

Pursuant to the said Order, a writ of possession was issued by the Clerk of Court of the RTC Branch 16, directing Sheriff Generoso Regalado to issue a Notice to Vacate.[37]

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[31] *Id*. at 138.

[32] *Id*. at 148.

[33] *Id*. at 10.

[34] *Id*. at 410-422.

[35] *Id*. at 425-427.

[36] *Id*. at 411-412.

[37] *Id*. at 428.

Spouses Sia filed a Motion for Reconsideration[38] of the RTC Branch 16 Order granting the Motion for Issuance of the Writ of Possession, which was subsequently denied in an Order[39] dated March 8, 2012. Spouses Sia then filed a Motion to Recall and to Quash Writ of Possession which was also denied in an Order[40] dated April 20, 2012. A Motion for Reconsideration of the Order denying the Motion to Recall and to Quash Writ of Possession was filed by Spouses Sia which was denied once more in an Order[41] dated September 7, 2012.[42]

An Urgent Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction[43] was filed by Spouses Sia on September 20, 2013 before the Court as they have received a Second Notice to Vacate on Writ of Possession.

On October 17, 2013, Spouses Sia filed before the Court an Extremely Urgent Reiterative Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction to Enjoin Enforcement of Third Notice to Vacate dated October 8, 2013, giving Spouses Sia ten (10) days from receipt thereof within which to vacate the premises.

Issues

Basically, the issues presented by Spouses Sia boil down to the following:

I. WHETHER THE CA ERRED IN HOLDING THAT BPI DID NOT BREACH ITS CONTRACT WITH SPOUSES SIA CONCERNING THE IGLF ENDORSEMENT

II. WHETHER THE CANCELLATION OF THE ₱5.7 MILLION CREDIT FACILITY OF SPOUSES SIA RAISES A LEGAL ISSUE

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38 *Id*. at 430-431.

39 *Id*. at 433-434.

40 *Id*. at 435-436.

41 *Id*. at 437-438.

42 *Id*. at 412.

43 Received on October 4, 2013 by the Court.

The Court's Ruling

The petition has no merit.

BPI did not commit Breach of Contract

The Court concurs with the CA and the RTC that BPI did not commit breach of contract against Spouses Sia.

In ruling so, the CA found that petitioner Pio admitted the execution and genuineness of the notarized contract of real estate mortgage and promissory note, including the signature of Spouses Sia on the letter of advice to signify their conformity with the terms and conditions during his oral testimony.[44] Furthermore, the CA ruled that jurisprudence laid down the consequences of admission:

> By the admission of the due execution of a document[,] [it means] that the party whose signature it bears admits that he signed it voluntarily or that it was signed by another for him and with his authority; and by the admission of the genuineness of the document[,] [it means] that the party whose signature it bears admits that at the time it was signed it was in the words and figures exactly as set out in the pleading of the party relying upon it.[45]

The Court finds no cause to deviate from the factual findings of both the RTC and the CA. "The settled rule is that conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as observe the demeanor of the witnesses while testifying in the case. The fact that the CA adopted the findings of fact of the trial court makes the same binding upon this Court."[46]

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[44] *Rollo*, p. 141.

[45] *Id.*, citing *Heirs of Amparo del Rosario v. Aurora Santos, et al., supra* note 27, at 684.

[46] *Magdiwang Realty Corporation v. The Manila Banking Corporation,* G.R. No. 195592, September 5, 2012, 680 SCRA 251, 263-264, citing

Since both the RTC and the CA found no evidence on record to support Spouses Sia's bare assertions that the endorsement to IGLF is a condition precedent to their contract of loan with BPI, the Court is inclined to disregard Spouses Sia's contentions on this score.

There is no legal issue as regard to the cancellation of the ₱5.7 Million Credit Line Facility

Initially, Spouses Sia insisted that the foreclosure of their real estate mortgage was premature because BPI violated their agreement to have their loan endorsed to IGLF.

Thereafter, Spouses Sia changed their stance and insisted that there was no Credit Line Facility agreement of ₱5.7 Million. Spouses Sia further alleged that it was the banking officers of BPI who borrowed the ₱5.7 Million and who prepared the Cancellation of the Real Estate Mortgage. But the cancellation was credited in favor of Spouses Sia. Payment should be therefore credited in their favor to extinguish the loans of ₱4 Million and ₱240,000.00 and that BPI is obligated to return the excess amount of ₱1,460,000.00 by way of *solutio indebiti.*[47]

The Court is hardly convinced with Spouses Sia's arguments. Both the RTC and the CA have profusely examined the evidence on the record, wherein the following observations were gathered:

> The bases of the extrajudicial foreclosure proceeding were the three real estate mortgage contracts executed by Sps. Sia in favor of BPI, to wit:
>
> 1. over TCT No. 102434 and its improvements for [₱]240,000.00 dated August 10, 1990[;]
> 2. over TCT No. 102434 and its improvements for [₱]4,000,000.00 dated May 24, 1990; and

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Bernales v. Heirs of Julian Sambaan, G.R. No. 163271, January 15, 2010, 610 SCRA 90, 104-105.

[47] *Rollo*, p. 15.

3. over TCT No. 102434 and its improvements, and TCT Nos. 87010, 102435, 102436 and 102437 for [₱]5,700,000.00 dated November 22, 1990.

Paragraph 6 of the aforecited real estate mortgage contracts provides that:

"***In the event that the Mortgagor/Debtor herein, should fail or refuse to pay any of the sums of money secured by this mortgage, or any part thereof, in accordance with the terms and conditions herein set forth or those stipulated in the correlative promissory note(s),*** *or should he/it fail to perform any of the conditions stipulated herein, or those in the promissory note(s), then and in any such case the* ***Mortgagee shall have the right at its election, to foreclose this mortgage***, x x x."

x x x x x x x x x

At the outset, **Sps. Sia admitted that they have not updated the interest due for their loans and in fact, they intentionally stopped servicing the interest, more particularly for the ₱4,000,000.00 loan because of the alleged breach of contract by BPI.** x x x.

x x x x x x x x x

x x x In fact**, it was admitted by Mr. Sia in his oral testimony that his only basis for the claim of full payment was the cancellation of real estate mortgage executed by BPI on August 2, 1991**. Based on such document, they assumed that a third person whom they did not know, paid in their behalves by way of donation. Sps. Sia were not even able to present a deed of donation but only a deed of acceptance of donation.[48] (Emphasis ours and italics supplied)

Another argument posited by Spouses Sia is that, they neither executed any ₱5.7 Million promissory note nor did they receive ₱5.7 Million from BPI.[49] Thus, there is no existing ₱5.7 Million Credit Line Facility Agreement as far as they are concerned. It appears from the allegations in their pleadings that Spouses Sia have misconstrued the concept of a Credit Line Facility

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[48] *Id*. at 143-145.

[49] *Id*. at 282.

Agreement. The Court has previously defined a credit line as the following:

> [A] credit line is "that amount of money or merchandise which a banker, merchant, or supplier agrees to supply to a person on credit and generally agreed to in advance." **It is the fixed limit of credit granted by a bank, retailer, or credit card issuer to a customer, to the full extent of which the latter may avail himself of his dealings with the former but which he must not exceed and is usually intended to cover a series of transactions in which case, when the customer's line of credit is nearly exhausted, he is expected to reduce his indebtedness by payments before making any further drawings.**[50] (Citations omitted and emphasis and underscoring ours)

Thus, contrary to the belief and understanding of Spouses Sia, BPI does not have to require the execution of promissory note of the entire ₱5.7 Million since a credit line as stated above, is merely a **fixed limit of credit**. Furthermore, still applying the above quoted definition, a credit line usually presupposes **a series of transactions** until the credit line is nearly exhausted. BPI is not obliged to release the amount of ₱5.7 Million to Spouses Sia all at once, in a single transaction.

In this case, BPI allowed the release only of ₱800,000.00 out of the ₱5.7 Million credit line and precluded any more availments since Spouses Sia have not yet satisfied their obligation to pay their loans of ₱4 Million and ₱240,000.00. Again, Spouses Sia are reminded that the Court is not a trier of facts. As the RTC and the CA both found, the release of the four collaterals was done to assist Spouses Sia in paying off their loans, not due to payment of ₱5.7 Million by Spouses Sia or any other person on their behalf. Spouses Sia read much into the Cancellation of the Real Estate Mortgage contract when in fact, the release was made for their benefit.

In any case, the extrajudicial foreclosure which is the subject of the present case pertains to Spouses Sia's failure to pay their

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[50] *Rosario Textile Mills Corporation v. Home Bankers Savings and Trust Co.*, 500 Phil. 475, 482 (2005).

₱240,000.00 and ₱4 Million loans. The Court sees no real issue as regards the ₱5.7 Million credit line since it is as plain as day that the entire ₱5.7 Million was not availed of by Spouses Sia and that the real estate mortgages securing such credit line were cancelled in their favor. Spouses Sia thwart the issue towards the ₱5.7 Million credit line when the real issue is their non-payment of ₱4 Million and ₱240,000.00 loans, which eventually led to the extrajudicial foreclosure of TCT No. 102434.

It is a settled rule of law that foreclosure is proper when the debtors are in default of the payment of their obligation.[51] As the CA had appositely considered, due to Spouses Sia's failure to pay their loans covered by Promissory Notes (PN) Nos. 90/98 and 90/152, the extrajudicial foreclosure of the real estate mortgage is valid and binding against them:

> Finding for the non-payment of obligations covered by PN Nos. 90/98 and 90/152, Sps. Sia's prayer to declare null and void the extrajudicial foreclosure of the subject real estate mortgage is now foiled. Therefore, the extrajudicial foreclosure and the corresponding certificate of sale executed on August 9, 1993 for the subject real estate property covered by TCT No. 102434 which sought to reach the property and subject it to the payment of Sps. Sia's obligations was valid and binding. We further rule that for failure of Sps. Sia to exercise the right of redemption, the right o consolidate ownership on the foreclosed property was validly exercised by BPI.[52]

Prayer for Issuance of Writ of Preliminary Injunction must be denied

In their Extremely Urgent Reiterative Motion For Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction filed on October 17, 2013, Spouses Sia referred to the ruling of this Court in *Cometa v. Intermediate Appellate Court*[53] where it was held that an issue in a separate case

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[51] *TML Gasket Industries, Inc. v. BPI Family Savings Bank, Inc.*, G.R. No. 188768, January 7, 2013, 688 SCRA 50, 59.

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

[53] 235 Phil. 569 (1987).

wherein the validity of levy and sale of properties is questioned[,] is one that requires pre-emptive resolution.[54]

A scrutiny of the above-cited case reveals that it is not applicable to this case. In *Cometa*, the property which was the subject of dispute was sold after levy and execution when the judgment award was not satisfied in another case for damages. Therein petitioner Herco Realty, assailed the validity of the execution sale and contended that the ownership of the lots had been transferred to it by Cometa before such execution sale. The ownership of the property sold in the execution sale was put into the very issue.

Whereas in this case, the property owned by Spouses Sia covered by TCT No. 102434 was mortgaged to BPI as security for their loans. The same property was sold after it was extrajudicially foreclosed. Hence, the facts in *Cometa* and this case cannot be any more different. Spouses Sia cannot invoke the application of the Court's ruling in *Cometa* to a case which is poles apart to it.

The pending suit questioning the validity of the extrajudicial foreclosure of mortgage does not entitle Spouses Sia to a suspension of the issuance of writ of possession. The Court calls to mind its ruling in *Baldueza v. CA*:[55]

The Court upholds the decision of the Court of Appeals as respondent bank is entitled to possession of the subject property. In several cases,[56] this Court has held:

> "It is settled [that] the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale.

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[54] *Id*. at 574.

[55] G.R. No. 155813, October 15, 2008, 569 SCRA 135.

[56] *LZK Holdings and Development Corporation v. Planters Development Bank,* 550 Phil. 825, 833 (2007); *Chailease Finance, Corporation v. Spouses Ma,* 456 Phil. 498, 504 (2003); *Vda. de Zaballero v. Court of Appeals,* G.R. No. 106958, February 9, 1994, 229 SCRA 810, 814; *F. David Enterprises v. Insular Bank of Asia and America*, G.R. No. 78714, November 21, 1990, 191 SCRA 516, 523.

As such, he is entitled to the possession of the property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act 3135 as amended. **No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court."**

The facts show that petitioner mortgaged the subject property to respondent bank. Upon maturity of the loan, petitioner failed to pay the loan despite demand. The property was foreclosed and sold in a public auction where respondent bank was the highest bidder. Petitioner failed to redeem the property within the one-year redemption period. Respondent bank consolidated its ownership over the property and a new title was issued in its favor. Hence, it became the ministerial duty of the court to issue the writ of possession applied for by respondent bank. **Despite the pending suit for annulment of the mortgage and Notice of Sheriff's Sale, respondent bank is entitled to a writ of possession, without prejudice to the eventual outcome of the said case.**[57] (Citation omitted and emphasis and underscoring ours)

Based on the reasons discussed above, the Court holds that there is no basis for the issuance of a Temporary Restraining Order/Writ of Preliminary Injunction to enjoin the enforcement of the third notice to vacate dated October 8, 2013.

Reduction of Attorney's Fees and Litigation Expenses is in order

The Court is in consonance with the CA and RTC that BPI is entitled to receive rental fees as the new owner of the property covered by TCT No. 102434 (Now TCT No. 130468),[58] following the Court's ruling in *F. David Enterprises v. Insular Bank of*

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[57] *Supra* note 55, at 139-140.

[58] *Rollo* p. 146.

Asia and America,[59] that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale.[60]

Also, the Court agrees with the RTC and CA that the award of attorney's fees and litigation expenses is warranted owing to the fact that BPI was compelled to engage the services of a counsel to protect its rights. It is so stated under Article 2208 of the Civil Code that attorney's fees and expenses of litigation may be recovered by a party when an act or omission has compelled him to litigate with third persons or to incur expenses to protect his interest. However, the Court deems the award of ₱500,000.00 as attorney's fees and ₱50,000 for litigation expenses, as excessive, considering the nature of this case. Award of attorney's fees, being part of a party's liquidated damages, may be equitably reduced.[61]

WHEREFORE, the instant petition is **DENIED.** The Decision dated July 25, 2007 and Resolution dated February 8, 2008 of the Court of Appeals are **AFFIRMED with MODIFICATIONS.** The award of attorney's fees and litigation expenses are hereby reduced to ₱50,000.00.

The prayer for the issuance of a Temporary Restraining Order/ Writ of Preliminary Injunction is **DENIED.**

SO ORDERED.

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

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[59] G.R. No. 78714, November 21, 1990, 191 SCRA 516.

[60] *Id.* at 523.

[61] *BPI, Inc. v. Yu,* G.R. No. 184122, January 20, 2010, 610 SCRA 412, 425, citing *Co v. Admiral United Savings Bank*, 574 Phil. 609, 618-619 (2008).

SECOND DIVISION

[G.R. No. 183923. November 27, 2013]

GENEROSO ENESIO, *petitioner, vs.* **LILIA TULOP, substituted by her heirs, namely: MILAGROS T. ASIA, MATTHEW N. TULOP and RESTITUTO N. TULOP, JR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; REVISED RULES ON SUMMARY PROCEDURE; PROVIDES THAT EJECTMENT CASES MERELY REQUIRE THE SUBMISSION BY THE PARTIES OF AFFIDAVITS AND POSITION PAPERS.—** As expressly provided in the Revised Rules on Summary Procedure, ejectment cases merely require the submission by the parties of affidavits and position papers. The rule directs courts to conduct hearings only when necessary to clarify factual matters. "This procedure is in keeping with the objective of the Rule of promoting the expeditious and inexpensive determination of cases."

2. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; TENANCY RELATIONSHIP; EXISTS WHEN THERE IS SHARING OF PRODUCE BETWEEN THE TENANT AND THE LANDOWNER.—** The issue of sharing of harvests between the petitioner and Lilia is a factual issue the Court should not bother in a Rule 45 petition. Nevertheless, if only to lay this issue to rest, the Court confirms that there was never any harvest sharing between the parties to make the petitioner the tenant of Lilia; this has been the consistent factual finding in the courts below and this finding binds this Court in the absence of any compelling reason showing that it is tainted with infirmity. The Court has repeatedly emphasized that sharing of produce must exist between the tenant and the landowner for tenancy relationship to exist. In the absence of this factual basis, the lower tribunals were correct in upholding the jurisdiction of the MTC over the ejectment case.

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT**

BROUGHT TO THE ATTENTION OF THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— The Court may not entertain the petitioner's *new theory* that there existed tenancy relationship between him and the previous owners of the land, and that Lilia must respect and continue that tenancy relationship. The petitioner never raised this issue before the lower tribunals, save in his motion for reconsideration before the CA. For the Court to accept the petitioner's new theory runs counter to the rule we have held in the past: "*points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule*."

APPEARANCES OF COUNSEL

Bureau of Agrarian Legal Assistance for petitioner.
Manuel S. Paradela for respondents.

D E C I S I O N

BRION, *J*.:

Petitioner Generoso Enesio seeks – through this petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court – the reversal of the decision[2] dated October 25, 2006 and the resolution[3] dated May 29, 2008 of the Court of Appeals *(CA)* in CA-G.R. CEB-SP No. 01662.

THE FACTS

On August 4, 2003, Lilia Tulop (substituted by her heirs, namely: Milagros T. Asia, Matthew N. Tulop, and Restituto N. Tulop, Jr., on appeal before the Court) sued petitioner Generoso

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[1] *Rollo*, pp. 2-16.

[2] *Id*. at 19-26; penned by Associate Justice Agustin S. Dizon, and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

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

Enesio for *"Ejectment, Damages, and Other Relief"* before the Municipal Trial Court (*MTC*) of San Fernando, Cebu.

Lilia alleged that she was the owner of the lot in possession of the petitioner whose possession was by her (the respondent's) mere tolerance. When Lilia notified the petitioner that she needed the property for the construction of a store, the petitioner ignored her demands. As a result, on June 18, 2003, Lilia, through her lawyer, formally sent the petitioner a letter demanding that the petitioner vacate the premises. A case arose before the MTC because of the petitioner's continued refusal to vacate the premises.

The petitioner filed his Answer before the MTC and claimed that he had been an agricultural tenant of the land; that the case was an agrarian dispute cognizable by the Department of Agrarian Reform Adjudication Board; and hence, the MTC must dismiss the case for lack of jurisdiction.

At the preliminary conference, the parties agreed on the following stipulation of facts: 1) the petitioner was not registered as a tenant as shown by the certification from the Municipal Agrarian Reform Officer of San Fernando, Cebu; 2) the petitioner was occupying a portion of the lot subject matter of the case; 3) the petitioner recently planted bananas in a small portion of the lot but he had been occupying the lot as a tenant and planted crops thereon with the consent of the previous owner; 4) the petitioner had not given any share of the harvest to Lilia but had been sharing his harvest with the original owner, Gregorio Navarro (father of Lilia), then to Margarita Navarro, the caretaker, and eventually to Emilio Navarro; and 5) the title of the subject lot was issued in December 1994.

THE MTC's AND THE RTC's RULINGS

In its February 24, 2004 decision,[4] the MTC exercised jurisdiction over the case and held that the petitioner was not Lilia's agricultural tenant. As the petitioner's possession was by Lilia's mere tolerance, the petitioner must vacate the property

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[4] Penned by Judge Glenda C. Go, MTC of San Fernando, Cebu; *id*. at 151-157.

when so required by her. The Regional Trial Court (*RTC*) fully affirmed the MTC's decision.[5]

THE CA's RULING

The petitioner appealed the RTC's ruling to the CA.

In its October 25, 2006 decision,[6] **the CA affirmed the RTC's ruling.** The CA ruled that the MTC does not lose jurisdiction over ejectment cases simply because tenancy relationship has been raised as a defense. It is only upon determination, after hearing, that tenancy relationship exists that the MTC must dismiss the case for want of jurisdiction.

The MTC concluded, after hearing, that tenancy *did not exist* between the parties. In fact, the petitioner himself admitted that he had never shared any of his harvests with Lilia. Thus, sharing of harvest, an important element of tenancy relationship, was missing.

On May 29, 2008, the CA denied the petitioner's motion for reconsideration.

On August 18, 2009, the petitioner died. No substitution has been made up to this date.

THE PARTIES' ARGUMENTS

The petitioner filed the present petition for review on *certiorari* to challenge the CA rulings. The petitioner pointed out that the MTC merely proceeded with the pre-trial conference and required the parties to submit position papers. He posited that the MTC should have conducted a preliminary hearing and received evidence to determine the existence of a tenancy relationship between the parties. The petitioner cited in this regard the procedures laid down by the Court in *Bayog v. Hon. Natino.*[7]

The petitioner also claimed that the lower tribunals misappreciated the established facts clearly brought out and

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[5] *Id*. at 22.

[6] *Supra* note 2.

[7] 327 Phil. 1019 (1996).

recorded during the pre-trial conference, to wit: 1) the petitioner had shared harvests with the previous owners of the land; and 2) there had been tenancy relationship between the previous owners of the land and the petitioner. These facts point to the conclusion that Lilia must respect the tenancy relationship between the previous landowner, the respondent's predecessor, and the petitioner, as provided for in Section 10[8] of Republic Act No. 3844.

In her comment to the petition,[9] Lilia reiterated that the petitioner himself admitted that he never shared harvests with her. While the petitioner shared the produce with the relatives and with the caretaker of Lilia, such sharing was not with Lilia in the absence of proof to that effect. In the absence of sharing of harvests between Lilia and the petitioner, tenancy cannot exist.

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

Bayog v. Hon. Natino **is not applicable; in ejectment cases, hearing is summary**

As the CA correctly held, the petitioner's reference to *Bayog* is misplaced as the factual situation in that case does not obtain in the present case.

In *Bayog*, the Court faulted the Municipal Circuit Trial Court (*MCTC*) for not receiving the defendant's belated Answer. As ruled by the Court, had the MCTC not refrained from receiving the defendant's Answer, the MCTC would have found that the

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[8] Section 10. *Agricultural Leasehold Relation Not Extinguished by Expiration of Period, etc.* — The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

[9] *Rollo*, pp. 178-181.

defendant raised tenancy as an issue. While tenancy as a defense in ejectment cases does not automatically divest the MCTC of its jurisdiction over ejectment cases, the MCTC should have heard and received evidence to determine whether the MCTC had jurisdiction over the case. If tenancy had indeed been an issue, the MCTC had no option but to dismiss the case for lack of jurisdiction.[10]

In the present case, the MTC correctly observed the proper procedure in ejectment cases. As expressly provided in the Revised Rules on Summary Procedure, ejectment cases merely require the submission by the parties of affidavits and position papers. The rule directs courts to conduct hearings only when necessary to clarify factual matters. "This procedure is in keeping with the objective of the Rule of promoting the expeditious and inexpensive determination of cases."[11]

Therefore, the petitioner's assertion that the MTC did not receive testimonial or documentary evidence in resolving the case is not correct. In fact, it is from the evidence furnished by the parties that the MTC concluded that the petitioner never shared his produce with Lilia. Expectedly, the MTC ruled that the petitioner was not Lilia's tenant and in this light, it had jurisdiction over the case.

Absence of harvest sharing belies claim of tenancy relationship; issues never raised before the trial court may not be ruled upon

The issue of sharing of harvests between the petitioner and Lilia is a factual issue the Court should not bother in a Rule 45 petition. Nevertheless, if only to lay this issue to rest, the Court confirms that there was never any harvest sharing between the parties to make the petitioner the tenant of Lilia; this has been the consistent factual finding in the courts below and this finding

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[10] *Supra* note 7, at 1037.

[11] *Odsigue v. Court of Appeals*, G.R. No. 111179, July 4, 1994, 233 SCRA 626, 630.

binds this Court in the absence of any compelling reason showing that it is tainted with infirmity. The Court has repeatedly emphasized that sharing of produce must exist between the tenant and the landowner for tenancy relationship to exist.[12] In the absence of this factual basis, the lower tribunals were correct in upholding the jurisdiction of the MTC over the ejectment case.

The Court may not entertain the petitioner's *new theory* that there existed tenancy relationship between him and the previous owners of the land, and that Lilia must respect and continue that tenancy relationship. The petitioner never raised this issue before the lower tribunals, save in his motion for reconsideration before the CA. For the Court to accept the petitioner's new theory runs counter to the rule we have held in the past: "*points of law, theories, issues and arguments not brought to the attention of the trial court will not be and ought not to be considered by a reviewing court, as these cannot be raised for the first time on appeal. Basic consideration of due process impels this rule*."[13]

WHEREFORE, in light of these considerations, the Court **DENIES** the petition for review on *certiorari*. The decision dated October 25, 2006 and the resolution dated May 29, 2008 of the Court of Appeals in CA-G.R. CEB-SP No. 01662 are hereby **AFFIRMED.**

SO ORDERED.

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

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[12] See *Gelos v. Court of Appeals*, G.R. No. 86186, May 8, 1992, 208 SCRA 608, 614; and *De la Cruz v. Bautista*, G.R. No. 39695, June 14, 1990, 186 SCRA 517, 527.

[13] *Mark Anthony Esteban, etc. v. Spouses Rodrigo C. Marcelo and Carmen T. Marcelo*, G.R. No. 197725, July 31, 2013, citing *Nunez v. SLTEAS Phoenix Solutions, Inc.*, G.R. No. 180542, April 12, 2010, 618 SCRA 134, 145; italics ours.

SECOND DIVISION

[G.R. No. 186433. November 27, 2013]

NUCCIO SAVERIO and NS INTERNATIONAL, INC., *petitioners, vs.* **ALFONSO G. PUYAT,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS; WHEN THE FINDINGS ARE GROUNDED ENTIRELY ON SPECULATION, SURMISES OR CONJECTURES.—** While we find the fact of indebtedness to be undisputed, the determination of the extent of the adjudged money award is not, because of the lack of any supporting documentary and testimonial evidence. These evidentiary issues, of course, are necessarily factual, but as we held in *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, this Court may take cognizance even of factual issues under exceptional circumstances, as x x x (1) **when the findings are grounded entirely on speculation, surmises or conjectures.**

2. **COMMERCIAL LAW; CORPORATION LAW; CORPORATION HAS PERSONALITY SEPARATE AND DISTINCT FROM ITS OFFICERS AND STOCKHOLDERS; ELUCIDATED.—** The rule is settled that a corporation is vested by law with a personality separate and distinct from the persons composing it. Following this principle, a stockholder, generally, is not answerable for the acts or liabilities of the corporation, and vice versa. The obligations incurred by the corporate officers, or other persons acting as corporate agents, are the direct accountabilities of the corporation they represent, and not theirs. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation and while there may be instances where solidary liabilities may arise, these circumstances are exceptional. Incidentally, we have ruled that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stocks of the corporation is not, by itself, a sufficient ground for disregarding the separate corporate personality. Other than mere ownership of capital stocks,

circumstances showing that the corporation is being used to commit fraud or proof of existence of absolute control over the corporation have to be proven. In short, before the corporate fiction can be disregarded, alter-ego elements must first be sufficiently established.

3. **ID.; ID.; ID.; PIERCING THE VEIL DOCTRINE; REQUIREMENTS.—** [I]n order for the ground of corporate ownership to stand, the following circumstances should be established: (1) that the stockholders had control or complete domination of the corporation's finances and that the latter had no separate existence with respect to the act complained of; (2) that they used such control to commit a wrong or fraud; and (3) the control was the proximate cause of the loss or injury.

4. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS WITH PENAL CLAUSE; JUDGE SHALL EQUITABLY REDUCE THE PENALTY WHEN DEBTOR HAS PARTLY COMPLIED WITH THE PRINCIPAL OBLIGATION; AWARD OF ATTORNEY'S FEES PROPER IN CASE AT BAR.—** On the issue of the award of attorney's fees, Article 1229 of the New Civil Code provides: The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. Under the circumstances of the case, we find the respondent's entitlement to attorney's fees to be justified. There is no doubt that he was forced to litigate to protect his interest, *i.e.*, to recover his money. We find, however, that in view of the partial payment of ₱600,000.00, the award of attorney's fees equivalent to 25% should be reduced to 10% of the total amount due.

APPEARANCES OF COUNSEL

Gepty & Jose Law Offices for petitioners.
Federico N. Alday, Jr. for respondent.

DECISION

BRION, *J*.:

We resolve the petition for review on *certiorari*,[1] filed by petitioners Nuccio Saverio and NS International, Inc. (*NSI*) against respondent Alfonso G. Puyat, challenging the October 27, 2008 decision[2] and the February 10, 2009 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV. No. 87879. The CA decision affirmed the December 15, 2004 decision[4] of the Regional Trial Court (*RTC*) of Makati City, Branch 136, in Civil Case No. 00-594. The CA subsequently denied the petitioners' motion for reconsideration.

The Factual Antecedents

On July 22, 1996, the respondent granted a loan to NSI. The loan was made pursuant to the Memorandum of Agreement and Promissory Note (*MOA*)[5] between the respondent and NSI, represented by Nuccio. It was agreed that the respondent would extend a credit line with a limit of ₱500,000.00 to NSI, to be paid within thirty (30) days from the time of the signing of the document. The loan carried an interest rate of 17% per annum, or at an adjusted rate of 25% per annum if payment is beyond the stipulated period. The petitioners received a total amount of ₱300,000.00 and certain machineries intended for their fertilizer processing plant business (*business*). The proposed business, however, failed to materialize.

On several occasions, Nuccio made personal payments amounting to ₱600,000.00. However, as of December 16, 1999, the petitioners allegedly had an outstanding balance of

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 9-20.

[2] *Id*. at 23-34; penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Jose C. Mendoza and Sesinando E. Villon.

[3] *Id*. at 36-39.

[4] *Id*. at 95-108; penned by Judge Rebecca R. Mariano.

[5] *Id*. at 52-54.

₱460,505.86. When the petitioners defaulted in the payment of the loan, the respondent filed a collection suit with the RTC, alleging mainly that the petitioners still owe him the value of the machineries as shown by the Breakdown of Account[6] he presented.

The petitioners refuted the respondent's allegation and insisted that they have already paid the loan, evidenced by the respondent's receipt for the amount of ₱600,000.00. They submitted that their remaining obligation to pay the machineries' value, if any, had long been extinguished by their business' failure to materialize. They posited that, even assuming without conceding that they are liable, the amount being claimed is inaccurate, the penalty and the interest imposed are unconscionable, and an independent accounting is needed to determine the exact amount of their liability.

The RTC Ruling

In its decision dated December 15, 2004, the RTC found that aside from the cash loan, the petitioners' obligation to the respondent also covered the payment of the machineries' value. The RTC also brushed aside the petitioners' claim of partnership. The RTC thus ruled that the payment of ₱600,000.00 did not completely extinguish the petitioners' obligation.

The RTC also found merit in the respondent's contention that the petitioners are one and the same. Based on Nuccio's act of entering a loan with the respondent for purposes of financing NSI's proposed business and his own admission during cross-examination that the word "NS" in NSI's name stands for "Nuccio Saverio," the RTC found that the application of the doctrine of piercing the veil of corporate fiction was proper.

The RTC, moreover, concluded that the interest rates stipulated in the MOA were not usurious and that the respondent is entitled to attorney's fees on account of the petitioners' willful breach of the loan obligation. Thus, principally relying on the submitted Breakdown of Account, the RTC ordered the petitioners, jointly

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

and severally, to pay the balance of ₱460,505.86, at 12% interest, and attorney's fees equivalent to 25% of the total amount due.

The CA Ruling

The petitioners appealed the RTC ruling to the CA. There, they argued that in view of the lack of proper accounting and the respondent's failure to substantiate his claims, the exact amount of their indebtedness had not been proven. Nuccio also argued that by virtue of NSI's separate and distinct personality, he cannot be made solidarily liable with NSI.

On October 27, 2008, the CA rendered a decision[7] declaring the petitioners jointly and severally liable for the amount that the respondent sought. The appellate court likewise held that since the petitioners neither questioned the delivery of the machineries nor their valuation, their obligation to pay the amount of ₱460,505.86 under the Breakdown of Account remained unrefuted.

The CA also affirmed the RTC ruling that petitioners are one and the same for the following reasons: (1) Nuccio owned forty percent (40%) of NSI; (2) Nuccio personally entered into the loan contract with the respondent because there was no board resolution from NSI; (3) the petitioners were represented by the same counsel; (4) the failure of NSI to object to Nuccio's acts shows the latter's control over the corporation; and (5) Nuccio's control over NSI was used to commit a wrong or fraud. It further adopted the RTC's findings of bad faith and willful breach of obligation on the petitioners' part, and affirmed its award of attorney's fees.

The Petition

The petitioners submit that the CA gravely erred in ruling that a proper accounting was not necessary. They argue that the Breakdown of Account — which the RTC used as a basis in awarding the claim, as affirmed by the CA — is hearsay since the person who prepared it, Ramoncito P. Puyat, was not presented in court to authenticate it. They also point to the absence

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[7] *Supra* note 2.

of the award's computation in the RTC ruling, arguing that assuming they are still indebted to the respondent, the specific amount of their indebtedness remains undetermined, thus the need for an accounting to determine their exact liability.

They further question the CA's findings of solidary liability. They submit that in the absence of any showing that corporate fiction was used to defeat public convenience, justify a wrong, protect fraud or defend a crime, or where the corporation is a mere alter ego or business conduit of a person, Nuccio's mere ownership of forty percent (40%) does not justify the piercing of the separate and distinct personality of NSI.

The Case for the Respondent

The respondent counters that the issues raised by the petitioners in the present petition – pertaining to the correctness of the calibration of the documentary and testimonial evidence by the RTC, as affirmed by the CA, in awarding the money claims – are essentially factual, not legal. These issues, therefore, cannot, as a general rule, be reviewed by the Supreme Court in an appeal by *certiorari*. In other words, the resolution of the assigned errors is beyond the ambit of a Rule 45 petition.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in affirming the RTC's decision holding the petitioners jointly and severally liable for the amount claimed.

Our Ruling

After a review of the parties' contentions, we hold that a remand of the case to the court of origin for a complete accounting and determination of the actual amount of the petitioners' indebtedness is called for.

The determination of questions of fact is improper in a Rule 45 proceeding; Exceptions.

The respondent questions the present petition's propriety, and contends that in a petition for review on *certiorari* under

Rule 45 of the Rules of Court, only questions of law may be raised. He argues that the petitioners are raising factual issues that are not permissible under the present petition and these issues have already been extensively passed upon by the RTC and the CA.

The petitioners, on the other hand, assert that the exact amount of their indebtedness has not been determined with certainty. They insist that the amount of ₱460,505.86 awarded in favor of the respondent has no basis because the latter failed to substantiate his claim. They also maintain that the Breakdown of Account used by the lower courts in arriving at the collectible amount is unreliable for the respondent's failure to adduce supporting documents for the alleged additional expenses charged against them. With no independent determination of the actual amount of their indebtedness, the petitioners submit that an order for a proper accounting is imperative.

We agree with the petitioners. While we find the fact of indebtedness to be undisputed, the determination of the extent of the adjudged money award is not, because of the lack of any supporting documentary and testimonial evidence. These evidentiary issues, of course, are necessarily factual, but as we held in *The Insular Life Assurance Company, Ltd. v. Court of Appeals*,[8] this Court may take cognizance even of factual issues under exceptional circumstances. In this cited case, we held:

> It is a settled rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the CA are conclusive and binding on the Court. However, the Court had recognized several exceptions to this rule, to wit: (1) **when the findings are grounded entirely on speculation, surmises or conjectures**; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in

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[8] G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86; emphasis ours, citations omitted.

making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

We note in this regard that the RTC, in awarding the amount of ₱460,505.86 in favor of the respondent, principally relied on the Breakdown of Account. Under this document, numerous entries, including the cash loan, were enumerated and identified with their corresponding amounts. It included the items of expenses allegedly chargeable to the petitioners, the value of the machineries, the amount credited as paid, and the interest and penalty allegedly incurred.

A careful perusal of the records, however, reveals that the entries in the Breakdown of Account and their corresponding amounts are not supported by the respondent's presented evidence. The itemized expenses, as repeatedly pointed out by the petitioners, were not proven, and the remaining indebtedness, after the partial payment of ₱600,000.00, was merely derived by the RTC from the Breakdown of Account.

Significantly, the RTC ruling neither showed how the award was computed nor how the interest and penalty were calculated. In fact, it merely declared the petitioners liable for the amount claimed by the respondent and adopted the breakdown of liability in the Breakdown of Account. This irregularity is even aggravated by the RTC's explicit refusal to explain why the payment of ₱600,000.00 did not extinguish the debt. While it may be true that the petitioners' indebtedness, aside from the cash loan of ₱300,000.00, undoubtedly covered the value of the machineries, the RTC decision was far from clear and instructive on the actual remaining indebtedness (inclusive of the machineries'

value, penalties and interests) after the partial payment was made and how these were all computed.

We, thus, find it unacceptable for the RTC to simply come up with a conclusion that the payment of ₱600,000.00 did not extinguish the debt, or, assuming it really did not, that the remaining amount of indebtedness amounts exactly to ₱460,505.86, without any showing of how this balance was arrived at. To our mind, the RTC's ruling, in so far as the determination of the actual indebtedness is concerned, is incomplete.

What happened at the RTC likewise transpired at the CA when the latter affirmed the appealed decision; the CA merely glossed over the contention of the petitioners, and adopted the RTC's findings without giving any enlightenment. To reiterate, nowhere in the decisions of the RTC and the CA did they specify how the award, including the penalty and interest, was determined. The petitioners were left in the dark as to how their indebtedness of ₱300,000.00, after making a payment of ₱600,000.00, ballooned to ₱460,505.86. Worse, unsubstantiated expenses, appearing in the Breakdown of Account, were charged to them.

We, therefore, hold it inescapable that the prayer for proper accounting to determine the petitioners' actual remaining indebtedness should be granted. As this requires presentation of additional evidence, a remand of the case is only proper and in order.

Piercing the veil of corporate fiction is not justified. The petitioners are not one and the same.

At the outset, we note that the question of whether NSI is an alter ego of Nuccio is a factual one. This is also true with respect to the question of whether the totality of the evidence adduced by the respondent warrants the application of the piercing the veil of corporate fiction doctrine. As we did in the issue of accounting, we hold that the Court may properly wade into the piercing the veil issue although purely factual questions are involved.

After a careful study of the records and the findings of both the RTC and the CA, we hold that their conclusions, based on the given findings, are not supported by the evidence on record.

The rule is settled that a corporation is vested by law with a personality separate and distinct from the persons composing it. Following this principle, a stockholder, generally, is not answerable for the acts or liabilities of the corporation, and vice versa. The obligations incurred by the corporate officers, or other persons acting as corporate agents, are the direct accountabilities of the corporation they represent, and not theirs. A director, officer or employee of a corporation is generally not held personally liable for obligations incurred by the corporation[9] and while there may be instances where solidary liabilities may arise, these circumstances are exceptional.[10]

Incidentally, we have ruled that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stocks of the corporation is not, by itself, a sufficient ground for disregarding the separate corporate personality. Other than mere ownership of capital stocks, circumstances showing that the corporation is being used to commit fraud or proof of existence of absolute control over the corporation have to be proven. In short, before the corporate fiction can be disregarded, alter-ego elements must first be sufficiently established.

In *Hi-Cement Corporation v. Insular Bank of Asia and America (later PCI-Bank, now Equitable PCI-Bank)*,[11] we refused to apply the piercing the veil doctrine on the ground that the corporation was a mere alter ego because mere ownership by a stockholder of all or nearly all of the capital stocks of a corporation does not, by itself, justify the disregard of the separate corporate personality. In this cited case, we ruled that in order for the ground of corporate ownership to stand, the following circumstances should also be established: (1) that the stockholders

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[9] *Heirs of Fe Tan Uy v. International Exchange Bank*, G.R. Nos. 166282 and 166283, February 13, 2013, 690 SCRA 519, 525-526.

[10] *MAM Realty Dev't. Corp. v. NLRC*, 314 Phil. 838, 844-845 (1995).

[11] 560 Phil. 535 (2007).

had control or complete domination of the corporation's finances and that the latter had no separate existence with respect to the act complained of; (2) that they used such control to commit a wrong or fraud; and (3) the control was the proximate cause of the loss or injury.

Applying these principles to the present case, we opine and so hold that the attendant circumstances do not warrant the piercing of the veil of NSI's corporate fiction.

Aside from the undisputed fact of Nuccio's 40% shareholdings with NSI, the RTC applied the piercing the veil doctrine based on the following reasons. *First*, there was no board resolution authorizing Nuccio to enter into a contract of loan. *Second*, the petitioners were represented by one and the same counsel. *Third*, NSI did not object to Nuccio's act of contracting the loan. *Fourth*, the control over NSI was used to commit a wrong or fraud. *Fifth*, Nuccio's admission that "NS" in the corporate name "NSI" means "Nuccio Saverio."

We are not convinced of the sufficiency of these cited reasons. In our view, the RTC failed to provide a clear and convincing explanation why the doctrine was applied. It merely declared that its application of the doctrine of piercing the veil of corporate fiction has a basis, specifying for this purpose the act of Nuccio's entering into a contract of loan with the respondent and the reasons stated above.

The records of the case, however, do not show that Nuccio had control or domination over NSI's finances. The mere fact that it was Nuccio who, in behalf of the corporation, signed the MOA is not sufficient to prove that he exercised control over the corporation's finances. Neither the absence of a board resolution authorizing him to contract the loan nor NSI's failure to object thereto supports this conclusion. These may be indicators that, among others, may point the proof required to justify the piercing the veil of corporate fiction, but by themselves, they do not rise to the level of proof required to support the desired conclusion. It should be noted in this regard that while Nuccio was the signatory of the loan and the money was delivered to

him, the proceeds of the loan were unquestionably intended for NSI's proposed business plan. That the business did not materialize is not also sufficient proof to justify a piercing, in the absence of proof that the business plan was a fraudulent scheme geared to secure funds from the respondent for the petitioners' undisclosed goals.

Considering that the basis for holding Nuccio liable for the payment of the loan has been proven to be insufficient, we find no justification for the RTC to hold him jointly and solidarily liable for NSI's unpaid loan. Similarly, we find that the CA ruling is wanting in sufficient explanation to justify the doctrine's application and affirmation of the RTC's ruling. With these points firmly in mind, we hold that NSI's liability should not attach to Nuccio.

On the final issue of the award of attorney's fees, Article 1229 of the New Civil Code provides:

> Article 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

Under the circumstances of the case, we find the respondent's entitlement to attorney's fees to be justified. There is no doubt that he was forced to litigate to protect his interest, *i.e.*, to recover his money. We find, however, that in view of the partial payment of ₱600,000.00, the award of attorney's fees equivalent to 25% should be reduced to 10% of the total amount due. The award of appearance fee of ₱3,000.00 and litigation cost of ₱10,000.00 should, however, stand as these are costs necessarily attendant to litigation.

WHEREFORE, the petition is **GRANTED.** The October 27, 2008 decision and the February 10, 2009 resolution of the Court of Appeals in CA-G.R. CV. No. 87879 are **REVERSED AND SET ASIDE.** The case is **REMANDED** to the Regional Trial Court of Makati City, Branch 136, for proper accounting and reception of such evidence as may be needed to determine the actual amount of petitioner NS International, Inc.'s

indebtedness, and to adjudicate respondent Alfonso G. Puyat's claims as such evidence may warrant.

SO ORDERED.

Carpio (Chairperson), del Castillo, Abad,[*] and *Perez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 190180. November 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARISSA CASTILLO *Y* ALIGNAY,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; RULE THAT NO NEW ISSUE MAY BE RAISED FOR THE FIRST TIME ON APPEAL; RULE RELAXED CONSIDERING THE GRAVITY OF ITS CONSEQUENCES ON THE LIBERTY OF APPELLANT.—** [A]ppellant did not raise the issue of the alleged non-compliance with the [questioned] procedural rule when the case was still being heard in the trial court. In *People v. Robelo*, we ruled that this assertion must be argued before the trial court and not on appeal for the first time. x x x Nevertheless, we will still pass upon this question considering the gravity of its consequences on the liberty of appellant.

2. **CRIMINAL LAW; DANGEROUS DRUGS ACT; CUSTODY AND DISPOSITION OF DANGEROUS DRUGS; NON-COMPLIANCE MAY BE OVERLOOKED AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE**

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[*] Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1619 dated November 22, 2013.

SEIZED ITEMS ARE PRESERVED.— [N]on-compliance with Section 21 does not necessarily render the arrest illegal or the items seized inadmissible because what is essential is that the integrity and evidentiary value of the seized items are preserved which would be utilized in the determination of the guilt or innocence of the accused. Moreover, despite the seemingly mandatory language used in the procedural rule at issue, a perusal of Section 21, Article II of the Implementing Rules and Regulations of Republic Act No. 9165 reveals the existence of a clause which may render non-compliance with said procedural rule non-prejudicial to the prosecution of drug offenses.

3. **ID.; ID.; CHAIN OF CUSTODY.—** Essentially, Section 21(1) of Republic Act No. 9165 ensures that the chain of custody of the seized drugs to be used in evidence must be complete and unbroken. We have defined "chain of custody" as the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. We reiterated the importance of the chain of custody as a means of validating evidence in the recent case of *People v. Del Rosario.*

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF POLICE OFFICERS, UPHELD.—** [T]he successful prosecution of drug cases is dependent, in large part, to the credibility of the police officers who conducted the buy-bust operation. In this case, we find no reason to question the credibility of the prosecution witnesses considering that, time and again, we have held that the determination of the credibility of witnesses by the trial court, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect.

5. **ID.; ID.; DENIAL MERELY CORROBORATED BY A RELATIVE, NOT APPRECIATED.—** [T]he defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act. Furthermore, we have recently reiterated that we give less probative weight to a defense of alibi when it is corroborated by friends and relatives. We apply

the same principle in the case at bar and declare that for the defense of denial to prosper, like alibi, it is necessary that the corroboration is credible, the same having been offered preferably by disinterested witnesses. In so doing, we regard the testimony of appellant's daughter, which in no way can be considered as disinterested and unbiased, as invalid corroboration unworthy of belief.

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.*:

Before the Court, appellant seeks to appeal the Decision[1] dated August 13, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03337 entitled, *People of the Philippines v. Marissa Castillo y Alignay*, which affirmed the Decision[2] dated November 9, 2007 of the Regional Trial Court (RTC) of Pasig City, Branch 154, in Criminal Case Nos. 15167-D and 15168-D. The trial court convicted appellant Marissa Castillo *y* Alignay of violation of Section 5 and Section 11 (sale and possession of illegal drugs, respectively), Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

In Criminal Case No. 15167-D, appellant was charged in an Information[3] that read:

On or about October 24, 2006, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and

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[1] *Rollo*, pp. 2-16; penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Arcangelita M. Romilla-Lontok and Romeo F. Barza, concurring.

[2] CA *rollo*, pp. 12-29.

[3] Records, p. 1.

knowingly sell, deliver and give away to PO2 Thaddeus Santos, a police poseur buyer, one (1) heat-sealed transparent plastic bag containing four centigram (0.04 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

While the pertinent portion of the Information[4] filed in Criminal Case No. 15168-D stated:

On or about October 24, 2006, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his [sic] possession and under his [sic] custody and control two (2) heat sealed transparent bags each containing four (4) centigram (0.04 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Upon arraignment, appellant entered pleas of "NOT GUILTY" to both charges. Afterwards, trial followed with the prosecution presenting Police Officer (PO) 2 Thaddeus Santos (PO2 Santos) and PO1 Grace Chavez (PO1 Chavez) as witnesses. On the other hand, appellant and her daughter, Marinell Castillo, took to the witness stand for the defense.

The versions of the prosecution and the defense regarding the events surrounding the arrest and detention of appellant were summarized in the November 9, 2007 Decision of the trial court as follows:

While on duty at the drug enforcement unit of the Eastern Police District, a confidential informant (CI) came and informed PO2 Santos and his colleagues at the said office about the illegal activity of the accused Marissa Castillo and one *alias* "Ompong" who were reported to be selling *shabu* along J.B. Miguel St., Brgy. Bambang, Pasig City. Upon receiving the information, PSI Hoover Pascual, the team leader of the drug enforcement unit conducted a briefing to discuss the details of the buy bust operation that would be undertaken against the accused. PO1 Santos was designated as the poseur buyer and for this purpose was given two (2) pieces of Php100.00 bills (Exhibit[s]

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[4] *Id*. at 17.

F-1 and F-2) by PSI Pascual. PO1 Santos put his initials "TS" on the two zeroes appearing on the right side of the bills. PO1 Grace Chavez was designated as the immediate back up of PO1 Santos. Thereafter, PO2 Quinton, the police investigator assigned to the team, prepared a pre-operation report (Exhibit "D") for the PDEA and a Certificate of Coordination (Exhibit "E") to show that the team coordinated with the PDEA.

At about 8:45 o'clock in the evening of the same day, the team headed by PSI Hoover Pascual with PO3 Florentino, PO3 Rioja, PO2 Quinton, PO1 Grace Chavez and PO2 Santos as members were dispatched together with the CI to the target area at J.B. Miguel St., Brgy. Bambang, Pasig City on board two (2) vehicles. The police team parked their vehicles a block away from the target place. Thereafter, the CI was ordered to look for Marissa C. Castillo and alias Ompong. After a few minutes, the CI came back and told the police officers that he was able to locate Marissa Castillo and *alias* Ompong. With this information, PSI Hoover Pascual instructed his team to proceed with the planned operation, whereupon, PO2 Santos and PO1 Grace Chavez, together with the CI, proceeded to J.B. Miguel St., Brgy. Bambang, with the other members following them. Upon seeing Marissa, the CI introduced PO2 Santos and PO1 Grace Chavez to Marissa as potential buyers. After the introduction, the CI asked Marissa "*meron ka ba ngayon*" referring to *shabu*. In reply, Marissa said "*magkano ang kukunin ninyo*" to which the CI replied. "*pabili ng dos*" and Marissa answered "*meron*" after which she brought out three (3) plastic sachets and then gave one of the plastic sachets to PO2 Santos.

PO2 Santos examined the plastic sachet given to him after which he scratched his head with his right hand which was the pre-arranged signal to signify that the sale had been consummated. PO2 Santos and his companions then introduced themselves as police officers after which PO2 Santos grabbed the left hand of Marissa Castillo. PO2 Santos was able to recover the Php200.00 buy bust money from the left hand of Marissa and the two other plastic sachets (Exhibits G-1 and G-2) containing suspected *shabu*. Marissa's companion, however, was able to run away.

After PO2 Santos had arrested accused Castillo, he informed her of her rights and then put markings on the plastic sachets confiscated from the accused. Thereafter, the accused was brought to the office of the SDEU while the plastic sachets confiscated from the accused

were brought to crime laboratory for examination. The examination shows that the contents of the plastic sachets tested positive for *shabu* (Exhibit "B" – Physical Science Report No. D-486-06-E). PO2 Santos identified the accused Marissa Castillo in open court.

On cross-examination, PO2 Santos was firm in saying that he gave the buy bust money to Marissa Castillo after the latter had handed the illegal substance to him.

Back-up operative PO1 Grace Chavez confirmed the testimony given by her colleague PO2 Santos. She said that she was part of the buy bust operation conducted by the police operatives headed by PSI Pascual against the accused Marissa Castillo at J.B. Miguel St., Bambang, Pasig City on October 24, 2006. She also confirmed the details of the operations as recounted by her colleague PO1 Santos. She said that after the operation was planned, the team proceeded to the target area on board two vehicles at about 8:30 o'clock in the evening; that upon arriving at the place, their CI was instructed to check if the suspect was in the area; that after 15 minutes the CI returned and gave the information that Marissa Castillo was there in the area talking to a male person; that thereafter, PSI Pascual ordered her and PO2 Santos, together with the CI to buy *shabu* from the accused; that upon seeing the accused Marissa Castillo, the CI introduced them as regular customers to her; that PO2 Santos handed the Php200.00 buy bust money to Marissa Castillo and that after Marissa received the money, she handed a plastic sachet to PO2 Santos after which she and PO2 Santos introduced themselves to the accused Marissa Castillo as police officers.

PO1 Chavez categorically said that she saw PO2 Santos hold the left hand of Marissa Castillo. Confiscated by PO2 Santos from Marissa Castillo were two plastic sachets of *shabu* and the buy bust money. This was in addition to the plastic sachet that was sold by PO2 Santos to the accused Marissa. She also said that the transaction took place on an alley near the house of the accused about 5 meters away from the main road.

PO[1] Chavez also identified the accused Marissa Castillo in open court.

As expected, Marissa Castillo denied the charges leveled against her for illegal sale and illegal possession of *shabu*. She testified that on October 26, 2006 at around 6:40 o'clock in the evening, while she was walking in an alley on her way home, a man touched

her shoulder. The accused would later come to know that man as PO2 Thaddeus Santos. With PO2 Santos at the time were two other male persons. After PO2 Santos touched Castillo's shoulder, PO2 Santos asked if she was Marissa Castillo to which the accused said "yes". After that PO2 Santos asked Marissa to go with them to her house as they would just ask something from her. x x x. Thus, Marissa and the policemen went to her house. When they arrived there, Marissa was greatly surprised upon seeing nine (9) persons inside her house, including police officer Mary Grace Chavez and some other police officers. The two male persons who accompanied Marissa Castillo to her house told the police officer who were there "*eto na si Marissa Castillo*" after which PO2 Grace Chavez approached Marissa and frisked her but nothing was recovered from her possession. The policemen also searched the house prompting Marissa to ask the policemen why they were searching her house but the policemen just ignored Marissa. Marissa was frisked by one of the policemen who said "*ilabas mo iyan*". At that point, Marissa's eldest daughter by the name of Marinel was also inside the house watching. After Marissa was frisked, one of the policemen said "*ilabas mo na iyan*".

After the policemen finished searching Marissa's house, Marissa heard one of them say "*wala, wala*" and another one saying "*dalhin na iyan*". Marissa and her daughter Marinel were then brought out of the house and then brought to the Eastern Police District headquarters (EPD). At the EPD headquarters, the police officers asked Marissa to cooperate with them and to point to persons selling *shabu*. Marissa, however, demurred saying that she did not know what the policemen were talking about and that she could not provide them any assistance. This upset the policemen who then told Marissa "*ayaw mong makipagtulungan sa amin, bahala ka*". After that, one of the police officers asked Marissa's daughter to go home and gave her Php20.00 as fare money. Marissa, on the other hand, was detained because she refused to cooperate with the police. Marissa said that she learned that charges for violation of Sections 5 and 11 of R.A. 9165 were filed against her only during her inquest. Marissa Castillo insisted during the inquest that the charges against her were not true but charges were nonetheless filed against her by the police.

Marinel Castillo, the daughter of the accused, corroborated in some details the testimony of her mother. She said that at around 6:30 o'clock in the evening of October 24, 2006 while she was in their house, she heard someone trying to open their door. When she peeped through the window she saw about nine (9) men outside

who entered their house. Once inside the men started searching the house. Marinel asked the men to whom she would later know as police officers, why they entered their house but the police officers just ordered her to be quiet and to just sit down. After the police had searched the house, a policeman approached her and frisked her. Nothing, however, was recovered from her possession. Marinel claimed that the police officers took a video camera, three (3) cellfones and other appliances from their house which the policemen did not return anymore. Marinel testified that while the police were in their house, one of the police officers whom she identified as PO2 Santos asked Marinel the whereabouts of her mother, the accused Marissa Castillo. After Marinel had informed PO2 Santos that her mother was in the market, PO2 Santos went out of the house together with another man. After that, Marinel's mother, the accused Marissa, arrived in their house together with PO2 Santos and the man who accompanied him. Marinel said that when her mother arrived, Marissa was surprised to see many people inside the house, with their things scattered all over the place. Marinel testified that a policeman frisked her mother. Recovered from her were some coins but the police officer by the name of Florentino still said "*dalhin na iyan*". Marinel heard her mother ask the policeman where they would be bringing her and Marinel. Officer Florentino replied "*ayaw mo rin lang ilabas dalhin na kayo.*" After that, the police officers brought Marinel and the accused Marissa Castillo to the Eastern Police District. At the police station, PO2 Santos, Florentino and some other police officers talked with her mother, the accused Marissa. Thereafter, a police officer approached Marinel and gave her Php20.00 for her fare in going home.

Marinel admitted that she did not know what happened from the time PO2 Santos left their house to look for her mother up to the time PO2 Santos returned with her mother.[5]

At the end of trial, the trial court rendered a verdict convicting appellant of the charge of sale of illegal drugs as well as the charge of possession of illegal drugs. The dispositive portion of the assailed November 9, 2007 Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in Criminal Case No. 15167-D finding the accused **MARISSA CASTILLO *y* Alignay GUILTY** beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 (sale of dangerous drugs) and

[5] CA *rollo*, pp. 12-18.

she is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT**. She is also ordered to pay a fine of Five Hundred Thousand Pesos (**Php500,000.00**).

In Criminal Case No. 15168-D, the accused **MARISSA CASTILLO *y* Alignay** is hereby found **GUILTY** beyond reasonable doubt of the crime of Violation of Section 11, Article II, R.A. 9165 for possessing *shabu*, a prohibited drug, and she is hereby sentenced to suffer the indeterminate penalty of **TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS and ONE (1) DAY imprisonment**.

She is also ordered to pay a fine of Four Hundred Thousand Pesos (**Php400,000.00**).

Considering the judgment rendered by the Court, the immediate commitment of the accused to the Correctional Institute for Women, Mandaluyong City is hereby ordered.

The illegal substance subject of the Information is ordered to be turned over forthwith to the Philippine Drug Enforcement Agency (PDEA) for proper action and disposition.[6]

Appellant then elevated the case to the Court of Appeals in the expectation of a different ruling; however, the appellate court considered her appeal as devoid of merit and affirmed the ruling of the trial court's judgment. The dispositive portion of the assailed August 13, 2009 Decision of the Court of Appeals is as follows:

WHEREFORE, the foregoing considered, the appeal is hereby **DISMISSED** and the assailed Decision **AFFIRMED**, *in toto*.[7]

Hence, appellant filed the present appeal wherein she submitted the following assignment of errors for consideration:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[8]

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[6] *Id*. at 20.

[7] *Rollo*, p. 16.

[8] CA *rollo*, p. 53.

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[9]

Appellant argues that the police officers who apprehended her failed to strictly comply with the procedural requirements of Section 21(1), Article II of Republic Act No. 9165, specifically, the failure to take photographs and to make an inventory of the seized evidence, and the lack of participation of the representatives from the media, the Department of Justice (DOJ), and any elected public official in the operation. Failing in such regard, appellant insists that the prosecution's case should necessarily fall and she be acquitted of all charges against her as the chain of custody of the seized illegal drugs was not properly established.

We are not persuaded.

In the instant petition, appellant requests this Court to carry out an inquiry on whether or not the arresting officers strictly complied with the requirements set forth by Section 21(1), Article II of Republic Act No. 9165, the text of which provides:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

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[9] *Rollo*, p. 36.

At the outset, it should be noted that appellant did not raise the issue of the alleged non-compliance with the aforementioned procedural rule when the case was still being heard in the trial court. In *People v. Robelo*,[10] we ruled that this assertion must be argued before the trial court and not on appeal for the first time, thus:

> Indeed[,] the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

Nevertheless, we will still pass upon this question considering the gravity of its consequences on the liberty of appellant. We take this opportunity to reiterate jurisprudence which states that non-compliance with Section 21 does not necessarily render the arrest illegal or the items seized inadmissible because what is essential is that the integrity and evidentiary value of the seized items are preserved which would be utilized in the determination of the guilt or innocence of the accused.[11]

Moreover, despite the seemingly mandatory language used in the procedural rule at issue, a perusal of Section 21, Article II of the Implementing Rules and Regulations of Republic Act No. 9165 reveals the existence of a clause which may render non-compliance with said procedural rule non-prejudicial to the prosecution of drug offenses, to wit:

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[10] G.R. No. 184181, November 26, 2012, 686 SCRA 417, 427-428, citing *People v. Sta. Maria*, 545 Phil. 520, 534 (2007); *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645; *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 274.

[11] *People v. Aneslag*, G.R. No. 185386, November 21, 2012, 686 SCRA 150, 163.

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[**.] (Emphasis supplied.)

Essentially, Section 21(1) of Republic Act No. 9165 ensures that the chain of custody of the seized drugs to be used in evidence must be complete and unbroken. We have defined "chain of custody" as the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[12]

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[12] *People v. Dumaplin*, G.R. No. 198051, December 10, 2012, 687 SCRA 631, 640.

We reiterated the importance of the chain of custody as a means of validating evidence in the recent case of *People v. Del Rosario,*[13] where we held:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.
>
> While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination and even substation and exchange. In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering – without regard to whether the same is advertent or otherwise not – dictates the level of strictness in the application of the chain of custody rule.

In the case at bar, we concur with appellant's assertion that the arresting officers involved were not able to strictly comply with the procedural guidelines stated in Section 21(1), Article II of Republic Act No. 9165. However, our affinity with appellant's argument does not sway us towards granting her absolution because, notwithstanding the procedural error, the integrity and the evidentiary value of the illegal drugs used in this case were

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[13] G.R. No. 188107, December 5, 2012, 687 SCRA 318, 330, citing *People v. Guru*, G.R. No. 189808, October 24, 2012, 684 SCRA 544, 555-556.

duly preserved and the chain of custody of said evidence was shown to be unbroken.

With regard to the first link in the chain of custody, the testimony of PO2 Santos confirms the fact that three heat-sealed plastic sachets each containing 0.04 gram of methylamphetamine hydrochloride or *shabu* were seized from appellant during a buy-bust operation conducted by PO2 Santos, PO1 Chavez and an unnamed confidential informant. The seized drugs were immediately marked at the place where appellant was apprehended. The relevant portions of PO2 Santos's testimony follow:

[PROSECUTOR TOLENTINO]

Q Three (3) plastic sachets were withdrawn by this Marissa, Marissa at the same time checked one and gave it to you, one plastic sachet?

A Yes, sir.

Q What did you do?

A I gave the two (2) pieces of ₱100.00 bill.

Q So you handed the money, the ₱200.00, to this person, a certain Marissa?

A Yes, sir.

Q That is after you have been handed the *shabu*?

A Yes, sir.

Q And after the money was given to Marissa or handed to Marissa, what happened next?

A When I examined the plastic sachet, I gave the pre-arranged signal to my co-operatives.

Q What was the pre-arranged signal that was given?

A Scratching my head.

Q With what hand did you scratch your head?

A With my right hand.

Q After you gave the pre-arranged signal, what happened next?

A We introduced ourselves as policemen.

Q You first, you introduced yourself as a police officer?
A Yes, sir, and grabbed the left hand of Marissa.

Q And after grabbing her by holding her left hand, what happened next?
A She was surprised and the male companion of Marissa ran away.

Q What happened to the male companion of Marissa? Were you able to arrest that person?
A Yes, sir.

Q What happened when you arrested her?
A I grabbed her left hand when she got the money and I then got the sachet.

Q So you got the ₱200.00 from her left hand and got two more plastic sachets of *shabu*. Who arrived at that point in time?
A My back up, Grace Chavez.

Q What did she do?
A She joined the arrest by grabbing Marissa.

Q That person you call Marissa, if that person is presented to you again, can you recognize her?
A Yes, sir.

Q Is she present in this courtroom?
A Yes, sir.

Q Please come down and tap her shoulder?
A (Witness stepping down from the witness stand and tapped the shoulder of a person inside the courtroom who when asked gave the name Marissa Castillo.)

Q You arrested her. What did you tell her after arresting the person named Marissa?
A We informed her of her rights.

Q What about the fact of her arrest?
A Yes, sir, after the arrest.

Q The specimens that you have confiscated from her, what did you do with them?
A We marked it at the place where she was arrested.

Q The subject matter of sale, what did you place as a mark?
A Her initials, MC.

Q And the other two plastic sachets recovered after her arrest, what markings did you put?
A MC

Q I am showing to you three (3) plastic sachets containing *shabu*. Will you please go over and tell us which one was the subject matter of sale and which were the plastic sachets which were recovered after her arrest?
A This is the one bought (witness referring to a plastic sachet with marking MC A-1 and underneath are the words "buy bust evidence").

Q These were your markings, MC A-1?
A Yes, sir.

Q The buy bust evidence?
A Yes, sir.

Q There appears to be two plastic sachets containing *shabu* which were marked MC A-2 and MC A-3. What are these?
A These are the two plastic sachets confiscated from her left hand.[14]

PO1 Chavez's testimony corroborates PO2 Santos's narrative regarding the arrest and seizure of *shabu* from appellant. The pertinent portions of her testimony are quoted here:

[PROSECUTOR TOLENTINO]

Q When the informant confirmed that the target person, the accused Marissa Castillo, was present thereat, what did you do next, Madam Witness?
A [Police Senior Inspector] Hoover Pascual ordered us to buy from the suspect.

Q Who went ahead?
A PO2 Thaddeus [Santos] and I.

Q Who accompanied you thereat?
A The informant.

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[14] TSN, April 26, 2007, pp. 9-12.

Q Where did you place yourself as back-up officer?

A I was at the left side of PO2 Thaddeus Santos.

Q After that, what happened next?

A Then the CI introduced us to the suspect as drug users.

Q So you were there beside Police Officer Santos all the time?

A Yes, sir.

Q At the time this operation was being conducted?

A Yes, sir.

Q Tell us, after that operation was conducted and the transfer and sale was made, what happened next?

A After we were introduced as users, the CI told the suspect that we could be regular customers.

Q After that, when you were introduced as would be regular buyers, what happened next?

A Because she was already holding three (3) sachets of *shabu*. He then handed the money.

Q Who handed the money?

A PO2 Thaddeus.

Q After the handing of the ₱200.00, what transpired next?

A After giving her the money, she handed to us one plastic sachet of *shabu* then we introduced ourselves as police officers.

Q You said one (1) plastic sachet was handed to whom?

A To PO2 Thaddeus Santos.

Q After the handing of the accused of this one plastic sachet to PO2 Thaddeus Santos, what happened next?

A We introduced ourselves as police officers and presented our IDs.

Q After you identified yourselves as police officers and showing your IDs, what did you do next?

A I saw Thaddeus hold the left hand of the suspect and he confiscated the two (2) plastic sachets of *shabu* and the buy bust money.

Q And you, when you saw the police poseur buyer PO2 Santos held the hand of the accused containing the plastic sachet and the buy bust money, what did you do?

A I just watched them and informed Marissa Castillo of her rights and then my companions arrived.

x x x x x x x x x

Q If that person whom you arrested and recovered the plastic sachet containing the shabu and from whom Thaddeus Santos bought shabu, if ever this person is presented to you again, can you recognize this person, Madam Witness?

A Yes, sir.

Q Is she present in this courtroom today, Miss Witness?

A Yes, sir.

Q Please stand up and tap her on her shoulder.

A (Witness stepping down from the witness stand and tapped the shoulder of a [woman] who when asked gave the name Marissa Castillo.)

Q After she was arrested, where did you bring her?

A At the EPD Headquarters.[15]

The illegal drugs seized from appellant were then turned over to Police Senior Inspector Hoover SM Pascual (PSI Pascual), the team leader and investigator of the buy-bust operation, who prepared and signed a Memorandum[16] requesting the laboratory examination of the three plastic sachets containing white crystalline substance previously marked by PO2 Santos as "MCA-1," "MCA-2" and "MCA-3," respectively. This document together with the marked specimens was then transmitted to the Eastern Police District (EPD) Crime Laboratory Office to determine if they contained dangerous drugs. As per Physical Sciences Report No. D-486-06E,[17] signed by Police Senior Inspector Isidro L. Carino (PSI Carino), the qualitative examination of the contents of the three plastic sachets yielded

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[15] TSN, June 21, 2007, pp. 6-9.

[16] Records, p. 52.

[17] *Id.* at 51.

a positive result for the presence of methylamphetamine hydrochloride or *shabu*. The same marked specimens were later identified by PO2 Santos in open court as the same items that he seized from appellant when confronted with them by Prosecutor Conrado Tolentino (Tolentino). After PO2 Santos positively identified them, Prosecutor Tolentino then requested the trial court that the three plastic sachets containing *shabu* be marked as Exhibits "G", "G-1", and "G-2", respectively.[18] From the foregoing narrative, it is readily apparent that the other links in the chain of custody of the seized illegal drugs have been sufficiently established.

Furthermore, the testimony of PO2 Santos and PO1 Chavez survived the scrutiny of both the trial court judge and the defense counsel and was adjudged to be credible and worthy of belief not only by the trial court but also by the appellate court. This is significant considering that we have stated in jurisprudence that the successful prosecution of drug cases is dependent, in large part, to the credibility of the police officers who conducted the buy-bust operation.[19] In this case, we find no reason to question the credibility of the prosecution witnesses considering that, time and again, we have held that the determination of the credibility of witnesses by the trial court, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect.[20]

With respect to her defense, appellant raised the claim that she was innocent of the charges and was merely framed by the police officers who arrested her. Nevertheless, in one case, we thoroughly explained why this Court is usually wary of a defense of denial in drug cases, thus:

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[18] TSN, April 26, 2007, pp. 11-12.

[19] *People v. Lapasaran*, G.R. No. 198820, December 10, 2012, 687 SCRA 663, 673.

[20] *People v. Hambora*, G.R. No. 198701, December 10, 2012, 687 SCRA 653, 660, citing *People v. Amarillo*, G.R. No. 194721, August 15, 2012, 678 SCRA 568, 579.

> Further, the testimonies of the police officers who conducted the buy-bust are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails. In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill-motive.[21] (Citations omitted.)

Appellant may argue that her denial is not entirely unsubstantiated because the same is corroborated by the testimony[22] of her daughter, Marinell Castillo. However, contrasted with the credible and positive testimony of PO2 Santos and PO1 Chavez, the corroborating testimony made by appellant's daughter is given lesser probative value than that of the prosecution's witnesses since this Court has consistently held that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[23]

Furthermore, we have recently reiterated that we give less probative weight to a defense of alibi when it is corroborated by friends and relatives.[24] We apply the same principle in the case at bar and declare that for the defense of denial to prosper, like alibi, it is necessary that the corroboration is credible, the same having been offered preferably by disinterested witnesses. In so doing, we regard the testimony of appellant's daughter, which in no way can be considered as disinterested and unbiased, as invalid corroboration unworthy of belief.

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[21] *Ampatuan v. People,* G.R. No. 183676, June 22, 2011, 652 SCRA 615, 628.

[22] TSN, September 27, 2007.

[23] *People v. Buenaventura,* G.R. No. 184807, November 23, 2011, 661 SCRA 216, 226.

[24] *People v. Basallo,* G.R. No. 182457, January 30, 2013, 689 SCRA 616, 644.

Lacking unprejudiced testimony to support her denial and without her making any allegation as to any ill motive on the part of the police officers who arrested her during a legitimate buy-bust operation, this Court is not inclined to overturn appellant's conviction for the sale and possession of illegal drugs.

WHEREFORE, premises considered, the Decision dated August 13, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03337 is **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 190318. November 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO VELASCO,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; IRREGULARITY THEREIN DEEMED WAIVED WHEN NOT OBJECTED BEFORE ARRAIGNMENT; IRREGULAR ARREST WILL NOT SET ASIDE A VALID JUDGMENT.—** Jurisprudence tells us that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment, thus, any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction of the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived. Nevertheless, even if appellant's warrantless arrest were proven

to be indeed invalid, such a scenario would still not provide salvation to appellant's cause because jurisprudence also instructs us that the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.

2. **ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; ACCUSED IN RAPE CASE MAY BE CONVICTED BASED SOLELY ON THE CREDIBLE TESTIMONY OF THE VICTIM.—** It is settled in jurisprudence 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 axiomatic that when it comes to evaluating the credibility of the testimonies of the witnesses, great respect is accorded to the findings of the trial judge who is in a better position to observe the demeanor, facial expression, and manner of testifying of witnesses, and to decide who among them is telling the truth. Lastly, in order for a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged since the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.

3. **CRIMINAL LAW; RAPE; MEDICAL CERTIFICATE NOT NECESSARY TO PROVE RAPE.—** With regard to appellant's argument that the findings of the medico-legal report do not support the allegation that the victim was indeed raped, we cannot give any credit to such claim in light of established jurisprudence holding that a medical certificate is not necessary to prove the commission of rape, as even a medical examination of the victim is not indispensable in a prosecution for rape.

4. **ID.; ID.; NOT NEGATED BY THE VICTIM'S FAILURE TO SHOUT FOR HELP AND FAILURE TO IMMEDIATELY REPORT THE CRIME.—** We have also recently reiterated that the failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent. Furthermore, it is doctrinally settled that "delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim" because

"delay in reporting an incident of rape is not an indication of a fabricated charge [and] does [not] necessarily cast doubt on the credibility of the complainant." It is likewise settled in jurisprudence that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault, thus, not all rape victims can be expected to act conformably to the usual expectations of everyone.

5. **ID.; ID.; PENALTY OF *RECLUSION PERPETUA* PROPER AS THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP WAS NOT ESTABLISHED.—** We likewise conclude that the lower courts' imposition of the penalty of *reclusion perpetua* in each charge of rape was proper, notwithstanding the mention in the Informations of the qualifying circumstances of minority and relationship. As the Court of Appeals noted, the appellant's relationship to the victim, as her stepfather, was not proven since there was no evidence of a valid marriage between appellant and the victim's mother.

6. **ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS.—** The elements of this crime (Acts of Lasciviousness) under Article 336 of the Revised Penal Code are: (1) the offender commits any act of lasciviousness or lewdness; (2) it is done under any of the following circumstances: (a) by using force or intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) the offended party is another person of either sex. Furthermore, there is jurisprudence which says that in case of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.

7. **REMEDIAL LAW; ALIBI; REQUIRES PHYSICAL IMPOSSIBILITY FOR THE ACCUSED TO BE AT THE SCENE OF THE CRIME AT THE TIME OF THE CRIME.—** As his principal defense against all these criminal charges, appellant provided an alibi. He maintains that, at the time of the three rape incidents as well as the one instance of acts of lasciviousness, he was working at a construction site in Barangay Caingin, Malolos City, Bulacan with his nephew Roderick Palconet who was the only witness he presented in court in order to corroborate his alibi. Time and again, we have repeated the legal doctrine that for alibi to prosper, it must be proved that during the commission of the crime, the accused was in another place

and that it was physically impossible for him to be at the crime scene. Furthermore, we have also established in jurisprudence that, in order for a corroboration of an alibi to be considered credible, it must necessarily come from disinterested witnesses.

8. **CRIMINAL LAW; SIMPLE RAPE AND ACTS OF LASCIVIOUSNESS; PENALTIES.—** [W]e affirm the conviction of appellant for three counts of the felony of simple rape and for one count of the felony of acts of lasciviousness. The award of ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages for each count of simple rape is correct in addition to the penalty of *reclusion perpetua*. However, the award of exemplary damages for each count of simple rape shall be increased to ₱30,000.00 pursuant to prevailing jurisprudence. The award of ₱20,000.00 as civil indemnity and ₱30,000.00 as moral damages for acts of lasciviousness is proper in addition to the penalty of an indeterminate prison term of four (4) months of *arresto mayor* as minimum to four (4) years of *prision correccional* as maximum.

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.*:

We resolve the present appeal from the Decision[1] dated August 25, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03315, entitled *People of the Philippines v. Roberto Velasco*, which affirmed with modification the Decision[2] dated March 5, 2008 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 13 in Criminal Cases No. 3579-M-2002, 3580-M-2002, 3581-M-2002 and 145-M-2003. The trial court found appellant Roberto Velasco guilty beyond reasonable doubt of the crime

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Conrado M. Vasquez, Jr. and Vicente S.E. Veloso, concurring.

[2] CA *rollo*, pp. 38-43.

of three counts of rape under Article 266-A of the Revised Penal Code as charged in Criminal Cases No. 3579-M-2002, 3580-M-2002 and 3581-M-2002. The trial court also found appellant guilty beyond reasonable doubt of the crime of acts of lasciviousness in Criminal Case No. 145-M-2003.

The pertinent portions of the three Informations charging appellant with one count each of the felony of rape in Criminal Cases No. 3580-M-2002, 3581-M-2002 and 145-M-2003 read as follows:

[Criminal Case No. 3580-M-2002]

That on or about the 27th day of December 2001, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of [Lisa[3]], a minor 14 years of age, did then and there wilfully, unlawfully and feloniously, by means of force and intimidation, have carnal knowledge of his stepdaughter [Lisa] against her will and without her consent.[4]

[Criminal Case No. 3581-M-2002]

That on or about the 28th day of December, 2001, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the stepfather of [Lisa], a minor 14 yrs. of age, did then and there wilfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of his stepdaughter [Lisa] against her will and without her consent.[5]

[Criminal Case No. 145-M-2003]

That on or about the 29th day of December, 2001, in the municipality of Malolos, province of Bulacan, Philippines, and within the

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[3] The Court of Appeals opted to use the *alias* "Lisa" in referring to the victim pursuant to prevailing jurisprudence. The real name of the victims-survivors and their personal circumstances 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].)

[4] Records (Criminal Case No. 3580-M-2002), p.1.

[5] *Id.* (Criminal Case No. 3581-M-2002), p.1.

jurisdiction of this Honorable Court, the above-named accused being the stepfather of [Lisa], a minor 14 years of age, did then and there wilfully, unlawfully and feloniously by means of force and intimidation, have carnal knowledge of his stepdaughter [Lisa] against her will and without her consent.[6]

On the other hand, the accusatory portion of the Information charging appellant with the felony of acts of lasciviousness in Criminal Case No. 3579-M-2002 stated:

> That on or about the 21st day of December, 2002, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of his moral ascendancy and influence over his stepdaughter [Lisa], a 15-year old child, with lewd designs, did then and there wilfully, unlawfully and feloniously by means of force and intimidation kiss and touch the private parts of complainant against her will and consent.[7]

Appellant was arraigned for the two charges of rape in Criminal Case Nos. 3580-M-2002 and 3581-M-2002; and one charge of acts of lasciviousness in Criminal Case No. 3579-M-2002 on February 3, 2003 to which he entered a plea of not guilty on all charges.[8] He was later arraigned on March 12, 2003 for the third charge of rape in Criminal Case No. 145-M-2003 to which he likewise pleaded "not guilty."[9]

After pre-trial, the cases were consolidated and the trial court conducted joint hearings on the merits. The prosecution intended to present the victim "Lisa" and Dr. Ivan Richard Viray, the medico-legal officer who examined her. However, after "Lisa" completed her testimony, the presentation of Dr. Viray was dispensed with upon the defense's admission of the due execution of the medical certificate and the stipulation of the prosecution that the cause of the victim's non-virgin state was not determined

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[6] *Id*. (Criminal Case No. 145-M-2003), p. 1.

[7] *Id*. (Criminal Case No. 3579-M-2002), p. 1.

[8] *Id*. (Criminal Case No. 3579-M-02), p. 12; *id*. (Criminal Case No. 3580-M-02), p. 4; and *id*. (Criminal Case No. 3581-M-02), p. 3.

[9] *Id*. (Criminal Case No. 145-M-2003, p. 17.

by Dr. Viray.[10] The defense, in turn, presented appellant and his nephew, Roderick Palconet.

The material facts according to the prosecution and restated in the Appellee's Brief are:

> Appellant is the live-in partner of [AAA], the mother of private complainant [Lisa]. [Lisa] stayed with them in their house in x x x, Malolos, Bulacan since she was fourteen (14) years old.
>
> On December 27, 2001, at around 11:00 o'clock in the morning, [Lisa] was at the *sala* watching television. Momentarily, appellant approached her and thereafter, removed his shorts and underwear as well as that of [Lisa's]. He then mounted [Lisa] and inserted his penis into her vagina. He warned her not to report the incident to anybody, otherwise, he will kill both [Lisa] and her mother. After satisfying his lust, appellant left without saying a word. At the time of the incident, [Lisa] and [appellant] were alone in the house as [Lisa's] brother and mother were out for work.
>
> The following day, or on December 28, 2001, appellant again approached [Lisa] and removed both their shorts and underwear. He went on top of her and inserted his penis into her vagina. She was again threatened not to tell anyone of the incident. The incident took place outside the family's bedroom at around 11:00 o'clock in the morning while [Lisa's] mother and brother were not in the house.
>
> The next day, or on December 29, 2001, also at around 11:00 o'clock in the morning, [Lisa] was raped for the third consecutive time by appellant while they were alone in the house. [Lisa] testified that white fluid came out of appellant's penis. Like in previous incidents, she was threatened not to tell anyone of the incident.
>
> A year thereafter, or on December 21, 2002, at midnight, when the other members of the family were asleep, appellant attempted to insert his penis into [Lisa's] vagina while the latter was sleeping on her folding bed. This time, [Lisa] cried. Although appellant succeeded in touching and kissing [Lisa's] private parts, he did not push through with his intention of raping her for fear of getting caught by the other family members who were sleeping just a few feet away from them.

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[10] TSN, February 13, 2006, pp. 2-3.

The medico legal report submitted by public physician Richard Ivan Viray states that [Lisa] is in a non-virgin state; that she had shallow healed hymenal lacerations at 2 and 3 o'clock positions and deep healed lacerations at 6 and 7 o'clock positions.[11] (Citations omitted.)

Conversely, the defense offered a different version of events which was retold in the Appellant's Brief in this wise:

For six (6) days a week in December 2001 and December 2002, [appellant] was working as a mason in Barangay Caingin, Malolos, Bulacan. He leaves their house at 7:00 o'clock in the morning to go to work and arrives at 5:30 in the afternoon.

He was [the] live-in partner of [Lisa's] mother. He was at work on the 27th, 28th and 29th of December 2001 with his nephew Roderick Palconet while he was at home on the 21st of December 2002. The accusations against him were instigated by [Lisa's] father who was mad at him for having a live-in relationship with [Lisa's] mother.

RODERICK PALCONET, the [appellant's] nephew and co-worker at Caingin, Malolos, Bulacan, averred that from 8:00 o'clock in the morning to 5:00 o'clock in the afternoon of the 27th, 28th and 29th of December 2001, he was with [appellant].[12] (Citations omitted.)

At the conclusion of trial, the trial court convicted appellant on all the charges leveled against him. The dispositive portion of the March 5, 2008 Decision of the trial court reads:

WHEREFORE, given the foregoing, the Court finds the accused guilty beyond reasonable doubt of the crime of rape on three (3) counts as charged in Crim. Case Nos. 3579-M-02, 3580-M-02, and 3581-M-02 and hereby sentences him to suffer the penalty of *reclusion perpetua* for each count (total: three *reclusion perpetua*).

The Court likewise finds the accused guilty beyond reasonable doubt of the crime of Acts of Lasciviousness in Crim. Case No. 145-M-03, and hereby sentences him to suffer the indeterminate penalty of six (6) months of *arresto mayor* as minimum to six (6) years of *prision correccional* as maximum.

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[11] CA *rollo*, pp. 60-62.

[12] *Id*. at 23.

The accused is likewise directed to indemnify the private complainant in the amount of ₱150,000.00.[13]

Appellant elevated his case to the Court of Appeals which denied his appeal and affirmed with modification the trial court judgment in a Decision dated August 25, 2009, the dispositive portion of which states:

WHEREFORE, in light of the foregoing, the decision of the trial court is **AFFIRMED** with **MODIFICATIONS** as follows:

1. In Criminal Case Nos. 3579-M-02, 3580-M-02 and 3581-M-02, appellant Roberto Velasco is held liable to pay the victim ₱50,000.00 as civil indemnity; ₱50,000.00 moral damages; and ₱25,000.00 exemplary damages for each count of rape in addition to the penalty of *reclusion perpetua*;
2. In Criminal Case No. 145-M-03, appellant Roberto Velasco is sentenced to suffer the indeterminate prison term of four (4) months of *arresto mayor* as minimum to four (4) years of *prision correccional* as maximum for the act of lasciviousness. He is also held liable to pay the victim ₱30,000.00 moral damages and ₱20,000.00 civil indemnity.[14]

Hence, appellant resorted to the present appeal, putting forward the following assignment of errors:

I

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THE WARRANTLESS ARREST OF THE ACCUSED-APPELLANT AS ILLEGAL.

II

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT ACCUSED-APPELLANT'S RIGHTS UNDER REPUBLIC ACT NO. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS,

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[13] *Id*. at 43.

[14] *Rollo*, pp. 17-18.

AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.

III

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE PRIVATE COMPLAINANT'S INCREDIBLE TESTIMONY.

IV

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[15]

The petition is without merit.

Appellant essentially focuses his defense on two issues: first, the preliminary issue surrounding the validity of his warrantless arrest; and, second, the substantive issue concerning the evidence used to convict him for three counts of rape and one count of acts of lasciviousness.

With regard to purported irregularities that attended appellant's warrantless arrest, we are of the same persuasion as the Court of Appeals which ruled that such a plea comes too late in the day to be worthy of consideration.

Jurisprudence tells us that an accused is estopped from assailing any irregularity of his arrest if he fails to raise this issue or to move for the quashal of the information against him on this ground before arraignment, thus, any objection involving a warrant of arrest or the procedure by which the court acquired jurisdiction of the person of the accused must be made before he enters his plea; otherwise, the objection is deemed waived.[16]

Nevertheless, even if appellant's warrantless arrest were proven to be indeed invalid, such a scenario would still not provide salvation to appellant's cause because jurisprudence also instructs

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[15] CA *rollo*, pp. 19-20.

[16] *Miclat, Jr. v. People*, G.R. No. 176077, August 31, 2011, 656 SCRA 539, 549.

us that the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error.[17]

Having disposed of the issue concerning appellant's warrantless arrest, we now undertake to resolve the more crucial issue involving the weight and sufficiency of the evidence used to convict appellant of the felonies he was charged with in these consolidated cases.

Appellant argues that the trial court erroneously gave probative weight and credence to the alleged victim's incredible and uniform testimony which casts doubt on her truthfulness. He also contends that the medico-legal report's conclusion which states that the "subject is in a non-virgin state physically" did not prove that the victim was indeed raped. Moreover, he claims that the alleged victim's failure to resist or to wake her brother and mother immediately after the alleged sexual molestation on December 21, 2002 or to shout for help from their neighbors who were in close proximity to their house negated the credibility of her accusations.

Appellant also reasons that the alleged victim's willingness to live in the same house with him despite what he allegedly did to her, taken together with her failure to immediately report the alleged sexual assaults to the authorities, further eroded the reliability of the victim's statements. Finally, he points out that he could not have possibly committed the crimes attributed to him because, during the times and dates the alleged criminal acts took place, he claims to be somewhere else.

In short, appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt. However, after a careful review of the records of this case, we can safely conclude that such an assertion of innocence cannot be upheld.

It is settled in jurisprudence that in a prosecution for rape, the accused may be convicted solely on the basis of the testimony

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[17] *People v. Trestiza*, G.R. No. 193833, November 16, 2011, 660 SCRA 407, 443-444.

of the victim that is credible, convincing, and consistent with human nature and the normal course of things.[18] Furthermore, it is axiomatic that when it comes to evaluating the credibility of the testimonies of the witnesses, great respect is accorded to the findings of the trial judge who is in a better position to observe the demeanor, facial expression, and manner of testifying of witnesses, and to decide who among them is telling the truth.[19] Lastly, in order for a discrepancy or inconsistency in the testimony of a witness to serve as a basis for acquittal, it must establish beyond doubt the innocence of the appellant for the crime charged since the credibility of a rape victim is not diminished, let alone impaired, by minor inconsistencies in her testimony.[20]

In the case at bar, we are in full agreement with the Court of Appeals that no fact or circumstance exists to warrant a reversal of the trial court's assessment that the victim's testimony is credible and worthy of belief. We also concur with the findings of the appellate court that the testimony of the victim was made in a candid and straightforward manner, even on extensive cross-examination. In sum, the alleged discrepancies in the victim's testimony were not significant enough to successfully tilt the scales of justice in favor of appellant.

With regard to appellant's argument that the findings of the medico-legal report do not support the allegation that the victim was indeed raped, we cannot give any credit to such claim in light of established jurisprudence holding that a medical certificate is not necessary to prove the commission of rape, as even a medical examination of the victim is not indispensable in a prosecution for rape.[21]

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[18] *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 251.

[19] *People v. Estoya*, G.R. No. 200531, December 5, 2012, 687 SCRA 376, 383.

[20] *People v. Laurino*, G.R. No. 199264, October 24, 2012, 684 SCRA 612, 619.

[21] *People v. Colorado*, G.R. No. 200792, November 14, 2012, 685 SCRA 660, 673 citing *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760, 774.

We have also recently reiterated that the failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent.[22] Furthermore, it is doctrinally settled that "delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim"[23] because "delay in reporting an incident of rape is not an indication of a fabricated charge [and] does [not] necessarily cast doubt on the credibility of the complainant."[24] It is likewise settled in jurisprudence that human reactions vary and are unpredictable when facing a shocking and horrifying experience such as sexual assault, thus, not all rape victims can be expected to act conformably to the usual expectations of everyone.[25]

Thus, on the basis of the foregoing doctrines, we cannot uphold appellant's assertion that the victim's lack of resistance; delay in reporting the rape incidents; and continued residence in appellant's place of dwelling even after she was raped numerous times militates against a finding that the allegations of rape are true.

We likewise conclude that the lower courts' imposition of the penalty of *reclusion perpetua* in each charge of rape was proper, notwithstanding the mention in the Informations of the qualifying circumstances of minority and relationship. As the Court of Appeals noted, the appellant's relationship to the victim, as her stepfather, was not proven since there was no evidence of a valid marriage between appellant and the victim's mother.

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[22] *People v. Basallo*, G.R. No. 182457, January 30, 2013, 689 SCRA 616, 641.

[23] *People v. De los Reyes*, G.R. No. 177357, October 17, 2012, 684 SCRA 260, 279.

[24] *People v. Condes*, G.R. No. 187077, February 23, 2011, 644 SCRA 312, 330.

[25] *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 546.

Anent the charge of one count of acts of lasciviousness, we declare that the prosecution was able to sufficiently prove that appellant did commit the same.

The elements of this crime under Article 336 of the Revised Penal Code are: (1) the offender commits any act of lasciviousness or lewdness; (2) it is done under any of the following circumstances: (a) by using force or intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) the offended party is another person of either sex.[26] Furthermore, there is jurisprudence which says that in case of acts of lasciviousness, the lone testimony of the offended party, if credible, is sufficient to establish the guilt of the accused.[27]

In the case at bar, we agree with the Court of Appeals' finding that the testimony of the victim was made in a straightforward and convincing manner. Her testimony in this regard detailed how she was forced and intimidated by appellant on December 21, 2002 and how appellant succeeded in molesting her by kissing and touching her private parts, thus, satisfying the required elements of the crime charged.

As his principal defense against all these criminal charges, appellant provided an alibi. He maintains that, at the time of the three rape incidents as well as the one instance of acts of lasciviousness, he was working at a construction site in Barangay Caingin, Malolos City, Bulacan with his nephew Roderick Palconet who was the only witness he presented in court in order to corroborate his alibi.

Time and again, we have repeated the legal doctrine that for alibi to prosper, it must be proved that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the

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[26] *People v. Banan*, G.R. No. 193664, March 23, 2011, 646 SCRA 420, 434.

[27] *Garingarao v. People*, G.R. No. 192760, July 20, 2011, 654 SCRA 243, 252.

crime scene.[28] Furthermore, we have also established in jurisprudence that, in order for a corroboration of an alibi to be considered credible, it must necessarily come from disinterested witnesses.[29]

In the case at bar, the testimony of appellant's sole corroborating witness reveals that the distance between the construction site and the appellant's house where the instances of rape and acts of lasciviousness occurred is relatively short and can be covered by a mere five-minute travel by motor vehicle. The relevant portion of said testimony reads as follows:

[FISCAL JOSON]

Q When you said Caingin, it was a *barangay* of Malolos City?

A Yes, sir.

Q And you can reach Barangay Caingin from the place of the house of Mr. Velasco up to Brgy. Caingin, it will take only five (5) minutes ride?

A It can be if there is no traffic, sir.[30]

Moreover, the testimony of appellant's nephew, which is undoubtedly coming from a close relative, cannot, in any way, be described as disinterested and unbiased. Therefore, considering these factual circumstances, appellant's defense of alibi certainly cannot prosper.

In view of the foregoing, we therefore affirm the conviction of appellant for three counts of the felony of simple rape and for one count of the felony of acts of lasciviousness. The award of ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages for each count of simple rape is correct in addition to the penalty of *reclusion perpetua*. However, the award of exemplary damages for each count of simple rape shall be

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[28] *People v. Batula*, G.R. No. 181699, November 28, 2012, 686 SCRA 575, 587.

[29] *People v. Jacinto*, G.R. No. 182239, March 16, 2011, 645 SCRA 590, 613.

[30] TSN, November 5, 2007, pp. 5-6.

increased to ₱30,000.00 pursuant to prevailing jurisprudence.[31] The award of ₱20,000.00 as civil indemnity and ₱30,000.00 as moral damages for acts of lasciviousness is proper in addition to the penalty of an indeterminate prison term of four (4) months of *arresto mayor* as minimum to four (4) years of *prision correccional* as maximum.

However, before we conclude, we clarify an oversight in the assignment of case numbers to the corresponding felonies charged which was committed by the trial court in the dispositive portion of its March 5, 2008 Decision and repeated by the Court of Appeals in its August 25, 2009 Decision. In both rulings, the criminal charge of acts of lasciviousness was erroneously attributed to Criminal Case No. 145-M-2003 when, in fact, the Information filed for said case explicitly indicated the criminal charge of rape. On the other hand, the corresponding Information as well as the evidence presented in Criminal Case No. 3579-M-2002 clearly points to a criminal charge of acts of lasciviousness. Thus, the correct attribution of criminal cases *vis-à-vis* crimes charged should be Criminal Case Nos. 3580-M-2002, 3581-M-2002 and 145-M-2003 were for rape; and Criminal Case No. 3579-M-2002 was for acts of lasciviousness.

WHEREFORE, premises considered, the Decision dated August 25, 2009 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03315, finding appellant Roberto Velasco **GUILTY** in Criminal Case Nos. 3580-M-2002, 3581-M-2002 and 145-M-2003 for a total of three (3) counts of rape for which he is to suffer the penalty of *reclusion perpetua* for each count, as well as, in Criminal Case No. 3579-M-2002 for one count of acts of lasciviousness for which he is to suffer the indeterminate prison term of four (4) months of *arresto mayor* as minimum to four (4) years of *prision correccional* as maximum, is hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) The exemplary damages to be paid by appellant Roberto Velasco for each count of simple rape is increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00);

[31] *People v. Lomaque*, G.R. No. 189297, June 5, 2013.

(2) Appellant Roberto Velasco is ordered to pay the private offended party interest on all damages awarded 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.

FIRST DIVISION

[G.R. No. 193839. November 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAVIER CAÑAVERAS,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELUCIDATED.—** There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof that tend directly and especially to ensure its execution, without risk to the offender arising from the defense that the offended party might make. Treachery is appreciated as a qualifying circumstance when the following elements are shown: a) the malefactor employed means, method, or manner of execution affording the person attacked no opportunity for self-defense or retaliation; and b) the means, method, or manner of execution was deliberately or consciously adopted by the offender. Treachery involves not only the swiftness, surprise, or suddenness of an attack upon an unsuspecting victim, rendering the victim defenseless. It should also be shown that the mode of attack has knowingly been

intended to accomplish the wicked intent. Thus, the second element is the subjective aspect of treachery. It means that the accused must have made some preparation to kill the deceased in a manner that would insure the execution of the crime or render it impossible or hard for the person attacked to resort to self-defense or retaliation. The mode of attack, therefore, must have been planned by the offender and must not have sprung from an unexpected turn of events. We have had occasion to rule that treachery is not present when the killing is not premeditated, or where the sudden attack is not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim, or when the killing is done at the spur of the moment.

2. **ID.; ID.; ID.; TAKING ADVANTAGE OF SUPERIOR STRENGTH; NOT NECESSARILY PRESENT IN SUPERIORITY IN NUMBER.—** Superiority in number does not necessarily amount to the qualifying circumstance of taking advantage of superior strength. It must be shown that the aggressors combined forces in order to secure advantage from their superiority in strength. When appreciating this qualifying circumstance, it must be proven that the accused simultaneously assaulted the deceased. Indeed, when assailants attack a victim alternately, they cannot be said to have taken advantage of their superior strength.

3. **ID.; HOMICIDE; PROPER PENALTY IN CASE AT BAR.—** Under Article 249 of the Revised Penal Code, the penalty imposed for the crime of homicide is *reclusion temporal*. Considering that no aggravating circumstances attended the commission of the crime, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the maximum penalty shall be selected from the range of the medium period of *reclusion temporal*, with the minimum penalty selected from the range of *prision mayor*. Thus, we impose the penalty of imprisonment for a period of 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum. As to the award of damages to Claro's heirs, x x x [t]he amounts of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as temperate damages, at the legal rate of 6% per annum from the finality of this Decision until these damages are 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

SERENO, *C.J.*:

This is an appeal from the Decision[1] of the Court of Appeals (CA) affirming the Partial Decision[2] of the Regional Trial Court of San Jose, Camarines Sur, Branch 30 (RTC), finding appellant guilty of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*.

At about 8:30 p.m. on 30 November 1993, appellant, together with three unidentified persons, was drinking liquor in the house of Oriel Conmigo (Oriel) in *Barangay* San Isidro, Sagnay, Camarines Sur.[3] Claro Sales (Claro) arrived and asked the men if "Judas," referring to a person named Gregorio Carable, was there.[4] Oriel answered that Judas was not.[5] A short while later, Claro came back and again asked if Judas was in the house. This time, appellant and his companions answered that they were, in fact, Judas. Claro then left, but the three unidentified persons followed him outside.[6]

On the road outside, the unidentified persons repeatedly punched Claro.[7] Just as he was about to escape, appellant went

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[1] *Rollo*, pp. 2-16. The Decision dated 21 June 2010 of the Court of Appeals (CA) Eleventh Division in CA-G.R. CR-H.C. No. 02532 was penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan concurring.

[2] CA *rollo*, pp. 17-29; in Criminal Case No. T-1358 dated 12 September 2006.

[3] *Rollo*, p. 4.

[4] CA *rollo*, p. 19.

[5] *Id*.

[6] *Id*.

[7] *Rollo*, p. 4.

out of the house and struck him on the head with a *grande* beer bottle.[8] Claro was able to take only five more steps and then collapsed.[9] Matea Pielago (Matea), who was nearby, trained her flashlight on the face of the assailant, enabling her to recognize appellant – despite the brownout – as the one who had struck Claro.[10] She shouted for help when she saw Claro bleeding.[11]

Teresita Tria (Teresita), a neighbor of Oriel, saw appellant and the unidentified persons go back to Oriel's house.[12] She heard one of them say, "You should have shoot [sic] him."[13]

Alvin Camu (Alvin), who heard the sound of the beer bottle as it struck something, went to Oriel's house, where he thought the sound came from.[14] Oriel informed him that appellant had struck Claro on the head.[15] Alvin even saw appellant in Oriel's house going out through the kitchen door.[16] Alvin then went to the road, where he saw broken bottles and Claro lying face down in the canal,[17] already dead. He then left to report the matter to the police.[18]

Dr. Roger Atanacio (Dr. Atanacio), municipal health officer, examined the body of Claro the following day and found contusions and massive hematoma on the left side of the victim's neck, forehead, and left lower back.[19] Dr. Atanacio pronounced

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[8] *Id*.

[9] *Id*.

[10] CA *rollo*, p. 19.

[11] *Id*. at 19.

[12] Records, p. 129.

[13] *Id*.

[14] *Id*. at 205-206.

[15] *Id*. at 206.

[16] *Id*.

[17] *Id*.

[18] *Id*. at 207.

[19] *Rollo*, p. 5.

the cause of death as "cardio-respiratory arrest, cervical cord, compression due to contusion with massive hematoma neck,"[20] explaining that the center of cardio-respiration is located at the base of the neck.[21] Trauma on that part may affect normal respiration and cardiovascular activity, which was what happened in this case and actually caused Claro's death.[22]

An Information dated 7 February 1994 was filed before the RTC charging appellant and the three unidentified persons with the crime of murder qualified by treachery, evident premeditation, and abuse of superior strength.[23] A warrant of arrest[24] for appellant was issued on 24 February 1994, but he was able to elude the authorities for almost 10 years and was arrested only on 3 October 2003.[25]

Appellant was arraigned on 11 November 2003. During pre-trial, he stipulated that if the name Javier Cañaveras was to be mentioned during the course of the trial, it would refer to him; that he was at *Barangay* San Isidro, Sagnay, Camarines Sur, on 30 November 1993; and that he was admitting the existence of the autopsy report and Certificate of Death of Claro.[26]

In his defense, appellant testified that on 30 November 1993, he went to the house of Oriel at San Isidro, Sagnay, Camarines Sur for the *fiesta*.[27] Oriel was the cousin of his wife and godfather of his son.[28] There was a brownout when appellant arrived at around 7:00 p.m.[29] He saw six persons, more or less, drinking

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[20] *Id*.

[21] Records, p. 120.

[22] *Id*.

[23] *Id*. at 19.

[24] *Id*. at 23.

[25] *Id*. at 60.

[26] *Id*. at 73 and 77.

[27] *Id*. at 424.

[28] *Id*.

[29] *Id*. at 425.

liquor at the annex of the house.[30] At the dining area, he was served food by Oriel and was later invited to join the people at the annex to drink liquor.[31] He saw that only three other persons, to whom he was introduced by Oriel, were left.[32] The three men sat at one end of the table, while he and Oriel were at the other.[33]

While drinking, he heard a person outside shouting that Judas must come out.[34] The second time this person shouted, one of the three men at the other end of the table answered that Judas was there, and the three then proceeded to go outside.[35] He and Oriel remained at the annex, and they heard some arguing and chasing outside.[36] Oriel got up and tried to look, but came back saying that he could not clearly see because it was dark.[37] The two of them continued drinking until the liquor ran out.[38] Appellant went home with Ramil Ecleo, who corroborated this statement.[39] The defense also presented police blotter entries concerning the death of Claro. These entries showed that only a spot investigation had been conducted on the incident.[40] Also, appellant was never identified or mentioned as the assailant or suspect in the police blotter entries.[41]

In the course of appellant's testimony, the prosecution presented two more Informations for murder against him: one for the murder of Jose Espiritu, Jr. on 20 July 1986 in Tigaon, Camarines

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[30] *Id*.

[31] *Id*. at 425-426.

[32] *Id*. at 426-427.

[33] *Id*. at 427.

[34] *Id*. at 428.

[35] *Id.* at 429.

[36] *Id*.

[37] *Id.* at 429-430.

[38] *Id*. at 430.

[39] *Id*. at 392-395.

[40] *Id*. at 366-370.

[41] *Id*. at 486.

Sur,[42] and the other for the murder of Ludem Sumayang on 29 September 2002 in San Jose, Puerto Princesa.[43]

RULING OF THE RTC

On 25 September 2006, the RTC promulgated a Partial Decision[44] finding appellant guilty of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua* with the inherent accessories provided by law.[45] Appellant was also ordered to pay Claro's heirs the amounts of ₱50,000 as civil indemnity, ₱50,000 as moral damages and ₱25,000 as temperate damages.

With the appreciation of the qualifying circumstances of treachery and taking advantage of superior strength, the RTC found that all the elements of murder were present: a) a person was killed; b) the accused killed that person; c) the killing was attended by a qualifying aggravating circumstance; and d) the killing was neither parricide nor infanticide.[46]

On appeal to the CA, appellant argued that the RTC erred in finding him guilty beyond reasonable doubt of the crime of murder.[47] Furthermore, even assuming that he committed the act complained of, it was error to appreciate the qualifying circumstances. Thus, he could only be found guilty of the crime of homicide.

Appellant pointed to alleged inconsistencies in the testimonies of Matea and Teresita. While Teresita testified that three persons including appellant went after Claro, Matea specified that the

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[42] *Id.* at 482.

[43] *Id.* at 478.

[44] *Id.* at 503-515. The case was archived insofar as the three unidentified persons (John Doe, Peter Doe and Richard Doe) were concerned, subject to its reactivation as soon as they are identified and the court acquires jurisdiction over their persons.

[45] *Id.* at 514.

[46] *Id.* at 511.

[47] CA *rollo*, pp. 84-99.

three unidentified persons went after the victim and appellant only followed later on.[48] According to appellant, such inconsistency went into the very question of his involvement.[49]

Also, appellant pointed out that there was a brownout during the incident, making it highly unlikely for the witnesses to have allegedly seen him commit the crime. According to him, the claim that Matea trained her flashlight on his face, enabling her to identify him, was not in accord with the common experience of persons witnessing a deplorable crime.[50] Knowing that he had been identified, appellant could have killed her as well.

It was also argued that there were inconsistencies between the testimonies of the witnesses and the findings of Dr. Atanacio. Teresita and Matea both testified that they saw blood coming out of the head of Claro after he was struck with a beer bottle. On the other hand, the medical findings showed that there were no lacerations on his body; thus, there could not have been any bleeding.[51]

In their testimonies, Oriel and Alvin admitted not having seen the actual incident. Thus, it was contended that their testimonies could not have been the basis for appellant's conviction.[52] Even Dr. Atanacio's findings should not have been given credence, because he admitted that he did not open Claro's body. Thus, his report should be properly denominated as a necropsy, and not an autopsy, report.[53]

Finally, appellant argued that the RTC erred in appreciating treachery and taking advantage of superior strength as qualifying circumstances. In the Partial Decision, no specific act pointing

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[48] *Id.* at 90.

[49] *Id.*

[50] *Id.* at 91.

[51] *Id.* at 92.

[52] *Id.* at 93.

[53] *Id.*

to the presence of treachery was ever identified.[54] Neither was it shown that appellant and his companions took advantage of their combined strength to consummate the killing of Claro. Granting that the four of them indeed attacked the victim, mere superiority in number is not enough for a finding of superior strength.[55]

Thus, appellant prayed that he be acquitted or, in the alternative, that he be convicted only of the crime of homicide.[56]

Ruling of the CA

On 21 June 2010, the CA rendered a Decision[57] affirming *in toto* that of the RTC. The CA ruled that the alleged inconsistency regarding the moment when appellant went out of the house referred only to a collateral matter and did not deviate from the fact that he had been identified as the assailant.[58] The brownout did not negate the positive identification of appellant, since Teresita testified that her house and that of Oriel were lit by kerosene lamps. That Matea boldly shone her flashlight on appellant's face did not make her any less credible as a witness.[59] On the contrary, it only showed her presence of mind and courage in the face of a startling and frightful experience.

On the lack of blood on the body of Claro, the CA noted with approval the argument of the Office of the Solicitor General (OSG). The beer bottle that was used to strike him still contained beer; and with the improvised lighting sources coupled with the sight of a seemingly dead body, the liquid could have easily been mistaken for blood.[60]

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[54] *Id.* at 95.

[55] *Id.* at 97.

[56] *Id.* at 98.

[57] *Id.* at 176-190.

[58] *Id.* at 187.

[59] *Id.*

[60] *Id.* at 189.

According to the CA, the RTC was correct in appreciating treachery. When appellant struck Claro, the latter was already in a helpless state, being in no position to defend himself.[61]

Hence, this appeal, with the parties adopting their respective arguments in their briefs filed before the CA.

ISSUES

1. Whether it was proven beyond reasonable doubt that appellant had killed Claro; and
2. Whether treachery or taking advantage of superior strength attended the commission of the crime.

OUR RULING

We partially grant the appeal.

We affirm the findings of the RTC and the CA that appellant indeed struck Claro with a beer bottle, leading to the victim's untimely death. Taken together, the testimonies of the prosecution witnesses clearly point to appellant as the assailant.

First, contrary to the contention of appellant that the three unidentified persons were not his companions, Oriel positively declared having received appellant together with the three other persons at his home. Furthermore, Oriel testified that after Claro had asked about "Judas" for the second time, appellant and the three others went after Claro outside.

Second, Matea saw appellant hit Claro on the head with a beer bottle after the three unidentified persons had finished punching the victim. We dismiss the improper imputations on Matea's credibility based on the argument that it is not in accord with common human experience for one to shine a light on the face of a person who has just committed a crime. The CA was correct in holding that her actuation meant nothing more than that she exhibited courage and presence of mind, knowing that she might be able to help, as indeed she did, in bringing the perpetrators to justice.

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[61] *Id*. at 187.

Third, Teresita heard one of appellant's companions say, "You should have shoot [sic] him" while they were going back to Oriel's house. Alvin even saw appellant at Oriel's house after Oriel revealed that appellant had struck Claro.

These declarations of the witnesses show a complete picture of what happened before, during, and after the attack on Claro by appellant. We take note that Oriel is a relative by affinity and close friend of appellant. Despite some effort on his part to "hide some material facts," as noted by the RTC,[62] he still provided enough evidence pointing to appellant as the assailant.

No stock can be placed in the theory that the witnesses did not see appellant because the police blotters written immediately after the incident did not mention him in any way. Police Officer 1 Dave John de Quiroz, who identified the police blotter entries, admitted that the result of a spot investigation is usually written not in the blotters but on a separate sheet.[63] According to him, the result of an investigation is the complaint against the suspect.[64] While it is usually the police who prepare the complaint, they would not have a copy if it was prepared by a lawyer.[65]

In this case, the complaint and the affidavits of the witnesses were executed with the assistance of a private lawyer. Appellant cannot rely on the police blotters as a comprehensive record of the investigation conducted by the police. While the blotters were silent as to his involvement in the crime, the complaint and the affidavits of the witnesses named him as the perpetrator.

However, while we entertain no doubt that appellant killed Claro, we find that treachery was improperly appreciated by the CA.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the

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[62] Records, p. 513.

[63] *Id*. at 370.

[64] *Id*. at 371.

[65] *Id*.

execution thereof that tend directly and especially to ensure its execution, without risk to the offender arising from the defense that the offended party might make.[66] Treachery is appreciated as a qualifying circumstance when the following elements are shown: a) the malefactor employed means, method, or manner of execution affording the person attacked no opportunity for self-defense or retaliation; and b) the means, method, or manner of execution was deliberately or consciously adopted by the offender.

Treachery involves not only the swiftness, surprise, or suddenness of an attack upon an unsuspecting victim,[67] rendering the victim defenseless. It should also be shown that the mode of attack has knowingly been intended to accomplish the wicked intent.[68]

Thus, the second element is the subjective aspect of treachery.[69] It means that the accused must have made some preparation to kill the deceased in a manner that would insure the execution of the crime or render it impossible or hard for the person attacked to resort to self-defense or retaliation. The mode of attack, therefore, must have been planned by the offender and must not have sprung from an unexpected turn of events.[70]

We have had occasion to rule that treachery is not present when the killing is not premeditated,[71] or where the sudden attack is not preconceived and deliberately adopted, but is just triggered by a sudden infuriation on the part of the accused as a result of a provocative act of the victim,[72] or when the killing is done at the spur of the moment.[73]

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[66] REVISED PENAL CODE, Art. 14(16).

[67] *People v. Recepcion*, 440 Phil. 227 (2002).

[68] *Id*.

[69] *People v. Abut*, 449 Phil. 522 (2003).

[70] *People v. Santillana*, 367 Phil. 373 (1999).

[71] *People v. Teriapil*, G.R. No. 191361, 2 March 2011, 644 SCRA 491.

[72] *People v. Tigle*, 465 Phil. 368 (2004).

[73] *People v. Badajos*, 464 Phil. 762 (2004).

In this case, there was no time for appellant and his companions to plan and agree to deliberately adopt a particular means to kill Claro. The first query of Claro was regarded as innocent enough and was given no attention. It was the second query that was considered impertinent, and witnesses testified that appellant and his companions went after Claro immediately after it was uttered. Even the choice of weapon, a beer bottle readily available and within grabbing range at the table as appellant followed outside, shows that the intent to harm came about spontaneously.

We also find that the RTC erred in appreciating the qualifying circumstance of taking advantage of superior strength.

Superiority in number does not necessarily amount to the qualifying circumstance of taking advantage of superior strength.[74] It must be shown that the aggressors combined forces in order to secure advantage from their superiority in strength.[75] When appreciating this qualifying circumstance, it must be proven that the accused simultaneously assaulted the deceased.[76] Indeed, when assailants attack a victim alternately, they cannot be said to have taken advantage of their superior strength.[77]

In this case, the unidentified companions of appellant punched Claro first. He was already about to escape when he was struck by appellant on the head with a beer bottle. Thus, the attack mounted by the unidentified persons had already ceased when appellant took over. Also, the fact that Claro would have been able to escape showed that the initial attack was not that overwhelming, considering that there were three of them attacking. Clearly, there was no blatant disparity in strength between Claro, on the one hand, and appellant and his companions on the other.

In the light of the foregoing, the crime committed was homicide, not murder. Under Article 249 of the Revised Penal Code, the

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[74] *People v. Aliben*, 446 Phil. 349 (2003).

[75] *Id*.

[76] *Id*.

[77] *People v. CAFGU Baltar, Jr.*, 401 Phil. 1 (2000).

penalty imposed for the crime of homicide is *reclusion temporal*. Considering that no aggravating circumstances attended the commission of the crime, the penalty shall be imposed in its medium period.

Applying the Indeterminate Sentence Law, the maximum penalty shall be selected from the range of the medium period of *reclusion temporal*, with the minimum penalty selected from the range of *prision mayor*. Thus, we impose the penalty of imprisonment for a period of 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum. As to the award of damages to Claro's heirs, we find that the award granted by the RTC is in keeping with prevailing jurisprudence on homicide.[78]

WHEREFORE, the appeal is **PARTIALLY GRANTED**. We find appellant **GUILTY** of the crime of **HOMICIDE.** He is hereby **SENTENCED** to suffer the penalty of imprisonment for 8 years and 1 day of *prision mayor* as minimum to 14 years, 8 months and 1 day of *reclusion temporal* as maximum and **ORDERED** to pay the heirs of **Claro Sales** the amounts of ₱50,000 as civil indemnity, ₱50,000 as moral damages, and ₱25,000 as temperate damages, at the legal rate of 6% per annum from the finality of this Decision until these damages are fully paid.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[78] *Pron v. People*, G.R. No. 199017, 10 April 2013; *Zalameda v. People*, G.R. No. 203259, 7 January 2013; *People v. Concillado,* G.R. No. 181204, 28 November 2011, 661 SCRA 363.

SECOND DIVISION

[G.R. No. 194201. November 27, 2013]

SPOUSES BAYANI H. ANDAL AND GRACIA G. ANDAL, *petitioners, vs.* **PHILIPPINE NATIONAL BANK, REGISTER OF DEEDS OF BATANGAS CITY, JOSE C. CORALES,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; LOAN; INTEREST; RATE OF INTEREST SUBSEQUENTLY DECLARED ILLEGAL DOES NOT STOP PAYMENT OF INTEREST.—** It is clear from the contract of loan between petitioners-spouses and respondent bank that petitioners-spouses, as borrowers, agreed to the payment of interest on their loan obligation. That the rate of interest was subsequently declared illegal and unconscionable does not entitle petitioners-spouses to stop payment of interest. It should be emphasized that only the rate of interest was declared void. The stipulation requiring petitioners-spouses to pay interest on their loan remains valid and binding. They are, therefore, liable to pay interest from the time they defaulted in payment until their loan is fully paid.
2. **ID.; ID.; ID.; ID.; BSP CIRCULAR NO. 799; IN THE ABSENCE OF EXPRESS CONTRACT AS TO RATE OF INTEREST, THE RATE IS SIX PERCENT (6%) PER ANNUM.—** Pursuant to Circular No. 799, series of 2013, issued by the Office of the Governor of the Bangko Sentral ng Pilipinas on 21 June 2013, and in accordance with the ruling of the Supreme Court in the recent case of *Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr*., effective 1 July 2013, the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

APPEARANCES OF COUNSEL

De Castro and Cagampang Law Offices for petitioners.
Rachelle Alma R. Panganiban for Phil. National Bank.

D E C I S I O N

PEREZ, *J*.:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to partially set aside the Decision,[2] dated 30 March 2010, and the Resolution,[3] dated 13 October 2010, of the Court of Appeals (CA) in CA-G.R. CV No. 91250. The challenged Decision dismissed the appeal of herein respondent Philippine National Bank (respondent bank) and affirmed the decision of the Regional Trial Court (RTC), Branch 84, Batangas City with the modification that the interest rate to be applied by respondent bank on the principal loan obligation of petitioners Spouses Bayani H. Andal and Gracia G. Andal (petitioners-spouses) shall be 12% per annum, to be computed from default.

As found by the CA, the facts of this case are as follows:

> x x x on September 7, 1995, [petitioners-spouses] obtained a loan from [respondent bank] in the amount of ₱21,805,000.00, for which they executed twelve (12) promissory notes x x x [undertaking] to pay [respondent bank] the principal loan with varying interest rates of 17.5% to 27% per interest period. It was agreed upon by the parties that the rate of interest may be increased or decreased for the subsequent interest periods, with prior notice to [petitioners-spouses], in the event of changes in interest rates prescribed by law or the Monetary Board x x x, or in the bank's overall cost of funds.
>
> To secure the payment of the said loan, [petitioners-spouses] executed in favor of [respondent bank] a real estate mortgage using as collateral five (5) parcels of land including all improvements therein, all situated in Batangas City and covered by Transfer Certificate of Title (TCT) Nos. T-641, T-32037, T-16730, T-31193 and RT 363 (3351) of the Registry of Deeds of Batangas City, in the name of [petitioners-spouses].

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[1] *Rollo*, pp. 23-46.

[2] *Id*. at 48-65; Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Normandie B. Pizarro and Ruben C. Ayson, concurring.

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

Subsequently, [respondent bank] advised [petitioners-spouses] to pay their loan obligation, otherwise the former will declare the latter's loan due and demandable. On July 17, 2001, [petitioners-spouses] paid ₱14,800,000.00 to [respondent bank] to avoid foreclosure of the properties subject of the real estate mortgage. Accordingly, [respondent bank] executed a release of real estate mortgage over the parcels of land covered by TCT Nos. T-31193 and RT-363 (3351). However, despite payment x x x, [respondent bank] proceeded to foreclose the real estate mortgage, particularly with respect to the three (3) parcels of land covered by TCT Nos. T-641, T-32037 and T-16730 x x x.

x x x [A] public auction sale of the properties proceeded, with the [respondent bank] emerging as the highest and winning bidder. Accordingly, on August 30, 2002, a certificate of sale of the properties involved was issued. [Respondent bank] consolidated its ownership over the said properties and TCT Nos. T-52889, T-52890, and T-52891 were issued in lieu of the cancelled TCT[s] x x x. This prompted [petitioners-spouses] to file x x x a complaint for annulment of mortgage, sheriff's certificate of sale, declaration of nullity of the increased interest rates and penalty charges plus damages, with the RTC of Batangas City.

In their amended complaint, [petitioners-spouses] alleged that they tried to religiously pay their loan obligation to [respondent bank], but the exorbitant rate of interest unilaterally determined and imposed by the latter prevented the former from paying their obligation. [Petitioners-spouses] also alleged that they signed the promissory notes in blank, relying on the representation of [respondent bank] that they were merely proforma [sic] bank requirements. Further, [petitioners-spouses] alleged that the unilateral increase of interest rates and exorbitant penalty charges are akin to unjust enrichment at their expense, giving [respondent bank] no right to foreclose their mortgaged properties. x x x.

x x x x x x x x x

On August 27, 2004 [respondent bank] filed its answer, denying the allegations in the complaint. x x x [respondent bank] alleged that: the penalty charges imposed on the loan was expressly stipulated under the credit agreements and in the promissory notes; although [petitioners-spouses] paid to [respondent bank] ₱14,800,000.00 on July 10, 2001, the former was still indebted to the latter in the amount of ₱33,960,633.87; assuming *arguendo* that the imposition was

improper, the foreclosure of the mortgaged properties is in order since [respondent bank's] bid in the amount of ₱28,965,100.00 was based on the aggregate appraised rates of the foreclosed properties. x x x[4]

After trial, the RTC rendered judgment[5] in favor of petitioners-spouses and against respondent bank, ordering that:

1. The rate of interest should be reduced as it is hereby reduced to 6% in accordance with Article 2209 of the Civil Code effective the next 30, 31 and 180 days respectively from the date of the twelve (12) promissory notes x x x covered by the real estate x x x mortgages, to be applied on a declining balance of the principal after the partial payments of ₱14,800,00.00 (paid July 17, 2001) and ₱2,000,000.00[6] (payments of ₱300,000.00 on October 1, 1999, ₱1,800,000.00 as [of] December 1, 1999, ₱700,000.00 [on] January 31, 2000) per certification of [respondent bank] to be reckoned at (sic) the dates the said payments were made, thus the corrected amounts of the liability for principal balance and the said 6% charges per annum shall be the new basis for the [petitioners-spouses] to make payments to the [respondent bank] x x x which shall automatically extinguish and release the mortgage contracts and the outstanding liabilities of the [petitioners-spouses]; [respondent bank] shall then surrender the new transfer certificates of title x x x in its name to the [c]ourt x x x, [c]anceling the penalty charges.

x x x x x x x x x

3. Declaring as illegal and void the foreclosure sales x x x, the Certificates of Sales and the consolidation of titles of the subject real properties including the cancellation of the new Transfer Certificates of Title x x x in the name of the [respondent] bank and reinstating Transfer Certificates of Title Nos. T-641, T-32037 and T-16730 in the names of the [petitioners-spouses]; the latter acts to be executed by the Register of Deeds of Batangas City.[7]

[4] *Id*. at 48-51.

[5] CA *rollo*, pp. 17-27; RTC Decision dated 6 July 2007.

[6] Should be ₱2,800,000.00.

[7] CA *rollo*, p. 27.

The foregoing disposition of the RTC was based on the following findings of fact:

As of this writing the [respondent] bank have (sic) not complied with the said orders as to the interest rates it had been using on the loan of [petitioners-spouses] and the monthly computation of interest *vis a vis* (sic) the total shown in the statement of account as of Aug 30, 2002. Such refusal amounts to suppression of evidence thus tending to show that the interest used by the bank was unilaterally increased without the written consent of the [petitioners-spouses]/ borrower as required by law and Central Bank Circular No. 1171. The latter circular provides that any increase of interest in a given interest period will have to be expressly agreed to in writing by the borrower. The mortgaged properties were subject of foreclosure and were sold on August 30, 2002 and the [respondent] bank's statement of account as of August 30, 2002 x x x shows unpaid interest up to July 17, 2001 of ₱12,695,718.99 without specifying the rate of interest for each interest period of thirty days. Another statement of account of [respondent bank] x x x as [of] the date of foreclosure on August 30, 2002 shows account balance of ₱20,505,916.51 with a bid price of ₱28,965,100.00 and showing an interest of ₱16,163,281.65. Again, there are no details of the interest used for each interest period from the time these loans were incurred up to the date of foreclosure. These statements of account together with the stated interest and expenses after foreclosure were furnished by the [respondent] bank during the [c]ourt hearings. The central legal question is that there is no agreement in writing from the [petitioners-spouses]/borrowers for the interest rate for each interest period neither from the data coming from the Central Bank or the cost of money which is understood to mean the interest cost of the bank deposits form the public. Such imposition of the increased interest without the consent of the borrower is null and void pursuant to Article 1956 of the Civil Code and as held in the pronouncement of the Supreme Court in several cases and C.B. Circular No. 1191 that the interest rate for each re-pricing period under the floating rate of interest is subject to mutual agreement in writing. Art. 1956 states that no interest is due unless it has been expressly stipulated and agreed to in writing.

Any stipulation where the fixing of interest rate is the sole prerogative of the creditor/mortgagee, belongs to the class of potestative condition which is null and void under Art. 1308 of the New Civil Code. The fulfillment of a condition cannot be left to the sole will of [one of] the contracting parties.

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In the instant case, if the interest is declared null and void, the foreclosure sale for a higher amount than what is legally due is likewise null and void because under the Civil Code, a mortgage may be foreclosed only to enforce the fulfillment of the obligation for whose security it was constituted (Art. 2126, Civil Code).

x x x x x x x x x

Following the declaration of nullity of the stipulation on floating rate of interest since no interest may be collected based on the stipulation that is null and void and legally inexistent and unenforceable. x x x. Since the interest imposed is illegal and void only the rate of 6% interest per month shall be imposed as liquidated damages under Art. 2209 of the Civil Code.

It is worth mentioning that these forms used by the bank are pre-printed forms and therefore contracts of adhesion and x x x any dispute or doubt concerning them shall be resolved in favor of the x x x borrower. This (sic) circumstances tend to support the contention of the [petitioners-spouses] that they were made to sign the real estate mortgages/promissory notes in blank with respect to the interest rates.

x x x x x x x x x

[Respondent bank has] no right to foreclose [petitioners-spouses'] property and any foreclosure thereof is illegal, unreasonable and void, since [petitioners-spouses] are not and cannot be considered in default for their inability to pay the arbitrarily, illegally, and unconscionably adjusted interest rates and penalty charges unilaterally made and imposed by [respondent] bank.

The [petitioners-spouses] submitted to the [c]ourt certified copies of the weighted average of Selected Domestic Interest Rates of the local banks obtained from the Bangko Sentral ng Pilipinas Statistical Center and it shows a declining balance of interest rates x x x.

x x x x x x x x x

There is no showing by the [respondent bank] that any of the foregoing rate was ever used to increase or decrease the interest rates charged upon the [petitioners-spouses'] mortgage loan for the 30 day re-pricing period subsequent to the first 30 days from [the] dates of the promissory notes. These documents submitted being

certified public documents are entitled to being taken cognizance of by the [c]ourt as an aid to its decision making. x x x.[8]

Respondent bank appealed the above judgment of the trial court to the CA. Its main contention is that the lower court erred in ordering the re-computation of petitioners-spouses' loans and applying the interest rate of 6% per annum. According to respondent bank, the stipulation on the interest rates of 17.5% to 27%, subject to periodic adjustments, was voluntarily agreed upon by the parties; hence, it was not left to the sole will of respondent bank. Thus, the lower court erred in reducing the interest rate to 6% and in setting aside the penalty charges, as such is contrary to the principle of the obligatory force of contracts under Articles 1315 and 1159 of the Civil Code.[9]

The CA disposed of the issue in the following manner:

We partly agree with [respondent bank's] contention.

Settled is the rule that the contracting parties are free to enter into stipulations, clauses, terms and conditions as they may deem convenient, as long as these are not contrary to law, morals, good customs, public order or public policy. Pursuant to Article 1159 of the Civil Code, these obligations arising from such contracts have the force of law between the parties and should be complied with in good faith. x x x.

x x x x x x x x x

In the case at bar, [respondent bank] and [petitioners-spouses] expressly stipulated in the promissory notes the rate of interest to be applied to the loan obtained by the latter from the former, x x x.

x x x x x x x x x

[Respondent bank] insists that [petitioner-spouses] agreed to the interest rates stated in the promissory notes since the latter voluntarily signed the same. However, we find more credible and believable the version of [petitioners-spouses] that they were made to sign the said promissory notes in blank with respect to the rate of interest

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[8] *Id*. at 22-27.

[9] *Rollo*, p. 56.

and penalty charges, and subsequently, [respondent] bank filled in the blanks, imposing high interest rate beyond which they were made to understand at the time of the signing of the promissory notes.

x x x x x x x x x

The signing by [petitioners-spouses] of the promissory notes in blank enabled [respondent] bank to impose interest rates on the loan obligation without prior notice to [petitioners-spouses]. The unilateral determination and imposition of interest rates by [respondent] bank without [petitioners-spouses'] assent is obviously violative of the principle of mutuality of contracts ordained in Article 1308 of the Civil Code x x x.

x x x x x x x x x

[Respondent bank's] act converted the loan agreement into a contract of adhesion where the parties do not bargain on equal footing, the weaker party's participation, herein [petitioners-spouses], being reduced to the alternative to take it or leave it. [Respondent] bank tried to sidestep this issue by averring that [petitioners-spouses], as businessmen, were on equal footing with [respondent bank] as far as the subject loan agreements are concerned. That may be true insofar as entering into the original loan agreements and mortgage contracts are concerned. However, that does not hold true when it comes to the unilateral determination and imposition of the escalated interest rates imposed by [respondent] bank.

x x x x x x x x x

The Court further notes that in the case at bar, [respondent] bank imposed different rates in the twelve (12) promissory notes: interest rate of 18% in five (5) promissory notes; 17.5% in two (2) promissory notes; 23% in one (1) promissory note; and 27% in three (3) promissory notes. Obviously, the interest rates are excessive and arbitrary. Thus, the foregoing interest rates imposed on [petitioners-spouses'] loan obligation without their knowledge and consent should be disregarded, not only for being iniquitous and exorbitant, but also for being violative of the principle of mutuality of contracts.

However, we do not agree with the trial court in fixing the rate of interest of 6%. It is well-settled that when an obligation is breached and consists in the payment of a sum of money, *i.e.*, loan or forbearance of money, the interest due shall be that which may have been stipulated in writing. In the absence of stipulation, the rate of interest shall

be 12% interest per annum to be computed from default, *i.e.*, from judicial or extra-judicial demand and subject to the provisions of Article 1169 of the Civil Code. Since the interest rates printed in the promissory notes are void for the reasons above-stated, the rate of interest to be applied to the loan should be 12% per annum only.[10]

The CA, consequently, dismissed respondent bank's appeal and affirmed the decision of the trial court with the modification that the rate of interest shall be 12% per annum instead of 6%.

Respondent bank filed a Motion for Reconsideration of the CA decision. Petitioners-spouses, on the other hand, filed a comment praying for the denial of respondent bank's motion for reconsideration. They also filed an "Urgent Manifestation"[11] calling the attention of the CA to its respective decisions in the cases of *Spouses Enrique and Epifania Mercado v. China Banking Corporation, et. al.* (CA-GR CV No. 75303)[12] and *Spouses Bonifacio Caraig and Ligaya Caraig v. The Ex-Officio Sheriff of RTC, Batangas City, et. al.* (CA-G.R. CV No. 76029).[13]

According to petitioners-spouses, in *Spouses Mercado v. China Banking*, the Special Seventh Division of the CA held that where the interest rate is potestative, the entire interest is null and void and no interest is due. On the other hand, in the case of *Spouses Caraig v. The Ex-Officio Sheriff of RTC, Batangas City*, the then Ninth Division of the CA ruled that under the doctrine of operative facts, no interest is due after the auction sale because the loan is paid in kind by the auction sale, and interest shall commence to run again upon finality of the judgment declaring the auction sale null and void.[14]

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[10] *Id.* at 57-62.

[11] CA *rollo*, pp. 192-195.

[12] *Rollo*, pp. 88-101; Promulgated on 15 November 2005.

[13] *Id.* at 103-115; Promulgated on 31 May 2007.

[14] CA *rollo*, pp. 226-229; Resolution of the CA dated 13 October 2010 in CA-G.R. CV No. 91250 denying respondent bank's Motion for Reconsideration.

The CA denied respondent bank's Motion for Reconsideration for lack of merit. It likewise found no merit in petitioners-spouses' contention that no interest is due on their principal loan obligation from the time of foreclosure until finality of the judgment annulling the foreclosure sale. According to the CA:

x x x Notably, this Court disregarded the stipulated rate[s] of interest on the subject promissory notes after finding that the same are iniquitous and exorbitant, and for being violative of the principle of mutuality of contracts. Nevertheless, in *Equitable PCI Bank v. Ng Sheung Ngor*, the Supreme Court ruled that because the escalation clause was annulled, the principal amount of the loan was subject to the original or stipulated interest rate of interest, and that upon maturity, the amount due was subject to legal interest at the rate of 12% per annum. In this case, while we similarly annulled the escalation clause contained in the promissory notes, this Court opted not to impose the original rates of interest stipulated therein for being excessive, the same being 17.5% to 27% per interest period.

Relevantly, the High Court held in *Asian Cathay Finance and Leasing Corporation v. Spouses Cesario Gravador and Norma De Vera, et. al.* that stipulations authorizing the imposition of iniquitous or unconscionable interest are contrary to morals, if not against the law. x x x. The nullity of the stipulation on the usurious interest does not, however, affect the lender's right to recover the principal of the loan. The debt due is to be considered without the stipulation of the excessive interest. A legal interest of 12% per annum will be added in place of the excessive interest formerly imposed.

Following the foregoing rulings of the Supreme Court, it is clear that the imposition by this Court of a 12% rate of interest per annum on the principal loan obligation of [petitioners-spouses], computed from the time of default, is proper as it is consistent with prevailing jurisprudence.

While the decisions of the Special Seventh Division and the Ninth Division of this Court in CA-G.R. CV No. 75303 and in CA-G.R. No. 76029 are final and executory, **the same merely have persuasive effect but do not outweigh the decisions of the Supreme Court which we are duty-bound to follow, conformably with the principle of *stare decisis*. The doctrine of *stare decisis* enjoins adherence to judicial precedents. It requires courts in a country to follow the rule established in a decision of the Supreme Court**

thereof. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis* is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[15] (Emphasis supplied.)

Petitioners-spouses are now before us, reiterating their position that no interest should be imposed on their loan, following the respective pronouncements of the CA in the Caraig and Mercado Cases. Petitioners-spouses insist that "[i]f the application of the doctrine of operative facts is upheld, as applied in ***Caraig vs. Alday***, x x x, interest in the instant case would be computed only from the finality of judgment declaring the foreclosure sale null and void. If ***Mercado vs. China Banking Corporation*** x x x, applying by analogy the rule on void usurious interest to void potestative interest rate, is further sustained, no interest is due when the potestative interest rate stipulation is declared null and void, as in the instant case.[16]

Our Ruling

We dismiss the appeal.

We cannot subscribe to the contention of petitioners-spouses that no interest should be due on the loan they obtained from respondent bank, or that, at the very least, interest should be computed only from the finality of the judgment declaring the foreclosure sale null and void, on account of the exorbitant rate of interest imposed on their loan.

It is clear from the contract of loan between petitioners-spouses and respondent bank that petitioners-spouses, as borrowers, agreed to the payment of interest on their loan obligation. That the rate of interest was subsequently declared illegal and unconscionable does not entitle petitioners-spouses to stop payment of interest. It should be emphasized that only the rate of interest was declared void. The stipulation

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[15] *Id.* at 228-229.

[16] *Rollo*, p. 41.

requiring petitioners-spouses to pay interest on their loan remains valid and binding. They are, therefore, liable to pay interest from the time they defaulted in payment until their loan is fully paid.

It is worth mentioning that both the RTC and the CA are one in saying that "[petitioners-spouses] cannot be considered in default for their inability to pay the arbitrary, illegal and unconscionable interest rates and penalty charges unilaterally imposed by [respondent] bank."[17] This is precisely the reason why the foreclosure proceedings involving petitioners-spouses' properties were invalidated. As pointed out by the CA, "since the interest rates are null and void, [respondent] bank has no right to foreclose [petitioners-spouses'] properties and any foreclosure thereof is illegal. x x x. Since there was no default yet, it is premature for [respondent] bank to foreclose the properties subject of the real estate mortgage contract."[18]

Thus, for the purpose of computing the amount of liability of petitioners-spouses, they are considered in default from the date the Resolution of the Court in G.R. No. 194164 *(Philippine National Bank v. Spouses Bayani H. Andal and Gracia G. Andal)* – which is the appeal interposed by respondent bank to the Supreme Court from the judgment of the CA – became final and executory. Based on the records of G.R. No. 194164, the Court denied herein respondent bank's appeal in a Resolution dated 10 January 2011. The Resolution became final and executory on 20 May 2011.[19]

In addition, pursuant to Circular No. 799, series of 2013, issued by the Office of the Governor of the Bangko Sentral ng Pilipinas on 21 June 2013, and in accordance with the ruling of the Supreme Court in the recent case of *Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*,[20] effective 1 July

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[17] *Id.* at 63.

[18] *Id.*

[19] *Id.* at 276.

[20] G.R. No. 189871, 13 August 2013.

2013, the rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum. Accordingly, the rate of interest of 12% per annum on petitioners-spouses' obligation shall apply from 20 May 2011 – the date of default – until 30 June 2013 only. From 1 July 2013 until fully paid, the legal rate of 6% per annum shall be applied to petitioners-spouses' unpaid obligation.

IN VIEW OF THE FOREGOING, the Petition is **DENIED** and the Judgment of the Court of Appeals in CA-G.R. CV No. 91250 is **AFFIRMED** with the **MODIFICATION** that the 12% interest per annum shall be applied from the date of default until 30 June 2013 only, after which date and until fully paid, the outstanding obligation of petitioners-spouses shall earn interest at 6% per annum. Let the records of this case be remanded to the trial court for the proper computation of the amount of liability of petitioners Spouses Bayani H. Andal and Gracia G. Andal, in accordance with the pronouncements of the Court herein and with due regard to the payments previously made by petitioners-spouses.

SO ORDERED.

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

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* Per Special Order No. 1619 dated 22 November 2013.

FIRST DIVISION

[G.R. No. 194538. November 27, 2013]

MORETO MIRALLOSA and all persons claiming rights and interests under him, *petitioner, vs.* **CARMEL DEVELOPMENT, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; ACTION FOR UNLAWFUL DETAINER; THE ONE-YEAR PRESCRIPTIVE PERIOD FOR FILING A CASE IS TACKED FROM THE DATE OF THE LAST DEMAND TO VACATE THE PREMISES.—** An action for unlawful detainer exists when a person unlawfully withholds possession of any land or building against or from a lessor, vendor, vendee or other persons, after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. Here, possession by a party was originally legal, as it was permitted by the other party on account of an express or implied contract between them. However, the possession became illegal when the other party demanded that the possessor vacate the subject property because of the expiration or termination of the right to possess under the contract, and the possessor refused to heed the demand. The importance of making a demand cannot be overemphasized, as it is jurisdictional in nature. The one-year prescriptive period for filing a case for unlawful detainer is tacked from the date of the last demand, the reason being that the other party has the right to waive the right of action based on previous demands and to let the possessor remain on the premises for the meantime. When respondent sent petitioner a demand letter in April 2002 and subsequently filed the Complaint in January 2003, it did so still within the one-year prescriptive period imposed by the rules. It matters not whether there is an ownership issue that needs to be resolved, for as we have previously held, a determination of the matter would only be provisional.

2. **POLITICAL LAW; STATUTORY CONSTRUCTION; A LAW DECLARED UNCONSTITUTIONAL PRODUCES NO EFFECT WHATSOEVER AND CONFERS NO RIGHT TO ANY PERSON; CASE AT BAR.—** In this case, it is clear

from the facts that what was once a legal possession of petitioner, emanating from P.D. 293, later became illegal by the pronouncement in *Tuason* that the law was unconstitutional. x x x As a general rule, a law declared as unconstitutional produces no effect whatsoever and confers no right on any person. It matters not whether the person is a party to the original case, because "[n]ot only the parties but all persons are bound by the declaration of unconstitutionality, which means that no one may thereafter invoke it nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity." Thus, petitioner's invocation of the doctrine of *res inter alios judicatae nullum aliis praejudicium faciunt* cannot be countenanced. We have categorically stated that the doctrine does not apply when the party concerned is a "successor in interest by title subsequent to the commencement of the action, or the action or proceeding is *in rem,* the judgment in which is binding against him." While petitioner may not have been a party to *Tuason*, still, the judgment is binding on him because the declaration of P.D. 293 as a nullity partakes of the nature of an *in rem* proceeding. Neither may petitioner avail himself of the operative fact doctrine, which recognizes the interim effects of a law prior to its declaration of unconstitutionality. The operative fact doctrine is a rule of equity. As such, it must be applied as an exception to the general rule that an unconstitutional law produces no effects. The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law, but it can never be invoked to validate as constitutional an unconstitutional act.

3. **CIVIL LAW; PROPERTY; RIGHT OF ACCESSION WITH RESPECT TO IMMOVABLE PROPERTY; BUILDER IN BAD FAITH ON THE LAND OF ANOTHER LOSES WHAT IS BUILT WITHOUT RIGHT OF INDEMNITY.—** A builder in good faith is "one who builds with the belief that the land he is building on is his, or that by some title one has the right to build thereon, and is ignorant of any defect or flaw in his title." Since petitioner only started occupying the property sometime in 1995 (when his predecessor-in-interest executed an Affidavit in his favor), or about seven years after *Tuason* was promulgated, he should have been aware of the binding effect of that ruling. Since all judicial decisions form part of the law of the land, its existence should be "[o]n one hand, x x x matter of mandatory judicial notice; on the other,

ignorantia legis non excusat." He thus loses whatever he has built on the property, without right to indemnity, in accordance with Article 449 of the Civil Code.

APPEARANCES OF COUNSEL

Ebencio M. Gandia for petitioner.

Rhoan Purugganan and Rita Marie B. Cubangban for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is an appeal by way of a Petition for Review on *Certiorari*[1] dated 6 December 2010 assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in C.A.-G.R. SP No. 105190, which reversed the Decision[4] and Order[5] of the Regional Trial Court (RTC), Branch 121, Caloocan City in Civil Case No. C-22018. The RTC had reversed the Decision[6] of the Metropolitan Trial Court (MeTC), Branch 52, Caloocan City in Civil Case No. 03-27114, ordering petitioner to vacate the subject property in this case for ejectment.

The antecedent facts are as follows:

Respondent Carmel Development, Inc. was the registered owner of a Caloocan property known as the Pangarap Village located

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[1] *Rollo,* pp. 28-55.

[2] *Id*. at 7-19; CA Decision dated 25 May 2010, penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Antonio L. Villamor and Florito S. Macalino.

[3] *Id*. at 20; CA Resolution dated 15 October 2010.

[4] *Id*. at 112-114; RTC Decision dated 30 April 2008, penned by Presiding Judge Adoracion G. Angeles.

[5] *Id*. at 115; RTC Order dated 11 August 2008.

[6] *Id*. at 187-190; MeTC Order dated 9 November 2007, penned by Acting Presiding Judge Josephine M. Advento-Vito Cruz.

at Barrio Makatipo, Caloocan City.[7] The property has a total land area of 156 hectares and consists of three parcels of land registered in the name of Carmel Farms, Inc. under Transfer Certificate of Title (TCT) Nos. (62603) 15634, (62605) 15632 and (64007) 15807.[8] The lot that petitioner presently occupies is Lot No. 32, Block No. 73 covered by the titles above-mentioned.[9]

On 14 September 1973, President Ferdinand Marcos issued Presidential Decree No. 293 (P.D. 293),[10] which invalidated the titles of respondent and declared them open for disposition to the members of the Malacañang Homeowners Association, Inc. (MHAI), to wit:

> NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation 1081, dated September 21, 1972 and General Order No. 1 dated September 22, 1972 do hereby order and decree that any and all sales contracts between the Government and the original purchasers, are hereby cancelled, and those between the latter and the subsequent transferees, and any and all transfers thereafter, covering lots 979, 981, 982, 985, 988, 989, 990, 991-new, 1226, 1228, 1230, and 980-C-2 (LRC PSD-1730), all of Tala Estate, Caloocan City are hereby declared invalid and null and void *ab initio* as against the Government; that Transfer Certificates of Title Nos. 62603, 6204, 6205, covering lots 1, 2, and 3., PCS-4383, **all in the name of Carmel Farms, Inc., which**

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[7] *Id*. at 8.

[8] *Id*.

[9] *Id*.

[10] *See* Presidential Decree No. 293 otherwise known as "Cancelling the Sale Certificates and/or Transfer Certificates of Title Numbers 62603, 62604, And 62605, covering Lots 1, 2, and 3, respectively, Pcs-4383, all in the name of Carmel Farms, Inc., which is a consolidation and subdivision of Lots 979, 981, 982, 985, 988, 989, 990, 991-New, 1226, 1230, and 980-C-2 (Lrc Psd-1730), All of Tala Estate, Caloocan City, and Declaring the same open for disposition to the Malacañang Homeowners Association, Inc., the present occupants, pursuant to the provisions of Commonwealth Act Number 32, as amended."

are a consolidation and subdivision survey of the lots hereinbefore enumerated, are declared invalid and considered cancelled as against the Government; and that said lots are declared open for disposition and sale to the members of the Malacañang Homeowners Association, Inc., the present bona fide occupants thereof, pursuant to Commonwealth Act No. 32, as amended. (Emphasis supplied)

By virtue of P.D. 293, a Memorandum[11] was inscribed on the last page of respondent's title, as follows:

> Memorandum – Pursuant to Presidential Decree No. 293, this Certificate of Title is declared invalid and null and void *ab initio* and considered cancelled as against the government and the property described herein is declared open for disposition and sale to the members of the Malacañang Homeowners Association, Inc.

On the basis of P.D. 293, petitioner's predecessor-in-interest, Pelagio M. Juan, a member of the MHAI, occupied Lot No. 32 and subsequently built houses there.[12] On the other hand, respondent was constrained to allow the members of MHAI to also occupy the rest of Pangarap Village.[13]

On 29 January 1988, the Supreme Court promulgated *Roman Tuason and Remedio V. Tuason, Attorney-in-fact, Trinidad S. Viado v. The Register of Deeds, Caloocan City, Ministry of Justice and the National Treasurer*[14] *(Tuason),* which declared P.D. 293 as unconstitutional and void *ab initio* in all its parts. The dispositive portion is herein quoted as follows:

> WHEREFORE, Presidential Decree No. 293 is declared to be unconstitutional and void *ab initio* in all its parts. The public respondents are commanded to cancel the inscription on the titles of the petitioners and the petitioners in intervention of the memorandum declaring their titles null and void and declaring the property therein respectively described open for disposition and sale to the members of the Malacañang Homeowners Association, Inc.

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[11] *Rollo,* p. 8.

[12] *Id.*

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

[14] 241 Phil. 650, 663 (1988).

to do whatever else is needful to restore the titles to full effect and efficacy; and henceforth to refrain, cease and desist from implementing any provision or part of said Presidential Decree No. 293. No pronouncement as to costs.

On 17 February 1988, the Register of Deeds then cancelled the Memorandum inscripted on respondent's title,[15] eventually restoring respondent's ownership of the entire property.

Meanwhile, sometime in 1995, petitioner took over Lot No. 32 by virtue of an Affidavit executed by Pelagio M. Juan in his favor.[16]

As a consequence of *Tuason*, respondent made several oral demands on petitioner to vacate the premises, but to no avail.[17] A written demand letter which was sent sometime in April 2002 also went unheeded.[18]

On 14 January 2003, respondent filed a Complaint for Unlawful Detainer[19] before the MeTC. After due hearing on 9 November 2007, the trial court rendered a Decision[20] in the following manner:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant, in the following manner:

1. Ordering the defendant to vacate the subject property located at Lot No. 32, Block 73, Gregorio Araneta Ave., Makatipo, Caloocan City, together with all persons claiming right under her;

2. To pay the sum of ₱10,000.00 as Attorney's fees;

3. To pay the costs of suit.

SO ORDERED. (Emphases in the original)

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[15] *Rollo,* p. 9.

[16] *Id.* at 408.

[17] *Id.* at 10.

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

[19] *Id.* at 117-120.

[20] *Supra* note 6.

In so ruling, the trial court stated that respondent was the registered owner of the property until its title was voided by P.D. 293.[21] It had no alternative but to allow petitioner's occupancy of the premises.[22] Since the latter's occupation was only by mere tolerance of respondent, petitioner was necessarily bound by an implied promise that he would vacate the property upon demand.[23] Failure to do so would render him liable for unlawful detainer.

Aggrieved, petitioner appealed to the RTC. On 30 April 2008, it rendered a Decision[24] reversing the findings of the MTC, as follows:

> **WHEREFORE, premises considered, the decision appealed from is hereby REVERSED AND SET ASIDE and the complaint is accordingly DISMISSED. With costs against plaintiff-appellee.**
>
> SO ORDERED. (Emphasis in the original)

In the opinion of the RTC, respondent's Complaint did not make out a case for unlawful detainer.[25] It maintained that respondent's supposed acts of tolerance must have been present right from the start of petitioner's possession.[26] Since the possession was sanctioned by the issuance of P.D. 293, and respondent's tolerance only came after the law was declared unconstitutional, petitioner thus exercised possession under color of title.[27] This fact necessarily placed the Complaint outside the category of unlawful detainer.[28]

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[21] *Id.* at 188.

[22] *Id.*

[23] *Id.* at 189.

[24] *Supra* note 4.

[25] *Id.* at 114.

[26] *Id.*

[27] *Id.*

[28] *Id.*

On 24 September 2008, respondent appealed to the CA.[29] The appellate court rendered a Decision[30] on 25 May 2010, the dispositive portion of which states:

> **WHEREFORE,** in view of the foregoing, the petition is **GRANTED.** The assailed decision dated April 30, 2008 of the RTC (Branch 121) of Caloocan City in Civil Case No. C-22018 is **REVERSED and SET ASIDE** and the Decision dated November 9, 2007 of the MTC (Branch 52) of Caloocan City in Civil Case No. 03-27114 is hereby **REINSTATED.**
>
> **SO ORDERED.** (Emphases in the original)

In disposing of the issues, the CA observed that petitioner's arguments could not be upheld.[31] The question of whether tolerance had been exercised before or after the effectivity of P.D. 293 would only matter if what was at issue was the timeliness of the Complaint or whether the Complaint was one for unlawful detainer or forcible entry.[32] Since the Complaint specifically alleged that the possession of respondent was by petitioner's tolerance, and that respondent's dispossession had not lasted for more than one year, it then follows that the MeTC rightly acquired jurisdiction over the Complaint.[33]

Moreover, with the determination of who was the lawful and registered owner of the property in question, the owner necessarily enjoyed or had a better right to the possession and enjoyment there.[34] Hence, petitioner had no right to the continued possession of the property.[35] Neither could he be considered a builder in good faith who could avail himself of the benefits under Article 448 of the Civil Code.[36] From the moment P.D. 293 was declared

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[29] *Id.* at 56-108.

[30] *Supra* note 2.

[31] *Id.* at 15.

[32] *Id.*

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

[34] *Id.* at 17.

[35] *Id.*

[36] *Id.*

unconstitutional and the title to the property restored to respondent, petitioner could no longer claim good faith.[37] Thus, as provided under Article 449, petitioner loses what he would be building, planting, or sowing without right of indemnity from that time.[38]

On 25 May 2010, petitioner filed a Motion for Reconsideration, but it was denied in a Resolution[39] issued by the CA on 15 October 2010.

Hence, the instant Petition.

On 2 May 2011, respondent filed a Comment[40] on the Petition for Review; and on 17 May 2011, petitioner filed a Reply.[41]

ISSUES

From the foregoing, we reduce the issues to the following:

1. Whether or not the MeTC had jurisdiction over the case;
2. Whether or not *Tuason* may be applied here, despite petitioner not being a party to the case; and
3. Whether or not petitioner is a builder in good faith.

THE COURT'S RULING

We shall discuss the issues *seriatim.*

The MeTC rightly exercised jurisdiction, this case being one of unlawful detainer.

Petitioner alleges that the MeTC had no jurisdiction over the subject matter, because respondent had filed the Complaint beyond the one-year prescriptive period for ejectment cases. Despite losing ownership and possession of the property as early

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[37] *Id*.

[38] *Id*. at 18.

[39] *Supra* note 3.

[40] *Id*. at 395-414.

[41] *Id*. at 451-463.

as 14 September 1973 when P.D. 293 took effect, respondent allegedly still failed to take the necessary action to recover it.[42]

Petitioner also insists that tolerance had not been present from the start of his possession of the property, as respondent extended its tolerance only after P.D. 293 was declared unconstitutional.[43] This situation necessarily placed respondent's cause of action outside the category of unlawful detainer[44] Consequently, the presence of an ownership dispute should have made this case either an *accion publiciana* or an *accion reivindicatoria*.[45]

Unfortunately, petitioner's contentions are without merit. The MeTC rightly exercised jurisdiction, this case being one of unlawful detainer.

An action for unlawful detainer exists when a person unlawfully withholds possession of any land or building against or from a lessor, vendor, vendee or other persons, after the expiration or termination of the right to hold possession by virtue of any contract, express or implied.[46] Here, possession by a party was originally legal, as it was permitted by the other party on account of an express or implied contract between them.[47] However, the possession became illegal when the other party demanded that the possessor vacate the subject property because of the expiration or termination of the right to possess under the contract, and the possessor refused to heed the demand.[48]

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[42] *Id*. at 37.

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

[44] *Id*.

[45] *Id*. at 37.

[46] *Samelo v. Manotok Services, Inc.,* G.R. No. 170509, 27 June 2012, 675 SCRA 132, citing *Racaza v. Gozum*, 523 Phil. 694, 707 (2006).

[47] *Jose v. Alfuerte,* G.R. No. 169380, 26 November 2012, 686 SCRA 323, citing *Estate of Soledad Manantan v. Somera,* G.R. No. 145867, 7 April 2009, 584 SCRA 81, 89-90.

[48] *Id*.

The importance of making a demand cannot be overemphasized, as it is jurisdictional in nature.[49] The one-year prescriptive period for filing a case for unlawful detainer is tacked from the date of the last demand, the reason being that the other party has the right to waive the right of action based on previous demands and to let the possessor remain on the premises for the meantime.[50]

In this case, it is clear from the facts that what was once a legal possession of petitioner, emanating from P.D. 293, later became illegal by the pronouncement in *Tuason* that the law was unconstitutional. While it is established that tolerance must be present at the start of the possession,[51] it must have been properly tacked **after** P.D. 293 was invalidated. At the time the decree was promulgated, respondent had no option but to allow petitioner and his predecessor-in-interest to enter the property. This is not the "tolerance" envisioned by the law. As explained in *Tuason*, the decree "was not as claimed a licit instance of the application of social justice principles or the exercise of police power. It was in truth a disguised, vile stratagem deliberately resorted to favor a few individuals, in callous and disdainful disregard of the rights of others. **It was in reality a taking of private property without due process and without compensation whatever, from persons relying on the indefeasibility of their titles in accordance with and as explicitly guaranteed by law."**[52]

When respondent sent petitioner a demand letter in April 2002 and subsequently filed the Complaint in January 2003, it did so still within the one-year prescriptive period imposed by the rules. It matters not whether there is an ownership issue that needs to be resolved, for as we have previously held, a

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[49] *Cajayon v. Sps. Batuyong,* 517 Phil. 648 (2006), citing *Muñoz v. Court of Appeals*, G.R. No. 102693, 23 September 1992, 214 SCRA 216.

[50] *Leonin v. Court of Appeals,* 534 Phil. 544 (2006), citing *Cañiza v. CA*, 335 Phil. 1107, 1117 (1997); *Penas, Jr. v. Court of Appeals*, G.R. No. 112734, 7 July 1994, 233 SCRA 744, 747.

[51] *Sarona v. Villegas,* 131 Phil. 365, 372 (1968).

[52] *Supra* note 14, at 662-663.

determination of the matter would only be provisional. In *Heirs of Ampil v. Manahan*,[53] we said:

> In an unlawful detainer case, the physical or material possession of the property involved, independent of any claim of ownership by any of the parties, is the sole issue for resolution. But where the issue of ownership is raised, the courts may pass upon said issue in order to determine who has the right to possess the property. This adjudication, however, is only an initial determination of ownership for the purpose of settling the issue of possession, the issue of ownership being inseparably linked thereto. As such, the lower court's adjudication of ownership in the ejectment case is merely provisional and would not bar or prejudice an action between the same parties involving title to the property.

Tuason may be applied despite petitioner not being a party to that case, because an unconstitutional law produces no effect and confers no right upon any person.

Petitioner argues that respondent has no cause of action against him, because under the doctrine of operative fact and the doctrine of *res inter alios judicatae nullum aliis praejudicium faciunt,* petitioner should not be prejudiced by *Tuason*; the declaration of the unconstitutionality of P.D. 293 should not affect the rights of other persons not party to the case.[54]

Again, petitioner's argument deserves scant consideration. In declaring a law null and void, the real issue is whether the nullity should have prospective, not retroactive, application.[55] *Republic v. Court of Appeals*[56] is instructive on the matter:

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[53] G.R. No. 175990, 11 October 2012, 684 SCRA 130, 139.

[54] *Rollo,* pp. 46-48.

[55] *Republic of the Philippines v. Court of Appeals*, G.R. No. 79732, 8 November 1993, 227 SCRA 509.

[56] *Id.* at 512.

The strict view considers a legislative enactment which is declared unconstitutional as being, for all legal intents and purposes, a total nullity, and it is deemed as if had never existed. x x x.

A judicial declaration of invalidity, it is also true, may not necessarily obliterate all the effects and consequences of a void act occurring prior to such a declaration. Thus, in our decisions on the moratorium laws, we have been constrained to recognize the interim effects of said laws prior to their declaration of unconstitutionality, but there we have likewise been unable to simply ignore strong considerations of equity and fair play. x x x.

As a general rule, a law declared as unconstitutional produces no effect whatsoever and confers no right on any person. It matters not whether the person is a party to the original case, because "[n]ot only the parties but all persons are bound by the declaration of unconstitutionality, which means that no one may thereafter invoke it nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity."[57] Thus, petitioner's invocation of the doctrine of *res inter alios judicatae nullum aliis praejudicium faciunt* cannot be countenanced. We have categorically stated that the doctrine does not apply when the party concerned is a "successor in interest by title subsequent to the commencement of the action, or the action or proceeding is *in rem,* the judgment in which is binding against him."[58] While petitioner may not have been a party to *Tuason*, still, the judgment is binding on him because the declaration of P.D. 293 as a nullity partakes of the nature of an *in rem* proceeding.

Neither may petitioner avail himself of the operative fact doctrine, which recognizes the interim effects of a law prior to its declaration of unconstitutionality.[59] The operative fact doctrine is a rule of equity. As such, it must be applied as an exception to the general rule that an unconstitutional law produces no

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[57] *Id.* at 511.

[58] *Dar Adventure Farm Corp., v. Court of Appeals*, G.R. No. 161122, 24 September 2012, 681 SCRA 580, 583.

[59] *Supra* note 55, at 512.

effects.[60] The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid law,[61] but it can never be invoked to validate as constitutional an unconstitutional act.[62]

In this case, petitioner could not be said to have been unduly burdened by reliance on an invalid law. Petitioner merely anchored his right over the property to an Affidavit allegedly issued by Pelagio M. Juan, a member of the MHIA, authorizing petitioner to occupy the same.[63] However, this Affidavit was executed only sometime in 1995, or approximately seven years after the *Tuason* case was promulgated.[64] At the time petitioner built the structures on the premises, he ought to have been aware of the binding effects of the *Tuason* case and the subsequent unconstitutionality of P.D. 293. These circumstances necessarily remove him from the ambit of the operative fact doctrine.

Petitioner may not be deemed a to be builder in good faith.

Petitioner also argues that he is a builder in good faith for want of knowledge of any infirmity in the promulgation of P.D. 293.[65] Being a builder in good faith, he believes that he is entitled to the reimbursement of his useful expenses and that he has a right to retain possession of the premises, pending reimbursement of the value of his improvements to be proven during trial, in accordance with Article 545 of the Civil Code.[66]

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[60] *League of Cities of the Philippines v. COMELEC*, G.R. No. 176951, 24 August 2010, 628 SCRA 819.

[61] *Chavez v. JBC,* G.R. No. 202242, 17 July 2012, 676 SCRA 579, citing *Planters Products, Inc. v. Fertiphil Corporation*, G.R. No. 166006, 14 March 2008, 548 SCRA 485, 516-517.

[62] *Supra* note 61.

[63] *Rollo,* pp. 408-409.

[64] *Id*.

[65] *Id*. at 460.

[66] *Id*.

Upon perusal of the records, however, we hold that petitioner is not a builder in good faith. A builder in good faith is "one who builds with the belief that the land he is building on is his, or that by some title one has the right to build thereon, and is ignorant of any defect or flaw in his title."[67] Since petitioner only started occupying the property sometime in 1995 (when his predecessor-in-interest executed an Affidavit in his favor), or about seven years after *Tuason* was promulgated, he should have been aware of the binding effect of that ruling. Since all judicial decisions form part of the law of the land, its existence should be "[o]n one hand, x x x matter of mandatory judicial notice; on the other, *ignorantia legis non excusat.*"[68] He thus loses whatever he has built on the property, without right to indemnity, in accordance with Article 449 of the Civil Code.[69]

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DISMISSED.** The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 105190 are **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[67] *Rosales v. Castelltort*, 509 Phil. 137, 147 (2005), citing *Macasaet v. Macasaet*, 482 Phil. 853, 871 (2004) (citation omitted).

[68] *Lapid v. Laurea,* 439 Phil. 887, 896-897 (2002).

[69] Civil Code, Art. 449. He who builds, plants or sows in bad faith on the land of another, loses what is built, planted or sown without right to indemnity.

FIRST DIVISION

[G.R. No. 194582. November 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN NIEGAS *Y* FALLORE,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS.—** In *People v. Pagalasan*, this Court synthesized the applicable provision and elements of the crime of Kidnapping and Serious Illegal Detention [under] Article 267 of the Revised Penal Code as amended by Republic Act No. 7659. x x x [Thus,] for the accused to be convicted of kidnapping, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer. If the victim of kidnapping and serious illegal detention 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. The essential elements for this crime is the deprivation of liberty of the victim under any of the above-mentioned circumstances coupled with indubitable proof of intent of the accused to effect the same. There must be a purposeful or knowing action by the accused to forcibly restrain the victim coupled with intent.

2. **ID.; CONSPIRACY; ELUCIDATED.—** The mere circumstance that accused-appellant Niegas did not personally perform all the acts necessary to consummate the crime is irrelevant when conspiracy is proven, since in conspiracy, the act of one is the act of all. Conspiracy exists when two or more persons come

to an agreement concerning the commission of a felony and decide to commit it. While it is mandatory to prove it by competent evidence, direct proof is not essential to show conspiracy — it may be deduced from the mode, method, and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action and community of interest.

3. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; FLIGHT; AN INDICATION OF GUILT.—** [F]light of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.

4. **ID.; ID.; FINDINGS OF THE TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** [F]actual findings of the trial court, especially those affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record. Since it was the trial court that was able to observe the demeanor of the witnesses, it is consequently in a better position to determine which of the witnesses are telling the truth.

5. **CRIMINAL LAW; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; PENALTY.—** [W]e find no reason to reverse the Decisions of the trial court and the Court of Appeals finding accused-appellant Niegas guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention. The trial court likewise correctly imposed the penalty of *reclusion perpetua*. While the penalty for kidnapping for the purpose of extorting ransom under Article 267 of the Revised Penal Code is death, Republic Act No. 9346 has proscribed the imposition of death penalty and reduced all death sentences to *reclusion perpetua*. The trial court awarded each victim One Hundred Thousand Pesos (₱100,000.00) as moral damages and Fifty Thousand Pesos (₱50,000.00) each as exemplary damages. In line with prevailing jurisprudence, the moral damages awarded to James is increased to ₱200,000.00 considering his minority, and the exemplary damages awarded to both victims is increased to ₱100,000.00. Accused-appellant Niegas is likewise rendered additionally liable for ₱100,000.00 in civil indemnity to both victims.

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[1] from the Decision[2] of the Court of Appeals, which affirmed *in toto* the Decision[3] of the Regional Trial Court (RTC), Branch 209, of Mandaluyong City finding accused-appellant Allan Niegas *y* Fallore guilty beyond reasonable doubt of the crime of kidnapping for ransom.

The Information dated February 17, 2003 charging accused-appellant Niegas states:

> That on or about the 9th day of December 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one (1) *alias* Obet, one (1) *alias* Jun and three (3) John Does whose true identities and whereabouts are unknown, and mutually helping one another, did then and there willfully, unlawfully and feloniously kidnap, detain or deprive of their liberty JAMES AUGUSTO T. MANIKIS and MILA ROSE N. FERNANDEZ for the purpose of extorting ransom from Augusto Alejandro Manikis, Jr., the father of James Augusto T. Manikis.[4]

The prosecution's version of the events, based on witnesses' testimonies, can be summed as follows:

Mila Rose Fernandez (Fernandez) worked for Augusto Manikis, Jr. (Augusto) as the nanny of his son, James Augusto

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[1] CA *rollo*, p. 126.

[2] *Rollo*, pp. 2-15; penned by Associate Justice Isaias Dicdican with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Stephen C. Cruz, concurring.

[3] CA *rollo*, pp. 58-73.

[4] Records, p. 1.

Manikis (James). She testified that on December 9, 2002, at around 7:30 in the morning, she took James, who was then crying, outside the house. She saw Augusto's driver, accused-appellant Niegas, who offered to take them to Jollibee at the Maysilo Circle to pacify the child.[5] They used Augusto's car, a brown Toyota Revo with plate number WLK 755.[6]

From Jollibee, Fernandez thought that accused-appellant Niegas was driving them home. However, accused-appellant Niegas kept on driving and only stopped to allow an unknown man to board the vehicle. She told accused-appellant Niegas to take them home, warning him that the child's grandmother might get angry. The unknown man, however, insisted that accused-appellant Niegas take them to Barangka where he would alight, and accused-appellant Niegas complied.[7]

Two other unknown men boarded the vehicle and sat to the left and right of Fernandez. At Boni Avenue, she was forced to wear covered shades so she could not see anything. They drove for around four hours, and apparently got lost somewhere in Calamba, Laguna. She heard the unknown men asking for directions to go to a place called Larang.[8]

They later reached their destination. Accused-appellant Niegas took her and James inside the concrete house. She and James were held inside a room and were told by accused-appellant Niegas that she should follow their instructions if she wanted to go home alive.[9]

During the eleven days when she and James were missing, there were times when she tried to escape. She attempted to run, but accused-appellant Niegas caught her and pushed her towards the room. When she tried to shout upon seeing an old person, accused-appellant Niegas told her that he will kill her

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[5] TSN, November 10, 2005, pp. 8-12.

[6] TSN, March 29, 2007, p. 12.

[7] TSN, November 10, 2005, pp. 15-18.

[8] *Id.* at 19-25.

[9] *Id.* at 25-27.

if she does that.[10] She identified accused-appellant Niegas in court, and said that she would recognize the other kidnappers should she see them again.

Augusto testified that his son, James, who was six years old at the time of the testimony, was around one and a half to two years old at the time he was kidnapped. Accused-appellant Niegas was his personal driver for less than a year. He recalled seeing James crying in the morning of December 9, 2002. He instructed Fernandez to buy *pandesal* at the bakery and for her to ask accused-appellant Niegas to accompany them. They left on board his brown Toyota Revo with plate number WLK 755.[11]

Augusto expected them to be back in around fifteen minutes. When they were not yet home at 10:00 a.m., he thought they might have encountered an accident and searched for them in vulcanizing shops and even at the nearest hospital. He then went to the police station to ask for help. While he was at the police station, he was informed through his cellular phone that someone called their home landline and asked for him and his wife.[12]

Augusto went home. At around 4:00 p.m., a caller informed him that his son was under his custody. The caller demanded that he produce Ten Million Pesos (₱10,000,000.00).[13]

Augusto sought the help of his relative, Colonel Molina, who referred him to the Police Anti-Crime Emergency Response (PACER) for assistance. During meetings with the PACER, he was instructed to secure a safe house in order to prevent the kidnappers from monitoring their operation.[14]

The kidnappers continued to call Augusto around twice a day, asking about the money demanded by them. He told them

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

[11] TSN, March 29, 2007, pp. 5-9.

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

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

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

each time that he and his family were still raising the money. After about ten days, Augusto told them that he was able to raise One Million Seven Hundred Thousand Pesos (₱1,700,000.00). The kidnappers settled for this amount and agreed to meet with Augusto. Initially, Augusto was supposed to bring the money to Tagaytay City. The meeting place was later changed to Marikina City. The kidnappers, noticing that there were police officers following Augusto, postponed the delivery of the money.[15]

On December 19, 2002, Augusto was told to go to the Sta. Mesa train station at 6:00 p.m. He used his motorcycle to go to Sta. Mesa, and, as always, the police officers followed him. Upon arriving at the station, the kidnappers instructed him through his cellular phone to walk through the rails until it was dark. He complied. He proceeded to a basketball court. A short man approached him and told him to give the bag and his cellular phone. He was then instructed to wait for further information as to when he can see his son.[16]

Augusto was fetched by his brother at a mini store. The following day, on December 20, 2002, at around 7:00 p.m., he was informed by the negotiator of the kidnappers that he could meet his son and Fernandez at the Metropolis Mall. He went to said mall with the help of his brother-in-law, and found James and Fernandez at the parking lot of the jeepney station.[17]

Augusto never saw accused-appellant Niegas since the kidnapping incident. Fernandez told Augusto that accused-appellant Niegas was one of the kidnappers who took them somewhere in Laguna, and that when she asked accused-appellant Niegas to help them escape, he punched her stomach. Augusto filed a criminal complaint against accused-appellant Niegas in Mandaluyong City. He thereafter learned that accused-appellant Niegas was arrested one year later and was told that the person

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[15] *Id*. at 17-20.

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

[17] *Id*. at 23-25.

who organized the crime was the father of accused-appellant Niegas's girlfriend.[18]

Augusto further testified that the incident inculcated fear and paranoia in him and his family. They hired security guards, and felt fear whenever their security guards were not around. He does not allow his son to go outside their house alone. The public prosecutor manifested at this point of his testimony that the witness was teary eyed and can hardly talk.[19]

The parties agreed to dispense with the presentation of prosecution witnesses Police Officer (PO) 3 Erma Jabal and PCI Rolan Magno after the defense agreed to admit the affidavits and/or documents prepared and signed by these officers upon the admission of the prosecution that said officers had no personal knowledge of the alleged kidnapping incident.[20]

Only **accused-appellant Niegas** was presented for the defense. He testified that he was washing the car of his employer, Augusto, when Fernandez approached him and told him to buy *pandesal*. He initially suggested to Fernandez that she walk to a nearby bakery, but Fernandez insisted that they buy at Pugon de Manila. He drove Fernandez and James to Pugon de Manila using his employer's Toyota Revo. When they reached the place, Fernandez gave him money and asked him to buy the *pandesal*. However, when he alighted from the vehicle, a man approached and poked a gun at him. The man's four companions entered the vehicle. Two of them flanked him, while the other two flanked Fernandez and James at the back seat.[21]

Accused-appellant Niegas resisted the unknown men and inquired about their intentions. The latter replied that they were arresting him and taking him to the precinct. He and Fernandez were blindfolded and forced to lie down. They were detained for several days, until they were released at Susana Heights.

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[18] *Id*. at 25-27.

[19] *Id*. at 31-32.

[20] Records, pp. 297-298 and 342-343.

[21] TSN, April 3, 2008, pp. 5-10.

He lost count of how many days they were detained. Since he was still afraid and was threatened by the men who kidnapped them, he refused to go with Fernandez back to Augusto's home. He instead went home to his province in Leyte.[22]

Accused-appellant Niegas claims that he never asked for ransom money from Augusto. He did not report the incident to the police because he cannot identify the men who kidnapped them. He cannot contact Augusto because his wallet was taken during the kidnapping.[23]

On June 26, 2008, the RTC of Mandaluyong City rendered its Decision finding accused-appellant Niegas guilty of the crime of kidnapping for ransom. The dispositive portion of the Decision read:

> **WHEREFORE**, in view of the foregoing, this Court finds accused **ALLAN NIEGAS *y* FALLORE**, **GUILTY** beyond reasonable doubt of kidnapping for ransom and is hereby sentenced to *Reclusion Perpetua*, and to pay the victims JAMES AUGUSTO T. MANIKIS and MILA ROSE N. FERNANDEZ the amounts of One Hundred Thousand Pesos (Php100,000.00) each as moral damages and Fifty Thousand Pesos (Php50,000.00) each as exemplary damages.[24]

The trial court held that Fernandez's narration of the kidnapping was straightforward, spontaneous, and contained such details which could not have been the result of a deliberate afterthought. The trial court noted that her description of the interior of the house was eventually confirmed by the PACER when they conducted a backtracking operation. This backtracking operation was part of the testimony of PO3 Erma Jabal which was stipulated upon by the parties. The elements of the crime of kidnapping were thus sufficiently established by the testimony of Fernandez, while the extortion of ransom was established by the testimony of Augusto.[25]

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[22] *Id*. at 10-14.

[23] *Id*. at 14-24.

[24] CA *rollo*, pp. 72-73.

[25] *Id*. at 69-71.

On June 25, 2010, the Court of Appeals affirmed the RTC Decision *in toto*. According to the appellate court, Fernandez's identification of accused-appellant Niegas was positive and unequivocal. Furthermore, there was no evidence of ill motive on the part of either Fernandez or Augusto, making their respective testimonies worthy of full faith and credit. The Court of Appeals likewise noted that accused-appellant Niegas deliberately fled and went home to his province where he was apprehended. Accused-appellant Niegas's one-year flight is further evidence of his guilt.[26]

Hence, the defense filed this appeal, where accused-appellant Niegas adopts the Brief he submitted to the Court of Appeals containing the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF KIDNAPPING DESPITE THE ABSENCE OF DIRECT EVIDENCE TO ESTABLISH HIS CRIMINAL CULPABILITY.[27]

In *People v. Pagalasan*,[28] this Court synthesized the applicable provision and elements of the crime of Kidnapping and Serious Illegal Detention:

Article 267 of the Revised Penal Code as amended by Republic Act No. 7659, reads:

ART. 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or

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[26] *Rollo*, pp. 12-13.

[27] CA *rollo*, pp. 48-49.

[28] 452 Phil. 341, 361-363 (2003).

in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female, or a public officer.

The penalty shall be death 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.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (As amended by RA No. 7659).

For the accused to be convicted of kidnapping, the prosecution is burdened to prove beyond reasonable doubt all the elements of the crime, namely: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer. If the victim of kidnapping and serious illegal detention 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.

The essential elements for this crime is the deprivation of liberty of the victim under any of the above-mentioned circumstances coupled with indubitable proof of intent of the accused to effect the same.

There must be a purposeful or knowing action by the accused to forcibly restrain the victim coupled with intent. (Citations omitted.)

Accused-appellant Niegas contends that the narration by Fernandez does not show that he kidnapped Fernandez and James. He highlights the statements by Fernandez on cross-examination that (1) he did not force Fernandez to ride with him, and he did not poke a gun at her; (2) he did not ask for money from Augusto; (3) neither he nor the other persons who boarded the vehicle told Fernandez that "this is a kidnap"; (4) Fernandez was not tied or struck by him while they were going to Calamba; and (5) he did not molest Fernandez or hurt James.[29] Accused-appellant Niegas further points out that, as confirmed by Augusto in his testimony, it was not him who demanded or received the ransom money.[30]

Accused-appellant Niegas's contentions are bereft of merit.

The testimonies of Fernandez and Augusto, which were believed by both the trial court and the Court of Appeals, clearly attribute all the elements of kidnapping and serious illegal detention to accused-appellant Niegas and his companions, collectively. Specifically, Fernandez's and Augusto's testimonies proved that the offenders detained Fernandez, a female, and James, a minor, for more than three days, for the purpose of extorting ransom. The mere circumstance that accused-appellant Niegas did not personally perform all the acts necessary to consummate the crime is irrelevant when conspiracy is proven, since in conspiracy, the act of one is the act of all.[31]

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[32] While it is mandatory to prove it by competent

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[29] CA *rollo*, pp. 49-52, citing TSN, April 6, 2006, pp. 5-9.

[30] *Id*. at 52.

[31] *People v. Uyboco*, G.R. No. 178039, January 19, 2011, 640 SCRA 146, 177.

[32] REVISED PENAL CODE, Article 8.

evidence, direct proof is not essential to show conspiracy — it may be deduced from the mode, method, and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action and community of interest.[33] On this point, accused-appellant Niegas argues that mere driving and allowing other men to board their vehicle are not sufficient to establish conspiracy.[34] The records, however, reveal otherwise. Accused-appellant Niegas's acts unequivocally show that he was complicit in the joint purpose and design of the kidnapping of Fernandez and James:

1. Instead of driving Fernandez and James home, accused-appellant Niegas kept on driving and only stopped to allow an unknown man to board the vehicle. He later let several other men to board;

2. When they reached their destination, it was accused-appellant Niegas himself who took Fernandez and James into the concrete house. Accused-appellant Niegas told them that she should follow *their* instructions if she wants to go home alive;

3. When Fernandez attempted to escape, it was accused-appellant Niegas who caught her and pushed her towards the room;

4. When Fernandez tried to shout upon seeing an old person, accused-appellant Niegas told her he will kill her if she does that.

Moreover, after the incident, accused-appellant Niegas did not report what happened to the authorities or even try to contact Augusto to explain his alleged non-participation in the incident. Instead, he went home to his province and it took the authorities one year to apprehend him. Accused-appellant Niegas's excuse that he lost his wallet and therefore cannot contact Augusto is absurd, as it is inconceivable for someone's personal driver for

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[33] *People v. Cenahonon*, 554 Phil. 415, 432 (2007).

[34] CA *rollo*, p. 53.

at least half a year to simply forget the address of his employer or to fail to communicate with the latter in some way and seek permission to return to the province if he is indeed innocent. We have held on several occasions that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.[35]

As stated above, both the trial court and the Court of Appeals found the testimonies of Fernandez and Augusto to be straightforward and credible. The records are likewise devoid of any evidence to show that either Fernandez or Augusto had any ill motive to falsely testify against accused-appellant Niegas. We have time and again ruled that factual findings of the trial court, especially those affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record. Since it was the trial court that was able to observe the demeanor of the witnesses, it is consequently in a better position to determine which of the witnesses are telling the truth.[36]

In view of the foregoing, we find no reason to reverse the Decisions of the trial court and the Court of Appeals finding accused-appellant Niegas guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention. The trial court likewise correctly imposed the penalty of *reclusion perpetua*. While the penalty for kidnapping for the purpose of extorting ransom under Article 267 of the Revised Penal Code is death, Republic Act No. 9346 has proscribed the imposition of death penalty and reduced all death sentences to *reclusion perpetua*.

The trial court awarded each victim One Hundred Thousand Pesos (₱100,000.00) as moral damages and Fifty Thousand Pesos (₱50,000.00) each as exemplary damages. In line with prevailing jurisprudence, the moral damages awarded to James is increased

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[35] *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797, 811.

[36] *People v. Milan*, G.R. No. 175926, July 6, 2011, 653 SCRA 607, 621-622.

to ₱200,000.00 considering his minority,[37] and the exemplary damages awarded to both victims is increased to ₱100,000.00.[38] Accused-appellant Niegas is likewise rendered additionally liable for ₱100,000.00 in civil indemnity to both victims.[39]

WHEREFORE, the Decision of the Court of Appeals affirming the conviction of accused-appellant Allan Niegas *y* Fallore is hereby **AFFIRMED** with the following **MODIFICATIONS**:

1. The moral damages awarded to James Augusto T. Manikis is **INCREASED** from ₱100,000.00 to ₱200,000.00;

2. The exemplary damages each awarded to James Augusto T. Manikis and Mila Rose Fernandez are both **INCREASED** to ₱100,000.00;

3. Accused-appellant Allan Niegas *y* Fallore is likewise **ORDERED** to pay James Augusto T. Manikis and Mila Rose Fernandez ₱100,000.00 each as civil indemnity;

4. Accused-appellant Allan Niegas *y* Fallore is likewise **ORDERED** to pay James Augusto T. Manikis and Mila Rose Fernandez interest at the legal rate of six percent (6%) per annum on all the amounts of damages awarded, commencing from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[37] *People v. Siongco*, G.R. No. 186472, July 5, 2010, 623 SCRA 501, 515-516.

[38] *People v. Gambao*, G.R. No. 172707, October 1, 2013.

[39] *Id*.

FIRST DIVISION

[G.R. Nos. 197592 & 202623. November 27, 2013]

THE PROVINCE OF AKLAN, *petitioner, vs.* **JODY KING CONSTRUCTION AND DEVELOPMENT CORP.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF PRIMARY JURISDICTION; DISCUSSED.—** The doctrine of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of the proper administrative bodies, relief must first be obtained in an administrative proceeding before a remedy is supplied by the courts even if the matter may well be within their proper jurisdiction. It applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice. The objective of the doctrine of primary jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.
2. **ID.; ID.; ID.; EXCEPTIONS.—** There are established exceptions to the doctrine of primary jurisdiction, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial

intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings.

3. **ID.; ID.; COMMISSION ON AUDIT (COA); PRIMARY JURISDICTION OVER MONEY CLAIMS AGAINST GOVERNMENT AGENCIES AND INSTRUMENTALITIES.—** Under Commonwealth Act No. 327, as amended by Section 26 of Presidential Decree No. 1445, it is the COA which has primary jurisdiction over money claims against government agencies and instrumentalities. x x x Pursuant to its rule-making authority conferred by the 1987 Constitution and existing laws, the COA promulgated the 2009 Revised Rules of Procedure of the Commission on Audit. Rule II, Section 1 specifically enumerated those matters falling under COA's exclusive jurisdiction, which include "[m]oney claims due from or owing to any government agency." x x x In *Euro-Med Laboratories Phil., Inc. v. Province of Batangas*, we ruled that it is the COA and not the RTC which has primary jurisdiction to pass upon petitioner's money claim against respondent local government unit. Such jurisdiction may not be waived by the parties' failure to argue the issue nor active participation in the proceedings. x x x Respondent's collection suit being directed against a local government unit, such money claim should have been first brought to the COA. Hence, the RTC should have suspended the proceedings and refer the filing of the claim before the COA. Moreover, petitioner is not estopped from raising the issue of jurisdiction even after the denial of its notice of appeal and before the CA. x x x The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. All the proceedings of the court in violation of the doctrine and all orders and decisions rendered thereby are null and void.

4. **ID.; ID.; ID.; ID.; WRIT OF EXECUTION ISSUED IN VIOLATION OF COA's PRIMARY JURISDICTION IS VOID.—** Since a judgment rendered by a body or tribunal that has no jurisdiction over the subject matter of the case is no judgment

at all, it cannot be the source of any right or the creator of any obligation. All acts pursuant to it and all claims emanating from it have no legal effect and the void judgment can never be final and any writ of execution based on it is likewise void. x x x [T]he RTC should have exercised utmost caution, prudence and judiciousness in issuing the writ of execution and notices of garnishment against petitioner. The RTC had no authority to direct the immediate withdrawal of any portion of the garnished funds from petitioner's depositary banks. Such act violated the express directives of this Court under Administrative Circular No. 10-2000, which was issued "precisely in order to prevent the circumvention of Presidential Decree No. 1445, as well as of the rules and procedures of the COA."

APPEARANCES OF COUNSEL

Ronaldo B. Ingente and *Lee T. Manares* for petitioner.
Jose S. Diloy, Jr. for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

These consolidated petitions for review on *certiorari* seek to reverse and set aside the following: (1) Decision[1] dated October 18, 2010 and Resolution[2] dated July 5, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 111754; and (2) Decision[3] dated August 31, 2011 and Resolution[4] dated June 27, 2012 in CA-G.R. SP No. 114073.

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[1] *Rollo* (G.R. No. 197592), pp. 289-298. Penned by Presiding Justice Andres B. Reyes, Jr. with Associate Justices Japar B. Dimaampao and Jane Aurora C. Lantion concurring.

[2] *Id.* at 343-348.

[3] *Rollo* (G.R. No. 202623), pp. 183-200. Penned by Associate Justice Angelita A. Gacutan with Associate Justices Vicente S.E. Veloso and Francisco P. Acosta concurring.

[4] *Id.* at 217-219.

The Facts

On January 12, 1998, the Province of Aklan (petitioner) and Jody King Construction and Development Corp. (respondent) entered into a contract for the design and construction of the Caticlan Jetty Port and Terminal (Phase I) in Malay, Aklan. The total project cost is ₱38,900,000: ₱18,700,000 for the design and construction of passenger terminal, and ₱20,200,000 for the design and construction of the jetty port facility.[5] In the course of construction, petitioner issued variation/ change orders for additional works. The scope of work under these change orders were agreed upon by petitioner and respondent.[6]

On January 5, 2001, petitioner entered into a negotiated contract with respondent for the construction of Passenger Terminal Building (Phase II) also at Caticlan Jetty Port in Malay, Aklan. The contract price for Phase II is ₱2,475,345.54.[7]

On October 22, 2001, respondent made a demand for the total amount of ₱22,419,112.96 covering the following items which petitioner allegedly failed to settle:

1. Unpaid accomplishments on additional works undertaken ——— Php12,396,143.09
2. Refund of taxes levied despite it not being covered by original contract ——— Php884,098.59
3. Price escalation (Consistent with Section 7.5, Original Contract) ——— Php 1,291,714.98
4. Additional Labor Cost resulting [from] numerous change orders issued sporadically— Php3,303,486.60
5. Additional Overhead Cost resulting [from] numerous Orders issued sporadically ——— Php 1,101,162.60

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[5] CA *rollo*, pp. 136-147.

[6] *Rollo* (G.R. No. 197592), p. 58.

[7] CA *rollo*, pp. 126-131.

6. Interest resulting [from] payment delays consistent with Section 7.3.b of the Original Contract ——————————————— Php 3,442,507.50.[8]

On July 13, 2006, respondent sued petitioner in the Regional Trial Court (RTC) of Marikina City (Civil Case No. 06-1122-MK) to collect the aforesaid amounts.[9] On August 17, 2006, the trial court issued a writ of preliminary attachment.[10]

Petitioner denied any unpaid balance and interest due to respondent. It asserted that the sums being claimed by respondent were not indicated in Change Order No. 3 as approved by the Office of Provincial Governor. Also cited was respondent's June 10, 2003 letter absolving petitioner from liability for any cost in connection with the Caticlan Passenger Terminal Project.[11]

After trial, the trial court rendered its Decision[12] on August 14, 2009, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of plaintiff Jody King Construction And Development Corporation and against defendant Province of Aklan, as follows:

1. ordering the defendant to pay to the plaintiff the amount of Php7,396,143.09 representing the unpaid accomplishment on additional works undertaken by the plaintiff;
2. ordering the defendant to refund to the plaintiff the amount of Php884,098.59 representing additional 2% tax levied upon against the plaintiff;
3. ordering the defendant to pay to the plaintiff price escalation in the amount of Php1,291,714.98 pursuant to Section 7.5 of the original contract;

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[8] *Id*. at 361-362.

[9] *Id*. at 217-229.

[10] *Rollo* (G.R. No. 197592), p. 56.

[11] *Id*. at 59-60.

[12] *Id*. at 56-74. Penned by Judge Manuel S. Quimbo.

4. ordering the defendant to pay to the plaintiff the amount of Php3,303,486.60 representing additional labor cost resulting from change orders issued by the defendant;

5. ordering the defendant to pay to the plaintiff the sum of Php1,101,162.00 overhead cost resulting from change orders issued by the defendant;

6. ordering the defendant to pay the sum of Php3,442,507.50 representing interest resulting from payment delays up to October 15, 2001 pursuant to Section 7.3.b of the original contract;

7. ordering the defendant to pay interest of 3% per month from unpaid claims as of October 16, 2001 to date of actual payment pursuant to Section 7.3.b[;]

8. ordering the [defendant] to pay to the plaintiff the sum of Php500,000.00 as moral damages;

9. ordering the defendant to pay to the plaintiff the sum of Php300,000.00 as exemplary damages;

10. ordering the defendant to pay the plaintiff the sum of Php200,000.00, as and for attorney's fees; and

11. ordering the defendant to pay the cost of suit.

SO ORDERED.[13]

Petitioner filed its motion for reconsideration[14] on October 9, 2009 stating that it received a copy of the decision on September 25, 2009. In its Order[15] dated October 27, 2009, the trial court denied the motion for reconsideration upon verification from the records that as shown by the return card, copy of the decision was actually received by both Assistant Provincial Prosecutor Ronaldo B. Ingente and Atty. Lee T. Manares on September 23, 2009. Since petitioner only had until October 8, 2009 within which to file a motion for reconsideration, its motion filed on

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[13] *Id*. at 73-74.

[14] *Id*. at 75-103.

[15] *Id*. at 114-115.

October 9, 2009 was filed one day after the finality of the decision. The trial court further noted that there was a deliberate attempt on both Atty. Manares and Prosecutor Ingente to mislead the court and make it appear that their motion for reconsideration was filed on time.

Petitioner filed a Manifestation[16] reiterating the explanation set forth in its Rejoinder to respondent's comment/opposition and motion to dismiss that the wrong date of receipt of the decision stated in the motion for reconsideration was due to pure inadvertence attributable to the staff of petitioner's counsel. It stressed that there was no intention to mislead the trial court nor cause undue prejudice to the case, as in fact its counsel immediately corrected the error upon discovery by explaining the attendant circumstances in the Rejoinder dated October 29, 2009.

On November 24, 2009, the trial court issued a writ of execution ordering Sheriff IV Antonio E. Gamboa, Jr. to demand from petitioner the immediate payment of ₱67,027,378.34 and tender the same to the respondent. Consequently, Sheriff Gamboa served notices of garnishment on Land Bank of the Philippines, Philippine National Bank and Development Bank of the Philippines at their branches in Kalibo, Aklan for the satisfaction of the judgment debt from the funds deposited under the account of petitioner. Said banks, however, refused to give due course to the court order, citing the relevant provisions of statutes, circulars and jurisprudence on the determination of government monetary liabilities, their enforcement and satisfaction.[17]

Petitioner filed in the CA a petition for *certiorari* with application for temporary restraining order (TRO) and preliminary injunction assailing the Writ of Execution dated November 24, 2009, docketed as **CA-G.R. SP No. 111754.**

On December 7, 2009, the trial court denied petitioner's notice of appeal filed on December 1, 2009. Petitioner's motion for

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[16] CA *rollo*, pp. 100-103.

[17] *Id.* at 120-121, 285-292.

reconsideration of the December 7, 2009 Order was likewise denied.[18] On May 20, 2010, petitioner filed another petition for *certiorari* in the CA questioning the aforesaid orders denying due course to its notice of appeal, docketed as **CA-G.R. SP No. 114073.**

By Decision dated October 18, 2010, the CA's First Division dismissed the petition in CA-G.R. SP No. 111754 as it found no grave abuse of discretion in the lower court's issuance of the writ of execution. Petitioner filed a motion for reconsideration which was likewise denied by the CA. The CA stressed that even assuming as true the alleged errors committed by the trial court, these were insufficient for a ruling that grave abuse of discretion had been committed. On the matter of execution of the trial court's decision, the appellate court said that it was rendered moot by respondent's filing of a petition before the Commission on Audit (COA).

On August 31, 2011, the CA's Sixteenth Division rendered its Decision dismissing the petition in CA-G.R. SP No. 114073. The CA said that petitioner failed to provide valid justification for its failure to file a timely motion for reconsideration; counsel's explanation that he believed in good faith that the August 14, 2009 Decision of the trial court was received on September 25, 2009 because it was handed to him by his personnel only on that day is not a justifiable excuse that would warrant the relaxation of the rule on reglementary period of appeal. The CA also held that petitioner is estopped from invoking the doctrine of primary jurisdiction as it only raised the issue of COA's primary jurisdiction after its notice of appeal was denied and a writ of execution was issued against it.

The Cases

In G.R. No. 197592, petitioner submits the following issues:

I.

WHETHER OR NOT THE DECISION DATED 14 AUGUST 2009 RENDERED BY THE REGIONAL TRIAL COURT, BRANCH 273,

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[18] *Rollo* (G.R. No. 197592), pp. 137-183, 197-199.

MARIKINA CITY AND THE WRIT OF EXECUTION DATED 24 NOVEMBER 2009 SHOULD BE RENDERED VOID FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT, BRANCH 273, MARIKINA CITY GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN RENDERING THE DECISION DATED 14 AUGUST 2009 AND ISSUING THE WRIT OF EXECUTION DATED 24 NOVEMBER 2009 EVEN IT FAILED TO DISPOSE ALL THE ISSUES OF THE CASE BY NOT RESOLVING PETITIONER'S "URGENT MOTION TO DISCHARGE *EX-PARTE* WRIT OF PRELIMINARY ATTACHMENT" DATED 31 AUGUST 2006.

III.

WHETHER OR NOT THE WRIT OF EXECUTION DATED 24 NOVEMBER 2009 WHICH WAS HASTILY ISSUED IN VIOLATION OF SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 10-2000 SHOULD BE RENDERED VOID.[19]

The petition in G.R. No. 202623 sets forth the following arguments:

Petitioner is not estopped in questioning the jurisdiction of the Regional Trial Court, Branch 273, Marikina City over the subject matter of the case.[20]

The petition for *certiorari* filed before the CA due to the RTC's denial of petitioner's Notice of Appeal was in accord with jurisprudence.[21]

The Issues

The controversy boils down to the following issues: (1) the applicability of the doctrine of primary jurisdiction to this case; and (2) the propriety of the issuance of the writ of execution.

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[19] *Id.* at 484-485.

[20] *Rollo* (G.R. No. 202623), p. 16.

[21] *Id.* at 21.

Our Ruling

The petitions are meritorious.

COA has primary jurisdiction over private respondent's money claims

Petitioner is not estopped from raising the issue of jurisdiction

The doctrine of primary jurisdiction holds that if a case is such that its determination requires the expertise, specialized training and knowledge of the proper administrative bodies, relief must first be obtained in an administrative proceeding before a remedy is supplied by the courts even if the matter may well be within their proper jurisdiction.[22] It applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative agency. In such a case, the court in which the claim is sought to be enforced may suspend the judicial process pending referral of such issues to the administrative body for its view or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice.[23]

The objective of the doctrine of primary jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.[24]

As can be gleaned, respondent seeks to enforce a claim for sums of money allegedly owed by petitioner, a local government unit.

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[22] *Industrial Enterprises, Inc. v. Court of Appeals,* 263 Phil. 352, 358 (1990).

[23] *Id.*; *Euro-Med Laboratories Phil., Inc. v. Province of Batangas,* 527 Phil. 623, 626-627 (2006).

[24] *Fabia v. Court of Appeals,* 437 Phil. 389, 403 (2002).

Under Commonwealth Act No. 327,[25] as amended by Section 26 of Presidential Decree No. 1445,[26] it is the COA which has primary jurisdiction over money claims against government agencies and instrumentalities.

> Section 26. *General jurisdiction*. The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and **settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities.** The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government. (Emphasis supplied.)

Pursuant to its rule-making authority conferred by the 1987 Constitution[27] and existing laws, the COA promulgated the 2009 Revised Rules of Procedure of the Commission on Audit. Rule II, Section 1 specifically enumerated those matters falling under COA's exclusive jurisdiction, which include "[m]oney claims due from or owing to any government agency." Rule VIII, Section 1 further provides:

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[25] AN ACT FIXING THE TIME WITHIN WHICH THE AUDITOR GENERAL SHALL RENDER HIS DECISIONS AND PRESCRIBING THE MANNER OF APPEAL THEREFROM.

[26] ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

[27] Sec. 6, Art. IX-A.

Section 1. ***Original Jurisdiction*** — The Commission Proper shall have original jurisdiction over: a) **money claim against the Government**; b) request for concurrence in the hiring of legal retainers by government agency; c) write off of unliquidated cash advances and dormant accounts receivable in amounts exceeding one million pesos (₱1,000,000.00); d) request for relief from accountability for loses due to acts of man, *i.e.* theft, robbery, arson, *etc.*, in amounts in excess of Five Million pesos (₱5,000,000.00).

In *Euro-Med Laboratories Phil., Inc. v. Province of Batangas*,[28] we ruled that it is the COA and not the RTC which has primary jurisdiction to pass upon petitioner's money claim against respondent local government unit. Such jurisdiction may not be waived by the parties' failure to argue the issue nor active participation in the proceedings. Thus:

This case is one over which the doctrine of primary jurisdiction clearly held sway for although petitioner's collection suit for ₱487,662.80 was within the jurisdiction of the RTC, the circumstances surrounding petitioner's claim brought it clearly within the ambit of the COA's jurisdiction.

First, **petitioner was seeking the enforcement of a claim for a certain amount of money against a local government unit. This brought the case within the COA's domain to pass upon money claims against the government or any subdivision thereof under Section 26 of the Government Auditing Code of the Philippines**:

> The authority and powers of the Commission [on Audit] shall extend to and comprehend all matters relating to x x x the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies, and instrumentalities. x x x.

The scope of the COA's authority to take cognizance of claims is circumscribed, however, by an unbroken line of cases holding statutes of similar import to mean only *liquidated* claims, or those determined or readily determinable from vouchers, invoices, and such other papers within reach of accounting officers. Petitioner's claim was

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[28] *Supra* note 23.

for a fixed amount and although respondent took issue with the accuracy of petitioner's summation of its accountabilities, the amount thereof was readily determinable from the receipts, invoices and other documents. Thus, the claim was well within the COA's jurisdiction under the Government Auditing Code of the Philippines.

Second, petitioner's money claim was founded on a series of purchases for the medical supplies of respondent's public hospitals. Both parties agreed that these transactions were governed by the Local Government Code provisions on supply and property management and their implementing rules and regulations promulgated by the COA pursuant to Section 383 of said Code. Petitioner's claim therefore involved compliance with applicable auditing laws and rules on procurement. Such matters are not within the usual area of knowledge, experience and expertise of most judges but within the special competence of COA auditors and accountants. Thus, it was but proper, out of fidelity to the doctrine of primary jurisdiction, for the RTC to dismiss petitioner's complaint.

Petitioner argues, however, that respondent could no longer question the RTC's jurisdiction over the matter after it had filed its answer and participated in the subsequent proceedings. To this, we need only state that **the court may raise the issue of primary jurisdiction *sua sponte* and its invocation cannot be waived by the failure of the parties to argue it as the doctrine exists for the proper distribution of power between judicial and administrative bodies and not for the convenience of the parties**.[29] (Emphasis supplied.)

Respondent's collection suit being directed against a local government unit, such money claim should have been first brought to the COA.[30] Hence, the RTC should have suspended the proceedings and refer the filing of the claim before the COA. Moreover, petitioner is not estopped from raising the issue of jurisdiction even after the denial of its notice of appeal and before the CA.

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[29] *Id*. at 627-629.

[30] See *Department of Agriculture v. NLRC,* G.R. No. 104269, November 11, 1993, 227 SCRA 693, 700-701.

There are established exceptions to the doctrine of primary jurisdiction, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings.[31] However, none of the foregoing circumstances is applicable in the present case.

The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.[32] All the proceedings of the court in violation of the doctrine and all orders and decisions rendered thereby are null and void.[33]

Writ of Execution issued in violation of COA's primary jurisdiction is void

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[31] *Rep. of the Phils. v. Lacap,* 546 Phil. 87, 97-98 (2007), citing *Rocamora v. RTC-Cebu (Br. VIII),* 249 Phil. 571, 579 (1988); *Hon. Carale v. Hon. Abarintos,* 336 Phil. 126, 137 (1997); and *Castro v. Sec. Gloria,* 415 Phil. 645, 651-652 (2001).

[32] *Heirs of Tantoco, Sr. v. Court of Appeals,* 523 Phil. 257, 284 (2006), citing *First Lepanto Ceramics, Inc. v. Court of Appeals,* G.R. No. 117680, February 9, 1996, 253 SCRA 552, 558; *Machete v. Court of Appeals,* 320 Phil. 227, 235 (1995); and *Vidad v. RTC of Negros Oriental, Br. 42,* G.R. Nos. 98084, 98922 & 100300-03, October 18, 1993, 227 SCRA 271, 276.

[33] See *Agra v. Commission on Audit,* G.R. No. 167807, December 6, 2011, 661 SCRA 563, 582.

Since a judgment rendered by a body or tribunal that has no jurisdiction over the subject matter of the case is no judgment at all, it cannot be the source of any right or the creator of any obligation.[34] All acts pursuant to it and all claims emanating from it have no legal effect and the void judgment can never be final and any writ of execution based on it is likewise void.[35]

Clearly, the CA erred in ruling that the RTC committed no grave abuse of discretion when it ordered the execution of its judgment against petitioner and garnishment of the latter's funds.

In its Supplement to the Motion for Reconsideration, petitioner argued that it is the COA and not the RTC which has original jurisdiction over money claim against government agencies and subdivisions. The CA, in denying petitioner's motion for reconsideration, simply stated that the issue had become moot by respondent's filing of the proper petition with the COA. However, respondent's belated compliance with the formal requirements of presenting its money claim before the COA did not cure the serious errors committed by the RTC in implementing its void decision. The RTC's orders implementing its judgment rendered without jurisdiction must be set aside because a void judgment can never be validly executed.

Finally, the RTC should have exercised utmost caution, prudence and judiciousness in issuing the writ of execution and notices of garnishment against petitioner. The RTC had no authority to direct the immediate withdrawal of any portion of the garnished funds from petitioner's depositary banks.[36] Such act violated the express directives of this Court under Administrative

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[34] *Ga, Jr. v. Tubungan,* G.R. No. 182185, September 18, 2009, 600 SCRA 739, 746.

[35] *Id*.

[36] See *University of the Philippines v. Hon. Agustin Dizon,* G.R. No. 171182, August 23, 2012, 679 SCRA 54, 80.

Circular No. 10-2000,[37] which was issued "precisely in order to prevent the circumvention of Presidential Decree No. 1445, as well as of the rules and procedures of the COA."[38]

WHEREFORE, both petitions in G.R. Nos. 197592 and 202623 are **GRANTED.** The Decision dated October 18, 2010 and Resolution dated July 5, 2011 of the Court of Appeals in CA-G.R. SP No. 111754, and Decision dated August 31, 2011 and Resolution dated June 27, 2012 in CA-G.R. SP No. 114073 are hereby **REVERSED** and **SET ASIDE.** The Decision dated August 14, 2009, Writ of Execution and subsequent issuances implementing the said decision of the Regional Trial Court of Marikina City in Civil Case No. 06-1122-MK are all **SET ASIDE.**

No pronouncement as to costs.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson), Peralta,[*] *Bersamin,* and *Reyes, JJ.,* concur.

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[37] EXERCISE OF UTMOST CAUTION, PRUDENCE AND JUDICIOUSNESS IN THE ISSUANCE OF WRITS OF EXECUTION TO SATISFY MONEY JUDGMENTS AGAINST GOVERNMENT AGENCIES AND LOCAL GOVERNMENT UNITS.

[38] *University of the Philippines v. Hon. Agustin Dizon*, *supra* note 36, at 81.

[*] Designated additional member per Raffle dated November 13, 2013 vice Chief Justice Ma. Lourdes P.A. Sereno who recused herself from the cases in view of her inhibition in a related case.

FIRST DIVISION

[G.R. No. 198318. November 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ASIR GANI *y* ALIH and NORMINA GANI *y* GALOS,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF PROHIBITED DRUGS; ELEMENTS.—** In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.
2. **ID.; ID.; OF UTMOST IMPORTANCE IS THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS.—** Jurisprudence has decreed that, in dangerous drugs cases, the failure of the police officers to make a physical inventory and to photograph the sachets of *shabu*, as well as to mark the sachets at the place of arrest, do not render the seized drugs inadmissible in evidence or automatically impair the integrity of the chain of custody of the said drugs. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.
3. **REMEDIAL LAW; EVIDENCE; DENIAL AND FRAME-UP; CANNOT PREVAIL OVER POSITIVE TESTIMONIES AND PRESENTATION OF THE *CORPUS DELICTI*.—** [A]ccused-appellants' uncorroborated defenses of denial and frame-up cannot prevail over the prosecution witnesses' positive testimonies, coupled with the presentation in court by the prosecution of the *corpus delicti*. Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Oft-repeated is the rule that in cases involving violations of Republic Act No. 9165,

credence is given to prosecution witnesses who are police officers (or in this case, NBI agents) for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Absent any indication that the NBI agents herein were ill motivated in testifying against accused-appellants, their testimonies deserve full credence. In contrast, the defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Republic Act No. 9165. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.

4. **CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF PROHIBITED DRUGS; PENALTY.—** The penalty for illegal sale of *shabu*, regardless of the quantity and purity involved, under Article II, Section 5 of Republic Act No. 9165, 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, the imposition of the penalty of life imprisonment upon accused-appellants and an order for each of them to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) are correct.

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 April 1, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02625, which affirmed *in toto* the Decision[2] dated October 16, 2006 of the Regional

[1] *Rollo*, pp. 2-14; penned by Associate Justice Manuel M. Barrios with Associate Justices Mario L. Guarina III and Apolinario D. Bruselas, Jr., concurring.

[2] Records, pp. 166-172; penned by Judge Pablito M. Rojas.

Trial Court (RTC), Branch 70, City of Pasig, in Criminal Case No. 13491-D, finding accused-appellants Asir A. Gani and Normina G. Gani guilty beyond reasonable doubt of illegal sale of dangerous drugs defined and penalized under Article II, Section 5 of Republic Act No. 9165 otherwise known as the Dangerous Drugs Act of 2002, in relation to Paragraph 2, Article 62 of the Revised Penal Code.

Accused-appellants were charged in conspiracy with one another under the following criminal information:

> The undersigned Assistant Provincial Prosecutor accuses PO2 ASIR GANI *y* Alih and NORMINA GANI *y* Galos @ ROHAIMA of the crime of Violation of Section 5, Art. II, R.A. 9165 in relation to Art. 62, Par. 2, of the Revised Penal Code, committed as follows:
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> That on or about the 6th day of May 2004 in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above named accused, in conspiracy with one another, acting as an organized/syndicated crime group, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur buyer, SI Saul, 98.7249 grams of white crystalline substance contained in two (2) heat sealed transparent plastic bags, which substance was found positive to the test for Methamphetamine Hydrochloride also known as "*shabu*," which is a dangerous drug, in consideration of the agreed amount of Php150,000.00 in violation of the above cited law.[3]

When arraigned on July 28, 2004, accused-appellants pleaded not guilty.[4] At the pre-trial conference held on September 15, 2004, the parties arrived at the following stipulation of facts:

STIPULATION OF FACTS

x x x x x x x x x

1) The qualification as an expert Forensic Chemist, P/Insp. Rommel Patingo of the NBI Forensic Chemistry Division;

2) The due execution and genuineness of the Request for Laboratory Examination dated May 7, 2004, which was marked in evidence as

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

[4] *Id*. at 43.

Exhibit "A". In addition, the entries therein under paragraph SPECIMENS SUBMITTED was marked as Exhibit "A-1" and the rubber stamp showing receipt thereof by the NBI Forensic Chemistry Division was marked as Exhibit "A-2";

3) That the said Request for Laboratory Examination together with the specimen mentioned therein were delivered to, and received by, the NBI Forensic Chemistry Division, Taft Avenue, Manila, for chemical examination/analysis of the specimen;

4) The due execution and genuineness, as well as the truth of the contents, of Dangerous Drugs Report No. DE-04 dated May 7, 2004 issued by Forensic Chemist P/Insp. Rommel Patingo of the NBI Chemistry Division, Taft Avenue, Manila, who conducted the examination, which was marked as Exhibit "B". In addition, the FINDINGS as appearing on the report was marked as Exhibit "B-1" and the signature of the forensic chemist over her typewritten name likewise as appearing on the report was marked as Exhibit "B-2";

5) The existence of the four (4) plastic sachets, but not their source or origin, the contents of which were the subject of the Request for Laboratory Examination, which were marked in evidence as follows: as Exhibit "C" (the brown envelope), as Exhibits "C-1" (the plastic sachet containing white crystals with markings ("ES-1"); as Exhibit "C-2" (the plastic sachet containing white crystals with markings "ES-2"); and as Exhibit "C-3" (the plastic sachet containing lesser crystals with markings "ES-1").[5]

Thereafter, trial ensued.

The prosecution presented the testimonies of Special Investigator (SI) Elson Saul (Saul),[6] SI Joel Otic (Otic),[7] SI Salvador Arteche, Jr. (Arteche),[8] SI Melvin Escurel (Escurel),[9] and Atty. Ross Jonathan Galicia (Galicia),[10] all of the National Bureau of Investigation (NBI) assigned to the Special Enforcement

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[5] *Id.* at 56-57.

[6] TSN, October 13 and 27, 2004, and November 10, 2004.

[7] TSN, January 12, 2005.

[8] TSN, February 9, 2005.

[9] TSN, April 20, 2005.

[10] TSN, July 20, 2005.

Services of the Philippine Drug Enforcement Agency (PDEA). The prosecution dispensed with the presentation of the testimony of NBI Forensic Chemist II Rommel G. Patingo, who conducted the chemical analysis of the specimens submitted for his examination, since the subject matter of his testimony had already been stipulated during the pre-trial conference.

The documentary evidence for the prosecution consisted of the NBI-PDEA Pre-Operation Report[11] dated May 6, 2004; Coordination Letter[12] dated May 6, 2004 of NBI-PDEA to the Chief of Police of Taguig, City; Joint Affidavit of Arrest[13] dated May 7, 2004 signed by several members of the buy-bust team, namely, SI Saul, SI Otic, SI Arteche, Atty. Galicia, SI Antonio Erum, SI Garry I. Meñez, SI Bertrand Gamaliel A. Mendoza, and SI Junnel Malaluan; Booking Sheet and Arrest Report[14] of each accused-appellant; Inventory of Seized Properties[15] signed by SI Saul and two witnesses; buy-bust money consisting of two ₱1,000.00 bills and several pieces of ₱20.00 bills;[16] request dated May 7, 2004 for the laboratory examination of "two (2) transparent heat-sealed plastic sachets containing undetermined amount of white crystalline substance" recovered from accused-appellants and marked "ES-1 05-06-04" and "ES-2 05-06-04";[17] Dangerous Drugs Report No. DD-04-161[18] dated May 13, 2004 prepared by NBI Forensic Chemist II Patingo and Forensic Chemist III Aida R. Viloria-Magsipoc (Viloria-Magsipoc); a brown envelope and four plastic sachets of *shabu*, including the two sachets marked "ES-1 05-06-04" and "ES-2 05-06-04";[19]

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[11] Records, p. 121.

[12] *Id*. at 122.

[13] *Id*. at 115-117.

[14] *Id*. at 119-120.

[15] *Id*. at 118.

[16] *Id*.

[17] *Id*. at 113.

[18] *Id*. at 114.

[19] Left in the custody of the RTC.

and the Toxicology Report Nos. TDD-04-1788 and TDD-04-1789[20] prepared by NBI Forensic Chemist II Patingo and Forensic Chemist III Viloria-Magsipoc.

Based on the totality of the evidence submitted, the prosecution presented the following version of the events which led to accused-appellants' arrest:

On May 5, 2004, SI Saul received information from a confidential informant that accused-appellant Normina Gani (Normina), *alias* Rohaima, was looking for a buyer of *shabu*. SI Saul agreed to meet the informant and accused-appellant Normina for negotiation at the Pearl Hotel in Manila, just in front of the NBI Headquarters. They eventually met at Jollibee restaurant beside the Pearl Hotel. SI Saul was introduced by the informant to accused-appellant Normina as an interested buyer of *shabu*. Accused-appellant Normina initially offered to sell 500 grams of *shabu* to SI Saul, but the two later on agreed on the sale of 100 grams of *shabu* for One Hundred Fifty Thousand Pesos (₱150,000.00) to be consummated in the afternoon of the following day, May 6, 2004, at FTI Complex corner Vishay Street, Taguig City.

After the meeting, SI Saul reported back to the NBI Headquarters to tell his superior, Atty. Ruel Lasala (Lasala), about the transaction. Atty. Lasala instructed SI Saul to coordinate with the PDEA and formed a buy-bust team composed of, among other people, SI Saul, SI Otic, SI Arteche, SI Escurel, and Atty. Galicia. SI Saul was designated as the poseur-buyer and was given the marked money constituting of two ₱1,000.00 bills, with several ₱20.00 bills in between, to make it appear that the money was worth One Hundred Fifty Thousand Pesos (₱150,000.00), the purchase price agreed upon by SI Saul and accused-appellant Normina for the *shabu*.

At around 1:00 in the afternoon on May 6, 2004, the buy-bust team was dispatched to the vicinity of FTI Complex in Taguig City. Upon their arrival, the members of the buy-bust

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[20] Records, pp. 123-124.

team strategically positioned themselves around the arranged meeting place. SI Saul arrived at around 2:00 in the afternoon; while accused-appellant got there at around 4:30 in the afternoon, riding in tandem on a motorcycle with a man, later on identified as accused-appellant Asir Gani (Asir). When SI Saul approached accused-appellants, the latter asked the former about the money. SI Saul then showed them the marked money wrapped in transparent plastic inside a clutch bag. SI Saul, in turn, asked accused-appellants about the *shabu*. Accused-appellants showed SI Saul the plastic packs of *shabu* inside a blue bag. SI Saul handed over the marked money to accused-appellant Gani. Accused-appellant Gani passed on the marked money to accused-appellant Normina and turned over the possession of the *shabu* to SI Saul.

After the exchange of money and *shabu*, SI Saul lighted a cigarette, which was the pre-arranged signal to the rest of the buy-bust team that the transaction had been consummated. When SI Saul already saw the buy-bust team members approaching, he grabbed accused-appellant Asir's hands and introduced himself as an NBI agent. Accused-appellants were arrested and duly advised of their constitutional rights. During the search incidental to accused-appellants' arrest, the buy-bust team seized from accused-appellants' possession two other sachets of *shabu*, the marked money, accused-appellant Asir's .45 caliber pistol, and the motorcycle. The buy-bust team and accused-appellants then proceeded to the FTI Barangay Hall.

At the FTI Barangay Hall, SI Saul conducted an inventory of the items recovered from accused-appellants, including the two plastic sachets of *shabu* subject of the sale, which SI Saul marked "ES-1 05-06-04" and "ES-2 05-06-04," representing SI Saul's initials and the date of the buy-bust. All these were done in the presence of accused-appellants and two *barangay* officials. SI Saul's inventory report, however, did not include the two other sachets of *shabu* seized from accused-appellants' possession. Thereafter, the buy-bust team brought accused-appellants to the NBI Headquarters in Manila.

At the NBI Headquarters, accused-appellants were booked and further investigated. The following day, May 7, 2004, several members of the buy-bust team executed the Joint Affidavit of Arrest of accused-appellants. SI Saul also executed an incident report, requested for laboratory examination of the contents of the plastic sachets marked "ES-1 05-06-04" and "ES-2 05-06-04," and submitted the said specimens to the NBI Forensic Chemistry Division where they were received by NBI Forensic Chemist II Patingo.

The two plastic sachets submitted for laboratory examination had a combined weight of 98.7249 grams. Based on the forensic analysis by NBI Forensic Chemist II Patingo and Forensic Chemist III Viloria-Magsipoc, the contents of said sachets tested positive for Methamphetamine Hydrochloride.

The evidence for the defense consisted of accused-appellants' testimonies.[21] Both denied the crime charged against them and claimed that they were the victims of extortion. They were charged only because they failed to produce the money demanded from them.

The sequence of events according to the combined testimonies of accused-appellants is as follows:

On May 6, 2004, accused-appellants were at their house located at Sitio Imelda, Upper Bicutan, Taguig City. At around 11:30 in the morning, Accused-appellant Normina informed her husband, accused-appellant Asir, that she will accompany accused-appellant Asir's cousin, a certain Rohaima Sulayman (Rohaima), who will meet someone at the Sunshine Mall in Taguig City. At about 12:00 noon, accused-appellant Normina and Rohaima arrived at Sunshine Mall. Rohaima borrowed accused-appellant Normina's cellphone several times to call up the person she was supposed to meet. At around 3:30 in the afternoon, the person who Rohaima was waiting for arrived. Rohaima then instructed accused-appellant Normina to go to Signal Village to accept a package from another person and, thereafter, to

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[21] TSN, November 16, 2005 and December 14, 2005.

deliver it to Rohaima at the Pepsi compound nearby. As instructed by Rohaima, accused-appellant Normina went to Signal Village and waited. A man, wearing a white shirt and jeans, later arrived and asked if she was Rohaima's sister-in-law. When accused-appellant Normina answered in the affirmative, the man handed her a bag and directed her to give the same to Rohaima.

Meanwhile, at around 2:30 in the afternoon of the same day, accused-appellant Asir decided to follow accused-appellant Normina to Sunshine Mall. When accused-appellant Asir did not find accused-appellant Normina at the mall, he decided to go back home. However, on his way home, accused-appellant Asir chanced upon accused-appellant Normina near the market. Accused-appellant Normina asked accused-appellant Asir to accompany her to the Pepsi compound where she would meet Rohaima to deliver the bag.

Upon reaching the parking lot of the Pepsi compound at around 4:30 in the afternoon, accused-appellant Normina alighted from the motorcycle with the bag in hand. As accused-appellant Normina was walking, a van suddenly arrived from which five police officers in civilian clothes alighted. The police officers poked their guns at accused-appellant Asir and restrained accused-appellant Normina, taking the bag away from her. The police officers then hit accused-appellant Asir on different parts of his body and slapped accused-appellant Normina. Accused-appellant Asir repudiated the police officers' accusation that he was selling drugs, and accused-appellant Normina denied the police officers' charge that she was Rohaima and that she had knowledge of the contents of the bag she was about to deliver. Thereafter, the police officers boarded accused-appellants on separate vehicles and brought them to the NBI Headquarters where accused-appellant Asir was further interrogated and mauled. After accused-appellants had spent several days in detention, a *"piyansadora"* from NBI approached accused-appellant Normina, who offered the dropping of the charges against accused-appellants in exchange for Two Hundred Thousand Pesos (₱200,000.00). Accused-appellant Normina declined because she did not have the money.

After trial, the RTC rendered its Decision on October 16, 2006. Weighed against the prosecution's testimonial and documentary evidence, including the *corpus delicti* of the crime, the RTC found accused-appellants' defenses of denial and alibi implausible and devoid of credence. In the end, the RTC found accused-appellants guilty of the crime charged and sentenced them, thus:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding accused PO2 ASIR GANI and NORMINA GANI **GUILTY** beyond reasonable doubt of the offense of violation of Section 5, Article II, of Republic Act 9165 (Illegal Sale of Dangerous Drugs), and are both hereby sentenced to **LIFE IMPRISONMENT** and each to pay a **FINE** of **FIVE HUNDRED THOUSAND PESOS (₱500,000.00)**.
>
> Considering the penalty imposed by the Court on herein accused PO2 Asir Gani and Normina Gani, their immediate commitment to the New Bilibid Prisons, National Penitentiary, Muntinlupa City and the Correctional Institute for Women, Mandaluyong City, respectively, is hereby ordered.
>
> Pursuant to Section 21 of Republic Act 9165, representatives from the Philippine Drug Enforcement Agency (PDEA) are hereby ordered to take charge and have custody of the sachets of *shabu*, subject matter of this case, for proper disposition.
>
> Costs against the accused.[22]

Accused-appellants appealed the foregoing RTC judgment to the Court of Appeals,[23] based on a lone assignment of error:

> THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS WHOSE GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.[24]

On April 1, 2011, the Court of Appeals promulgated its Decision affirming accused-appellants' conviction. The appellate court accorded weight to the assessment by the RTC of the veracity of the witnesses' testimonies. The prosecution witnesses

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[22] Records, pp. 171-172.

[23] *Id*. at 178.

[24] CA *rollo*, p. 55.

gave a clear and candid narration of the buy-bust operation against accused-appellants; while accused-appellants' denial and alibi fail in the absence of clear and convincing evidence of ill motive or bad faith on the part of the buy-bust team. The appellate court also declared that there was substantial compliance with the rule on the chain of custody of the seized drugs, thus, preserving the integrity and evidentiary value of the same. Hence, the Court of Appeals decreed:

> **WHEREFORE**, premises considered, the appeal is hereby **DISMISSED**. The 16 October 2006 Decision of the Regional Trial Court of Pasig City, Branch 70 is hereby **AFFIRMED** *in toto*.[25]

Hence, the instant appeal.

Since the parties manifested that they would no longer submit any supplemental brief,[26] the Court considers the same arguments raised by the parties before the Court of Appeals.

In their Brief, accused-appellants assert that the prosecution failed to comply with the rules on the custody of seized drugs provided under Section 21 of Republic Act No. 9165. According to accused-appellants, there is no showing that the inventory and picture-taking of the *shabu* were conducted in their presence, as well as in the presence of a representative from the media, the Department of Justice (DOJ), and any elected public official, immediately after accused-appellants' arrest and seizure of the *shabu* purportedly sold by them. When accused-appellants were brought by the buy-bust team to the *barangay* hall following their arrest, there was already a typewritten inventory report for signature by the *barangay* officials, which, accused-appellants surmise, was already prepared at the NBI Office. It is likewise not clearly established where and when the markings on the plastic sachets of *shabu* were made. Accused-appellants reason that the suspicions regarding the actual conduct of an inventory of the *shabu* allegedly sold by them could have been avoided had the prosecution presented the testimonies of the *barangay* officials who signed the inventory report.

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[25] *Rollo*, p. 14.

[26] *Id*. at 22-24 and 27-30.

Accused-appellants further point out that the prosecution's evidence conflicted as to the number of sachets of *shabu* seized from them. It was stipulated during the pre-trial that there were four plastic sachets of *shabu* but prosecution witness SI Saul testified that as poseur-buyer, he bought and received only two sachets of *shabu* from accused-appellants. No details were provided about the seizure of the other two sachets of *shabu*.

Plaintiff-appellee, in its Brief, maintains that the rule on the chain of custody of the seized *shabu* had been substantially complied with and the issues raised by accused-appellants are trivial and unfounded.

The Court finds the appeal bereft of merit.

The combined testimonial, documentary, and object evidence of the prosecution produced a detailed account of the buy-bust operation against accused-appellants and proved all the essential elements of the crime charged against them.

In the prosecution for the crime of illegal sale of prohibited drugs, the following elements must concur: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment thereof. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually occurred, coupled with the presentation in court of the substance seized as evidence.[27]

It has been clearly established herein that a buy-bust operation took place on May 6, 2004 conducted by a team of NBI agents. SI Saul, as the poseur-buyer, and accused-appellants, as the sellers, agreed on the price of One Hundred Fifty Thousand Pesos (₱150,000.00) for One Hundred (100) grams of *shabu*. After SI Saul handed over the buy-bust money to accused-appellants, the latter gave him, in exchange, two plastic sachets containing white crystalline substance. Thereafter, accused-appellants were immediately arrested by the buy-bust team. During the search incidental to accused-appellants' arrest, a .45 caliber handgun, the buy-bust money, and two more sachets

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[27] *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 408.

of suspected *shabu* were recovered from their possession. Chemical examination confirmed that the contents of the two plastic sachets sold to SI Saul were indeed *shabu*. These two sachets of *shabu*, marked "ES-1 05-06-04" and "ES-2 05-06-04" and with a total weight of 98.7249 grams, together with two other sachets, were duly presented as evidence by the prosecution before the RTC.

Contrary to accused-appellants' averment, prosecution witness, SI Saul, was able to explain why there were a total of four sachets of *shabu* presented during trial, when SI Saul only bought two sachets during the buy-bust operation. SI Saul testified that in addition to the two plastic sachets of *shabu* sold to him by accused-appellants, there were two more sachets of *shabu* recovered from accused-appellants' possession by the buy-bust team during the body search conducted incidental to accused-appellants' lawful arrest.[28]

The Court further finds that the arresting officers had substantially complied with the rule on the chain of custody of the dangerous drugs as provided under Section 21 of Republic Act No. 9165.

Jurisprudence has decreed that, in dangerous drugs cases, the failure of the police officers to make a physical inventory and to photograph the sachets of *shabu*, as well as to mark the sachets at the place of arrest, do not render the seized drugs inadmissible in evidence or automatically impair the integrity of the chain of custody of the said drugs.[29] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused.[30]

In this case, testimonial and documentary evidence for the prosecution proved that immediately after accused-appellants' arrest, they were brought to the FTI Barangay Hall. It was there,

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[28] TSN, October 27, 2004, pp. 18-20.

[29] *Imson v. People*, G.R. No. 193003, July 13, 2011, 653 SCRA 827, 134.

[30] *People v. Resurreccion*, G.R. No. 186380, October 12, 2009, 603 SCRA 510, 519.

in the presence of two *barangay* officials, that SI Saul conducted an inventory of the two plastic sachets of *shabu* subject of the buy-bust operation, plus the other items seized from accused-appellants' possession during the search conducted incidental to accused-appellants' arrest. It was also at the *barangay* hall where SI Saul marked the two plastic sachets of *shabu* sold to him by accused-appellants as "ES-1 05-06-04" and "ES-2 05-06-04," representing SI Saul's initials and the date of the buy-bust operation. Thereafter, the buy-bust team, with accused-appellants, proceeded to the NBI Headquarters. At the NBI Headquarters, SI Saul made a request for examination of the two plastic sachets of *shabu*, marked "ES-1 05-06-04" and "ES-2 05-06-04," and personally handed the same to NBI Forensic Chemist II Patingo. NBI Forensic Chemist II Patingo, together with NBI Forensic Chemist III Viloria-Magsipoc, conducted the laboratory examination of the contents of the two sachets marked "ES-1 05-06-04" and "ES-2 05-06-04" and kept said sachets in his custody until the same were submitted to the RTC as evidence during trial.

Thus, the Court of Appeals was correct in its observation that the failure of the buy-bust team to take pictures of the seized drugs immediately upon seizure and at the site of accused-appellants' apprehension, and to mark and make an inventory of the same in the presence of all the persons named in Section 21 of Republic Act No. 9165, are not fatal and did not render the seized drugs inadmissible in evidence given that the prosecution was able to trace and establish each and every link in the chain of custody of the seized drugs and, hence, the identity and integrity of the said drugs had been duly preserved. For the same reasons, it was not imperative for the prosecution to present as witnesses before the RTC the two *barangay* officials who witnessed the conduct of the inventory. At best, the testimonies of these two *barangay* officials will only be corroborative, and would have no significant impact on the identity and integrity of the seized drugs.

Moreover, accused-appellants' uncorroborated defenses of denial and frame-up cannot prevail over the prosecution witnesses' positive testimonies, coupled with the presentation in court by

the prosecution of the *corpus delicti*. Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Oft-repeated is the rule that in cases involving violations of Republic Act No. 9165, credence is given to prosecution witnesses who are police officers (or in this case, NBI agents) for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Absent any indication that the NBI agents herein were ill motivated in testifying against accused-appellants, their testimonies deserve full credence.[31] In contrast, the defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Republic Act No. 9165. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.[32] Accused-appellants presented no such evidence in this case.

The penalty for illegal sale of *shabu*, regardless of the quantity and purity involved, under Article II, Section 5 of Republic Act No. 9165, 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, the imposition of the penalty of life imprisonment upon accused-appellants and an order for each of them to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) are correct.

WHEREFORE, in view of the foregoing, the Decision dated April 1, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02625, which affirmed *in toto* the Decision dated October 16, 2006 of the RTC, Branch 70, of the City of Pasig, in Criminal Case No. 13491-D, is hereby **AFFIRMED.**

SO ORDERED.

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

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[31] *People v. Vicente, Jr.*, G.R. No. 188847, January 31, 2011, 641 SCRA 186, 197-198.

[32] *People v. Lazaro, Jr.*, G.R. No. 186418, October 16, 2009, 604 SCRA 250, 269.

FIRST DIVISION

[G.R. No. 198718. November 27, 2013]

SPOUSES TEODORO and ROSARIO SARAZA and FERNANDO SARAZA, *petitioners, vs.* **WILLIAM FRANCISCO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED.—** [T]he Court underscores the limited scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Section 1 of Rule 45 provides that the petition shall raise only questions of law, which must be distinctly set forth. Questions of fact are not entertained, for the Court is not duty-bound to analyze again and weigh the evidence introduced in and already considered by the tribunals below. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by the Court, save in some recognized exceptions.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL FAILS AGAINST CATEGORICAL STATEMENT.—** [P]etitioners do not deny the authenticity and their execution of the subject Agreement, a matter that is also sufficiently established by the fact that the document was acknowledged before a notary public. As both the RTC and CA correctly held, such Agreement sufficiently proves the fact of the respondent's payment to the petitioners of the agreed initial payment of ₱1,200,000.00, as [stated.] x x x Given this categorical statement, the petitioners' denial that they have received the amount necessitated concrete and substantial proof. A perusal of the case records shows that the petitioners failed in this regard. Even their unsubstantiated claim that the document's notarization was irregularly made cannot prevail over the presumption that the notary public's duty has been regularly performed. The CA also correctly held that the parol evidence rule applies to this case. Unsubstantiated testimony, offered as proof of verbal agreements which tend to vary the terms of the written agreement, is inadmissible under the rule.

3. **ID.; CIVIL PROCEDURE; APPEALS; NO ISSUE MAY BE RAISED FOR THE FIRST TIME ON APPEAL.—** Basic is the rule that no issue may be raised on appeal unless it has been brought before the lower tribunals for consideration. To consider such issues and arguments that are belatedly raised by a party would be tantamount to a blatant disregard of the basic principles of fair play, justice and due process.

4. **ID.; ID.; VENUE OF ACTIONS; RESIDENCE OF PLAINTIFF MAY BE THE VENUE OF ACTION TO TRANSFER PROPERTY LOCATED IN ANOTHER PLACE.—** As to the issue of venue, the petitioners' argument that the action should have been instituted with the RTC of Makati City (venue of subject property), and not the RTC of Imus, Cavite (venue of plaintiff's residence), is misplaced. Although the end result of the respondent's claim was the transfer of the subject property to his name, the suit was still essentially for specific performance, a personal action, because it sought Fernando's execution of a deed of absolute sale based on a contract which he had previously made. Our ruling in *Cabutihan v. Landcenter Construction & Development Corporation* is instructive. In the said case, a complaint for specific performance that involved property situated in Parañaque City was instituted before the RTC of Pasig City. When the case's venue was raised as an issue, the Court sided with therein petitioner who argued that "[t]he fact that 'she ultimately sought the conveyance of real property' not located in the territorial jurisdiction of the RTC of Pasig is x x x an anticipated consequence and beyond the cause for which the action [for specific performance with damages] was instituted." x x x Section 2, Rule 4 of the Rules of Court then governs the venue for the respondent's action. It provides that personal actions "may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff." Considering the respondent's statement in his complaint that he resides in Imus, Cavite, the filing of his case with the RTC of Imus was proper.

5. **CIVIL LAW; DAMAGES; AWARD MUST INDICATE CLASSIFICATION AND LEGAL BASES THEREFOR.—** Both the RTC and the CA failed to indicate the award's

classification and the factual and legal bases therefor, save for a general statement by the RTC that it was deemed a "reasonable amount of damages arising from the failure of the [petitioners] to fulfill [their] obligation under their Agreement." The claim in the complaint was for "moral and compensatory damages," yet the RTC failed to indicate whether the ₱100,000.00 was for the moral damages for the "undue anxiety, mental anguish and wounded feelings," or compensatory damages for the "actual business losses due to disruption of his business" as alleged by the respondent in his Amended Complaint. More importantly, there is no showing that such allegations were sufficiently substantiated by the respondent, rendering the deletion of the award warranted.

APPEARANCES OF COUNSEL

Edilberto B. Cosca and *Renecio R. Espiritu* for petitioners.
Fortun Narvasa & Salazar for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, which assails the Decision[2] dated June 28, 2011 and Resolution[3] dated September 30, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 93961. The assailed decision and resolution of the CA affirmed the Decision[4] dated June 5, 2009 of the Regional Trial Court (RTC) of Imus, Cavite, Branch 20, in Civil Case No. 0319-04, an action for specific performance/sum of money and damages.

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[1] *Rollo*, pp. 7-21.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Celia C. Librea-Leagogo and Michael P. Elbinias, concurring; *id*. at 23-42.

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

[4] Issued by Presiding Judge Fernando Felicen; *id*. at 70-75.

The Facts

The case stems from an amended complaint filed by William Francisco (respondent) against Fernando Saraza (Fernando) and Spouses Teodoro and Rosario (Rosario) Saraza (Spouses Saraza) (petitioners). The respondent alleged in his complaint that on September 1, 1999, he and Fernando executed an Agreement[5] that provided for the latter's sale of his 100-square meter share in a lot situated in Bangkal, Makati City, which at that time was still registered in the name of one Emilia Serafico and covered by Transfer Certificate of Title (TCT) No. 40376 (later covered by TCT No. 220530), for a total consideration of ₱3,200,000.00. The amount of ₱1,200,000.00 was paid upon the Agreement's execution, while the balance of ₱2,000,000.00 was to be paid on installments to the Philippine National Bank (PNB), to cover a loan of Spouses Saraza, Fernando's parents, with the bank. A final deed of sale conveying the property was to be executed by Fernando upon full payment of the PNB loan.[6]

It was also agreed upon that should the parties fail for any reason to transfer the subject property to the respondent's name, Rosario and Fernando's 136-sq m property covered by TCT No. 156126 and encumbered to PNB to secure the loan that was to be paid by the respondent shall be considered a collateral in favor of the respondent.[7] Spouses Saraza signified their conformity to the Agreement. The respondent was also allowed to take immediate possession of the property covered by TCT No. 156126 through a contract of lease.[8] The petitioners likewise furnished PNB with an Authority,[9] allowing the respondent to pay their obligations to the PNB, to negotiate for a loan restructuring, to receive the owner's duplicate copy of TCT No. 156126 upon full payment of the loan secured by its mortgage,

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

[6] *Id*.

[7] *Id*. at 57.

[8] *Id*. at 65.

[9] *Id*. at 66.

and to perform such other acts as may be necessary in connection with the settlement of the loan.[10]

When the remaining balance of the PNB loan reached ₱226,582.13, the respondent asked for the petitioners' issuance of a Special Power of Attorney (SPA) that would authorize him to receive from PNB the owner's duplicate copy of TCT No. 156126 upon full payment of the loan. The petitioners denied the request. Upon inquiry from PNB, the respondent found out that the petitioners had instead executed an Amended Authority, which provided that the owner's copy of TCT No. 156126 should be returned to the mortgagors upon full payment of the loan.[11] Spouses Saraza also caused the eviction of the respondent from the property covered by TCT No. 156126.[12] These prompted the respondent to institute the civil case for specific performance, sum of money and damages with the RTC of Imus, Cavite on December 7, 2004.[13]

The petitioners admitted the existence of the Agreement and the Authority which was addressed to PNB. They, nonetheless, opposed the respondent's complaint on the ground that the amount of ₱1,200,000.00 which was supposed to be paid by the respondent upon the Agreement's execution remained unpaid. The respondent allegedly took advantage of the trust that was reposed upon him by the petitioners, who nonetheless did not formally demand payment from him but merely waited for him to pay the amount.[14]

The Ruling of the RTC

On June 5, 2009, the RTC rendered a Decision in favor of the respondent. The RTC considered the contents of the Agreement executed by the parties, taking into account that it was a notarized document. It held:

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[10] *Id*. at 57.

[11] *Id*. at 58.

[12] *Id*. at 59.

[13] *Id*. at 70.

[14] *Id*. at 72.

In another case, the High Court held that: "*The recitals in a public instrument executed with all the legal formalities are evidence against the parties thereto and their successors in interest, and a high degree of proof is necessary to overcome the presumption that such recitals are true*." (*Naval, et al. v. Enriquez*, 3 Phil. 669).[15] (Italics supplied)

The RTC held that contrary to the petitioners' claim, the respondent's full payment of the ₱3,200,000.00 consideration provided in the Agreement was supported by: (1) the petitioners' acknowledgment in the Agreement that they received the amount of ₱1,200,000.00 upon its execution; and (2) the Certification from PNB that the full amount of Spouses Saraza's loan with the bank had been fully paid.

The RTC, however, declared that only Fernando should be held liable for the respondent's claims, since the main action was for specific performance, specifically to compel him to execute a Deed of Absolute Sale over the subject property already covered by TCT No. 220530 under Fernando's name. Hence, the decretal portion of the RTC Decision reads:

WHEREFORE, premises considered[,] judgment is hereby rendered ordering [petitioner] Fernando M. Saraza as follows, *viz*:

1. to EXECUTE a Deed of Absolute Sale covering the 100-square meter parcel of land located in Barangay Bangkal, City of Makati and covered by Transfer Certificate of Title No. 220530 of the Registry of Deeds of Makati in favor of [respondent] William Francisco pursuant to their Agreement dated 01 September 1999;
2. to DELIVER to [respondent] William Francisco the Owner's Copy of Transfer Certificate of Title No. 220530 covering the 100-square meter parcel of land located in Barangay Bangkal, City of Makati which is subject of the Deed of Absolute Sale; and
3. to PAY all taxes imposable by law for the transfer of the title in the name of [respondent], pursuant to the parties' AGREEMENT dated 1 September 1999;

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[15] *Id*. at 73.

4. to PAY [respondent] William Francisco the following:

   4.1 One Hundred Thousand Pesos (Ph 100,000.00) as and by way of damages;

   4.2 One Hundred Seventy-Seven Thousand Pesos (Php177,000.00) as and by way of attorney's fees; and

   4.3 the costs of suit.

SO ORDERED.[16]

Dissatisfied, Fernando questioned the RTC Decision before the CA. In addition to the defenses which he raised during the proceedings before the RTC, he argued that the RTC of Imus lacked jurisdiction over the case as it involved an adjudication of ownership of a property situated in Makati City.[17]

The Ruling of the CA

The CA affirmed the RTC rulings *via* the Decision dated June 28, 2011. The CA rejected the petitioners' allegation that the amount of ₱1,200,000.00 remained unpaid by the respondent, citing the stipulation in their Agreement which provided that the said amount was paid upon the contract's execution.

On the issue of jurisdiction, the CA cited Fernando's failure to seasonably file before the lower court a motion to dismiss stating that the action should have been filed in Makati City. More importantly, the Court explained that the case was a personal action since it did not involve a claim of ownership of the subject property, but only sought Fernando's execution of a deed of sale in the respondent's favor. Thus, the venue for the action was the residence of the plaintiff or the defendant, at the plaintiff's option.[18]

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[16] *Id*. at 75.

[17] *Id*. at 36.

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

Petitioner Fernando's Motion for Reconsideration[19] was denied by the CA in the Resolution dated September 30, 2011.[20] Hence, this petition for review on *certiorari*.

The Issue

The main issue for the Court's resolution is: Whether or not the petitioners are bound to comply with their obligations to the respondent as embodied in their Agreement dated September 1, 1999.

This Court's Ruling

The respondent's satisfaction of his obligation under the Agreement

It is imperative to look into the respondent's compliance with his covenants under the subject Agreement in order to ascertain whether or not he can compel the petitioners to satisfy their respective undertakings.

At the outset, the Court underscores the limited scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Section 1 of Rule 45 provides that the petition shall raise only questions of law, which must be distinctly set forth. Questions of fact are not entertained, for the Court is not duty-bound to analyze again and weigh the evidence introduced in and already considered by the tribunals below.[21] When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by the Court, save in some recognized exceptions such as: (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

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[19] *Id.* at 76-89.

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

[21] *Medina v. Court of Appeals,* G.R. No. 137582, August 29, 2012, 679 SCRA 191, 201.

conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both 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 petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[22]

The respondent's obligation under the Agreement pertains to the payment of the ₱3,200,000.00 consideration for Fernando's corresponding duty of executing a Deed of Sale over the property formerly covered by TCT No. 40376. To dispute the respondent's claim that he has satisfied said obligation, the petitioners now raise factual issues which the Court however emphasizes are not for the Court to reassess. For one, the issue of whether or not the respondent's obligation to pay has already been satisfied is a factual question.

We consider the fact that both the RTC and the CA have determined that there has been a full payment by the respondent of his ₱3,200,000.00 obligation under the Agreement. Upon review, the Court finds no reason to deviate from this finding of the courts, especially as it is supported by substantial evidence. To begin with, the petitioners do not deny the authenticity and their execution of the subject Agreement, a matter that is also sufficiently established by the fact that the document was acknowledged before a notary public. As both the RTC and CA correctly held, such Agreement sufficiently proves the fact of the respondent's payment to the petitioners of the agreed initial payment of ₱1,200,000.00, as it states:

> That, for and in consideration of the agreed purchase price of THREE MILLION TWO HUNDRED THOUSAND PESOS ([₱]3,200,000.00), Philippine currency, of which the sum of **ONE**

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[22] *Id.*; *Samaniego-Celada v. Abena*, 579 Phil. 60, 66 (2008), citing *Ontimare, Jr. v. Spouses Elep,* 515 Phil. 237, 245-246 (2006).

MILLION TWO HUNDRED THOUSAND PESOS ([₱]1,200,000.00), has been paid by the buyer upon execution of this instrument x x x.[23] (Emphasis ours)

Given this categorical statement, the petitioners' denial that they have received the amount necessitated concrete and substantial proof. A perusal of the case records shows that the petitioners failed in this regard. Even their unsubstantiated claim that the document's notarization was irregularly made cannot prevail over the presumption that the notary public's duty has been regularly performed.[24] The CA also correctly held that the parol evidence rule applies to this case. Unsubstantiated testimony, offered as proof of verbal agreements which tend to vary the terms of the written agreement, is inadmissible under the rule.[25]

In addition to the foregoing, the petitioners' plain denial of the respondent's claim of full payment is self-serving, belied by their admission that they had not at anytime demanded from the respondent the payment of ₱1,200,000.00. The petitioners are presumed under the law to have taken ordinary care of their concerns;[26] thus, they would have exerted efforts to demand payment of the amount due them if in fact, no payment had been made. Moreover, given this presumption, the petitioners were supposed to be wary of the import of affixing their signature on the Agreement, and would not have voluntarily signed the subject Agreement if they did not intend to give full effect thereto.

The petitioners also raise in their Supplemental Petition[27] some defenses which were not introduced during the proceedings before the lower courts. These pertain to the alleged failure of Spouses Saraza to fully understand the contents of the Agreement as these were written in English, and their claim that the

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[23] *Rollo*, p. 63.

[24] RULES OF COURT, Rule 131, Section 3(m).

[25] *Seaoil Petroleum Corporation v. Autocorp Group,* G.R. No. 164326, October 17, 2008, 569 SCRA 387, 395.

[26] RULES OF COURT, Rule 131, Section 3(d).

[27] *Rollo*, pp. 90-113.

Agreement was a contract of adhesion for having been prepared solely by the respondent. Basic is the rule, however, that no issue may be raised on appeal unless it has been brought before the lower tribunals for consideration.[28] To consider such issues and arguments that are belatedly raised by a party would be tantamount to a blatant disregard of the basic principles of fair play, justice and due process.[29] In any case, the new defenses that are raised by the petitioners deserve scant consideration. There is no claim that the cited language limitation equally applied to the respondent, the principal party in the Agreement. Contrary to the petitioners' stance, the Agreement also does not appear to be a contract where the petitioners had no opportunity to question its terms, negotiate or decline its execution. The bare allegations of the petitioners fail to suffice.

Based on available evidence, it is then clear that the respondent had fully satisfied his obligation under the subject Agreement given the stipulation in the document on his initial payment of ₱1,200,000.00, and considering PNB's Certification[30] that the ₱2,000,000.00 loan of Spouses Saraza with the bank had been fully settled on April 22, 2005. Fernando, being equally bound by the terms of the document, was correctly ordered by the RTC and the CA to duly comply with his own obligation under the contract, particularly the obligation to execute a deed of sale over his 100-sqm property in Bangkal, Makati City. The respondent's satisfaction of his obligation under the Agreement also rendered unmeritorious the petitioners' counterclaim for damages.

Venue of an Action for Specific Performance

As to the issue of venue, the petitioners' argument that the action should have been instituted with the RTC of Makati City,

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[28] *Buklod nang Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc.,* G.R. No. 131481, March 16, 2011, 645 SCRA 401, 455.

[29] *Office of the President v. Cataquiz,* G.R. No. 183445, September 14, 2011, 657 SCRA 681, 705-706, citing *Madrid v. Mapoy*, G.R. No. 150887, August 14, 2009, 596 SCRA 14, 28.

[30] *Rollo*, p. 123.

and not the RTC of Imus, Cavite, is misplaced. Although the end result of the respondent's claim was the transfer of the subject property to his name, the suit was still essentially for specific performance, a personal action, because it sought Fernando's execution of a deed of absolute sale based on a contract which he had previously made.

Our ruling in *Cabutihan v. Landcenter Construction & Development Corporation*[31] is instructive. In the said case, a complaint for specific performance that involved property situated in Parañaque City was instituted before the RTC of Pasig City. When the case's venue was raised as an issue, the Court sided with therein petitioner who argued that "[t]he fact that 'she ultimately sought the conveyance of real property' not located in the territorial jurisdiction of the RTC of Pasig is x x x an anticipated consequence and beyond the cause for which the action [for specific performance with damages] was instituted."[32] The Court explained:

[I]n *La Tondeña Distillers, Inc. v. Ponferrada,* private respondents filed an action for specific performance with damages before the RTC of Bacolod City. The defendants allegedly reneged on their contract to sell to them a parcel of land located in Bago City – a piece of property which the latter sold to petitioner while the case was pending before the said RTC. **Private respondent did not claim ownership but**, by annotating a notice of *lis pendens* on the title, **recognized defendants' ownership thereof**. **This Court ruled that the venue had properly been laid in the RTC of Bacolod, even if the property was situated in Bago**.

In *Siasoco v. Court of Appeals,* private respondent filed a case for specific performance with damages before the RTC of Quezon City. It alleged that after it accepted the offer of petitioners, they sold to a third person several parcels of land located in Montalban, Rizal. The Supreme Court sustained the trial court's order allowing an amendment of the original Complaint for specific performance with damages. Contrary to petitioners' position that the RTC of Quezon City had no jurisdiction over the case, as the subject lots

[31] 432 Phil. 927 (2002).

[32] *Id.* at 938.

were located in Montalban, Rizal, the said RTC had jurisdiction over the original Complaint. The Court reiterated the rule that **a case for specific performance with damages is a personal action which may be filed in a court where any of the parties reside**.[33] (Citations omitted and emphasis supplied)

The Court compared these two cases with the case of *National Steel Corporation v. Court of Appeals*[34] where the Court held that an action that seeks the execution of a deed of sale over a parcel of land is for recovery of real property, and not for specific performance, because the primary objective is to regain ownership and possession of the property.[35] It was explained that the prayer in *National Steel* was not in any way connected to a contract that was previously executed by the party against whom the complaint was filed, unlike in *Cabutihan* where the parties had earlier executed an Undertaking for the property's transfer, correctly giving rise to a cause of action either for specific performance or for rescission, as in this case.

Section 2, Rule 4 of the Rules of Court then governs the venue for the respondent's action. It provides that personal actions "may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff." Considering the respondent's statement in his complaint that he resides in Imus, Cavite,[36] the filing of his case with the RTC of Imus was proper.

Award of Damages

The Court, however, modifies the lower courts' award of damages in favor of the respondent. In the assailed decision, the CA affirmed the RTC's award of the following amounts:

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[33] *Id*. at 939-940.

[34] 362 Phil. 150 (1999).

[35] *Id*. at 158.

[36] *Rollo,* p. 56.

(1) ₱100,000.00 as damages; (2) ₱177,000.00 as attorney's fees; and (3) costs of suit.

Upon review, the Court finds no justification for the order to pay damages in the amount ₱100,000.00. Both the RTC and the CA failed to indicate the award's classification and the factual and legal bases therefor, save for a general statement by the RTC that it was deemed a "reasonable amount of damages arising from the failure of the [petitioners] to fulfill [their] obligation under their Agreement."[37]

The claim in the complaint was for "moral and compensatory damages", yet the RTC failed to indicate whether the ₱100,000.00 was for the moral damages for the "undue anxiety, mental anguish and wounded feelings,"[38] or compensatory damages for the "actual business losses due to disruption of his business"[39] as alleged by the respondent in his Amended Complaint. More importantly, there is no showing that such allegations were sufficiently substantiated by the respondent, rendering the deletion of the award warranted.

WHEREFORE, the Decision dated June 28, 2011 and Resolution dated September 30, 2011 of the Court of Appeals in CA-G.R. CV No. 93961 are **AFFIRMED with MODIFICATION** in that the award of ₱100,000.00 as damages in favor of respondent William Francisco is deleted.

SO ORDERED.

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

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[37] *Id.* at 74.

[38] *Id.* at 60.

[39] *Id.*

SECOND DIVISION

[G.R. No. 198935. November 27, 2013]

MAYNILAD WATER SUPERVISORS ASSOCIATION, represented by ROBERTA ESTIMO, *petitioners, vs.* **MAYNILAD WATER SERVICES, INC.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; MONTHLY COST OF LIVING ALLOWANCE (COLA); MAYNILAD UNDER THE CONCESSION AGREEMENT IS NOT BOUND TO PAY COLA TO EMPLOYEES IT ABSORBED FROM THE MWSS.—** [T]he main issue in this case is whether Maynilad bound itself under the Concession Agreement to pay the COLA of the employees it absorbed from MWSS. A careful review of the Concession Agreement led us to conclude that both MWSS and Maynilad never intended to include COLA as one of the benefits to be granted to the absorbed employees. The benefits agreed upon by the parties are stated in Exhibit "F" of the Concession Agreement. x x x It is clear from the enumeration that COLA is not among the benefits to be received by the absorbed employees. Contrary to the contention of MWSA, the declaration by the Court of the ineffectiveness of DBM CCC No. 10 due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country, did not give rise to the employee's right to demand payment of the subject benefit from Maynilad. As far as their employment relationship with Maynilad is concerned, the same is not affected by the *De Jesus* ruling because it is governed by a separate compensation package provided for under the Concession Agreement. It would be erroneous to presume that had the COLA been received during the time of the execution of the contract, the benefit would have been included in Exhibit "F". First of all, we note that the Court's ruling in the *De Jesus* case applies only to government-owned and controlled corporations and not to private entities. Secondly, the parties to the Concession Agreement could not have thought of including the COLA in Exhibit "F" because as early as 1989, the government already resolved to remove the COLA, among

others, from the list of allowances being received by government employees. Hence, the enactment of Republic Act (R.A.) No. 6758 or the Compensation and Position Classification Act of 1989 which integrated the COLA into the standardized salary rate.

2. **ID.; ID.; ID.; COLA INCLUDED IN THE STANDARDIZED SALARY RATES.—** In *Gutierrez v. DBM*, which is a consolidated case involving over 20 government-owned and controlled corporations, the Court found proper the inclusion of COLA in the standardized salary rates. It settled that COLA, not being an enumerated exclusion, was deemed already incorporated in the standardized salary rates of government employees under the general rule of integration. In explaining its inclusion in the standardized salary rates, the Court cited its ruling in *National Tobacco Administration v. COA,* in that the enumerated fringe benefits in items (1) to (6) have one thing in common – they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. On the other hand, item (7) is a "catch-all proviso" for benefits in the nature of allowances similar to those enumerated. Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty. As defined, cost of living refers to "the level of prices relating to a range of everyday items" or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption." Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.

3. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; LABOR CONTRACTS WITH FORMER EMPLOYER CANNOT BE ENFORCED AGAINST ABSORBING EMPLOYER.—** The ruling of the Labor Arbiter which MWSA insists on is also erroneous in that it seeks to have the COLA incorporated in the monthly compensation to be received by

the absorbed employees. It failed to consider that the employment contracts of the MWSA members with MWSS were terminated prior to their employment with Maynilad. Although they may have continued performing the same function, their employment is already covered by an entirely new employment contract. This Court has ruled that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being *in personam,* thus binding only between the parties.

4. **ID.; NATIONAL LABOR RELATIONS COMMISSION (NLRC); RULES OF PROCEDURE; APPEAL BOND INSUFFICIENCY; MAY BE RELAXED WHEN THERE IS SUBSTANTIAL COMPLIANCE AND EXPLANATION THEREFOR.—** Anent the issue of the insufficiency of the appeal bond posted by Maynilad, we agree with the NLRC that there was merit in the arguments forwarded in support of the prayer for the reduction of the appeal bond. x x x Our ruling in *Garcia, et al. v. KJ Commercial* that the bond requirement on appeals may be relaxed when there is substantial compliance with the Rules of Procedure of the NLRC or when the appellant shows willingness to post a partial bond. Here, we note that Maynilad's appeal was accompanied by an appeal bond in the amount of Twenty Five Million Pesos (₱25,000,000.00) with an Urgent Manifestation and Motion to Reduce Bond on the ground that the labor arbiter failed to specify the exact amount of monetary award from which the amount of the appeal bond is to be based. In *University Plans v. Solano,* this Court reiterated the guidelines which the NLRC must exercise in considering the motions for reduction of bond.

APPEARANCES OF COUNSEL

Jabla Borja Cabrera & Bagas Law Offices for petitioner.
Tantoco Villanueva De Guzman & Llamas Law Offices and *Siguion Reyna Montecillo & Ongsiako* for respondent.

D E C I S I ON

PEREZ, *J.*:

For resolution is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to reverse, annul and set aside the Amended Decision and Resolution issued by the Court of Appeals (CA) in CA-G.R. S.P. No. 101911, specifically the (a) Amended Decision[2] dated 31 January 2011 which reversed its earlier Decision dated 31 May 2010 and (b) Resolution[3] dated 12 September 2011 which denied petitioner's Motion for Reconsideration.

Culled from the records are the following antecedent facts:[4]

Petitioner Maynilad Water Supervisors Association (MWSA) is an association composed of former supervisory employees of Metropolitan Waterworks and Sewerage System (MWSS). These employees claim that during their employment with MWSS, they were receiving a monthly cost of living allowance (COLA) equivalent to 40% of their basic pay.

The payment of these allowances and other additional compensation, including the COLA were, however, discontinued without qualification effective 1 November 1989 when the Department of Budget and Management (DBM) issued Corporate Compensation Circular No. 10 (CCC No. 10).

In 1997, MWSS was privatized and part of it, MWSS West, was acquired by Maynilad Water Services, Inc. (Maynilad). Some of the employees of MWSS, which included members of MWSA, were absorbed by Maynilad subject to the terms and conditions of a Concession Agreement, a portion of which reads:

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[1] *Rollo*, pp. 10-33.

[2] *Id*. at 264-279; Penned by Associate Justice Rodil V. Zalameda with Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr. concurring.

[3] *Id*. at 336-341.

[4] *Id*. at 12-19; Petition.

Article 6.1.1 (ii)

One month prior to the Commencement Date, the Concessionaire shall make an offer to employ each Concessionaire Employee, subject to a probationary period of six months following the Commencement Date, at a salary or pay scale and with benefits at least equal to those enjoyed by such Employee on the date of his or her separation from MWSS. x x x

x x x x x x x x x

Article 6.1.3. Non-Diminution of Benefits

The Concessionaire shall grant to all Concessionaire Employees employee benefits no less favorable than those granted to such employees by the MWSS at the time of their separation from MWSS, particularly those set forth in Exhibit F and the following:

x x x x x x x x x

The payment of COLA was not among those listed as benefits in Exhibit "F".

In 1998, the Supreme Court promulgated a Decision[5] declaring DBM CCC No. 10 ineffective for failure to comply with the publication requirement. Consequently, MWSS partially released the COLA payments for its employees, including members of MWSA, covering the years 1989 to 1997, and up to year 1999 for its retained employees.

In 2002, MWSA filed a complaint before the Labor Arbiter praying for the payment of their COLA from the year 1997, the time its members were absorbed by Maynilad, up to the present. MWSA argued that since DBM CCC No. 10 was rendered ineffective, the COLA should be paid as part of the benefits enjoyed by their members at the time of their separation from MWSS, and which should form part of their salaries and benefits with Maynilad.

In a decision dated 10 November 2006, the Labor Arbiter granted MWSA's claim and directed Maynilad to pay the COLA of the supervisors retroactive to the date when they were hired

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[5] *De Jesus v. COA,* 355 Phil. 584 (1998).

in 1997, with legal interest from the date of promulgation of the decision. It also directed Maynilad to take necessary measures to ensure that the benefit is incorporated in the employees' monthly compensation.[6]

On 11 December 2006, Maynilad appealed the decision before the National Labor Relations Commission (NLRC) and filed an Urgent Manifestation and Motion to Reduce Bond.

The NLRC granted Maynilad's motion and reversed on appeal the decision of the Labor Arbiter.

On 28 September 2007, MWSA filed a motion for reconsideration but this was denied by the NLRC in its 23 October 2007 resolution.

Aggrieved, MWSA filed a petition for *certiorari* with the CA on 11 January 2008.

In a Decision[7] dated 31 May 2010, the CA Ninth Division annulled and set aside the decision of the NLRC. It thus reinstated the decision of the Labor Arbiter.

Maynilad filed a motion for reconsideration of the 31 May 2010 CA Decision.

On 31 January 2011, the CA Ninth Division reconsidered its earlier Decision. The decretal portion of the amended decision reads:

> **WHEREFORE**, premises considered, the Motion for Reconsideration is **GRANTED**. Consequently, the Court's 31 May 2010 Decision is **REVERSED** and **SET ASIDE**, and the 07 September 2007 Decision and 23 October 2007 Resolution of the NLRC are **AFFIRMED**, and are thus **REINSTATED**.[8]

MWSA filed a Motion for Reconsideration of the amended decision. Pending resolution of the Motion for Reconsideration, MWSA moved for the inhibition of the members of the Ninth

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[6] *Rollo,* pp. 82-92.

[7] *Id*. at 219-229.

[8] *Id*. 278-279.

Division of the CA. The members of the division recused from the case in a Resolution dated 3 June 2011.

Thereafter, the Second Division of the CA, to which the case was raffled, issued a Resolution[9] on 12 September 2011 denying MWSA's Motion for Reconsideration.

Hence, this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

ISSUES

Whether the CA erred in not holding that the MWSA members are entitled to COLA under the Concession Agreement.

Whether the CA erred in not finding grave abuse of discretion on the part of NLRC when the latter granted Maynilad's appeal despite insufficiency of the appeal bond.

OUR RULING

Simply stated, the main issue in this case is whether Maynilad bound itself under the Concession Agreement to pay the COLA of the employees it absorbed from MWSS. A careful review of the Concession Agreement led us to conclude that both MWSS and Maynilad never intended to include COLA as one of the benefits to be granted to the absorbed employees.

The benefits agreed upon by the parties are stated in Exhibit "F" of the Concession Agreement, to wit:

Existing MWSS Fringe Benefits

A. ALLOWANCES

PERA - ₱500.00 Salary Grade 1 to 23 except those with RATA
ACA – ₱500.00 Salary Grade 1 to 25
RATA- 40% of basic – Supervisory Level, Section Chiefs and up or equivalent ranks. Technical and Executive Assistants
Medical – 2,500/year
Rice – 500/month
Uniform – 2,000/year
Meal – 25.00/day (for medical personnel – ₱30.00/day)

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[9] *Id*. at 336-341.

Longevity – 50.00/year of service/month
Children – 30.00/child/month, maximum four (4) children below 21 years old
Hazard – 50.00/month

B. BONUSES

Year-End Financial Assistance – One (1) month Gross pay (Basic Salary plus PERA, ACA, rice, meal, longevity, Children and RATA
Mid-Year – One (1) month Gross Pay
Christmas Bonus and Cash Gift – One (1) month Basic salary plus ₱1,000 cash gift
Anniversary (Bigay-pala) – 4,000.00 or 50% of basic, whichever is greater
Productivity as of December 1995 – Amount equivalent to ₱5,000 or 60% of gross pay, exclusive of RATA, whichever is higher

C. PREMIUMS

Graveyard – 50% (12MN – 6:00 AM)
Nightwork – 25% (6PM – 6AM)
Holiday – 125%
Sunday – 150%
Overtime – 125%
Distress – 25% of basic pay (For Sewerage Department only)

D. PAID LEAVES

Vacation – 15 days/year
Sick – 15 days/year
Maternity – 60 calendar days
Paternity – 7 working days
Emergency Leave - 3 days/year (Birthday/Funeral/Mourning/Graduation/Enrollment/Wedding/Anniversary/Hospitalization/Accident/Relocation)

E. STUDY LEAVE

- Study now pay later scheme
- Grant (with contract to serve MWSS)[10]

It is clear from the aforesaid enumeration that COLA is not among the benefits to be received by the absorbed employees.

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[10] CA *rollo*, pp. 112-113.

Contrary to the contention of MWSA, the declaration by the Court of the ineffectiveness of DBM CCC No. 10 due to its non-publication in the Official Gazette or in a newspaper of general circulation in the country,[11] did not give rise to the employee's right to demand payment of the subject benefit from Maynilad.

As far as their employment relationship with Maynilad is concerned, the same is not affected by the *De Jesus* ruling because it is governed by a separate compensation package provided for under the Concession Agreement. It would be erroneous to presume that had the COLA been received during the time of the execution of the contract, the benefit would have been included in Exhibit "F". First of all, we note that the Court's ruling in the *De Jesus* case applies only to government-owned and controlled corporations and not to private entities. Secondly, the parties to the Concession Agreement could not have thought of including the COLA in Exhibit "F" because as early as 1989, the government already resolved to remove the COLA, among others, from the list of allowances being received by government employees. Hence, the enactment of Republic Act R.A. No. 6758 or the Compensation and Position Classification Act of 1989[12] which integrated the COLA into the standardized salary rate. Section 12 thereof provides:

> Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. x x x

From the aforesaid provision, we note that all allowances were deemed integrated into the standardized salary rates except:

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[11] *De Jesus v. COA, supra* note 5.

[12] An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes.

(1) representation and transportation allowances;

(2) clothing and laundry allowances;

(3) subsistence allowances of marine officers and crew on board government vessels;

(4) subsistence allowances of hospital personnel;

(5) hazard pay;

(6) allowances of foreign service personnel stationed abroad; and

(7) such other additional compensation not otherwise specified in Section 12 as may be determined by the DBM.

In *Gutierrez v. DBM*,[13] which is a consolidated case involving over 20 government-owned and controlled corporations, the Court found proper the inclusion of COLA in the standardized salary rates. It settled that COLA, not being an enumerated exclusion, was deemed already incorporated in the standardized salary rates of government employees under the general rule of integration. In explaining its inclusion in the standardized salary rates, the Court cited its ruling in *National Tobacco Administration v. COA*,[14] in that the enumerated fringe benefits in items (1) to (6) have one thing in common – they belong to one category of privilege called allowances which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. Consequently, if these allowances are consolidated with the standardized salary rates, then the government official or employee will be compelled to spend his personal funds in attending to his duties. On the other hand, item (7) is a "catch-all proviso" for benefits in the nature of allowances similar to those enumerated.[15]

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[13] G.R. No. 153266, 18 March 2010, 616 SCRA 1, 18.

[14] *Id*. citing *National Tobacco Administration v. COA* 370 Phil. 793, 805 (1999).

[15] *Id*. citing *Bureau of Fisheries and Aquatic Resources Employees Union, Regional Office No. VII, Cebu City v. COA*, G.R. No. 169815, 13 August 2008, 562 SCRA 134, 141.

Clearly, COLA is not in the nature of an allowance intended to reimburse expenses incurred by officials and employees of the government in the performance of their official functions. It is not payment in consideration of the fulfillment of official duty.[16] As defined, cost of living refers to "the level of prices relating to a range of everyday items"[17] or "the cost of purchasing those goods and services which are included in an accepted standard level of consumption."[18] Based on this premise, COLA is a benefit intended to cover increases in the cost of living. Thus, it is and should be integrated into the standardized salary rates.

From the aforesaid discussion, it is evident therefore, that at the time the MWSS employees were absorbed by Maynilad in 1997, the COLA was already part and parcel of their monthly salary. The non-publication of DBM CCC No. 10 in the Official Gazette or newspaper of general circulation did not nullify the integration of COLA into the standardized salary rates upon the effectivity of R.A. No. 6758.[19] As held by this Court in *Phil. International Trading Corp. v. COA*,[20] the validity of R.A. No. 6758 should not be made to depend on the validity of its implementing rules.

To grant COLA to herein petitioners now would create an absurd situation wherein they would be receiving an additional COLA in the amount equivalent to 40% of their basic salary even if the Court has already ruled that the COLA is already integrated in the employee's basic salary. Such conclusion would give the absorbed employees far greater rights than their former co-employees or other government employees from whom COLA was eventually disallowed.

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

[17] *Id*. at 19 citing *The New Oxford American Dictionary*, *Oxford University Press*, 2005 Edition.

[18] *Id*. citing *Webster's Third New International Dictionary*, *Merriam-Webster Inc.*, 1993 Edition.

[19] *Id*. at 24.

[20] 461 Phil. 737, 750 (2003).

The ruling of the Labor Arbiter which MWSA insists on is also erroneous in that it seeks to have the COLA incorporated in the monthly compensation to be received by the absorbed employees. It failed to consider that the employment contracts of the MWSA members with MWSS were terminated prior to their employment with MAYNILAD. Although they may have continued performing the same function, their employment is already covered by an entirely new employment contract.

This Court has ruled that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being *in personam,* thus binding only between the parties.[21] In the instant case, the only commitment of Maynilad under the Concession Agreement it entered with MWSS was to provide the absorbed employees with a compensation package "no less favorable than those granted to [them] by the MWSS at the time of their separation from MWSS, particularly those set forth in Exhibit 'F' x x x."[22] It is undisputed that Maynilad complied with such commitment. It cannot, however, be compelled to assume the payment of an allowance which was not agreed upon. Such would not only be unreasonable but also unfair for Maynilad. MWSS and Maynilad could not have presumed that the COLA was part of the agreement when it was no longer being received by the employees at the time of the execution of the contract, which is the reckoning point of their new employment.

In *Norton Resources and Development Corporation v. All Asia Bank Corporation,*[23] this Court ruled that [t]he agreement or contract between the parties is the formal expression of the

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[21] *Sundowner Development Corp. v. Hon. Drilon*, 259 Phil. 481, 485 (1989); *Robledo v. NLRC*, G.R. No. 110358, 9 November 1994, 238 SCRA 52, 56-57; *Associated Labor Unions-VIMCONTU v. NLRC*, G.R. No. 74841, 20 December 1991, 204 SCRA 913, 923; *Barayoga v. Asset Privatization Trust*, 510 Phil. 452, 461 (2005).

[22] *Rollo*, p. 13; Petition, Article 6.1.3 on Non-Diminution of Benefits.

[23] G.R. No. 162523, 25 November 2009, 605 SCRA 370, 380.

parties' rights, duties and obligations. It is the best evidence of the intention of the parties. Thus, when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be no evidence of such terms other than the contents of the written agreement between the parties and their successors in interest. Time and again, we have stressed the rule that a contract is the law between the parties, and courts have no choice but to enforce such contract so long as it is not contrary to law, morals, good customs or public policy. Otherwise, courts would be interfering with the freedom of contract of the parties. Simply put, courts cannot stipulate for the parties or amend the latter's agreement, for to do so would be to alter the real intention of the contracting parties when the contrary function of courts is to give force and effect to the intention of the parties.

In fine, contrary to the allegation of MWSA, there is no ambiguity in the Concession Agreement. Thus, there is nothing to be construed.

Anent the issue of the insufficiency of the appeal bond posted by Maynilad, we agree with the NLRC that there was merit in the arguments forwarded in support of the prayer for the reduction of the appeal bond. Maynilad sought the reduction of the appeal bond to ten percent (10%) for the following reasons: a) that it had filed a Petition for Rehabilitation before the Regional Trial Court of Quezon City; and b) that as a result thereof, the Rehabilitation Court issued a Stay Order prohibiting it from selling, encumbering, transferring or disposing in any manner any of its properties making it impossible for it to fully comply with the appeal bond requirement.[24] Our ruling in *Garcia, et al. v. KJ Commercial*[25] that the bond requirement on appeals may be relaxed when there is substantial compliance with the Rules

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[24] *Rollo*, p. 130; NLRC Decision.

[25] G.R. No. 196830, 29 February 2012, 667 SCRA 396, 411-413 citing *Rosewood Processing, Inc. v. NLRC*, 352 Phil. 1013, 1029 (1998); *Quiambao v. NLRC,* 324 Phil. 455, 461 (1996); *Globe General Services and Security Agency v. NLRC,* 319 Phil. 531, 535 ; *Ong v. Court of Appeals*, 482 Phil. 170, 180-181 (2004).

of Procedure of the NLRC or when the appellant shows willingness to post a partial bond. Here, we note that Maynilad's appeal was accompanied by an appeal bond in the amount of Twenty Five Million Pesos (₱25,000,000.00) with an Urgent Manifestation and Motion to Reduce Bond on the ground that the labor arbiter failed to specify the exact amount of monetary award from which the amount of the appeal bond is to be based.

In *University Plans v. Solano*,[26] this Court reiterated the guidelines which the NLRC must exercise in considering the motions for reduction of bond:

> The bond requirement on appeals involving monetary awards has been and may be relaxed in meritorious cases. These cases include instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.

It is evident that the aforesaid instances are present in the instant case.

WHEREFORE, premises considered, the instant Petition is hereby **DENIED** and the 31 January 2011 Amended Decision and 12 September 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 101911 is **AFFIRMED** *in toto*.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Leonardo-de Castro,*[**] and *del Castillo, JJ.,* concur.

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[26] G. R. No. 170416, 22 June 2011, 652 SCRA 492, 504-505 citing *Nicol v. FootjJoy Industrial Corporation*, 27 July 2007, 528 SCRA 300, 312-313.

[*] Per raffle dated 15 October 2012.

[**] Per raffle dated 15 October 2012.

FIRST DIVISION

[G.R. No. 199494. November 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WELMO LINSIE *Y* BINEVIDEZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; GUIDING PRINCIPLES; REVOLVES AROUND THE CREDIBILITY OF THE RAPE VICTIM.—** It is settled in jurisprudence that in reviewing rape convictions, we are guided by three principles, namely (a) that an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime of rape as involving two persons, the rapist and the victim, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Unsurprisingly, the credibility of the rape victim's testimony is a recurring crucial factor in the resolution of a case of rape. In fact, we have held that, in rape cases, the accused may be convicted based solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESS; WHERE RAPE IS SUFFICIENTLY ESTABLISHED, MINOR INCONSISTENCIES ARE IRRELEVANT.—** We have repeatedly held that what is decisive in a rape charge is that the commission of the rape by the accused against the complainant has been sufficiently proven; and that inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal. Furthermore, we have recently reiterated that rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might be trying to obliterate it from their

memory, thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.

3. **CRIMINAL LAW; RAPE; NOT NEGATED BY FAILURE OF THE VICTIM TO RESIST HER ATTACKER.—** [W]e reject appellant's allegation that AAA did not "tenaciously" resist his sexual advances. The victim's testimony will bear out that she did exert efforts to refuse appellant's carnal desires by slapping the accused, kicking him and trying to create noise but she was physically overpowered and intimidated by the threat of mortal harm posed by appellant's knife as well as debilitated by illness. Nevertheless, we have in the past held that failure of a rape victim to shout, fight back, or escape from the scoundrel is not tantamount to consent or approval because the law imposes no obligation to exhibit defiance or present proof of struggle.

4. **ID.; ID.; MEDICO-LEGAL REPORT, NOT INDISPENSABLE FOR THE PROSECUTION OF RAPE.—** [A]ppellant's attempt to discredit the medico-legal report (which he claimed merely proved that AAA had an active sexual relationship at the time material to the charge) cannot exculpate him from liability for rape because the said document and the medico-legal's subsequent testimony are not essential for the prosecution and conviction of a person accused of rape. We have previously stated that a medical examination and a medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape.

5. **ID.; RAPE WITH THE USE OF A DEADLY WEAPON; PENALTY.—** [W]e affirm the conviction of appellant for the felony of simple rape. Considering that appellant committed the crime with the use of a deadly weapon, the penalty imposed by the trial court which is imprisonment of *reclusion perpetua* without eligibility for parole is proper in accordance with Article 266-B, paragraph 2 of the Revised Penal Code that prescribes the punishment for such a circumstance to be *reclusion perpetua* to death. As correctly pointed out by the Court of Appeals, the mitigating circumstance of voluntary surrender may be appreciated in favor of appellant, however, considering that the imposable penalty of *reclusion perpetua* is single and indivisible, the same may not serve to lower the penalty. The award of ₱50,000.00 as civil indemnity and another ₱50,000.00

as moral damages is upheld. However, in line with jurisprudence, the exemplary damages by reason of the established presence of the aggravating circumstance of use of a deadly weapon is increased from ₱25,000.00 to ₱30,000.00. Moreover, 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.

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.*:

Before this Court is an appeal from the Decision[1] dated April 13, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04333, entitled *People of the Philippines v. Welmo Linsie y Binevidez*, which affirmed the Decision[2] dated January 27, 2010 of the Regional Trial Court (RTC) of Parañaque City, Branch 195 in Criminal Case No. 06-005. The trial court convicted appellant Welmo Linsie *y* Binevidez of one count of the felony of simple rape as defined and penalized in Article 266-A, paragraph 1 in relation to Article 266-B, paragraph 2 of the Revised Penal Code, as amended by Republic Act No. 8353.

In an Information[3] dated December 19, 2005, appellant was accused of rape by the Office of the City Prosecutor of Parañaque City, purportedly committed as follows:

That on or about the 14th day of December, 2005, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, by means of force, threat and intimidation, did then and there willfully, unlawfully

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[1] *Rollo*, pp. 2-14; penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Noel J. Tijam and Leoncia R. Dimagiba, concurring.

[2] CA *rollo*, pp. 18-23.

[3] Records, p. 1.

and feloniously have carnal knowledge with the complainant **[AAA[4]]**, against her will and without her consent.

During his arraignment on January 16, 2006, appellant pleaded "NOT GUILTY" to the criminal charge against him.[5]

The conflicting testimonies of the prosecution and defense witnesses were summarized by the trial court in this manner:

[AAA] testified that she resides with her common law husband, [BBB], and brother [CCC], for almost a year already at x x x, Brgy. Moonwalk, Parañaque City. The three of them work at Kingsmen Tailoring, located at x x x, Brgy. Moonwalk, Parañaque City from 7 in the morning till 6 in the evening. She has known [appellant] for a very long time because he is a "*kababayan*" from Bicol. On December 14, 2005, she did not report for work because she had a headache and high fever. She only stayed at home. At around 11:00 in the morning, while resting, she heard someone knocking on the door. Thinking it was her husband, she opened the door, but, instead, she saw [appellant]. [Appellant] asked her if Edna was there to which she answered no. Knowing that she was alone, [appellant] pushed and closed the door, drew a knife which is about 6 to 8 inches long with a wood handle and pointed it to the center of her neck. [Appellant] covered her mouth with his left hand. She fought back but [appellant] punched her on the stomach. With the knife pointed at her, [appellant] asked her to undress. Fearing that [appellant] might kill her, she undressed and took off her shirt and then her bra. [Appellant] also took off his clothes with his one hand while the other hand was holding the knife which was still pointed at her. [Appellant] started kissing her neck for which she objected to by repeatedly slapping him even though she was using her hands in covering her chest. This made [appellant] mad and pressed the knife harder into her neck. She tried resisting the acts of [appellant] but he held her hair tighter. [Appellant] then removed her panty and inserted his penis into her "*pepe*". [Appellant] got naked ahead of her. They were already near her room

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[4] In line with jurisprudence, the real name of the victim-survivor is withheld and fictitious initials are used 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 disclosed. (*See People v. Cabalquinto*, 533 Phil. 703 [2006].)

[5] Records, p. 15.

when [appellant] was able to go on top of her. [Appellant] was able to sandwich her legs with his legs and succeeded in raping her. She did everything to resist [appellant]. She kicked [appellant] and made some noise. She was not able to shout since the knife was still pointed at her. After raping her, [appellant] threatened to kill her and told her not to tell her common law husband about what happened. Accused put on his clothes and left. After crying, she dressed up and sat on their bed. Her common law husband arrived at around noon, but she did not tell him what happened, fearing that his feeling might change towards her upon learning about it. Both of them ate lunch afterwards. Because she could no longer hide from her husband what happened, she told him about it the following day (December 16). They both went to the *barangay* and had the incident blottered. In response to her complaint, the *barangay* people accompanied her to the work place of [appellant] but the latter was not there so they just waited for him at his house. She was able to have a medical check up only on December 17, 2005. She executed a Sworn Statement (Exhibit A), narrating what [appellant] did to her.

Faltiquera was no longer placed [o]n the witness stand because the matters that she would testify on were already stipulated by the defense, thus, that: 1.) she is a neighbor of the complaining witness; 2.) at the time of the incident, she was in her house; and 3.) she heard a commotion from the house of the complaining witness.

With respect to Barangay Tanods Roberto Sagun and Oroya, their presence was likewise dispensed with. The defense merely admitted that; [appellant] voluntarily surrendered to them and that they had the case referred to the women's desk of Parañaque Police Station. The defense also admitted the due execution and genuineness of the Medical Certificate that Dr. Zaldua issued on December 17, 2005. With that admission, the prosecution dispensed with the presentation of Dr. Zaldua.

In the Order of this Court dated April 20, 2009, prosecution's Exhibits "A" to "C" were admitted against the objection of [appellant] as part of the testimony of its witnesses.

Defense presented as witnesses, Allan Talinghale and [appellant] himself.

Talinghale testified that on December 14, 2005, he saw [appellant] mixing cement for the construction of the house of a certain Aling Gigi. The house being constructed was in front of his store, located

at Annex 35, Block 44, Cleopaz St., Betterliving Subdivision, Parañaque City, with a distance of more or less 6 to 7 meters. Between 11 and 11:30 in the morning, [appellant] went to his store and bought ice and 2 sticks of Hope cigarettes. He asked [appellant's] name and the latter said "Welmo". [Appellant] paid him ₱50.00. He gave ₱46.00 to [appellant] as his change. Thereafter, [appellant] went back to work at around 11:20 in the morning. He saw [appellant] place the ice in the pitcher.

[Appellant] had 2 companions, Mang Jhun and Philip. He was able to see [appellant] the whole time as there was no obstruction in front of him. [Appellant] continued mixing cement and handed it to those working on the top floor of the house. [Appellant] never left his place of work and went back to his store at around 5:10 in the afternoon to buy candy. The following day, he learned from Aling Gigi that [appellant] was accused of raping someone.

[Appellant] testified that he does not know of any reason [AAA] is accusing him of rape. He denied that on December 14, 2005 at around 11:00 o'clock in the morning, armed with a knife, he raped [AAA]. He had known [AAA] for only less than a week. On December 14, 2005, he left his house at around 6 o'clock in the morning and along with a certain Kuya Jun, boarded a tricycle and went to Annex 35 where he was working as a construction worker in the house of Aling Gigi. As a construction worker, he mixes the cement and as an assistant mason "*tagadala ng mga halo at kung ano pang kailangan ng mason.*" He started working at 8 o'clock in the morning and had his break time at around 11 o'clock in the morning. He then went to the store of Kuya Allan which is located in front of the construction site. He then took his lunch and waited for their work to resume. His work for the day ended at around 5 o'clock in the afternoon. After resting for a while and cleaning his body, he dressed up and boarded a tricycle to go home. He arrived at his house at 6 o'clock in the evening. He learned that someone was accusing him of rape only on December 16, 2005 from Ate Baby. He asked her to accompany him to the Barangay Hall of Moonwalk to inquire about the case filed against him by [AAA]. He asked the *barangay tanods* to call [AAA]. When [AAA] arrived, he talked to her and asked her why she was accusing him of such crime when all the time she said she was raped, he was at work and would be impossible for him to do so. [AAA] insisted that he was the one who raped her. He was then brought to the police precinct at Coastal. He was not informed of his constitutional rights to remain silent and to have counsel of his

own choice. Immediately, he was detained. After four days of detention, he was brought to the City Hall but was not informed of the reason why he was there.[6]

At the conclusion of the hearings, the trial court found appellant guilty beyond reasonable doubt of the felony of simple rape and on January 27, 2010 rendered the following verdict:

> **WHEREFORE**, this Court finds accused **WELMO LINSIE *Y* BINEVIDEZ**, **GUILTY BEYOND REASONABLE DOUBT** of the crime of Rape under Art. 266-A, 1st paragraph in relation to Art. 266-B 2nd paragraph of the Revised Penal Code, as amended by RA 8353 and hereby sentences him to suffer the penalty of *Reclusion Perpetua* without the eligibility of Parole, which carries with it the accessory penalties of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to principal penalty, unless the same shall have been expressly remitted in the pardon.
>
> Accused is likewise ordered to pay private complainant the amounts of Fifty Thousand (₱50,000.00) Pesos, as indemnity *ex delicto*, Fifty Thousand (₱50,000.00) Pesos as moral damages, Twenty[-]Five Thousand (₱25,000.00) Pesos as exemplary damages.[7]

As can be expected, appellant appealed his conviction. On review, the Court of Appeals rendered judgment affirming the trial court ruling. The dispositive portion of the assailed April 13, 2011 Decision is reproduced below:

> **WHEREFORE,** in view of the foregoing, the 27 January 2010 decision of the Regional Trial Court of Parañaque City (Branch 195) in Criminal Case No. 06-005 finding accused-appellant Welmo Binevidez Linsie guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua*, and directing him to indemnify private complainant ₱50,000.00 as civil indemnity *ex delicto*, another ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages is **AFFIRMED.**[8]

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[6] CA *rollo*, pp. 18-20.

[7] *Id*. at 22.

[8] *Rollo*, p. 13.

Undaunted, appellant comes to the Court with the instant appeal contending in his Appellant's Brief that:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BASED SOLELY ON THE INCREDIBLE AND UNCORROBORATED TESTIMONY OF THE PRIVATE COMPLAINANT.[9]

In his Supplemental Brief[10] filed before the Court, he reiterates that: (1) AAA's testimony was plagued with inconsistencies and variations and she was far from candid in her narration of the incident; (2) there was no proof that AAA tenaciously resisted appellant's alleged bestial act and afterwards she showed no signs of disturbance or stress; and (3) appellant was able to prove that it was physically impossible for him to commit the alleged rape since his presence in his place of work at the time of the incident was corroborated by defense witness Allan Talinghale.

To recall, the Information charged appellant with the felony of simple rape committed with the use of a deadly weapon, as defined and penalized under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 2, of the Revised Penal Code. We quote the material portions of the statute here:

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:

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[9] CA *rollo*, p. 74.

[10] *Rollo*, pp. 37-44.

a. Through force, threat or intimidation;

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

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

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

x x x x x x x x x

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

Whenever the rape is committed **with the use of a deadly weapon** or by two or more persons, the penalty shall be *reclusion perpetua* to death. (Emphases supplied.)

The challenge to the trial court was to determine the existence of the foregoing elements of rape in the case at bar based on the degree of proof sufficient for a conviction.

It is settled in jurisprudence that in reviewing rape convictions, we are guided by three principles, namely (a) that an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (b) that in view of the intrinsic nature of the crime of rape as involving two persons, the rapist and the victim, the testimony of the complainant must be scrutinized with extreme caution; and (c) that the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[11]

Unsurprisingly, the credibility of the rape victim's testimony is a recurring crucial factor in the resolution of a case of rape. In fact, we have held that, in rape cases, the accused may be convicted based solely on the testimony of the victim, provided

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[11] *People v. Buado, Jr.*, G.R. No. 170634, January 8, 2013, 688 SCRA 82, 95.

that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.[12]

The trial court concluded that AAA's version of events is more credible than what appellant narrated after having had the opportunity to observe the deportment and manner of testifying of both parties. The same conclusion was likewise firmly upheld by the Court of Appeals.

In *People v. Deligero*,[13] we ruled that:

> [F]actual findings of the trial court, especially when affirmed by the Court of Appeals, are "entitled to great weight and respect, if not conclusiveness, for we accept that 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 offenses charged. The direct appreciation of testimonial demeanor during examination, veracity, sincerity and candor was foremost the trial court's domain, not that of a reviewing court that had no similar access to the witnesses at the time they testified." (Citation omitted.)

After a thorough review of the testimony and evidence as indicated in the records of this case, we find no cogent reason to deviate from the uniform findings of both the lower and appellate courts.

With regard to appellant's assertion that AAA's testimony was plagued with inconsistencies and variations that would merit appellant's acquittal, we conclude that these discrepancies in AAA's testimony involve minor matters that do not constitute material facts or circumstances of consequence. The suppositions that appellant could not have raped AAA as his legs at one point were supposedly sandwiching AAA's legs or that he could not have been able to undress while pointing a knife at the victim do not necessarily render AAA's testimony incredible. In the

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[12] *People v. Penilla*, G.R. No. 189324, March 20, 2013, 694 SCRA 141, 149.

[13] G.R. No. 189280, April 17, 2013.

present case, AAA categorically stated under oath that despite her attempts to resist ("*palag [nang] palag*") appellant succeeded in removing her panty and inserting his penis inside her sexual organ,[14] thereby consummating the crime of rape.

We have repeatedly held that what is decisive in a rape charge is that the commission of the rape by the accused against the complainant has been sufficiently proven; and that inconsistencies and discrepancies as to minor matters which are irrelevant to the elements of the crime cannot be considered grounds for acquittal.[15] Furthermore, we have recently reiterated that rape victims are not expected to make an errorless recollection of the incident, so humiliating and painful that they might be trying to obliterate it from their memory, thus, a few inconsistent remarks in rape cases will not necessarily impair the testimony of the offended party.[16]

Likewise, we reject appellant's allegation that AAA did not "tenaciously" resist his sexual advances. The victim's testimony will bear out that she did exert efforts to refuse appellant's carnal desires by slapping the accused, kicking him and trying to create noise but she was physically overpowered and intimidated by the threat of mortal harm posed by appellant's knife as well as debilitated by illness. Nevertheless, we have in the past held that failure of a rape victim to shout, fight back, or escape from the scoundrel is not tantamount to consent or approval because the law imposes no obligation to exhibit defiance or present proof of struggle.[17]

Even appellant's attempt to discredit the medico-legal report (which he claimed merely proved that AAA had an active sexual relationship at the time material to the charge) cannot exculpate

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[14] TSN, May 29, 2006, pp. 34-35.

[15] *People v. Monticalvo*, G.R. No. 193507, January 30, 2013, 689 SCRA 715, 734-735.

[16] *People v. Veloso*, G.R. No. 188849, February 13, 2013, 690 SCRA 586, 598.

[17] *People v. Basallo*, G.R. No. 182457, January 30, 2013, 689 SCRA 616, 641.

him from liability for rape because the said document and the medico-legal's subsequent testimony are not essential for the prosecution and conviction of a person accused of rape. We have previously stated that a medical examination and a medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape.[18]

For his ultimate defense, appellant puts forward denial and alibi. His alibi was corroborated by defense witness Talinghale who appears to be not related to appellant as borne by the records. However, we are not persuaded by appellant's alibi despite corroboration from a disinterested witness.

In *People v. Piosang*,[19] we reiterated our frequent pronouncements regarding denial and alibi in this manner:

[B]oth 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. Moreover, for the defense of alibi to prosper, the appellant must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. x x x. (Citations omitted.)

In the case at bar, we find that appellant's alibi did not sufficiently establish that he was working at a construction site when AAA was raped and that it was physically impossible for him to be at the scene of the crime when it was committed. Likewise, the corroborating testimony of defense witness Talinghale does not discount the possibility that appellant may have left the construction site to commit the dastardly act he was charged with and came back afterwards.

We quote with approval the trial court's disquisition on this issue, thus:

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[18] *People v. Buado, Jr.*, *supra* note 11 at 103.

[19] G.R. No. 200329, June 5, 2013.

[Appellant's] testimony that he was at the construction site from 8 in the morning till 5 in the afternoon on the date in question (December 14, 2005) is not worthy of belief considering that aside from his self-serving testimony, no other clear and convincing evidence was presented to substantiate the same. When asked by this Court if his employer keeps a logbook or a record of the time in and time out of the workers (page 44. TSN dated May 26, 2008), he answered in the affirmative. However, no logbook or record was presented by him. Neither was [his] alleged employer, Aling Gigi, nor any of his co-workers, was presented to corroborate his testimony that he was indeed at the construction site on the date and time in question.

Instead of presenting Aling Gigi or any of his co-workers, defense presented Talinghale whose testimony can hardly be given credence. Admittedly, Talinghale, on the date and time in question was, tending his store which is 6 to 7 meters away from the construction site. It is, therefore, impossible for him to be attending to his customers or answering the call of nature and at the same time watching [appellant]. What is very possible under this situation, is for [appellant] to leave the construction site, granting for the sake of argument that he was really there, without Talinghale noticing him. Most importantly, it is not physically impossible for [appellant] to be in the house of [AAA] at one time and to be in his work place on another time simply because the house of [AAA] is very near the construction site. It would take [appellant] only two (2) tricycle rides to reach [AAA]'s house, located at x x x, Bgy. Moonwalk, Parañaque City. As testified to by [appellant] himself, he took his break at 11 in the morning, the time that [AAA] said she was raped. x x x.[20]

We note too that appellant failed to show any motive why AAA would testify falsely against him. This fact further bolsters the veracity of AAA's accusation since we have previously held that no woman would concoct a tale that would tarnish her reputation, bring humiliation and disgrace to herself and her family, and submit herself to the rigors, shame, and stigma attendant to the prosecution of rape, unless she is motivated by her quest to seek justice for the crime committed against her.[21]

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[20] CA *rollo*, pp. 30-31.

[21] *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 345.

Based on the foregoing discussion, we therefore affirm the conviction of appellant for the felony of simple rape. Considering that appellant committed the crime with the use of a deadly weapon, the penalty imposed by the trial court which is imprisonment of *reclusion perpetua* without eligibility for parole is proper in accordance with Article 266-B, paragraph 2 of the Revised Penal Code that prescribes the punishment for such a circumstance to be *reclusion perpetua* to death. As correctly pointed out by the Court of Appeals, the mitigating circumstance of voluntary surrender may be appreciated in favor of appellant, however, considering that the imposable penalty of *reclusion perpetua* is single and indivisible, the same may not serve to lower the penalty.

The award of ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages is upheld. However, in line with jurisprudence, the exemplary damages by reason of the established presence of the aggravating circumstance of use of a deadly weapon is increased from ₱25,000.00 to ₱30,000.00.[22] Moreover, 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.[23]

WHEREFORE, premises considered, the Decision dated April 13, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04333, finding appellant Welmo Linsie *y* Binevidez **GUILTY** in Criminal Case No. 06-005 for one (1) count of rape, is hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) The exemplary damages to be paid by appellant Welmo Linsie *y* Binevidez is increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00); and

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[22] *People v. Toriaga*, G.R. No. 177145, February 9, 2011, 642 SCRA 515, 522.

[23] *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236, 248-249.

(2) Appellant Welmo Linsie *y* Binevidez 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.

FIRST DIVISION

[G.R. No. 201445. November 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HERMENIGILDO MAGLENTE *Y* MEDINA *alias* "JUN MAGLENTE" and ROLANDO VELASQUEZ *Y* GUEVARRA *alias* "RANDY,"** *accused-appellants.* **DAN MAGSIPOC *Y* CANCELER and PABLO INEZ *alias* "KA JAY,"** *accused.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** [T]he Court has consistently abided by the rule that the trial court is in a better position to adjudge the credibility of witnesses, especially if its decision is affirmed by the CA, unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case. The Court finds no reason to depart from the assessment of the RTC, as affirmed by the CA, as this is supported by the records of the case.

2. **CRIMINAL LAW; CONSPIRACY; AGREEMENT TO COMMIT A CRIME MAY BE ESTABLISHED BY CHAIN OF CIRCUMSTANCES.—** Conspiracy exists when two or more persons come to an agreement concerning a felony and decide to commit it. It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.

3. **ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED IN CASE AT BAR.—** "The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims." Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted. The established facts easily demonstrate the existence of treachery in this case. The perpetrators waited for the victims' van in ambush, with Maglente standing at the corner with his gun drawn. Thereafter, a car blocked the van's path and the perpetrators started shooting at the van and its passengers. The means employed by the perpetrators show that it was employed to discount any possibility of retaliation or escape, and that such means or method was deliberately employed.

4. **ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; THE FACT OF PLANNING THE CRIME MUST BE ESTABLISHED.—** [T]he CA correctly deviated from the RTC's finding regarding the existence of evident premeditation. According to the CA, the records did not show sufficient evidence to support the existence of the "time when appellants determined to commit the crime and that sufficient lapse of time existed between such determination and execution to allow them to reflect upon the circumstances of their act." To properly appreciate evident premeditation as an aggravating circumstance, it is indispensable that the fact of planning the crime be established. Particularly, evidence must show how and when the plan to kill was hatched or how

much time had elapsed before it was carried out. Absent such proof, evident premeditation cannot prosper. In this case, the records are bereft of evidence proving how and when the plan to attack the victims was hatched up.

5. **REMEDIAL LAW; EVIDENCE; DENIAL; FAILS IN THE PRESENCE OF POSITIVE IDENTIFICATION.—** Maglente's bare denial, without more, does not deserve consideration and cannot overthrow the positive identification made by De Leon. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused, the former indisputably deserves more credence and evidentiary weight.

6. **CRIMINAL LAW; MURDER; PENALTY AND DAMAGES.—** Treachery having qualified the killing of Chua to Murder, the imposable penalty against Maglente, therefore, is *reclusion perpetua* to death as provided in Article 248 of the Revised Penal Code (RPC). There being no other circumstance to aggravate or mitigate the crime, the RTC, as affirmed by the CA, correctly imposed the penalty of *reclusion perpetua*. The same shall be without eligibility for parole, as provided in Section 3 of Republic Act No. 9346. Actual damages are recoverable only when the injured party proves the actual amount of loss with reasonable degree of certainty based upon competent proof. In this case, only a certification issued by the sales manager of the memorial park was presented to substantiate the claim for actual damages in the amount of ₱840,000.00. The official receipts adduced, however, showed only the total amount of ₱50,000.00. Hence, the CA correctly reduced the same to that actually proven by the receipts presented. Moral damages in the amount of ₱50,000.00 was also correctly awarded by the CA. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family. Meanwhile, exemplary damages in the amount of ₱30,000.00 was also properly awarded. As to the civil indemnity, the Court deems it proper to reinstate the amount awarded by the RTC, which is ₱75,000.00, as civil indemnity as such amount is mandatory and is granted without need of evidence other than the commission of the crime.

7. **ID.; FRUSTRATED MURDER; PROPER PENALTY AND DAMAGES IN CASE AT BAR.—** Article 61, paragraph 2

of the RPC provides that the penalty of frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*. *Reclusion temporal* has a range of twelve (12) years and one (1) day to twenty (20) years. There being no modifying circumstance in the commission of the frustrated murder and applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from *reclusion temporal* in its medium period, and the minimum of the indeterminate penalty shall be taken from the full range of *prision mayor*, which is one degree lower than *reclusion temporal*, ranging from six (6) years and one (1) day to twelve (12) years. Hence, the modification made by the CA as regards the penalty imposed in this case, that is, from **eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years of *reclusion temporal* medium, as maximum**, is proper. And conspiracy having been proven, each of the accused shall be sentenced to suffer such imprisonment. The Court also sustains the CA's award of actual damages in the amount of ₱129,548.11, instead of the amount of ₱769,098.24 awarded by the RTC, as the official receipts adduced by the prosecution to prove Mendoza's hospitalization expenses proved only such reduced amount. The Court, however, modifies the amount of moral damages and exemplary damages awarded in favor of the victim Mendoza to conform to prevailing jurisprudence. Thus, the modified amounts of ₱40,000.00 as moral damages and ₱20,000.00 as exemplary damages are hereby awarded. Lastly, civil indemnity in the amount of ₱30,000.00 awarded by the CA is deleted in view of existing cases that no longer grant the same in the crime of frustrated murder. All the sums of money awarded to the victims and their heirs will accrue a six percent (6%) interest *per annum* from the time of this Decision until fully paid. It should be noted, however, that since accused Velasquez no longer interposed an appeal before the Court, his liability shall be limited to the amounts awarded by the CA, since the latter's Decision has become final and executory with respect to him.

APPEARANCES OF COUNSEL

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

RESOLUTION

REYES, *J*.:

This is an appeal from the Decision[1] dated June 30, 2011 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03256, which affirmed with modification the Joint Decision[2] dated December 21, 2007 of the Regional Trial Court (RTC) of Angeles City, Branch 59, finding Hermenigildo Maglente *y* Medina (Maglente) guilty beyond reasonable doubt of the crimes of Murder (Criminal Case No. 00-032) and Frustrated Murder (Criminal Case No. 00-033).

Maglente, together with Dan Magsipoc *y* Canceler (Magsipoc), John Doe, Peter Doe and Charlie Doe, was charged with Murder[3] and Frustrated Murder[4] under two separate Informations. Maglente pleaded not guilty to the charges against him.

The Informations were subsequently amended[5] to include accused Rolando Velasquez *y* Guevarra (Velasquez) and Pablo Inez (Inez), who also pleaded not guilty upon arraignment. Inez died while the case was pending, and the case against him was consequently dismissed. Magsipoc, meanwhile, remained at large.

Evidence for the prosecution

Crisanta De Leon (De Leon), testified that at around 5:00 p.m. of August 6, 1999, she and her co-teacher Regina Manalili (Manalili) were walking along Jesus Street going to Lakandula

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[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Hakim S. Abdulwahid and Danton Q. Bueser, concurring; CA *rollo*, pp. 231-249.

[2] Issued by Presiding Judge Ma. Angelica T. Paras-Quiambao; *id*. at 113-132.

[3] *Id*. at 162-163.

[4] *Id*. at 163.

[5] RTC records, Volume I, pp. 1-2; 3-4.

Street along Balibago. They saw a kinky-haired man (later identified in court as Maglente) standing at the corner of said streets, holding a revolver as if waiting for someone. A white Nissan Safari van then passed along and had its path blocked by a red Toyota Corolla car. Maglente and two other armed men then went to the front of the van and simultaneously riddled it with bullets at a close range of about 1 to 1½ meters away.[6] The van's driver lost control of the van causing it to head towards an apartment and destroy its fence. The red Toyota Corolla then disappeared. When the shooting erupted, De Leon and Manalili hid behind a big fence. Maglente followed and looked at them. Then, another man holding a shotgun came from across Lakandula Street towards Maglente and told the latter, "*tara na*!" Both men then left the crime scene going south towards Manila.[7]

Pepe A. Mendoza (Mendoza), meanwhile, was the driver of the van and a security aide of Benito Chua, the father of the deceased victim Victor Benito Chua (Chua). On the day of the incident, August 6, 1999, Mendoza accompanied Chua to different banks to withdraw money. While they were travelling towards Balibago in Angeles City, their van was intercepted at Lakandula Street by an old faded maroon car. Three (3) men suddenly appeared and drew guns. He shifted gear as he saw them poke their guns at them. He then lost consciousness and could not tell anymore who among the men particularly shot him. Upon regaining consciousness, Mendoza was informed that there were seven (7) bullets in his head, three (3) of which have already been removed.

Mendoza and Chua were rushed to the hospital where Chua was pronounced dead[8] due to "[h]emorrhage, massive, traumatic intracranial, secondary to multiple gunshot wounds."[9] Mendoza, on the other hand, was immediately operated on. In his medico-

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[6] TSN, March 20, 2001, p. 5.

[7] *Id*. at 6.

[8] CA *rollo*, p. 168.

[9] *Id*. at 168-169; RTC records, Volume I, p. 31.

legal certificate, Dr. Joven G. Esguerra reported on the injuries sustained by Mendoza, to wit:

1. Emergency E Craniotomy done
2. Gunshot wounds, right temporal and right mandibular areas
3. slug recovered upon opening of skin at mandibular area
4. Craniotomy allowed evacuation of intracerebral hematoma

REMARKS:

Barring complications or involvement of other structures not apparent at the time of the examination, the above-named injuries will require medical attendance for 1 ½ to 2 months.[10]

During trial on the merits, Maglente was positively identified by De Leon as the one who held the revolver while waiting along Jesus and Lakandula Streets, and also as one of the armed men who fired at the van and the victims.[11] Initially, however, De Leon identified Magsipoc as the one holding the revolver. On cross-examination, she rectified her previous statement and identified Maglente as the gunman who fired at the van. De Leon also identified Maglente among the pictures presented by SPO3 Danilo DG Cruz (SPO3 Cruz) during his follow-up investigation of the case. Mendoza, on the other hand, identified Velasquez as one of the men who positioned in front of the Nissan Safari van and who fired at them.[12]

Evidence for the Defense

The defense, on the other hand, presented the testimonies of accused Velasquez who interposed an *alibi* that he was at home with his family during the time of the incident, and that he came to know about Chua's death through his uncle. His wife Leda corroborated his statement. Maglente, on the other hand, merely denied that he is one of the assailants.

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[10] *Id*. at 169; RTC records, Volume I, p. 29.

[11] *Id*. at 235.

[12] *Id*. at 235-236.

RTC Decision

In its Decision dated December 21, 2007, the RTC convicted Maglente and Velasquez of the crimes of Murder and Frustrated Murder, *viz*:

IN VIEW OF THE FOREGOING, the Court finds accused HERMENIGILDO MAGLENTE *y* MEDINA *alias* "Jun Maglente" and ROLANDO VELASQUEZ *y* VERGARA *alias* "Randy" GUILTY beyond reasonable doubt of the crimes of Murder and Frustrated Murder qualified by treachery defined and penalized in Articles 248 and 250 of the Revised Penal Code, respectively, and there being the aggravating circumstance of evident premeditation to be considered against the accused, hereby sentences them as follows:

1. in Criminal Case No. 00-032 for Murder, for each of them to suffer the penalty of *reclusion perpetua*; to jointly and severally pay the heirs of victim Victor Benjamin Chua the following sums:

   a) Seventy-five thousand [pesos] ([₱]75,000.00) as civil indemnity,

   b) Eight hundred ninety thousand pesos (₱890,000.00) for actual damages, and

   c) Fifty thousand pesos (₱50,000.00) for moral damages;

   and to pay the costs of suit.

2. in Criminal Case No. 00-033 for Frustrated Murder, for each of them to suffer an indeterminate penalty of from [sic] Ten (10) years and one (1) day of *prision mayor* as the minimum term to Nineteen (19) years and one (1) day of *reclusion temporal* as the maximum term; to jointly and severally pay victim Pepe A. Mendoza actual damages in the amount of Seven hundred sixty nine thousand ninety-eight pesos and twenty[-]four centavos (₱769,098.24); and to pay the costs of suit.

SO ORDERED.[13]

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[13] *Id*. at 131-132.

The RTC gave full faith and credence to the evidence of the prosecution and convicted Maglente and Velasquez of the crimes charged. The RTC found that treachery, evident premeditation, taking advantage of superior strength and conspiracy attended the commission of the crimes based on the following circumstances: (1) the lack of opportunity for Mendoza and Chua to put up any defense against the successive bursts of gunfire hailed against them at close range by all the accused, while they peacefully travelled along Balibago in Angeles City in a Nissan Safari;[14] (2) the suddenness of the attack and its being well-planned; (3) the sufficient lapse of time for all of the accused to reflect upon the consequences of the attack prior to it commission;[15] and (4) the fact that all the accused acted in concert before, during and after the commission of the offense, thus, making them co-principals in the commission of the crimes. The RTC also brushed aside the *alibi* interposed by Velasquez and ratiocinated that *alibi* as a defense will not prevail over the positive identification of the accused, especially when the victim has no motive to falsely testify against the accused.[16]

Maglente and Velasquez filed Notices of Appeals, which was given due course by the RTC in its Order[17] dated March 3, 2008.

CA Decision

The CA affirmed[18] the findings of the RTC and accorded full faith and credence to the evidence of the prosecution. The CA explained that De Leon's positive identification of Maglente both in open court and in the pictures shown to her by the police authorities rectified whatever confusion she had in initially identifying Magsipoc as the gunman during direct examination.

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[14] *Id*. at 126-127.

[15] *Id*. at 127.

[16] *Id*. at 128.

[17] *Id*. at 80.

[18] *Id*. at 231-249.

The CA also found that the integrity of De Leon's testimony was reinforced by the fact that she is a disinterested witness who described in detail what she personally witnessed without any false motive or purpose to favor either of the parties in the case.

As to Mendoza, the CA ratiocinated that being a victim interested in the vindication for a crime committed against him makes it unnatural for him to falsely point against someone other than a real culprit.[19] Lastly, the CA stressed that witnesses are not expected to be consistent in every detail of an incident with perfect or total recall as differences in recollections, viewpoints or impressions are inevitable.[20]

The CA, however, modified the RTC decision and ruled that evident premeditation cannot be appreciated. The CA found no evidence to establish the time when the malefactors determined to commit the crime or that sufficient time has lapsed between such determination and the execution of the crime intended to be committed.[21] Abuse of superior strength, on the other hand, cannot be separately appreciated because it was necessarily absorbed in treachery.[22]

The CA also modified the award of damages, except as to the moral damages. Thus, the CA Decision dated June 30, 2011 provided for the following dispositive portion:

> ***WHEREFORE***, the appealed Joint Decision of the Regional Trial Court of Angeles City (Branch 59), dated 21 December 2007, is **AFFIRMED** with the following **MODIFICATIONS**:
>
> (1) In Criminal Case No. 00-032 for ***murder***—
>
> a) The trial court's award of Seventy-Five Thousand Pesos ([₱]75,000.00) by way of civil indemnity is reduced to Fifty Thousand Pesos ([₱]50,000.00);

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[19] *Id*. at 240.

[20] *Id*. at 241.

[21] *Id*. at 243-244.

[22] *Id*. at 244.

b) Exemplary damages of Thirty Thousand Pesos ([₱]30,000.00) is awarded to the heirs of the deceased victim, in addition to the moral damages of Fifty Thousand Pesos ([₱]50,000.00); and

c) Actual damages of Eight Hundred Ninety Thousand Pesos ([₱]890,000.00) is reduced to Fifty Thousand Pesos ([₱]50,000.00).

(2) In Criminal Case No. 00-033 for ***frustrated murder*** —

a) The penalty imposed by the trial court is modified and appellants are sentenced to eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years of *reclusion temporal* medium, as maximum;

b) Complainant Pepe A. Mendoza is awarded civil indemnity in the amount of Thirty Thousand Pesos ([₱]30,000.00), moral damages of Twenty-Five Thousand Pesos ([₱]25,000.00) and another Twenty-Five Thousand Pesos ([₱]25,000.00) as exemplary damages;

c) The actual damages of Seven Hundred Sixty[-]Nine Thousand Ninety[-]Eight Pesos and Twenty[-]Four Centavos ([₱]769,098.24), awarded by the trial court, is reduced to One Hundred Twenty-Nine Thousand Five Hundred Forty-Eight Pesos and Eleven Centavos ([₱]129,548.11).

SO ORDERED.[23]

Dissatisfied, Maglente brought his conviction for review to this Court, anchored on the sole issue of whether the CA erred in affirming the RTC's judgment convicting him of the crimes of Murder and Frustrated Murder.[24]

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[23] *Id*. at 247-248.

[24] In his Manifestation (In Lieu of a Supplemental Brief), Maglente manifested that he will no longer file a Supplemental Brief since no new issues material to the case which were not elaborated upon in Appellant's Brief were discovered, and he has exhaustively argued all the relevant issues in his brief and motion for reconsideration. *Rollo*, pp. 28-30.

The Court's Ruling

The appeal is devoid of merit.

Maglente's argument is centered on the alleged uncertainty over his identification by De Leon as one of the assailants, and the absence of testimony from Mendoza and Chua's father identifying him as such. On this point, the Court has consistently abided by the rule that the trial court is in a better position to adjudge the credibility of witnesses, especially if its decision is affirmed by the CA, unless there is a showing that it had overlooked, misunderstood or misapplied some fact or circumstance of weight and substance that would have affected the result of the case.[25] The Court finds no reason to depart from the assessment of the RTC, as affirmed by the CA, as this is supported by the records of the case.

Thus, it was the finding of the RTC that at first, De Leon, indeed pointed to Magsipoc as the one who stood at the corner of Jesus and Lakandula streets, and one of those who fired at the van. Nevertheless, the RTC further found that De Leon was able to positively identify Maglente during cross-examination and during the investigation conducted by SPO3 Cruz one week after the incident. The CA also made a similar finding and concluded further that "[De Leon's] seeming confusion in pointing to Hernando Magsipoc during the direct examination was forthwith rectified by her during the cross-examination where she made a positive identification of Maglente."[26] The CA also stated that "[t]he fact that De Leon identified only Maglente and not Velasquez, and Mendoza did not point to Maglente and was able to see only Velasquez during the incident does not undermine their credibility nor destroy the essential integrity of their respective testimonies."[27] It should be stressed that De Leon had already identified Maglente during the follow-

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[25] *People v. Rarugal*, G.R. No. 188603, January 16, 2013, 688 SCRA 646, 652-653.

[26] CA *rollo,* p. 240.

[27] *Id.* at 240-241.

up investigation conducted by SPO3 Cruz one week after the incident, and her testimony during cross examination merely confirmed her previous identification of Maglente. The well-settled rule is that where there is nothing to indicate that a witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit,[28] which the Court finds application in this particular case.

Maglente also denies the existence of conspiracy, claiming that there was no proof that he acted in furtherance of a common design and purpose entertained by the other assailants.[29]

Conspiracy exists when two or more persons come to an agreement concerning a felony and decide to commit it.[30] It may be inferred from the acts of the accused before, during or after the commission of the crime which, when taken together, would be enough to reveal a community of criminal design, as the proof of conspiracy is frequently made by evidence of a chain of circumstances.[31] Here, prior to the commission of the crime, De Leon and Manalili saw Maglente holding a revolver and standing in the corner of Lakandula and Jesus Streets waiting. As the Nissan Safari passed by, another car blocked its path and Maglente and other armed men simultaneously riddled the van with bullets. As aptly explained by the CA:

> Such mode and manner in which the offense was committed likewise evinces a joint purpose and design, concerted action, and community of intent, all showing that appellants conspired with one another. Indeed, direct proof of previous agreement to commit a crime is not necessary since conspiracy may be inferred from the acts of the accused before, during and after the crime, which are

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[28] *People of the Philippines v. Mark Joseph Zapuiz y Ramos @ "Jaymart"*, G.R. No. 199713, February 20, 2013, 691 SCRA 510.

[29] CA *rollo*, p. 158.

[30] REVISED PENAL CODE, Article 8. *See also People v. Anticamara*, G.R. No. 178771, June 8, 2011, 651 SCRA 489, 506.

[31] *Id.* at 506-507.

indicative of a joint purpose, concerted action and concurrence of sentiments. Significantly, where conspiracy is established, the act of one is the act of all.[32] (Citations omitted)

Maglente also assails the appreciation of treachery as a qualifying circumstance. He insists that there is no evidence showing that the perpetrators deliberately and consciously adopted means in order to ensure their safety from any defense that could be put up by the victims.[33]

"The essence of treachery is the sudden and unexpected attack by the aggressor on unsuspecting victims, depriving the latter of any real chance to defend themselves, thereby ensuring its commission without risk to the aggressor, and without the slightest provocation on the part of the victims."[34] Two conditions must concur for treachery to exist, namely: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.[35]

The established facts easily demonstrate the existence of treachery in this case. The perpetrators waited for the victims' van in ambush, with Maglente standing at the corner with his gun drawn. Thereafter, a car blocked the van's path and the perpetrators started shooting at the van and its passengers. The means employed by the perpetrators show that it was employed to discount any possibility of retaliation or escape, and that such means or method was deliberately employed. As found by the CA:

[A]ppellants' attack came unexpectedly when appellants suddenly blocked the way of the victims who were unsuspecting of appellants'

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[32] CA *rollo*, p. 242.

[33] *Id.* at 159.

[34] *People v. Gutierrez*, G.R. No. 188602, February 4, 2010, 611 SCRA 633, 644, citing *People v. Mara*, G.R. No. 184050, May 8, 2009, 587 SCRA 839, 845.

[35] *People v. Lopez*, G.R. No. 176354, August 3, 2010, 626 SCRA 485, 500, citing *People v. Ducabo*, 560 Phil. 709, 725 (2007).

plan to attack. At a spur of a moment [sic], appellants, armed with firearms, positioned themselves in front of the van of the helpless, unarmed and surprised victims, and began shooting at them. From the legal standpoint, treachery was attendant as the manner of the attack and the means employed by appellants obviously manifested the intention of ensuring the commission of the crime without risk to them and to deprive the victims of any real chance to defend themselves.[36]

The Court also agrees with the CA that abuse of superior strength, which was alleged in the information, is already absorbed in treachery.

Moreover, the CA correctly deviated from the RTC's finding regarding the existence of evident premeditation. According to the CA, the records did not show sufficient evidence to support the existence of the "time when appellants determined to commit the crime and that sufficient lapse of time existed between such determination and execution to allow them to reflect upon the circumstances of their act."[37] To properly appreciate evident premeditation as an aggravating circumstance, it is indispensable that the fact of planning the crime be established. Particularly, evidence must show how and when the plan to kill was hatched or how much time had elapsed before it was carried out. Absent such proof, evident premeditation cannot prosper. In this case, the records are bereft of evidence proving how and when the plan to attack the victims was hatched up.

As to the credibility of the testimonies of De Leon and Mendoza, the Court finds them straightforward and consistent with each other. Their combined declarations established beyond reasonable doubt Maglente's identity as one of the malefactors of the crimes charged. Consequently, Maglente's bare denial, without more, does not deserve consideration and cannot overthrow the positive identification made by De Leon. Time-tested is the rule that between the positive assertions of prosecution witnesses and the negative averments of the accused,

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[36] CA *rollo*, p. 242.

[37] *Id*. at 244.

the former indisputably deserves more credence and evidentiary weight.[38]

Penalties Imposed and Award of Damages

Criminal Case No. 00-032
for Murder

Treachery having qualified the killing of Chua to Murder, the imposable penalty against Maglente, therefore, is *reclusion perpetua* to death as provided in Article 248 of the Revised Penal Code (RPC). There being no other circumstance to aggravate or mitigate the crime, the RTC, as affirmed by the CA, correctly imposed the penalty of *reclusion perpetua*. The same shall be without eligibility for parole, as provided in Section 3 of Republic Act No. 9346.[39]

On the award of damages.

Actual damages are recoverable only when the injured party proves the actual amount of loss with reasonable degree of certainty based upon competent proof. In this case, only a certification[40] issued by the sales manager of the memorial park was presented to substantiate the claim for actual damages in the amount of ₱840,000.00. The official receipts adduced, however, showed only the total amount of ₱50,000.00. Hence, the CA correctly reduced the same to that actually proven by the receipts presented.[41]

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[38] *People of the Philippines v. Percival Dela Rosa y Bayer*, G.R. No. 201723, June 13, 2013.

[39] Entitled, An Act Prohibiting the Imposition of Death Penalty in the Philippines, which provides 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. 4103, otherwise known as the Indeterminate Sentence Law, as amended."

[40] RTC records, Volume 3, p. 373.

[41] *Id*. at 371.

Moral damages in the amount of ₱50,000.00[42] was also correctly awarded by the CA. As borne out by human nature and experience, a violent death invariably and necessarily brings about emotional pain and anguish on the part of the victim's family.[43] Meanwhile, exemplary damages in the amount of ₱30,000.00 was also properly awarded.[44]

As to the civil indemnity, the Court deems it proper to reinstate the amount awarded by the RTC, which is ₱75,000.00, as civil indemnity as such amount is mandatory and is granted without need of evidence other than the commission of the crime.[45]

Criminal Case No. 00-033 for Frustrated Murder

Article 61, paragraph 2 of the RPC provides that the penalty of frustrated murder is one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*. *Reclusion temporal* has a range of twelve (12) years and one (1) day to twenty (20) years. There being no modifying circumstance in the commission of the frustrated murder and applying the Indeterminate Sentence Law, the maximum of the indeterminate penalty should be taken from *reclusion temporal* in its medium period, and the minimum of the indeterminate penalty shall be taken from the full range of *prision mayor*, which is one degree lower than *reclusion temporal*, ranging from six (6) years and one (1) day to twelve (12) years. Hence, the modification made by the CA as regards the penalty imposed in this case, that is, from **eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years of *reclusion temporal* medium, as maximum**, is proper. And conspiracy having

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[42] *People v. Angelio*, G.R. No. 197540, February 27, 2012, 667 SCRA 102, 111-112.

[43] *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 206, citing *People v. Escleto*, G.R. No. 183706, April 25, 2012, 671 SCRA 149, 158.

[44] *Id*. at 207.

[45] *Id*. at 206.

been proven, each of the accused shall be sentenced to suffer such imprisonment.[46]

The Court also sustains the CA's award of actual damages in the amount of ₱129,548.11, instead of the amount of ₱769,098.24 awarded by the RTC, as the official receipts adduced by the prosecution to prove Mendoza's hospitalization expenses proved only such reduced amount.[47]

The Court, however, modifies the amount of moral damages and exemplary damages awarded in favor of the victim Mendoza to conform to prevailing jurisprudence.[48] Thus, the modified amounts of ₱40,000.00 as moral damages and ₱20,000.00 as exemplary damages are hereby awarded.

Lastly, civil indemnity in the amount of ₱30,000.00 awarded by the CA is deleted in view of existing cases that no longer grant the same in the crime of frustrated murder.[49]

All the sums of money awarded to the victims and their heirs will accrue a six percent (6%) interest *per annum* from the time of this Decision until fully paid.[50] It should be noted, however, that since accused Velasquez no longer interposed an appeal before the Court, his liability shall be limited to the amounts awarded by the CA, since the latter's Decision has become final and executory with respect to him.[51]

WHEREFORE, the Decision dated June 30, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 03256 is hereby **MODIFIED** as follows:

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[46] REVISED PENAL CODE, Article 249, in relation to Article 6, paragraph 2.

[47] CA *rollo*, p. 247.

[48] *People v. Baldomar*, G.R. No. 197043, February 29, 2012, 667 SCRA 415; *People v. Milan*, G.R. No. 175926, July 6, 2011, 653 SCRA 607.

[49] *People v. Baldomar*, *id.*; *People v. Milan*, *id.*; *People v. Mokammad*, G.R. No. 180594, August 19, 2009, 596 SCRA 497.

[50] *People v. Domingo*, G.R. No. 184343, March 2, 2009, 580 SCRA 436, 459.

[51] *People v. Milan*, *supra* note 48, at 626.

(1) In Criminal Case No. 00-032 for Murder, the civil indemnity in favor of the heirs of the victim Victor Benito Chua is increased to Seventy-Five Thousand Pesos (₱75,000.00); and

(2) In Criminal Case No. 00-033 for Frustrated Murder —

a) Moral damages in favor of the victim Pepe A. Mendoza is increased to Forty Thousand Pesos (₱40,000.00);

b) The award of exemplary damages is reduced to Twenty Thousand Pesos (₱20,000.00); and

c) The award of civil indemnity in the amount of ₱30,000.00 is deleted.

Interest at the rate of six percent (6%) *per annum* shall be imposed on all the damages awarded, to earn from the date of the finality of this judgment until fully paid, in line with prevailing jurisprudence.[52]

In all other respects, the Decision of the Court of Appeals is **AFFIRMED.**

SO ORDERED.

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

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[52] *People v. Cabungan*, G.R. No. 189355, January 23, 2013, 689 SCRA 236.

SECOND DIVISION

[G.R. No. 202358. November 27, 2013]

GATCHALIAN REALTY, INC., *petitioner, vs.* **EVELYN M. ANGELES,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; REALTY INSTALLMENT BUYER PROTECTION ACT (RA 6552 MACEDA LAW); SECTION 3 ON THE RIGHTS OF A BUYER WHO HAS PAID AT LEAST TWO YEARS OF INSTALLMENT BUT DEFAULTS IN THE PAYMENT OF SUCCEEDING INSTALLMENTS.—** Republic Act No. 6552, also known as the Maceda Law, or the Realty Installment Buyer Protection Act, has the declared public policy of "protect[ing] buyers of real estate on installment payments against onerous and oppressive conditions." Section 3 of R.A. 6552 provides for the rights of a buyer who has paid at least two years of installments but defaults in the payment of succeeding installments. [Thus,] x x x (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any. (b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer. Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.
2. **REMEDIAL LAW; EVIDENCE; DOCUMENTS; REGISTRY RETURN OF THE REGISTERED MAIL IS *PRIMA FACIE***

PROOF OF THE FACTS INDICATED THEREIN.— The registry return of the registered mail is *prima facie* proof of the facts indicated therein. Angeles failed to present contrary evidence to rebut this presumption with competent and proper evidence. To establish its claim of service of the notarial rescission upon Angeles, GRI presented the affidavit of its liaison officer Fortunato Gumahad, the registry receipt from the Greenhills Post Office, and the registry return receipt. We affirm the CA's ruling that GRI was able to substantiate its claim that it served Angeles the notarial rescission sent through registered mail in accordance with the requirements of R.A. 6552.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; REALTY INSTALLMENT BUYER PROTECTION ACT (RA 6552 MACEDA LAW); CANCELLATION OF CONTRACT TO SELL REQUIRES NOTARIZED NOTICE OF CANCELLATION AND REFUND OF THE CASH SURRENDER VALUE; ABSENT ANY REQUIREMENT RENDERS THE CONTRACT VALID AND SUBSISTING; REMEDIES OF THE BUYER IN CASE AT BAR.—** This Court has been consistent in ruling that a valid and effective cancellation under R.A. 6552 must comply with the mandatory twin requirements of a notarized notice of cancellation and a refund of the cash surrender value. x x x In view of the absence of a valid cancellation, the Contract to Sell between GRI and Angeles remains valid and subsisting. Apart from *Olympia* and *Pagtalunan*, we are guided by our rulings in *Active Realty & Development Corp. v. Daroya* (*Active*) and *Associated Marine Officers and Seamen's Union of the Philippines PTGWO-ITF v. Decena* (*Associated*). x x x We observe that this case has, from the institution of the complaint, been pending with the courts for 10 years. As both parties prayed for the issuance of reliefs that are just and equitable under the premises, and in the exercise of our discretion, we resolve to dispose of this case in an equitable manner. Considering that GRI did not validly rescind Contracts to Sell Nos. 2271 and 2272, Angeles has two options: 1. The option to pay, within 60 days from the MeTC's determination of the proper amounts, the unpaid balance of the full value of the purchase price of the subject properties plus interest at 6% *per annum* from 11 November 2003, the date of filing of the complaint, up to the finality of this Decision, and thereafter, at the rate of 6% *per*

annum. Upon payment of the full amount, GRI shall immediately execute Deeds of Absolute Sale over the subject properties and deliver the corresponding transfer certificate of title to Angeles. In the event that the subject properties are no longer available, GRI should offer substitute properties of equal value. Acceptance of the suitability of the substitute properties is Angeles' sole prerogative. Should Angeles refuse the substitute properties, GRI shall refund to Angeles the actual value of the subject properties with 6% interest *per annum* computed from 11 November 2003, the date of the filing of the complaint, until fully paid; and 2. The option to accept from GRI ₱574,148.40, the cash surrender value of the subject properties, with interest at 6% *per annum*, computed from 11 November 2003, the date of the filing of the complaint, until fully paid. Contracts to Sell Nos. 2271 and 2272 shall be deemed cancelled 30 days after Angeles' receipt of GRI's full payment of the cash surrender value. No rent is further charged upon Angeles as GRI already had possession of the subject properties on 10 October 2006.

APPEARANCES OF COUNSEL

Conti Gatchalian Villanueva Rabuco & Bailon Law Offices for petitioner.

Eduardo T. Sierra, Jr. for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 202358 is a petition for review[1] assailing the Decision[2] promulgated on 11 November 2011 as well as the Resolution[3] promulgated on 19 June 2012 by the Court of Appeals

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 43-54. Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Rosmari D. Carandang and Ramon R. Garcia, concurring.

[3] *Id*. at 41. Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Rosmari D. Carandang and Ramon R. Garcia, concurring.

(CA) in CA-G.R. SP No. 105964. The CA reversed and set aside the 8 October 2008 Order[4] of Branch 197 of the Regional Trial Court of Las Piñas City (RTC) in Civil Case No. LP-07-0143. The CA also dismissed the unlawful detainer case filed by Gatchalian Realty, Inc. (GRI) against Evelyn M. Angeles (Angeles).

The Metropolitan Trial Court (MeTC) rendered on 28 February 2006 a decision[5] in Civil Case No. 6809 in favor of GRI and against Angeles. In its decision[6] dated 13 February 2008, the RTC set aside the decision of the MeTC and dismissed the ejectment case filed by GRI against Angeles. The RTC reversed itself in an Order[7] dated 17 June 2008, and affirmed with modification the decision of the MeTC. The RTC denied Angeles' Motion for Reconsideration in an Order dated 8 October 2008.

The Facts

The CA recited the facts as follows:

On 28 December 1994, [Angeles] purchased a house (under Contract to Sell No. 2272) and lot (under Contract to Sell No. 2271) from [GRI] valued at Seven Hundred Fifty Thousand Pesos (Php 750,000.00) and Four Hundred Fifty Thousand Pesos (Php 450,000.00), respectively, with twenty-four percent (24%) interest per annum to be paid by installment within a period of ten years.

The house and lot were delivered to [Angeles] in 1995. Nonetheless, under the contracts to sell executed between the parties, [GRI] retained ownership of the property until full payment of the purchase price.

After sometime, [Angeles] failed to satisfy her monthly installments with [GRI]. [Angeles] was only able to pay thirty-five (35) installments for Contract to Sell No. 2271 and forty-eight (48) installments for Contract to Sell No. 2272. According to [GRI], [Angeles] was given at least twelve (12) notices for payment in a span of three (3) years but she still failed to settle her account despite receipt of said notices

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[4] *Id*. at 219. Penned by Judge Erlinda Nicolas-Alvaro.

[5] CA *rollo*, pp. 29-37. Penned by Judge Arthur A. Famini.

[6] *Id*. at 23-28. Penned by Judge Manuel N. Duque.

[7] *Id*. at 20-22. Penned by Judge Erlinda Nicolas-Alvaro.

and without any valid reason. [Angeles] was again given more time to pay her dues and likewise furnished with three (3) notices reminding her to pay her outstanding balance with warning of impending legal action and/or rescission of the contracts, but to no avail. After giving a total of fifty-one (51) months grace period for both contracts and in consideration of the continued disregard of the demands of [GRI], [Angeles] was served with a notice of notarial rescission dated 11 September 2003 by registered mail which she allegedly received on 19 September 2003 as evidenced by a registry return receipt.

Consequently [Angeles] was furnished by [GRI] with a demand letter dated 26 September 2003 demanding her to pay the amount of One Hundred Twelve Thousand Three Hundred Four Pesos and Forty Two Centavos (Php 112,304.42) as outstanding reasonable rentals for her use and occupation of the house and lot as of August 2003 and to vacate the same. She was informed in said letter that the fifty percent (50%) refundable amount that she is entitled to has already been deducted with the reasonable value for the use of the properties or the reasonable rentals she incurred during such period that she was not able to pay the installments due her. After deducting the rentals from the refundable amount, she still had a balance of One Hundred Twelve Thousand Three Hundred Four Pesos and Forty Two Centavos (Php 112,304.42) which she was required to settle within fifteen (15) days from receipt of the letter.

Allegedly, [Angeles] subsequently sent postal money orders through registered mail to [GRI]. In a letter dated 27 January 2004 [Angeles] was notified by [GRI] of its receipt of a postal money order sent by [Angeles]. More so, she was requested to notify [GRI] of the purpose of the payment. [Angeles] was informed that if the postal money order was for her monthly amortization, the same will not be accepted and she was likewise requested to pick it up from [GRI's] office. On 29 January 2004, another mail with a postal money order was sent by [Angeles] to [GRI]. In her 6 February 2004 letter, [GRI] was informed that the postal money orders were supposed to be payments for her monthly amortization. Again, in its 8 February 2004 letter, it was reiterated by [GRI] that the postal money orders will only be accepted if the same will serve as payment of her outstanding rentals and not as monthly amortization. Four (4) more postal money orders were sent by [Angeles] by registered mail to [GRI].

For her continued failure to satisfy her obligations with [GRI] and her refusal to vacate the house and lot, [GRI] filed a complaint for unlawful detainer against [Angeles] on 11 November 2003.[8]

The MeTC's Ruling

The MeTC of Branch 79, Las Piñas City ruled in favor of GRI. The MeTC determined that the case was for an unlawful detainer, and thus assumed jurisdiction. The MeTC further held that the facts show that GRI was able to establish the validity of the rescission:

> A careful scrutiny of the evidence presented by both parties regarding payments made clearly show that [Angeles] defaulted in the payment of the monthly installments due. Repeated notices and warnings were given to her but she still and failed to update her account (Exhibits "E" to "E-1" and "G" to "G-2", [GRI's] Position Paper). This is a clear violation of the condition of their contracts. An ample grace period, *i.e.*, 51 months, was granted to her by [GRI] but she still failed to pay the whole amount due as provided in paragraph 6 of the contracts and Section 3 of RA 6552. [Angeles] has been in arrears beyond the grace period provided under the contracts and law. The last payment received by [GRI], which represents [Angeles'] 35th installment, was made in July 2002. On the other hand, the last payment, which represents her 48th installment, [was] received [by GRI] in April 1999. Thus, [GRI], as seller, can terminate or rescind the contract by giving her the notice of notarial rescission of the contracts. The notarial rescission of the contracts was executed on September 26, 2003 and served upon [Angeles].[9]

Although the MeTC agreed with Angeles that her total payment is already more than the contracted amount, the MeTC found that Angeles did not pay the monthly amortizations in accordance with the terms of the contract. Interests and penalties accumulated and increased the amount due. Furthermore, the MeTC found the monthly rentals imposed by GRI reasonable and within the range of the prevailing rental rates in the vicinity. Compensation between GRI and Angeles legally took effect in accordance with

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[8] *Rollo,* pp. 44-45.

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

Article 1290[10] of the Civil Code. The MeTC ruled that GRI is entitled to ₱1,060,896.39 by way of reasonable rental fee less ₱574,148.40 as of May 2005, thus leaving a balance of ₱486,747.99 plus the amount accruing until Angeles finally vacates the subject premises.

The dispositive portion of the MeTC's Decision reads:

WHEREFORE, in view of the foregoing, the Court renders judgment for [GRI] and against [Angeles] and all persons claiming rights under her, as follows:

1. Ordering [Angeles] and all persons claiming rights under her to immediately vacate the property subject of this case situated at Blk. 3, Lot 8, Lanzones St., Phase 3-C, Gatchalian Subdivision, Las Piñas City and surrender possession thereof to [GRI];

2. Ordering the encashment of the Postal Money Order (PMO) in the total amount of Php 120,000.00 in favor of [GRI];

3. Ordering [Angeles] to pay [GRI] the outstanding amount of Php 486,747.99 representing reasonable monthly rentals of the subject premises as of May 2005 less the amount of the postal money orders [worth] Php 120,000.00 and all the monthly rentals that will accrue until she vacates the subject premises and have possession thereof turned over to [GRI], plus the interests due thereon at the rate of twelve percent (12%) per annum from the time of extra-judicial demand;

4. Ordering [Angeles] to pay [GRI] the amount of Php 20,000.00 as attorney's fees; and

5. Costs of suit.

[Angeles'] counterclaims are hereby dismissed for lack of merit.

SO ORDERED.[11]

On 21 March 2006, Angeles filed a notice of appeal with the MeTC. A week later, on 28 March 2006, Angeles filed a motion

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[10] Article 1290 of the Civil Code reads: "When all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation."

[11] CA *rollo*, pp. 36-37.

to dismiss based on lack of jurisdiction. The Las Piñas RTC denied Angeles' motion to dismiss in an order dated 28 July 2006.

Angeles also filed on 2 October 2006 a Petition for *Certiorari* with Immediate Issuance of Temporary Restraining Order and Injunction, which was docketed as SCA Case No. 06-008.[12] On 3 May 2007, Branch 201 of the Las Piñas RTC dismissed Angeles' Petition for *Certiorari* for forum-shopping.[13]

GRI, on the other hand, filed a Motion for Execution Pending Appeal. A Writ of Execution Pending Appeal was issued in favor of GRI on 25 August 2006, and the properties were turned over to GRI on 10 October 2006.[14]

The RTC's Ruling

Angeles' appeal before Branch 197 of the Las Piñas RTC initially produced a result favorable to her. The RTC found that the case was one for ejectment. As an ejectment court, the MeTC's jurisdiction is limited only to the issue of possession and does not include the title or ownership of the properties in question.

The RTC pointed out that Republic Act No. 6552 (R.A. 6552) provides that the non-payment by the buyer of an installment prevents the obligation of the seller to convey title from acquiring binding force. Moreover, cancellation of the contract to sell may be done outside the court when the buyer agrees to the cancellation. In the present case, Angeles denied knowledge of GRI's notice of cancellation. Cancellation of the contract must be done in accordance with Section 3 of R.A. 6552, which requires a notarial act of rescission and refund to the buyer of the cash surrender value of the payments on the properties. Thus, GRI cannot insist on compliance with Section 3(b) of R.A. 6552 by applying Angeles' cash surrender value to the rentals of the properties after Angeles failed to pay the installments due.

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[12] *Rollo*, pp. 190-197.

[13] *Id.* at 198-200.

[14] *Id.* at 198.

Contrary to the MeTC's ruling, there was no legal compensation between GRI and Angeles. The RTC ruled:

There being no valid cancellation of the Contract to Sell, this Court finds merit in the appeal filed by [Angeles] and REVERSES the decision of the court *a quo*. This Court recognized [Angeles'] right to continue occupying the property subject of the Contract to Sell.

WHEREFORE, premises considered, the decision of the lower court is hereby SET ASIDE and the ejectment case filed by [GRI] is hereby DISMISSED.

SO ORDERED.[15]

GRI filed a Motion for Reconsideration. The RTC issued an Order on 17 June 2008 which ruled that GRI had complied with the provisions of R.A. 6552, and had refunded the cash surrender value to Angeles upon its cancellation of the contract to sell when it deducted the amount of the cash surrender value from rentals due on the subject properties. The RTC relied on this Court's ruling in *Pilar Development Corporation v. Spouses Villar.*[16] The RTC ruled:

Applying the above Pilar ruling in the present case, the cash surrender value of the payments made by [Angeles] shall be applied to the rentals that accrued on the property occupied by [Angeles], which rental is fixed by this Court in the amount of seven thousand pesos per month (₱7,000.00). The total rental payment due to Gatchalian Realty Inc. is six hundred twenty three thousand (₱623,000.00) counted from June 1999 to October 2006. According to R.A. 6552, the cash surrender value, which in this case is equivalent to fifty percent (50%) of the total payment made by [Angeles], should be returned to her by [GRI] upon cancellation of the contract to sell on September 11, 2003. Admittedly no such return was ever made by [GRI]. Thus, the cash surrender value, which in this case is equivalent to ₱182,094.48 for Contract to Sell No. 2271 and ₱392,053.92 for Contract to Sell No. 2272 or a total cash surrender value of ₱574,148.40 should be deducted from the rental payment or award owing to [Angeles].

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[15] CA *rollo*, p. 28.

[16] 536 Phil. 465 (2006).

WHEREFORE, premises considered, the Motion for Reconsideration is hereby GRANTED. The earlier decision dated February 13, 2008 is SET ASIDE and the decision of the court *a quo* is MODIFIED to wit:

1. Ordering [Angeles] and all persons claiming rights under her to immediately vacate the property subject of this case situated at Blk. 3, Lot 8, Lanzones St., Phase 3-C, Gatchalian Subdivision, Las Piñas City and surrender possession thereof to [GRI];

2. Ordering the encashment of the Postal Money Order (PMO) in the total amount of Php 120,000.00 in favor of [GRI];

3. Ordering defendant, Evelyn M. Angeles, to pay plaintiff, Gatchalian Realty Inc., the outstanding rental amount of forty eight thousand eight hundred fifty one pesos and sixty centavos (₱48,851.60) and legal interest of six percent (6%) per annum, until the above amount is paid;

4. Ordering [Angeles] to pay [GRI] the amount of Php 20,000.00 as attorney's fees; and

5. Costs of suit.

SO ORDERED.[17]

The Court of Appeals' Ruling

The CA dismissed GRI's complaint for unlawful detainer, and reversed and set aside the RTC's decision. Although the CA ruled that Angeles received the notice of notarial rescission, it ruled that the actual cancellation of the contract between the parties did not take place because GRI failed to refund to Angeles the cash surrender value. The CA denied GRI's motion for reconsideration.

GRI filed the present petition for review before this Court on 10 August 2012.

The Issues

GRI assigned the following errors of the CA:

The court *a quo* committed reversible error when it declared that there was no refund of the cash surrender value in favor of [Angeles] pursuant to R.A. No. 6552; and

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[17] CA *rollo*, pp. 21-22.

The court *a quo* erred in holding that the actual cancellation of the contract between the parties did not take place.[18]

The Court's Ruling

GRI's petition has no merit. We affirm the ruling of the CA with modification.

Validity of GRI's Cancellation of the Contracts

Republic Act No. 6552, also known as the Maceda Law, or the Realty Installment Buyer Protection Act, has the declared public policy of "protect[ing] buyers of real estate on installment payments against onerous and oppressive conditions."[19] Section 3 of R.A. 6552 provides for the rights of a buyer who has paid at least two years of installments but defaults in the payment of succeeding installments. Section 3 reads:

> Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:
>
> (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.
>
> (b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made, and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual

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[18] *Rollo*, pp. 24-25.

[19] R.A. 6552, Section 2.

cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

The sixth paragraph of the contracts between Angeles and GRI similarly provides:

SIXTH - Should the VENDEE/S fail to pay due any monthly installment the VENDOR shall have the right to cancel this Contract and resell the lot/s subject matter of this contract to another buyer, provided, however, that where the VENDEE/S has/have already paid at least two years of installments, the VENDEE/S will have the right:

a) to pay without additional interest, the installments in arrears within the total grace period earned by him/her/them which is hereby fixed at the rate of one (1) month grace period for every one (1) year of installment payment made, but this right can be exercised by the VENDEE/S only once in every five (5) years of the life of this contract and its extension, if any, and

b) if the contract is cancelled, the VENDOR shall refund to the VENDEE/S the cash surrender value of the payments made on the lot/s equivalent to fifty per cent (50%) of the total payments made, and after five (5) years of installment, an additional five per cent (5%) every year but not to exceed ninety per cent (90%) of the total payments made; Provided, that the actual cancellation of the contract shall take place after thirty (30) days from the receipt by the VENDEE/S of the notice of cancellation or the demand for rescission of the contract by a notarial act upon full payment of the cash surrender value to the VENDEE/S; where, however, the VENDEE/S has/have paid less than two (2) years of installments, the VENDOR shall give the VENDEE/S [a] grace period of sixty (60) days from the date the installment became due; and if the VENDEE/S fail/s to pay the installment due after the expiration of the grace period, the VENDOR may cancel the contract after thirty (30) days from receipt by the VENDEE/S of the notice of cancellation or the demand for rescission of the contract by a notarial act; and in case of cancellation and/or rescission of this contract, all

improvements on the lot/s above-described shall be forfeited in favor of the VENDOR, and in this connection, the VENDEE/S obligate/s himself/herself/themselves to peacefully vacate the premises mentioned above without necessity of notice or demand by the VENDOR.[20]

We examine GRI's compliance with the requirements of R.A. 6552, as it insists that it extended to Angeles considerations that are beyond what the law provides.

<u>*Grace Period*</u>

It should be noted that Section 3 of R.A. 6552 and paragraph six of Contract Nos. 2271 and 2272, speak of "two years of installments." The basis for computation of the term refers to the installments that correspond to the number of months of payments, and not to the number of months that the contract is in effect as well as any grace period that has been given. Both the law and the contracts thus prevent any buyer who has not been diligent in paying his monthly installments from unduly claiming the rights provided in Section 3 of R.A. 6552.

The MeTC, the RTC, and the CA all found that Angeles was able to pay 35 installments for the lot (Contract No. 2271) and 48 installments for the house (Contract No. 2272).[21] Angeles thus made installment payments for less than three years on the lot, and exactly four years on the house.

Section 3(a) of R.A. 6552 provides that the total grace period corresponds to one month for every one year of installment payments made, provided that the buyer may exercise this right only once in every five years of the life of the contract and its extensions. The buyer's failure to pay the installments due at the expiration of the grace period allows the seller to cancel the contract after 30 days from the buyer's receipt of the notice of cancellation or demand for rescission of the contract by a notarial act. Paragraph 6(a) of the contract gave Angeles the same rights.

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[20] *Rollo*, pp. 95-96.

[21] *Id.* at 44.

Both the RTC and the CA found that GRI gave Angeles an accumulated grace period of 51 months.[22] This extension went beyond what was provided in R.A. 6552 and in their contracts.

Receipt of the Notice of Notarial Rescission

The registry return of the registered mail is *prima facie* proof of the facts indicated therein.[23] Angeles failed to present contrary evidence to rebut this presumption with competent and proper evidence. To establish its claim of service of the notarial rescission upon Angeles, GRI presented the affidavit of its liaison officer Fortunato Gumahad,[24] the registry receipt from the Greenhills Post Office,[25] and the registry return receipt.[26] We affirm the CA's ruling that GRI was able to substantiate its claim that it served Angeles the notarial rescission sent through registered mail in accordance with the requirements of R.A. 6552.

Amount of the Cash Surrender Value

GRI claims that it gave Angeles a refund of the cash surrender value of both the house and the lot in the total amount of 574,148.40 when it deducted the amount of the cash surrender value from the amount of rentals due.

For paying more than two years of installments on the lot, Angeles was entitled to receive cash surrender value of her payments on the lot equivalent to fifty per cent of the total payments made. This right is provided by Section 3(b) of R.A. 6552, as well as paragraph 6(b) of the contract. Out of the contract price of ₱450,000, Angeles paid GRI a total of ₱364,188.96 consisting of ₱135,000 as downpayment and

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[22] *Id*.

[23] *Club Filipino, Inc. v. Araullo*, 538 Phil. 430 (2006), citing *Genuino Ice Company, Inc. v. Magpantay*, 526 Phil. 170 (2006).

[24] CA *rollo*, pp. 245-246.

[25] *Rollo*, p. 159.

[26] *Id*.

₱229,188.96 as installments and penalties.[27] The cash surrender value of Angeles' payments on the lot amounted to ₱182,094.48.[28]

For the same reasons, Angeles was also entitled to receive cash surrender value of the payments on the house equivalent to fifty per cent of the total payments made. Out of the contract price of ₱750,000, Angeles paid GRI a total of ₱784,107.84 consisting of ₱165,000 as downpayment and ₱619,107.84 as installments and penalties.[29] The cash surrender value of Angeles' payments on the house amounted to ₱392,053.92.[30]

Actual Cancellation of the Contracts

There was no actual cancellation of the contracts because of GRI's failure to actually refund the cash surrender value to Angeles.

Cancellation of the contracts for the house and lot was contained in a notice of notarial rescission dated 11 September 2003.[31] The registry return receipts show that Angeles received this notice on 19 September 2003.[32] GRI's demand for rentals on the properties, where GRI offset Angeles' accrued rentals by the refundable cash surrender value, was contained in another letter dated 26 September 2003.[33] The registry return receipts show that Angeles received this letter on 29 September 2003.[34] GRI filed a complaint for unlawful detainer against Angeles on 11 November 2003, 61 days after the date of its notice of notarial rescission, and 46 days after the date of its demand for rentals. For her part, Angeles sent GRI postal money orders in the total amount of ₱120,000.[35]

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

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

[29] *Id*. at 21.

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

[31] *Rollo,* pp. 157-158.

[32] *Id*. at 159.

[33] *Id*. at 163-165.

[34] *Id*. at 166.

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

The MeTC ruled that it was proper for GRI to compensate the rentals due from Angeles' occupation of the property from the cash surrender value due to Angeles from GRI. The MeTC stated that compensation legally took effect in accordance with Article 1290 of the Civil Code, which reads: "When all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation." In turn, Article 1279 of the Civil Code provides:

In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist of a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts are due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

However, it was error for the MeTC to apply Article 1279 as there was nothing in the contracts which provided for the amount of rentals in case the buyer defaults in her installment payments. The rentals due to GRI were not liquidated. GRI, in its letter to Angeles dated 26 September 2003, unilaterally imposed the amount of rentals, as well as an annual 10% increase:

PERIOD COVERED	NO. OF MONTHS	RENTALS PER MONTH	AMOUNT DUE
June to December 1999	7	11,000.00	77,000.00
January to December 2000	12	12,100.00	145,200.00
January to December 2001	12	13,310.00	159,720.00

January to December 2002	12	14,641.00	175,692.02 [sic]
January to August 2003	8	16,105.10	128,840.80
	TOTAL AMOUNT DUE		₱686,452.82 [sic].[36]

We cannot subscribe to GRI's view that it merely followed our ruling in *Pilar Development Corporation v. Spouses Villar*[37] (*Pilar*) when it deducted the cash surrender value from the rentals due. In *Pilar*, the developer also failed to refund the cash surrender value to the defaulting buyer when it cancelled the Contract to Sell through a Notice of Cancellation. It was this Court, and not the developer, that deducted the amount of the cash surrender value from the accrued rentals. Moreover, the developer in *Pilar* did not unilaterally impose rentals. It was the MeTC that decreed the amount of monthly rent. Neither did the developer unilaterally reduce the accrued rentals by the refundable cash surrender value. The cancellation of the contract took effect only by virtue of this Court's judgment because of the developer's failure to return the cash surrender value.

This was how we ruled in *Pilar*:

According to R.A. 6552, the cash surrender value, which in this case is equivalent to fifty percent (50%) of the total payment made by the respondent spouses, should be returned to them by the petitioner upon the cancellation of the contract to sell on August 31, 1998 for the cancellation to take effect. Admittedly, no such return was ever made by petitioner. Thus, the said cash surrender value is hereby ordered deducted from the award owing to the petitioner based on the MeTC judgment, and cancellation takes effect by virtue of this judgment.

Finally, as regards the award of ₱7,000.00/month as rental payment decreed by the MeTC for the use of the property in question from the time the respondent spouses obtained possession thereof up to the time that its actual possession is surrendered or restored to the petitioner, the Court finds the same just and equitable to prevent

[36] *Id.* at 164. The amount due for the period January to December 2001 should only be ₱175,692.00; hence, the total amount due should be ₱686,452.80.

[37] 536 Phil. 465 (2006).

the respondent spouses, who breached their contract to sell, from unjustly enriching themselves at the expense of the petitioner which, for all legal intents and purposes, never ceased to be the owner of the same property because of the respondents' non-fulfillment of the indispensable condition of full payment of the purchase price, as embodied in the parties' contract to sell. However, as earlier explained, this sum is to be reduced by the cash surrender value of the payments so far made by the spouses, and the resulting net amount still owing as accrued rentals shall be subject to legal interest from finality of this Decision up to the time of actual payment thereof.[38]

Mandatory Twin Requirements: Notarized Notice of Cancellation and Refund of Cash Surrender Value

This Court has been consistent in ruling that a valid and effective cancellation under R.A. 6552 must comply with the mandatory twin requirements of a notarized notice of cancellation and a refund of the cash surrender value.

In *Olympia Housing, Inc. v. Panasiatic Travel Corp.*,[39] we ruled that the notarial act of rescission must be accompanied by the refund of the cash surrender value.

> x x x The actual cancellation of the contract can only be deemed to take place upon the expiry of a 30-day period following the receipt by the buyer of the notice of cancellation or demand for rescission by a notarial act *and* the full payment of the cash surrender value.

In *Pagtalunan v. Dela Cruz Vda. De Manzano,*[40] we ruled that there is no valid cancellation of the Contract to Sell in the absence of a refund of the cash surrender value. We stated that:

> x x x Sec. 3 (b) of R.A. No. 6552 requires refund of the cash surrender value of the payments on the property to the buyer before cancellation of the contract. The provision does not provide a different requirement for contracts to sell which allow possession of the property by the

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[38] *Id.* at 473-474.

[39] 443 Phil. 385, 398-399 (2003). Italicization in the original.

[40] 559 Phil. 658, 669-670 (2007).

buyer upon execution of the contract like the instant case. Hence, **petitioner cannot insist on compliance with the requirement by assuming that the cash surrender value payable to the buyer had been applied to rentals of the property after respondent failed to pay the installments due**. (Emphasis supplied)

Remedies of the Buyer in the Absence of a Valid Cancellation of a Contract to Sell

In view of the absence of a valid cancellation, the Contract to Sell between GRI and Angeles remains valid and subsisting. Apart from *Olympia* and *Pagtalunan*, we are guided by our rulings in *Active Realty & Development Corp. v. Daroya*[41] (*Active*) and *Associated Marine Officers and Seamen's Union of the Philippines PTGWO-ITF v. Decena*[42] (*Associated*).

In *Olympia*, this Court dismissed the complaint for recovery of possession for having been prematurely filed without complying with the mandate of R.A. 6552. We ordered the defaulting buyer to pay the developer the balance as of the date of the filing of the complaint plus 18% interest *per annum* computed from the day after the date of the filing of the complaint, but within 60 days from the receipt of a copy of the decision. Upon payment, the developer shall issue the corresponding certificate of title in favor of the defaulting buyer. If the defaulting buyer fails to pay the full amount, then the defaulting buyer shall vacate the subject property without need of demand and all payments will be charged as rentals to the property. There was no award for damages and attorney's fees, and no costs were charged to the parties.

In *Pagtalunan*, this Court dismissed the complaint for unlawful detainer. We also ordered the defaulting buyer to pay the developer the balance of the purchase price plus interest at 6% *per annum* from the date of filing of the complaint up to the finality of judgment, and thereafter, at the rate of 12% *per annum*. Upon payment, the developer shall issue a Deed of Absolute Sale of the subject property and deliver the corresponding certificate

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[41] 431 Phil. 753 (2002).

[42] G.R. No. 178584, 8 October 2012, 682 SCRA 308.

of title in favor of the defaulting buyer. If the defaulting buyer fails to pay the full amount within 60 days from finality of the decision, then the defaulting buyer should vacate the subject property without need of demand and all payments will be charged as rentals to the property. No costs were charged to the parties.

In *Active*, this Court held that the Contract to Sell between the parties remained valid because of the developer's failure to send a notarized notice of cancellation and to refund the cash surrender value. The defaulting buyer thus had the right to offer to pay the balance of the purchase price, and the developer had no choice but to accept payment. However, the defaulting buyer was unable to exercise this right because the developer sold the subject lot. This Court ordered the developer to refund to the defaulting buyer the <u>actual value</u> of the lot with 12% interest *per annum* computed from the date of the filing of the complaint until fully paid, or to deliver a substitute lot at the option of the defaulting buyer.

In *Associated*, this Court dismissed the complaint for unlawful detainer. We held that the Contract to Sell between the parties remained valid because the developer failed to send to the defaulting buyer a notarized notice of cancellation and to refund the cash surrender value. We ordered the MeTC to conduct a hearing within 30 days from receipt of the decision to determine the unpaid balance of the full value of the subject properties as well as the current reasonable amount of rent for the subject properties. We ordered the defaulting buyer to pay, within 60 days from the trial court's determination of the amounts, the unpaid balance of the full value of the subject properties with interest at 6% *per annum* computed from the date of sending of the notice of final demand up to the date of actual payment. Upon payment, we ordered the developer to execute a Deed of Absolute Sale over the subject properties and deliver the transfer certificate of title to the defaulting buyer. In case of failure to pay within the mandated 60-day period, we ordered the defaulting buyer to immediately vacate the premises without need for further demand. The developer should also pay the defaulting buyer the cash surrender value, and the contract should be deemed

cancelled 30 days after the defaulting buyer's receipt of the full payment of the cash surrender value. If the defaulting buyer failed to vacate the premises, he should be charged reasonable rental in the amount determined by the trial court.

We observe that this case has, from the institution of the complaint, been pending with the courts for 10 years. As both parties prayed for the issuance of reliefs that are just and equitable under the premises, and in the exercise of our discretion, we resolve to dispose of this case in an equitable manner. Considering that GRI did not validly rescind Contracts to Sell Nos. 2271 and 2272, Angeles has two options:

1. The option to pay, within 60 days from the MeTC's determination of the proper amounts, the unpaid balance of the full value of the purchase price of the subject properties plus interest at 6% *per annum* from 11 November 2003, the date of filing of the complaint, up to the finality of this Decision, and thereafter, at the rate of 6% *per annum*.[43] Upon payment of the full amount, GRI shall immediately execute Deeds of Absolute

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[43] See *Nacar v. Gallery Frames and/or Felipe Bordey, Jr.,* G.R. No. 189871, 13 August 2013. This case modified the guidelines on imposition of interest rates laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals,* G.R. No. 97412, 12 July 1994, 234 SCRA 78 to reflect Bangko Sentral ng Pilipinas – Monetary Board Circular No. 799, Series of 2013, effective 1 July 2013. *Nacar* stated:

> Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum — as reflected in the case of *Eastern Shipping Lines, Inc.* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) *per annum* effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest when applicable.

Sale over the subject properties and deliver the corresponding transfer certificate of title to Angeles.

In the event that the subject properties are no longer available, GRI should offer substitute properties of equal value. Acceptance of the suitability of the substitute properties is Angeles' sole prerogative. Should Angeles refuse the substitute properties, GRI shall refund to Angeles the actual value of the subject properties with 6% interest *per annum*[44] computed from 11 November 2003, the date of the filing of the complaint, until fully paid; and

2. The option to accept from GRI ₱574,148.40, the cash surrender value of the subject properties, with interest at 6% *per annum*,[45] computed from 11 November 2003, the date of the filing of the complaint, until fully paid. Contracts to Sell Nos. 2271 and 2272 shall be deemed cancelled 30 days after Angeles' receipt of GRI's full payment of the cash surrender value. No rent is further charged upon Angeles as GRI already had possession of the subject properties on 10 October 2006.

WHEREFORE, we **DENY** the petition. The Decision of the Court of Appeals in CA-G.R. SP No. 105964 promulgated on 11 November 2011 and the Resolution promulgated on 19 June 2012 are **AFFIRMED with MODIFICATIONS**.

1. The Metropolitan Trial Court of Las Piñas City is directed to conduct a hearing within a maximum period of 30 days from finality of this Decision to (1) determine Evelyn M. Angeles' unpaid balance on Contracts to Sell Nos. 2271 and 2272; and (2) the actual value of the subject properties as of 11 November 2003.

2. Evelyn M. Angeles shall notify the Metropolitan Trial Court of Las Piñas City and Gatchalian Realty, Inc. within a maximum period of 60 days from the Metropolitan Trial Court of Las Piñas City's determination of the unpaid balance whether

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[44] *Id.*

[45] *Id.*

she will pay the unpaid balance or accept the cash surrender value.

Should Evelyn M. Angeles choose to pay the unpaid balance, she shall pay, within 60 days from the MeTC's determination of the proper amounts, the unpaid balance of the full value of the purchase price of the subject properties plus interest at 6% *per annum* from 11 November 2003, the date of filing of the complaint, up to the finality of this Decision, and thereafter, at the rate of 6% *per annum*. Upon payment of the full amount, GRI shall immediately execute Deeds of Absolute Sale over the subject properties and deliver the corresponding transfer certificate of title to Angeles.

In the event that the subject properties are no longer available, GRI should offer substitute properties of equal value. Should Angeles refuse the substitute properties, GRI shall refund to Angeles the actual value of the subject properties with 6% interest *per annum* computed from 11 November 2003, the date of the filing of the complaint, until fully paid.

Should Evelyn M. Angeles choose to accept payment of the cash surrender value, she shall receive from GRI ₱574,148.40 with interest at 6% *per annum*, computed from 11 November 2003, the date of the filing of the complaint, until fully paid. Contracts to Sell Nos. 2271 and 2272 shall be deemed cancelled 30 days after Angeles' receipt of GRI's full payment of the cash surrender value. No rent is further charged upon Evelyn M. Angeles.

No costs.

SO ORDERED.

Brion, del Castillo, Abad, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 203433. November 27, 2013]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FAISAL LOKS *Y* PELONYO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** In *People v. Seraspe*, the Court emphasized that in the prosecution of illegal sale of dangerous drugs, the two essential elements of the offense must concur, namely: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED. —** It is a well-entrenched principle that "[t]he trial court's evaluation of the credibility of witnesses and their testimonies is conclusive on this Court as it is the trial court which had the opportunity to closely observe the demeanor of the witnesses."

3. **ID.; ID.; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES.—** [I]n cases involving violations of [R.A. No. 9165], credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary."

4. **CRIMINAL LAW; DANGEROUS DRUGS ACT; BUY-BUST OPERATION; WARRANTLESS ARREST WITH SEARCH AND SEIZURE IS LEGAL.—** "[A] buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors." Since Loks was caught by the buy-bust team *in flagrante delicto,* his immediate arrest was also validly made. The accused was caught in the act and had to be apprehended on the spot. From the very nature of a buy-bust operation, the absence of a warrant did not make the arrest illegal. Section 5(a), Rule 113 of the Rules of Court authorizes a warrantless arrest by a peace officer and even a

private person "when, in his presence, the person to be arrested has committed or is attempting to commit an offense." The legitimate warrantless arrest also cloaks the arresting police officer with the authority to validly search and seize from the offender those that may be used to prove the commission of the offense.

5. **ID.; ID.; FAILURE TO MAKE AN INVENTORY AND TAKE PHOTOGRAPHS OF THE SUBJECT DRUG WILL NOT ADVERSELY AFFECT THE PROSECUTION'S CASE AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED.—** [T]he buy-bust team's failure to make an inventory and to take photographs of the subject drug did not adversely affect the prosecution's case. Time and again, the Court has recognized that non-compliance with Section 21 of R.A. No. 9165 which identifies the said requirements does not necessarily render the arrest illegal or the items seized inadmissible. What is essential is that the integrity and evidentiary value of the seized items which would be utilized in the determination of the guilt or innocence of the accused are preserved. In this case, the defense failed to substantiate its claim that such integrity and evidentiary value of the subject drug was adversely affected by the police officers' handling thereof.

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.*:

This is an appeal from the Decision[1] dated February 13, 2012 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04129, which affirmed the Decision[2] dated June 11, 2009 of the Regional

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[1] Penned by Associate Justice Manuel M. Barrios, with Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr., concurring; CA *rollo,* pp. 85-92.

[2] Issued by Judge Caroline Rivera-Colasito; *id.* at 48-52.

Trial Court (RTC) of Manila, Branch 23 finding accused-appellant Faisal Loks *y* Pelonyo (Loks) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Loks was accused of violating R.A. No. 9165 for the sale of methylamphetamine hydrochloride, commonly known as *shabu*, weighing 1.300 grams on August 2, 2006 in the City of Manila.[3] When arraigned, he pleaded not guilty to the charge. After pre-trial, trial on the merits ensued.[4]

SPO1 Jerry Velasco (SPO1 Velasco) and SPO1 Rodolfo Ramos (SPO1 Ramos) testified for the prosecution. Their testimonies provided that on August 2, 2006, at around 4:00 p.m., SPO1 Ramos learned from a confidential informant about the delivery of *shabu* worth ₱3,000.00 that was to be made by a certain "Faisal" at around 6:00 p.m. along Carriedo Street in Quiapo, Manila. The information was reported by SPO1 Ramos to Police Senior Inspector Julian Olonan, who immediately organized a buy-bust team composed of SPO1 Velasco, SPO1 Ramos, a certain PO2 Nicdao and PO2 Manlapaz. The marked money for the buy-bust operation was prepared by SPO1 Ramos, while SPO1 Velasco was designated as the poseur-buyer. The members of the team agreed that SPO1 Velasco would remove his bull cap to signal that the sale by "Faisal" of the illegal drug had been consummated.[5]

At the target area in Quiapo, Manila, "Faisal" was identified as herein accused-appellant Loks. When Loks arrived, he approached the police's confidential informant, who was then with SPO1 Velasco. SPO1 Velasco was introduced by the confidential informant to Loks as the buyer of *shabu*.[6]

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[3] *Id*. at 9.

[4] *Id*. at 13.

[5] *Id*. at 14.

[6] *Id*. at 15.

The sale ensued between SPO1 Velasco and Loks. Loks handed to SPO1 Velasco 1.25 grams of *shabu*, while SPO1 Velasco paid the amount of ₱3,000.00 to Loks. When SPO1 Velasco executed the team's pre-arranged signal, the other members of the buy-bust team approached to arrest Loks. SPO1 Ramos recovered the marked money from Loks, while SPO1 Velasco kept with him the purchased drug.[7]

Loks was then brought to the police station, where SPO1 Velasco placed the marking "DAID" to the seized item.[8] The specimen was turned over to one SPO1 Pama,[9] who brought it to the police crime laboratory for examination.[10] The examination conducted by Police Senior Inspector Marites F. Mariano confirmed that the seized specimen contained *shabu*.[11]

For his defense, accused-appellant Loks denied having sold any illegal drug to SPO1 Velasco. He claimed that on August 2, 2006, he was selling pirated compact discs at Isetan in Recto, Manila when four men in civilian clothes approached him and asked if he was Faisal Benito. Even after Loks informed the men that he was not Faisal Benito, he was told to go with them to the Western Police District (WPD) Station along United Nations Avenue, Manila. At the police station, Loks overheard from some policemen that they erred in the identity of the person whom they arrested, but SPO1 Velasco instructed them to proceed with the charge.[12]

On June 11, 2009, the RTC rendered its Decision[13] finding Loks guilty beyond reasonable doubt of the crime charged. The dispositive portion of the Decision reads:

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[7] *Id*.

[8] *Id*.

[9] Referred to as SPO1 Fama in some pleadings.

[10] CA *rollo*, p. 15.

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

[12] *Id*. at 16.

[13] *Id*. at 48-52.

WHEREFORE, the court finds the accused, FAISAL LOKS *Y* PELONYO @ Feisal, GUILTY, beyond reasonable doubt, of the crime of Violation of Section 5 Article II of RA 9165 and is sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of Five Hundred Thousand Pesos ([₱]500,000.00).

The one (1) heat-sealed transparent plastic sachet with white crystalline substance, containing methylamphetamine hydrochloride known as *shabu*, a dangerous drug, subject matter of this case, is hereby confiscated in favor of the State and ordered turned over to the Philippine Drug Enforcement Agency for its eventual destruction pursuant to existing Rules. No cost.

SO ORDERED.[14]

Dissatisfied, Loks appealed the RTC decision to the CA which, in the Decision[15] dated February 13, 2012, affirmed the rulings of the RTC. Hence, this appeal.

Upon review, the Court finds no cogent reason to reverse the conviction of accused-appellant Loks. Both the RTC and the CA courts correctly declared him guilty beyond reasonable doubt of illegal sale of *shabu*, as defined in Section 5, Article II of R.A. No. 9165. In *People v. Seraspe*,[16] the Court emphasized that in the prosecution of illegal sale of dangerous drugs, the two essential elements of the offense must concur, namely: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[17]

The presence in the instant case of these two elements was sufficiently discussed in the RTC and CA decisions. Citing the facts which were determined after a trial on the merits, the RTC explained:

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[14] *Id*. at 52.

[15] *Id*. at 85-92.

[16] G.R. No. 180919, January 9, 2013, 688 SCRA 289.

[17] *Id*. at 299, citing *People v. Legaspi*, G.R. No. 173485, November 23, 2011, 661 SCRA 171, 185.

In the case under consideration, all these elements have been established. The witnesses for the prosecution clearly showed that the sale of the drugs actually happened and that the *shabu* subject of the sale was brought and identified in court. The poseur buyer (SPO1 Velasco) positively identified accused as the seller of the *shabu*. He categorically testified about the buy-bust operation – from the time he was introduced by the informant to accused as the buyer of the *shabu*; to the time when accused agreed to the sale; to the actual exchange of the marked money and the heat-sealed sachet containing a white crystalline substance; and until the apprehension of accused. His testimony was corroborated by SPO1 Ramos.

Moreover, the prosecution was able to establish that the substance recovered from accused was indeed *shabu*[.] Per Chemistry Report No[.] D-D-911-06 of Police Senior Inspector Marites F. Mariano, the substance, weighing ONE POINT THREE ZERO ZERO (1.300) grams, which was brought by SPO2 Pama was examined and found to be methamphetamine hydrochloride (*shabu)*.[18]

The RTC's appreciation of the prosecution witnesses' testimonies *vis-à-vis* the defense offered by Loks and the other evidence presented during the proceedings before it deserves respect. It is a well-entrenched principle that "[t]he trial court's evaluation of the credibility of witnesses and their testimonies is conclusive on this Court as it is the trial court which had the opportunity to closely observe the demeanor of the witnesses."[19] Further, we explained in *People v. Naelga:*[20]

[I]t should be pointed out that prosecutions involving illegal drugs largely depend on the credibility of the police officers who conducted the buy-bust operation. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court. This Court will not interfere with the trial court's assessment of the credibility of witnesses except when there appears on record some fact or circumstance of

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[18] CA *rollo*, pp. 16-17.

[19] *People v. Salcedo*, G.R. No. 186523, June 22, 2011, 652 SCRA 635, 645, citing *People v. Flores,* G.R. No. 188315, August 25, 2010, 629 SCRA 478, 488.

[20] G.R. No. 171018, September 11, 2009, 599 SCRA 477.

weight and influence which the trial court has overlooked, misapprehended, or misinterpreted. This rule is consistent with the reality that the trial court is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Thus, factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the Court of Appeals, as in this case.[21] (Citations omitted)

"It is equally settled that in cases involving violations of [R.A. No. 9165], credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary."[22] In this case, the RTC gave greater weight to the testimonies of the police officers who testified against Loks, a ruling which even the CA affirmed on appeal. Upon review, the Court has determined that the testimony of SPO1 Velasco, who was the poseur-buyer in the sale and thus armed with sufficient personal knowledge on the transaction, indeed established Lok's sale of the illegal drug and the validity of his arrest.

"[A] buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors."[23] Since Loks was caught by the buy-bust team in *flagrante delicto,* his immediate arrest was also validly made. The accused was caught in the act and had to be apprehended on the spot. From the very nature of a buy-bust operation, the absence of a warrant did not make the arrest illegal.[24] Section 5(a), Rule 113 of the Rules of Court authorizes a warrantless

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[21] *Id*. at 489-490.

[22] *People v. Dela Cruz*, G.R. No. 177324, March 30, 2011, 646 SCRA 707, 726; *People v. Unisa*, G.R. No. 185721, September 28, 2011, 658 SCRA 305, 336.

[23] *People v. Mantalaba*, G.R. No. 186227, July 20, 2011, 654 SCRA 188, 199, citing *People v. Chua Uy*, 384 Phil. 70, 85 (2000).

[24] *People v. Marcelino,* G.R. No. 189278, July 26, 2010, 625 SCRA 632, 640.

arrest by a peace officer and even a private person "when, in his presence, the person to be arrested has committed or is attempting to commit an offense." The legitimate warrantless arrest also cloaks the arresting police officer with the authority to validly search and seize from the offender those that may be used to prove the commission of the offense.[25]

The drug seized during the buy-bust operation, which is considered the crime's *corpus delicti,* was sufficiently established as containing *shabu,* a dangerous drug. SPO1 Velasco's marking of the seized drug immediately upon his arrival at the police station qualified as a compliance with the marking requirement. Contrary to the argument of the defense, even the buy-bust team's failure to make an inventory and to take photographs of the subject drug did not adversely affect the prosecution's case. Time and again, the Court has recognized that non-compliance with Section 21[26] of R.A. No. 9165 which identifies the said requirements does not necessarily render the arrest illegal or the items seized inadmissible. What is essential is that the integrity and evidentiary value of the seized items which would be utilized in the determination of the guilt or innocence of the accused are preserved.[27] In this case, the defense failed to substantiate

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[25] *Ambre v. People,* G.R. No. 191532, August 15, 2012, 678 SCRA 552, 563.

[26] Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x.

[27] *People v. Aneslag,* G.R. No. 185386, November 21, 2012, 686 SCRA 150, 163.

its claim that such integrity and evidentiary value of the subject drug was adversely affected by the police officers' handling thereof. As the Court explained in *People v. Mendoza*:[28]

> This Court has, in many cases, held that while the chain of custody should ideally be perfect, in reality it is not, "as it is almost always impossible to obtain an unbroken chain." The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused. Hence, the prosecution's failure to submit in evidence the physical inventory and photograph of the seized drugs as required under Article 21 of Republic Act No. 9165, will not render [the accused]'s arrest illegal or the items seized from her inadmissible.[29] (Citations omitted)

As against the prosecution's evidence, Lok's defense of denial fails to persuade. Our ruling in *People v. Ganenas*[30] applies:

> Courts generally view with disfavor the defense of denial, on account of its aridity and the facility with which the accused can concoct it to suit their defense. Negative and self-serving, it deserves no weight in law when unsubstantiated by clear and convincing evidence. Thus, it cannot be given greater evidentiary weight than that given to the testimonies of credible witnesses who testify on affirmative matters. Thus, when the issue hinges on the credibility of witnesses *vis-à-vis* the appellant's denial, the trial court's findings in that respect are generally not disturbed on appeal.[31] (Citations omitted)

WHEREFORE, the Decision dated February 13, 2012 of the Court of Appeals in CA-G.R. CR-H.C. No. 04129 is **AFFIRMED.**

SO ORDERED.

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

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[28] G.R. No. 189327, February 29, 2012, 667 SCRA 357.

[29] *Id.* at 368.

[30] 417 Phil. 53 (2001).

[31] *Id.* at 66-67.

SECOND DIVISION

[A.C. No. 4549. December 2, 2013]

NESTOR V. FELIPE, ALBERTO V. FELIPE, AURORA FELIPE-ORANTE, ASUNCION FELIPE-DOMINGO, MILAGROS FELIPE-CABIGTING, and RODOLFO V. FELIPE, *complainants, vs.* **ATTY. CIRIACO A. MACAPAGAL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; DISCIPLINE OF LAWYERS; DISHONESTY OF LAWYERS; ISSUES WHICH ARE PROPER SUBJECT OF AND MUST BE THRESHED OUT IN A JUDICIAL ACTION CANNOT BE SETTLED IN AN ADMINISTRATIVE CASE; APPLICATION IN CASE AT BAR.—** [C]omplainants charged respondent with dishonesty (1) when he stated in the defendants' Answer in Civil Case No. A-95-22906 that the parties therein are strangers to each other; (2) when he introduced a falsified Certificate of Marriage as part of his evidence in Civil Case No. A-95-22906; and (3) when he knowingly filed a totally baseless pleading captioned as *Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction* in the same case. At the outset, we note that in order to determine whether respondent is guilty of dishonesty, we will have to delve into the issue of whether the complainants are indeed related to the defendants in Civil Case No. A-95-22906 being half-brothers and half-sisters. We would also be tasked to make an assessment on the authenticity of the Certificate of Marriage which respondent submitted in the proceedings in Civil Case No. A-95-22906. Similarly, we will have to make a ruling on whether the *Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction* which respondent filed was indeed baseless and irrelevant to the proceedings in Civil Case No. A-95-22906. Clearly, these prerequisites cannot be accomplished in this administrative case. x x x Clearly, the issue of filiation must be settled in those proceedings, and not in this administrative case. The same is true with regard to the issue of authenticity of the Marriage Certificate which was submitted in evidence as well

as the relevance of the *Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction.* Besides, as complainants have asserted, a criminal case for Perjury had already been filed against the defendants in Civil Case No. A-95-22906 and docketed as Criminal Case No. 41667 pending before Branch 36 of the Manila MeTC for their alleged "untruthful" statement that they are strangers to each other. They had also filed another Perjury charge against the defendants in Civil Case No. A-95-22906 before the Office of the City Prosecutor of Quezon City, docketed as I.S. No. 95-15656-A for allegedly submitting in evidence a falsified Marriage Certificate. Moreover, they already filed a *Vigorous Opposition* to the *Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction* filed by the respondent. In fine, these issues are proper subjects of and must be threshed out in a judicial action.

2. **ID.; ID.; UNJUSTIFIED DISREGARD OF THE LAWFUL ORDERS OF THE SUPREME COURT AND THE IBP IS NOT ONLY IRRESPONSIBLE BUT ALSO CONSTITUTES UTTER DISRESPECT FOR THE JUDICIARY AND HIS FELLOW LAWYERS; PENALTY.—** It has not escaped our notice that despite receipt of our directive, respondent did not file his comment. Neither did he file his Position Paper as ordered by the IBP. And for this, he must be sanctioned. Respondent's unjustified disregard of the lawful orders of this Court and the IBP is not only irresponsible, but also constitutes utter disrespect for the judiciary and his fellow lawyers. His conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court. As an officer of the court, respondent is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely. This is also true of the orders of the IBP as the investigating arm of the Court in administrative cases against lawyers. Under the circumstances, we deem a reprimand with warning commensurate to the infraction committed by the respondent.

APPEARANCES OF COUNSEL

Emilio M. Llanes for complainants.

RESOLUTION

DEL CASTILLO, *J.*:

On March 5, 1996, a *Petition*[1] for disbarment was filed against respondent Atty. Ciriaco A. Macapagal, docketed as A.C. No. 4549. In a Resolution[2] dated June 19, 1996, we required respondent to comment. Respondent received a copy of the Resolution on July 16, 1996.[3] On August 15, 1996, respondent filed an *Urgent Ex-Parte Motion For Extension Of Time To File Comment.*[4] He requested for an additional period of 30 days within which to file his comment citing numerous professional commitments. We granted said request in our October 2, 1996 Resolution.[5] The extended deadline passed sans respondent's comment. Thus, on January 29, 1997, complainants filed an *Urgent Motion To Submit The Administrative Case For Resolution Without Comment Of Respondent*[6] claiming that respondent is deemed to have waived his right to file comment.

On February 24, 1997, we referred this administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.[7]

The case was initially assigned to Investigating Commissioner Elizabeth Hermosisima-Palma who set the hearing on October 22, 1997 at 9:00 a.m.[8] The Minutes of the Hearing[9] showed

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[1] *Rollo*, pp. 1-8. Filed by Nestor V. Felipe, Alberto V. Felipe, Aurora Felipe-Orante, Asuncion Felipe-Domingo, Milagros Felipe-Cabigting and Rodolfo V. Felipe.

[2] *Id.* at 44.

[3] See Registry Return Receipt, *id.* (attached to the dorsal portion).

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

[5] *Id.* at 51.

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

[7] *Id.* at 70.

[8] IBP records (attached to the *rollo*), p. 1.

[9] *Id.* at 3.

that both parties were present. The next hearing was set on November 6, 1997[10] but was postponed upon request of the complainants' counsel.[11] Noting that more than five months had lapsed after the postponement of the last hearing, complainants moved to calendar the case.[12]

The new Investigating Commissioner, Arturo C. Delos Reyes, set the hearing of the case on January 12, 1999.[13] During the scheduled hearing, complainants appeared and were directed to submit their Position Paper. Respondent failed to attend despite receipt of notice.[14] Complainants submitted their Position Paper[15] on January 28, 1999.[16]

It took 11 years, more particularly on February 26, 2010, before the IBP, thru Investigating Commissioner Agustinus V. Gonzaga, submitted its Report and Recommendation.[17]

In his Report, the Investigating Commissioner quoted verbatim the allegations in the *Petition*; he then narrated the proceedings undertaken by the IBP. Unfortunately, no discussion was made regarding the merits of the complaint. However, it was recommended that respondent be suspended from the practice of law for one (1) month.

In Resolution No. XX-2011-246 dated November 19, 2011, the IBP Board of Governors adopted the Report and Recommendation of the Investigating Commissioner with modification that respondent be suspended from the practice of law for one (1) year.

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[10] *Id*.

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

[12] *Id*. at 6-8.

[13] *Id*. at 9.

[14] *Id*. at 11.

[15] *Id*. at 12-25.

[16] *Id*. at 12.

[17] *Id*., unpaginated.

In their *Petition*, complainants alleged that they are co-plaintiffs in Civil Case No. A-95-22906 pending before Branch 216 of the Regional Trial Court of Quezon City while respondent is the counsel for the defendants therein; that respondent committed dishonesty when he stated in the defendants' Answer in Civil Case No. A-95-22906 that the parties therein are strangers to each other despite knowing that the defendants are half-brothers and half-sisters of complainants; and that they filed a criminal case for Perjury [against the defendants in Civil Case No. A-95-22906] docketed as Criminal Case No. 41667 pending before Branch 36 of the Metropolitan Trial Court (MeTC) of Quezom City.

Complainants also alleged that respondent introduced a falsified Certificate of Marriage as part of his evidence in Civil Case No. A-95-22906; and that they filed another Perjury charge [against the defendants in Civil Case No. A-95-22906] before the Office of the City Prosecutor of Quezon City, docketed as I.S. No. 95-15656-A.

Next, complainants averred that respondent knowingly filed a totally baseless pleading captioned as *Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction*; that said pleading is not in accordance with the rules of procedure; that the said filing delayed the proceedings in Civil Case No. A-95-22906; and that they filed a *Vigorous Opposition* to the said pleading.

Complainants insisted that by the foregoing actuations, respondent violated his duty as a lawyer and prayed that he be disbarred and ordered to pay complainants the amount of ₱500,000 representing the damages that they suffered.

In fine, complainants charged respondent with dishonesty (1) when he stated in the defendants' Answer in Civil Case No. A-95-22906 that the parties therein are strangers to each other; (2) when he introduced a falsified Certificate of Marriage as part of his evidence in Civil Case No. A-95-22906; and (3) when he knowingly filed a totally baseless pleading captioned as *Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction* in the same case.

At the outset, we note that in order to determine whether respondent is guilty of dishonesty, we will have to delve into the issue of whether the complainants are indeed related to the defendants in Civil Case No. A-95-22906 being half-brothers and half-sisters. We would also be tasked to make an assessment on the authenticity of the Certificate of Marriage which respondent submitted in the proceedings in Civil Case No. A-95-22906. Similarly, we will have to make a ruling on whether the *Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction* which respondent filed was indeed baseless and irrelevant to the proceedings in Civil Case No. A-95-22906. Clearly, these prerequisites cannot be accomplished in this administrative case.

The resolution of whether the parties are related to each other appears to be one of the issues brought up in Civil Case No. A-95-22906 which is a complaint for *Partition, Reconveyance, Declaration of Nullity of Documents and Damages*. The complainants claimed that they are the legitimate children of the late Gregorio V. Felipe, Sr. This was rebutted by the defendants therein, as represented by the respondent, who denied their filiation with the complainants. Clearly, the issue of filiation must be settled in those proceedings, and not in this administrative case. The same is true with regard to the issue of authenticity of the Marriage Certificate which was submitted in evidence as well as the relevance of the *Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction.* Besides, as complainants have asserted, a criminal case for Perjury had already been filed against the defendants in Civil Case No. A-95-22906 and docketed as Criminal Case No. 41667 pending before Branch 36 of the Quezon City MeTC for their alleged "untruthful" statement that they are strangers to each other. They had also filed another Perjury charge against the defendants in Civil Case No. A-95-22906 before the Office of the City Prosecutor of Quezon City, docketed as I.S. No. 95-15656-A for allegedly submitting in evidence a falsified Marriage Certificate. Moreover, they already filed a *Vigorous Opposition* to the *Urgent Motion to Recall Writ of Execution of the Writ of Preliminary Injunction* filed by the respondent. In fine, these

issues are proper subjects of and must be threshed out in a judicial action.

We held in *Anacta v. Resurreccion*[18] that —

x x x it is imperative to first determine whether the matter falls within the disciplinary authority of the Court or whether the matter is a proper subject of judicial action against lawyers. If the matter involves violations of the lawyer's oath and code of conduct, then it falls within the Court's disciplinary authority. However, if the matter arose from acts which carry civil or criminal liablity, and which do not directly require an inquiry into the moral fitness of the lawyer, then the matter would be a proper subject of a judicial action which is understandably outside the purview of the Court's disciplinary authority. x x x[19]

Similarly, we held in *Virgo v. Amorin*,[20] *viz*:

While it is true that disbarment proceedings look into the worthiness of a respondent to remain as a member of the bar, and need not delve into the merits of a related case, the Court, in this instance, however, cannot ascertain whether Atty. Amorin indeed committed acts in violation of his oath as a lawyer concerning the sale and conveyance of the Virgo Mansion without going through the factual matters that are subject of the aforementioned civil cases, x x x. As a matter of prudence and so as not to preempt the conclusions that will be drawn by the court where the case is pending, the Court deems it wise to dismiss the present case without prejudice to the filing of another one, depending on the final outcome of the civil case.[21]

Thus, pursuant to the above pronouncements, the *Petition* filed by complainants must be dismissed without prejudice.

However, we cannot end our discussion here. It has not escaped our notice that despite receipt of our directive, respondent did

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[18] A.C. No. 9074, August 14, 2012, 678 SCRA 352.

[19] *Id*. at 365-366.

[20] A.C. No. 7861, January 30, 2009, 577 SCRA 188.

[21] *Id*. at 199.

not file his comment. Neither did he file his Position Paper as ordered by the IBP. And for this, he must be sanctioned.

Respondent's unjustified disregard of the lawful orders of this Court and the IBP is not only irresponsible, but also constitutes utter disrespect for the judiciary and his fellow lawyers. His conduct is unbecoming of a lawyer, for lawyers are particularly called upon to obey court orders and processes and are expected to stand foremost in complying with court directives being themselves officers of the court.

As an officer of the court, respondent is expected to know that a resolution of this Court is not a mere request but an order which should be complied with promptly and completely. This is also true of the orders of the IBP as the investigating arm of the Court in administrative cases against lawyers.[22]

Under the circumstances, we deem a reprimand with warning commensurate to the infraction committed by the respondent.[23]

ACCORDINGLY, respondent Atty. Ciriaco A. Macapagal is **REPRIMANDED** for failing to give due respect to the Court and the Integrated Bar of the Philippines. He is **WARNED**

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[22] *Sibulo v. Ilagan*, 486 Phil. 197, 203-204 (2004).

[23] In *Sibulo v. Ilagan*, *id.* at 204-205, the Court also reprimanded the therein respondent ratiocinating in this wise:

Considering, however, that respondent was absolved of the administrative charge against him and is being taken to task for his intransigence and lack of respect, the Court finds that the penalty of suspension would not be warranted under the circumstances.

In previously decided cases where a respondent lawyer was likewise found to have ignored lawful orders of this Court, suspension was imposed only where the respondent was also found guilty of violating his duties as a lawyer, such as the duty to observe good faith and fairness in dealing with his client, or to serve his client with diligence and competence.

To the Court's mind, a reprimand and a warning are sufficient sanctions for respondent's disrespectful actuations directed against the Court and the IBP. The imposition of these sanctions in the present case would be more consistent with the avowed purpose of a disciplinary case, which is "not so much to punish the individual attorney as to protect the dispensation of justice by sheltering the judiciary and the public from the misconduct or inefficiency of officers of the court."

that commission of a similar infraction will be dealt with more severely. Resolution No. XX-2011-246 dated November 19, 2011 of the Integrated Bar of the Philippines is **SET ASIDE.** A.C. No. 4549 is **DISMISSED** without prejudice.

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.

SECOND DIVISION

[A.C. No. 5044. December 2, 2013]

FELIPE C. DAGALA, *complainant, vs.* **ATTY. JOSE C. QUESADA, JR. and ATTY. AMADO T. ADQUILEN,*** *respondents.*

SYLLABUS

1. **LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; THE RELATIONSHIP BETWEEN A LAWYER AND HIS CLIENT IS ONE IMBUED WITH UTMOST TRUST AND CONFIDENCE; SUSTAINED.—** The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect

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* Passed away on June 22, 2008 as shown in the certificate at Death; see *rollo*, pp. 277-278.

that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. For his part, the lawyer is required to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. He is likewise expected to act with honesty in all his dealings, especially with the courts. These principles are embodied in Rule 1.01 of Canon 1, Rule 10.01 of Canon 10, Canon 17 and Rule 18.03 of Canon 18 of the Code.

2. **ID.; ID.; A RETAINED COUNSEL IS EXPECTED TO SERVE THE CLIENT WITH COMPETENCE AND DILIGENCE AND NOT TO SIT IDLY BY AND LEAVE THE RIGHTS OF HIS CLIENT IN A STATE OF UNCERTAINTY; VIOLATION IN CASE AT BAR.—** It bears stressing that a retained counsel is expected to serve the client with competence and diligence and not to sit idly by and leave the rights of his client in a state of uncertainty. To this end, he is oblige to attend scheduled hearings or conferences, prepare and file the required pleadings, prosecute the handled cases with reasonable dispatch, and urge their termination without waiting for the client or the court to prod him or her to do so. Atty. Quesada's failure to attend the scheduled conference hearings, despite due notice and without any proper justification, exhibits his inexcusable lack of care and diligence in managing his client's cause in violation of Canon 17 and Rule 18.03, Canon 18 of the Code. Moreover, Atty. Quesada acted with less candor and good faith in the proceedings before the IBP-CBD when he denied the existence of any lawyer-client relationship between him and complainant, and claimed that the labor case was handled by another lawyer, despite his previous admission before the Court of having accepted complainant's case. x x x While the IBP-CBD is not a court, the proceedings therein are nonetheless part of a judicial proceeding, a disciplinary action being in reality an investigation by the Court into the misconduct of its officers or an examination into his character. Besides, Atty. Quesada failed to rebut the allegation that complainant's corresponding failure to appear during the mandatory conference hearings in NLRC Case No. RAB-I-11-1123-94 was upon his counsel's advice. Under the premises, it is therefore reasonable to conclude that Atty. Quesada had indulged in deliberate

falsehood, contrary to the prescriptions under Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the Code.

3. **ID.; ID.; VIOLATION THEREOF; THE APPROPRIATE PENALTY ON AN ERRANT LAWYER DEPENDS ON THE EXERCISE OF SOUND DISCRETION BASED ON THE SURROUNDING FACTS; APPLICATION IN CASE AT BAR.—** The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. In *Conlu v. Aredonia, Jr.*, a lawyer was suspended from the practice of law for a period of one (1) year for inexcusable negligence that resulted in the dismissal of complainant's appeal and for misrepresentations committed before the CA, in violation of Rule 1.01, Canon 1, Rule 10.01, Canon 10 and Rule 18.03, Canon 18 of the Code. In the cases of *Cheng v. Atty. Agravante* and *Perea v. Atty. Almadro*, respondent-lawyers were similarly punished for their negligence in the discharge of their duties to their client and for misrepresentation committed before the Court, in violation of Rule 10.01, Canon 10 and Rule 18.03, Canon 18 of the Code. Hence, consistent with existing jurisprudence, the Court adopts the penalty recommended by the IBP and accordingly suspends Atty. Quesada for a period of one (1) year.

4. **ID.; ID.; ID.; LIABILITIES OF THE PARTIES WHICH ARE PURELY CIVIL IN NATURE SHOULD BE THRESHED OUT IN A PROPER PROCEEDING OF SUCH NATURE AND NOT DURING ADMINISTRATIVE-DISCIPLINARY PROCEEDINGS; CASE AT BAR.—** The Court must, however, clarify that the foregoing resolution should not include a directive to return the amount of ₱74,000.00 as ordered by the IBP in its November 19, 2011 Resolution which represents the settlement initially offered by Capitol in the dismissed labor case. The return of the said amount partakes the nature of a purely civil liability which should not be dealt with during an administrative-disciplinary proceeding such as this case. In *Tria-Samonte v. Obias*, the Court recently illumined that disciplinary proceedings against lawyers are only confined to the issue of whether or not the respondent-lawyer is still fit to be allowed to continue as a member of the Bar and that the only concern is his administrative liability. Thus, matters which have no intrinsic link to the lawyer's professional engagement, such as the liabilities of the parties which are purely civil in

nature, should be threshed out in a proper proceeding of such nature, and not during administrative-disciplinary proceedings, as in this case.

RESOLUTION

PERLAS-BERNABE, *J.*:

For the Court's resolution is an administrative complaint[1] filed by complainant Felipe C. Dagala (complainant) against respondents Atty. Jose C. Quesada, Jr. (Atty. Quesada) and Atty. Amado T. Adquilen (Atty. Adquilen), charging them for gross negligence in handling his labor complaints.

The Facts

On November 8, 1994, complainant, assisted by Atty. Quesada, filed before the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. I, San Fernando City, La Union (NLRC-RAB) a Complaint[2] for illegal dismissal, overtime pay, separation pay, damages and attorney's fees against Capitol Allied Trading & Transport (Capitol), and its owner and General Manager, Lourdes Gutierrez, as well as its Personnel Manager, Joseph G. De Jesus, docketed as NLRC Case No. RAB-I-11-1123-94. The said case was, however, dismissed without prejudice, through an Order[3] dated December 13, 1994 (December 13, 1994 Order), for failure of complainant and Atty. Quesada to appear during the two (2) scheduled mandatory conference hearings despite due notice.

Thereafter, complainant engaged the services of Atty. Adquilen, a former Labor Arbiter (LA) of the NLRC-RAB, who re-filed his labor case, re-docketed as NLRC Case No. RAB-I-10-1091-95 (LU).[4] Similarly, the case was dismissed without prejudice

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[1] *Id*. at 1-12.

[2] *Id*. at 13.

[3] *Id*. at 14-15. Penned by Executive Labor Arbiter Norma C. Olegario.

[4] *Id*. at 18.

on June 28, 1996, this time due to the parties' failure to submit their respective position papers.[5]

Complainant and Atty. Adquilen re-filed the case for a third time on August 27, 1996, docketed as NLRC Case No. RAB-I-08-1191-96 (LU).[6] During its pendency, the representative of Capitol purportedly offered the amount of ₱74,000.00 as settlement of complainant's claim, conditioned on the submission of the latter's position paper.[7] Atty. Adquilen, however, failed to submit one, resulting in the dismissal of the complaint "for lack of interest and failure to prosecute" as stated in an Order[8] dated February 27, 1997 (February 27, 1997 Order). Atty. Adquilen and complainant received notice of the said order on March 11, 1997 and March 24, 1997,[9] respectively.

On July 11, 1997, complainant – this time assisted by Atty. Imelda L. Picar (Atty. Picar) – filed a motion for reconsideration[10] from the February 27, 1997 Order, which was treated as an appeal and transmitted to the NLRC-National Capital Region (NLRC-NCR).[11] However, the NLRC-NCR dismissed the same in a Resolution[12] dated June 17, 1998 for having been filed out of time, adding that the negligence of counsel binds the client.[13]

Due to the foregoing, Atty. Picar sent separate letters[14] dated November 18, 1998 to respondents, informing them that

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[5] *Id*. at 58.

[6] *Id*. at 19.

[7] *Id*. at 5.

[8] *Id*. at 58-59. Penned by Labor Arbiter Irenarco R. Rimando.

[9] *Id*. at 20.

[10] *Id*. at 42-57.

[11] *Id*. at 20. See Order dated July 15, 1997.

[12] *Id*. at 61-64. Penned by Commissioner Alberto R. Quimpo, with Presiding Commissioner Rogelio I. Rayala and Commissioner Vicente S.E. Veloso (now Associate Justice of the Court of Appeals), concurring.

[13] *Id*. at 63.

[14] *Id*. at 68 and 70.

complainant is in the process of pursuing administrative cases against them before the Court. Nevertheless, as complainant remains open to the possibility of settlement, respondents were invited to discuss the matter at Atty. Picar's office. Only Atty. Quesada responded to the said letter and subsequently, through a Memorandum of Agreement[15] dated December 5, 1998 (December 5, 1998 MoA), undertook to compensate the damages sustained by complainant in consideration of the non-filing of an administrative complaint against him. Atty. Quesada, however, reneged on his promise, thus prompting complainant to proceed with the present complaint.[16]

In a Resolution[17] dated June 21, 1999, the Court directed respondents to comment on the Complaint within ten (10) days from notice. However, despite notices[18] and the extension granted,[19] Atty. Adquilen failed to comply with the directive and the subsequent show-cause resolutions.[20] Accordingly, a fine in the amount of ₱500.00 was imposed[21] against him, which he duly paid on September 19, 2005.[22]

On the other hand, Atty. Quesada, in his Comment,[23] admitted having accepted and filed the initial labor case for complainant. He, however, explained that he was unable to file the required position paper due to complainant's failure to furnish him with the employment records and other relevant documents. He also claimed that when he was informed of the dismissal of the case

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

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

[17] *Id*. at 129.

[18] *Id*. at 129 and 181-182, dorsal portion.

[19] See Resolution dated November 7, 2005; *id*. at 193.

[20] See Resolutions dated December 6, 2000 and February 11, 2004; *id.* at 171 and 182.

[21] See Resolution dated June 27, 2005; *id*. at 183.

[22] Evidenced by Official Receipt No. 1866259 A; *id*. at 189.

[23] *Id*. at 130-133.

without prejudice, he advised complainant to re-file the case with the assistance of another lawyer as he had to attend to his duties as Chairman of the Laban ng Demokratikong Pilipino for the Second District of La Union Province.[24] Anent the December 5, 1998 MoA, Atty. Quesada alleged that he was merely prevailed upon to sign the same for fear of losing his means of livelihood and license to practice law, and that he had no intention of reneging on his promise to pay. Nonetheless, despite earnest efforts, he still failed to come up with the agreed-upon amount.[25]

In a Resolution[26] dated March 27, 2006, the Court resolved to refer the instant administrative case to the Integrated Bar of the Philippines (IBP) for evaluation, report and recommendation or decision.

The Proceedings Before the IBP

The IBP Commission on Bar Discipline (IBP-CBD) set the case for mandatory conference on August 25, 2006 and required the parties to submit their respective briefs.[27] Complainant was duly represented[28] by his counsel at the hearing,[29] while respondents filed separate motions to reset, only to subsequently waive their respective appearances. Atty. Adquilen attributed the waiver to his medical condition;[30] on the other hand, in a complete turnaround, Atty. Quesada denied the existence of any lawyer-client relationship between him and complainant.[31]

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[24] *Id*. at 130-131.

[25] *Id*. at 132.

[26] *Id*. at 194.

[27] See Notice of Mandatory Conference dated June 13, 2006; *id*. at 197.

[28] See Special Power of Attorney dated August 24, 2006; *id*. at 202-203.

[29] See Minutes of the Hearing; *id*. at 204.

[30] See Manifestation dated September 19, 2006; *id*. at 213.

[31] See Compliance with Waiver of Appearance; *id*. at 215-218.

On March 25, 2009, Investigating IBP Commissioner Pedro A. Magpayo, Jr. issued a Report and Recommendation,[32] finding that respondents were grossly negligent in handling complainant's case in violation of Rule 18.03, Canon 18 of the Code of Professional Responsibility (Code). As such, he recommended that each of them be suspended from the practice of law for a period of one (1) year. Moreover, Atty. Quesada was directed to comply with his undertaking under the December 5, 1998 MoA to pay the amount of ₱68,000.00, with legal interest from January 20, 1999 until fully settled; while Atty. Adquilen was ordered to pay the amount of ₱6,000.00, representing the difference between the ₱74,000.00 settlement offered by Capitol and the above-stated settlement amount, with legal interest from date of notice of the order of dismissal on March 25, 1997[33] until fully paid.

The IBP Board of Governors adopted and approved the afore-stated report and recommendation in Resolution No. XX-2011-262 dated November 19, 2011 (November 19, 2011 Resolution), finding the same to be fully supported by the evidence on record and the applicable laws and rules. Consequently, it directed respondents to pay complainant the total amount of ₱74,000.00 within thirty (30) days from notice.[34]

In a Resolution[35] dated September 12, 2012, the Court noted the Notice[36] of the IBP's November 19, 2011 Resolution, and thereafter sent notices to the parties as well as the IBP-CBD, the Office of the Bar Confidant and the Public Information Office. However, the notice sent to Atty. Adquilen was returned unserved with the notation "Return to Sender, Deceased."[37] Thus, in the Resolutions dated February 20, 2013[38] and June

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[32] *Id*. at 250-258.

[33] *Id*. at 258. Should be March 24, 1997 (*id*. at 20).

[34] *Id*. at 249.

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

[36] *Id*. at 249.

[37] *Id*. at 263.

[38] *Id*. at 270.

10, 2013,[39] the IBP was required to furnish the Court with the death certificate of Atty. Adquilen.

On August 30, 2013, the IBP filed its compliance,[40] attaching therewith the Certificate of Death[41] of Atty. Adquilen which indicates that the latter passed away on June 22, 2008 due to cardiac arrhythmia. In view of Atty. Adquilen's death prior to the promulgation of this Decision,[42] the Court, bearing in mind the punitive nature of administrative liabilities,[43] hereby dismisses the case against him. Hence, what is left for resolution is the complaint against Atty. Quesada.

The Issue Before the Court

The essential issue in this case is whether or not Atty. Quesada should be held administratively liable for gross negligence in handling complainant's labor case.

The Court's Ruling

The Court concurs with and affirms the findings of the IBP anent Atty. Quesada's administrative liability, but deems it proper to delete the recommended order for the return of the amount of ₱74,000.00.

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[39] *Id*. at 274.

[40] See Letter dated August 29, 2013; *id*. at 276.

[41] *Id*. at 277-278.

[42] *Bayaca v. Ramos*, A.M. No. MTJ-07-1676, January 29, 2009, 577 SCRA 93, 107.

[43] In *Re: Application for Retirement/Gratuity Benefits under R.A. No. 910*, 575 Phil. 267, 271 (2008), citing *Bote v. Judge Eduardo*, 491 Phil. 198, 204 (2005), the Court stated:

> The Court does not agree with the OCA Legal Office and the OCA. The dismissal of the administrative case against Judge Butacan by reason of his demise is in accordance with *Bote v. Judge Eduardo* where the Court held that in view of the death of Judge Escudero, for humanitarian reasons, **it is inappropriate to impose any administrative liability of a punitive nature**; and declared the administrative complaint against the respondent Judge, dismissed, closed and terminated. (Emphasis supplied; citations omitted)

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. For his part, the lawyer is required to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.[44] He is likewise expected to act with honesty in all his dealings, especially with the courts.[45] These principles are embodied in Rule 1.01 of Canon 1, Rule 10.01 of Canon 10, Canon 17 and Rule 18.03 of Canon 18 of the Code which respectively read as follows:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCEDURES.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 – 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.

x x x x x x x x x

CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

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[44] *Pitcher v. Gagate*, A.C. No. 9532, October 8, 2013.

[45] *Sonic Steel Industries, Inc. v. Chua*, A.C. No. 6942, July 1, 2013.

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

In the present case, the Court finds Atty. Quesada to have violated the foregoing Rules and Canons.

Primarily, Atty, Quesada failed to exercise the required diligence in handling complainant's case by his failure to justify his absence on the two (2) mandatory conference hearings in NLRC Case No. RAB-I-11-1123-94 despite due notice, which thus resulted in its dismissal. It bears stressing that a retained counsel is expected to serve the client with competence and diligence and not to sit idly by and leave the rights of his client in a state of uncertainty. To this end, he is oblige to attend scheduled hearings or conferences, prepare and file the required pleadings, prosecute the handled cases with reasonable dispatch, and urge their termination without waiting for the client or the court to prod him or her to do so.[46] Atty. Quesada's failure to attend the scheduled conference hearings, despite due notice and without any proper justification, exhibits his inexcusable lack of care and diligence in managing his client's cause in violation of Canon 17 and Rule 18.03, Canon 18 of the Code.

Moreover, Atty. Quesada acted with less candor and good faith in the proceedings before the IBP-CBD when he denied the existence of any lawyer-client relationship between him and complainant, and claimed that the labor case was handled by another lawyer,[47] despite his previous admission[48] before the Court of having accepted complainant's case. To add, a perusal of the complaint[49] dated November 8, 1994 in NLRC Case No. RAB-I-11-1123-94 reveals that Atty. Quesada signed the same

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[46] *Conlu v. Aredonia, Jr.*, A.C. No. 4955, September 12, 2011, 657 SCRA 367, 374.

[47] *Rollo*, p. 215.

[48] *Id.* at 130.

[49] *Id.* at 13.

as counsel for complainant.[50] While the IBP-CBD is not a court, the proceedings therein are nonetheless part of a judicial proceeding, a disciplinary action being in reality an investigation by the Court into the misconduct of its officers or an examination into his character.[51] Besides, Atty. Quesada failed to rebut the allegation that complainant's corresponding failure to appear during the mandatory conference hearings in NLRC Case No. RAB-I-11-1123-94 was upon his counsel's advice.[52] Under the premises, it is therefore reasonable to conclude that Atty. Quesada had indulged in deliberate falsehood, contrary to the prescriptions under Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the Code.[53]

The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[54] In *Conlu v. Aredonia, Jr.*,[55] a lawyer was suspended from the practice of law for a period of one (1) year for inexcusable negligence that resulted in the dismissal of complainant's appeal and for misrepresentations committed before the CA, in violation of Rule 1.01, Canon 1, Rule 10.01, Canon 10 and Rule 18.03, Canon 18 of the Code. In the cases of *Cheng v. Atty. Agravante*[56] and *Perea v. Atty. Almadro*,[57] respondent-lawyers were similarly punished for their negligence in the discharge of their duties to their client and for misrepresentation committed before the Court, in violation of Rule 10.01, Canon 10 and Rule 18.03, Canon 18 of the Code. Hence, consistent with existing jurisprudence, the Court adopts the penalty recommended by the IBP and accordingly suspends Atty. Quesada for a period of one (1) year.

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[50] *Id*.

[51] *Sambajon v. Atty. Suing*, 534 Phil. 84, 101 (2006).

[52] *Rollo*, p. 2.

[53] *Conlu v. Aredonia, Jr.*, *supra* note 46, at 375.

[54] *Anastacio-Briones v. Atty. Zapanta*, 537 Phil. 218, 224 (2006).

[55] *Supra* note 46.

[56] 469 Phil. 869 (2004).

[57] 447 Phil. 434 (2003).

The Court must, however, clarify that the foregoing resolution should not include a directive to return the amount of ₱74,000.00 as ordered by the IBP in its November 19, 2011 Resolution which represents the settlement initially offered by Capitol in the dismissed labor case. The return of the said amount partakes the nature of a purely civil liability which should not be dealt with during an administrative-disciplinary proceeding such as this case. In *Tria-Samonte v. Obias*,[58] the Court recently illumined that disciplinary proceedings against lawyers are only confined to the issue of whether or not the respondent-lawyer is still fit to be allowed to continue as a member of the Bar and that the only concern is his administrative liability. Thus, matters which have no intrinsic link to the lawyer's professional engagement, such as the liabilities of the parties which are purely civil in nature, should be threshed out in a proper proceeding of such nature, and not during administrative-disciplinary proceedings, as in this case.

WHEREFORE, respondent Atty. Jose C. Quesada, Jr. is found **GUILTY** of violating Rule 1.01 of Canon 1, Rule 10.01 of Canon 10, Canon 17, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility, and is accordingly **SUSPENDED** from the practice of law for one (1) year, effective upon his receipt of this Decision, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

On the other hand, the administrative complaint against respondent Atty. Amado T. Adquilen is hereby **DISMISSED** in view of his supervening death.

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

SO ORDERED.

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

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[58] As noted in this case, "[a]n example of a liability which has an intrinsic link to the professional engagement would be a lawyer's acceptance fees." (A.C. No. 4945, October 8, 2013.)

SECOND DIVISION

[G.R. No. 168979. December 2, 2013]

REBECCA PACAÑA-CONTRERAS and ROSALIE PACAÑA, *petitioners, vs.* **ROVILA WATER SUPPLY, INC., EARL U. KOKSENG LILIA TORRES, DALLA P. ROMANILLOS and MARISA GABUYA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A PETITION FOR *CERTIORARI* UNDER RULE 65 IS THE PROPER REMEDY FOR A DENIAL OF A MOTION TO DISMISS ATTENDED BY GRAVE ABUSE OF DISCRETION.—** *Petition for certiorari under Rule 65 is a proper remedy for a denial of a motion to dismiss attended by grave abuse of discretion.* In *Barrazona v. RTC, Branch 61, Baguio City*, the Court held that while an order denying a motion to dismiss is interlocutory and non-appealable, *certiorari* and prohibition are proper remedies to address an order of denial made without or in excess of jurisdiction. The writ of *certiorari* is granted to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing grave abuse of discretion amounting to lack or excess of jurisdiction.

2. **ID.; CIVIL PROCEDURE; PLEADINGS; DEFENSES AND OBJECTIONS NOT PLEADED; AS THE RULE NOW STANDS, THE FAILURE TO INVOKE THE GROUND OF FAILURE TO STATE A CAUSE OF ACTION IN A MOTION TO DISMISS OR IN THE ANSWER WOULD RESULT IN ITS WAIVER; RATIONALE.—** Notably, in the present rules, there was a deletion of the ground of "failure to state a cause of action" from the list of those which may be waived if not invoked either in a motion to dismiss or in the answer. Another novelty introduced by the present Rules, which was totally absent in its two precedents, is the addition of the period of time within which a motion to dismiss should be filed as provided under Section 1, Rule 16. x x x All these considerations point to the legal reality that the new Rules effectively restricted the dismissal of complaints in general,

especially when what is being invoked is the ground of "failure to state a cause of action." Thus, jurisprudence governed by the 1940 and 1964 Rules of Court to the effect that the ground for dismissal based on failure to state a cause of action may be raised anytime during the proceedings, is already inapplicable to cases already governed by the present Rules of Court which took effect on July 1, 1997. As the rule now stands, the failure to invoke this ground in a motion to dismiss or in the answer would result in its waiver.

3. **ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.—** The first paragraph of Section 1, Rule 16 of the Rules of Court provides for the period within which to file a motion to dismiss under the grounds enumerated. Specifically, the motion should be filed within the time for, but before the filing of, the answer to the complaint or pleading asserting a claim. Equally important to this provision is Section 1, Rule 9 of the Rules of Court which states that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except for the following grounds: 1) the court has no jurisdiction over the subject matter; 2) *litis pendencia*; 3) *res judicata*; and 4) prescription. Therefore, the grounds not falling under these four exceptions may be considered as waived in the event that they are not timely invoked.

4. **ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE JURISDICTION OF THE COURT IS LIMITED ONLY TO QUESTIONS OF LAW, EXCEPT WHEN THE FINDINGS OF THE COURT ARE CONCLUSIONS WITHOUT CITATION OF SPECIFIC EVIDENCE ON WHICH THEY ARE BASED; PRESENT IN CASE AT BAR.—** Time and again, we have held that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45, such as the present case, is limited only to questions of law, save for certain exceptions. One of these is attendant herein, which is, when the findings are conclusions without citation of specific evidence on which they are based. x x x Our examination of the records shows that the CA had no basis in its finding that the respondents alleged the grounds as affirmative defenses in their answer. The respondents merely stated in their petition for *certiorari* that they alleged the subject grounds in their answer. However, nowhere in the petition did they support this allegation; they did not even attach a copy of their

answer to the petition. It is basic that the respondents had the duty to prove by substantial evidence their positive assertions. Considering that the petition for *certiorari* is an original and not an appellate action, the CA had no records of the RTC's proceedings upon which the CA could refer to in order to validate the respondents' claim. Clearly, other than the respondents' bare allegations, the CA had no basis to rule, without proof, that the respondents alleged the grounds for dismissal as affirmative defenses in the answer. The respondents, as the parties with the burden of proving that they timely raised their grounds for dismissal, could have at least attached a copy of their answer to the petition. This simple task they failed to do.

5. **ID.; CIVIL PROCEDURE; PARTIES; REAL PARTY IN INTEREST DISTINGUISHED FROM INDISPENSABLE PARTY.—** A distinction between a real party in interest and an indispensable party is in order. In *Carandang v. Heirs of de Guzman, et al.*, the Court clarified these two concepts and held that "[a] ***real party in interest*** is the party who stands to be benefited or injured by the judgment of the suit, or the party entitled to the avails of the suit. On the other hand, an ***indispensable party*** is a party in interest without whom no final determination can be had of an action, in contrast to a ***necessary party***, which is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action. x x x If a suit is not brought in the name of or against the real party in interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action. However, the dismissal on this ground entails an examination of whether the parties presently pleaded are interested in the outcome of the litigation, and **not** whether all persons interested in such outcome are actually pleaded. The latter query is relevant in discussions concerning indispensable and necessary parties, but **not** in discussions concerning real parties in interest. Both indispensable and necessary parties are considered as real parties in interest, since both classes of parties stand to be benefited or injured by the judgment of the suit."

6. **ID.; ID.; ID.; INDISPENSABLE PARTY; FAILURE TO IMPLEAD INDISPENSABLE PARTIES IS A CURABLE**

ERROR; APPLICATION IN CASE AT BAR.— Mindful of the differing views of the Court as regards the legal effects of the non-inclusion of indispensable parties, the Court clarified in *Republic of the Philippines v. Sandiganbayan, et al.*, that the failure to implead indispensable parties is a **curable error** and the foreign origin of our present rules on indispensable parties permitted this corrective measure. x x x In *Galicia, et al. v. Vda. De Mindo, et al.*, the Court ruled that in line with its policy of promoting a just and inexpensive disposition of a case, it allowed the intervention of the indispensable parties instead of dismissing the complaint. Furthermore, in *Commissioner Domingo v. Scheer*, the Court cited *Salvador, et al. v. Court of Appeals, et al.* and held that the Court has full powers, apart from that power and authority which are inherent, to amend the processes, pleadings, proceedings and decisions by substituting as party-plaintiff the real party in interest. The Court has the power to avoid delay in the disposition of this case, and to order its amendment in order to implead an indispensable party. With these discussions as premises, the Court is of the view that the proper remedy in the present case is to implead the indispensable parties especially when their non-inclusion is merely a technical defect. To do so would serve proper administration of justice and prevent further delay and multiplicity of suits. Pursuant to Section 9, Rule 3 of the Rules of Court, parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action. If the plaintiff refuses to implead an indispensable party despite the order of the court, then the court may dismiss the complaint for the plaintiff's failure to comply with a lawful court order. The operative act that would lead to the dismissal of the case would be the refusal to comply with the directive of the court for the joinder of an indispensable party to the case. Obviously, in the present case, the deceased Pacañas can no longer be included in the complaint as indispensable parties because of their death during the pendency of the case. Upon their death, however, their ownership and rights over their properties were transmitted to their heirs, including herein petitioners, pursuant to Article 774 in relation with Article 777 of the Civil Code. In *Orbeta, et al. v. Sendiong*, the Court acknowledged that the heirs, whose hereditary rights are to be affected by the case, are deemed indispensable parties who should have been impleaded by the trial court.

APPEARANCES OF COUNSEL

Mercado Cordero Bael Acuna & Sepulveda for petitioners.
Latras Heyrosa Alcazaren Reussora Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking the reversal of the decision[2] dated January 27, 2005 and the resolution[3] dated June 6, 2005 of the Court of Appeals (*CA*) in CA-G.R. SP No. 71551. The CA set aside the orders dated February 28, 2002[4] and April 1, 2002[5] of the Regional Trial Court (*RTC*), Branch 8, Cebu City, which denied the motion to dismiss and the motion for reconsideration, respectively, of respondents Rovila Water Supply, Inc. (*Rovila Inc.*), Earl U. Kokseng, Lilia Torres, Dalla P. Romanillos and Marisa Gabuya.

THE FACTUAL ANTECEDENTS

Petitioners Rebecca Pacaña-Contreras and Rosalie Pacaña, children of Lourdes Teves Pacaña and Luciano Pacaña, filed the present case against Rovila Inc., Earl, Lilia, Dalla and Marisa for accounting and damages.[6] The petitioners claimed that their family has long been known in the community to be engaged in the water supply business; they operated the "Rovila Water Supply" from their family residence and were

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[1] *Rollo*, pp. 9-30.

[2] *Id.* at 31-43; penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justices Sesinando E. Villon and Ramon M. Bato, Jr.

[3] *Id.* at 44-45.

[4] *Id.* at 58-60; penned by Presiding Judge Antonio T. Echavez.

[5] *Id.* at 66-67.

[6] Docketed as Civil Case No. CEB-25327; *id.* at 32.

engaged in the distribution of water to customers in Cebu City.

The petitioners alleged that Lilia was a former trusted employee in the family business who hid business records and burned and ransacked the family files. Lilia also allegedly posted security guards and barred the members of the Pacaña family from operating their business. She then claimed ownership over the family business through a corporation named "Rovila Water Supply, Inc." *(Rovila Inc.)* Upon inquiry with the Securities and Exchange Commission *(SEC)*, the petitioners claimed that Rovila Inc. was surreptitiously formed with the respondents as the majority stockholders. The respondents did so by conspiring with one another and forming the respondent corporation to takeover and illegally usurp the family business' registered name.[7]

In forming the respondent corporation, the respondents allegedly used the name of Lourdes as one of the incorporators and made it appear in the SEC documents that the family business was operated in a place other than the Pacaña residence. Thereafter, the respondents used the Pacaña family's receipts and the deliveries and sales were made to appear as those of the respondent Rovila Inc. Using this scheme, the respondents fraudulently appropriated the collections and payments.[8]

The petitioners filed the complaint in their own names although Rosalie was authorized by Lourdes through a sworn declaration and special power of attorney (*SPA*). The respondents filed a first motion to dismiss on the ground that the RTC had no jurisdiction over an intra-corporate controversy.[9] The RTC denied the motion.

On September 26, 2000, Lourdes died[10] and the petitioners amended their complaint, with leave of court, on October 2,

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

[8] *Id.* at 15.

[9] *Id.* at 34.

[10] *Ibid.*

2000 to reflect this development.[11] They still attached to their amended complaint the sworn declaration with SPA, but the caption of the amended complaint remained the same.[12] On October 10, 2000, Luciano also died.[13]

The respondents filed their Answer on November 16, 2000.[14] The petitioners' sister, Lagrimas Pacaña-Gonzales, filed a motion for leave to intervene and her answer-in-intervention was granted by the trial court. At the subsequent pre-trial, the respondents manifested to the RTC that a substitution of the parties was necessary in light of the deaths of Lourdes and Luciano. They further stated that they would seek the dismissal of the complaint because the petitioners are not the real parties in interest to prosecute the case. The pre-trial pushed through as scheduled and the RTC directed the respondents to put into writing their earlier manifestation. The RTC issued a pre-trial order where one of the issues submitted was whether the complaint should be dismissed for failure to comply with Section 2, Rule 3 of the Rules of Court which requires that every action must be prosecuted in the name of the real party in interest.[15]

On January 23, 2002,[16] the respondents again filed a motion to dismiss on the grounds, among others, that the petitioners are not the real parties in interest to institute and prosecute the case and that they have no valid cause of action against the respondents.

THE RTC RULING

The RTC denied the respondents' motion to dismiss. It ruled that, save for the grounds for dismissal which may be raised at

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[11] *Id*. at 35.

[12] *Ibid*.

[13] *Supra* note 4.

[14] *Supra* note 6.

[15] *Rollo*, pp. 35-36.

[16] *Id*. at 83.

any stage of the proceedings, a motion to dismiss based on the grounds invoked by the respondents may only be filed within the time for, but before, the filing of their answer to the amended complaint. Thus, even granting that the defenses invoked by the respondents are meritorious, their motion was filed out of time as it was filed only after the conclusion of the pre-trial conference. Furthermore, the rule on substitution of parties only applies when the parties to the case die, which is not what happened in the present case.[17] The RTC likewise denied the respondents' motion for reconsideration.[18]

The respondents filed a petition for *certiorari* under Rule 65 of the Rules of Court with the CA, invoking grave abuse of discretion in the denial of their motion to dismiss. They argued that the deceased spouses Luciano and Lourdes, not the petitioners, were the real parties in interest. Thus, the petitioners violated Section 16, Rule 3 of the Rules of Court on the substitution of parties.[19] Furthermore, they seasonably moved for the dismissal of the case[20] and the RTC never acquired jurisdiction over the persons of the petitioners as heirs of Lourdes and Luciano.[21]

THE CA RULING

The CA granted the petition and ruled that the RTC committed grave abuse of discretion as the petitioners filed the complaint and the amended complaint as attorneys-in-fact of their parents. As such, they are not the real parties in interest and cannot bring an action in their own names; thus, the complaint should be dismissed[22] pursuant to the Court's ruling in *Casimiro v. Roque and Gonzales*.[23]

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[17] *Id*. at 59, 66-67.

[18] *Id*. at 66.

[19] CA *rollo*, p. 10.

[20] *Id*. at 11.

[21] *Ibid*.

[22] *Rollo*, 37-39.

[23] 98 Phil. 880 (1956).

Neither are the petitioners suing as heirs of their deceased parents. Pursuant to jurisprudence,[24] the petitioners should first be declared as heirs before they can be considered as the real parties in interest. This cannot be done in the present ordinary civil case but in a special proceeding for that purpose.

The CA agreed with the respondents that they alleged the following issues as affirmative defenses in their answer: 1) the petitioners are not the real parties in interest; and 2) that they had no legal right to institute the action in behalf of their parents.[25] That the motion to dismiss was filed after the period to file an answer has lapsed is of no moment. The RTC judge entertained it and passed upon its merit. He was correct in doing so because in the pre-trial order, one of the submitted issues was whether the case must be dismissed for failure to comply with the requirements of the Rules of Court. Furthermore, in *Dabuco v. Court of Appeals*,[26] the Court held that the ground of lack of cause of action may be raised in a motion to dismiss at anytime.[27]

The CA further ruled that, in denying the motion to dismiss, the RTC judge acted contrary to established rules and jurisprudence which may be questioned *via* a petition for *certiorari*. The phrase "grave abuse of discretion" which was traditionally confined to "capricious and whimsical exercise of judgment" has been expanded to include any action done "contrary to the Constitution, the law or jurisprudence[.]"[28]

THE PARTIES' ARGUMENTS

The petitioners filed the present petition and argued that, *first*, in annulling the interlocutory orders, the CA unjustly

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[24] *Heirs of Yaptinchay v. Hon. Del Rosario*, 363 Phil. 393, 397-398 (1999); *Litam, etc., et al. v. Rivera*, 100 Phil. 364, 378 (1956); and *Solivio v. Court of Appeals*, 261 Phil. 231, 242 (1990).

[25] *Rollo,* p. 35.

[26] 379 Phil. 939 (2000).

[27] *Rollo,* p. 41.

[28] *Id.* at 42.

allowed the motion to dismiss which did not conform to the rules.[29] Specifically, the motion was not filed within the time for, but before the filing of, the answer to the amended complaint, nor were the grounds raised in the answer. Citing Section 1, Rule 9 of the Rules of Court, the respondents are deemed to have waived these grounds, as correctly held by the RTC.[30]

Second, even if there is non-joinder and misjoinder of parties or that the suit is not brought in the name of the real party in interest, the remedy is not outright dismissal of the complaint, but its amendment to include the real parties in interest.[31]

Third, the petitioners sued in their own right because they have actual and substantial interest in the subject matter of the action as heirs or co-owners, pursuant to Section 2, Rule 3 of the Rules of Court.[32] Their declaration as heirs in a special proceeding is not necessary, pursuant to the Court's ruling in *Marabilles, et al. v. Quito*.[33] Finally, the sworn declaration is evidentiary in nature which remains to be appreciated after the trial is completed.[34]

The respondents reiterated in their comment that the petitioners are not the real parties in interest.[35] They likewise argued that they moved for the dismissal of the case during the pre-trial conference due to the petitioners' procedural lapse in refusing to comply with a condition precedent, which is, to substitute the heirs as plaintiffs. Besides, an administrator of the estates of Luciano and Lourdes has already been appointed.[36]

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

[30] *Id*. at 22, 126.

[31] *Id*. at 21, 26, 126.

[32] *Id*. at 131.

[33] 100 Phil. 64 (1956).

[34] *Rollo*, p. 130.

[35] *Id*. at 78-79.

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

The respondents also argued that the grounds invoked in their motion to dismiss were timely raised, pursuant to Section 2, paragraphs g and i, Rule 18 of the Rules of Court. Specifically, the nature and purposes of the pre-trial include, among others, the dismissal of the action, should a valid ground therefor be found to exist; and such other matters as may aid in the prompt disposition of the action. Finally, the special civil action of *certiorari* was the proper remedy in assailing the order of the RTC.[37]

THE COURT'S RULING

We find the petition meritorious.

Petition for certiorari under Rule 65 is a proper remedy for a denial of a motion to dismiss attended by grave abuse of discretion

In *Barrazona v. RTC, Branch 61, Baguio City*,[38] the Court held that while an order denying a motion to dismiss is interlocutory and non-appealable, *certiorari* and prohibition are proper remedies to address an order of denial made without or in excess of jurisdiction. The writ of *certiorari* is granted to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing grave abuse of discretion amounting to lack or excess of jurisdiction.

The history and development of the ground "fails to state a cause of action" in the 1940, 1964 and the present 1997 Rules of Court

Preliminarily, a suit that is not brought in the name of the real party in interest is dismissible on the ground that the complaint "fails to state a cause of action."[39] Pursuant to

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[37] *Id.* at 75-76.

[38] 521 Phil. 53, 59-60 (2006).

[39] *Carandang v. Heirs of De Guzman et al.*, 538 Phil. 326, 334 (2006); *Tankiko v. Cezar*, 362 Phil. 184, 194-195 (1999), citing *Lucas v. Durian*, 102 Phil. 1157-1158 (1957); *Nebrada v. Heirs of Alivio*, 104 Phil. 126,

jurisprudence,[40] this is also the ground invoked when the respondents alleged that the petitioners are not the real parties in interest because: 1) the petitioners should not have filed the case in their own names, being merely attorneys-in-fact of their mother; and 2) the petitioners should first be declared as heirs.

A review of the 1940, 1964 and the present 1997 Rules of Court shows that the fundamentals of the ground for dismissal based on "failure to state a cause of action" have drastically changed over time. A historical background of this particular ground is in order to preclude any confusion or misapplication of jurisprudence decided prior to the effectivity of the present Rules of Court.

The 1940 Rules of Court provides under Section 10, Rule 9 that:

> Section 10. *Waiver of defenses* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the defense of failure to state a cause of action, which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the trial on the merits; but in the last instance, the motion shall be disposed of as provided in Section 5 of Rule 17 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action. [underscoring supplied]

This provision was essentially reproduced in Section 2, Rule 9 of the 1964 Rules of Court, and we quote:

> Section 2. *Defenses and objections not pleaded deemed waived.*— Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the failure to state a cause of action which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleadings, or at the

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128-129 (1958); *Gabila v. Bariga*, 148-B Phil. 615, 618-619 (1971); *Travel Wide Associated Sales (Phils.), Inc. v. CA*, 276 Phil. 219, 224 (1991).

[40] *Heirs of Yaptinchay v. Hon. Del Rosario, supra* note 23; and *Filipinas Industrial Corp., et al. v. Hon. San Diego, et al.,* 132 Phil. 195 (1968).

trial on the merits; but in the last instance, the motion shall be disposed of as provided in Section 5 of Rule 10 in the light of any evidence which may have been received. Whenever it appears that the court has no jurisdiction over the subject-matter, it shall dismiss the action. [underscoring supplied]

Under the present Rules of Court, this provision was reflected in Section 1, Rule 9, and we quote:

> Section 1. *Defenses and objections not pleaded*. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. [underscoring supplied]

Notably, in the present rules, there was a deletion of the ground of "failure to state a cause of action" from the list of those which may be waived if not invoked either in a motion to dismiss or in the answer.

Another novelty introduced by the present Rules, which was totally absent in its two precedents, is the addition of the period of time within which a motion to dismiss should be filed as provided under Section 1, Rule 16 and we quote:

> Section 1. *Grounds*. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds: x x x [underscoring supplied]

All these considerations point to the legal reality that the new Rules effectively restricted the dismissal of complaints in general, especially when what is being invoked is the ground of "failure to state a cause of action." Thus, jurisprudence governed by the 1940 and 1964 Rules of Court to the effect that the ground for dismissal based on failure to state a cause of action may be raised anytime during the proceedings, is already inapplicable to cases already governed by the present Rules of Court which took effect on July 1, 1997.

As the rule now stands, the failure to invoke this ground in a motion to dismiss or in the answer would result in its waiver. According to Oscar M. Herrera,[41] the reason for the deletion is that failure to state a cause of action may be cured under Section 5, Rule 10 and we quote:

> Section 5. *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.

With this clarification, we now proceed to the substantial issues of the petition.

The motion to dismiss in the present case based on failure to state a cause of action was not timely filed and was thus waived

Applying Rule 16 of the Rules of Court which provides for the grounds for the dismissal of a civil case, the respondents' grounds for dismissal fall under Section 1(g) and (j), Rule 16 of the Rules of Court, particularly, failure to state a cause of action and failure to comply with a condition precedent (substitution of parties), respectively.

The first paragraph of Section 1,[42] Rule 16 of the Rules of Court provides for the period within which to file a motion to

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[41] *Remedial Law* Volume I, 2007 Ed., pp. 794-795.

[42] Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds[.]

dismiss under the grounds enumerated. Specifically, the motion should be filed within the time for, but before the filing of, the answer to the complaint or pleading asserting a claim. Equally important to this provision is Section 1,[43] Rule 9 of the Rules of Court which states that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived, except for the following grounds: 1) the court has no jurisdiction over the subject matter; 2) *litis pendencia*; 3) *res judicata*; and 4) prescription.

Therefore, the grounds not falling under these four exceptions may be considered as waived in the event that they are not timely invoked. As the respondents' motion to dismiss was based on the grounds which should be timely invoked, material to the resolution of this case is the period within which they were raised.

Both the RTC and the CA found that the motion to dismiss was only filed after the filing of the answer and after the pre-trial had been concluded. Because there was no motion to dismiss before the filing of the answer, the respondents should then have at least raised these grounds as affirmative defenses in their answer. The RTC's assailed orders did not touch on this particular issue but the CA ruled that the respondents did, while the petitioners insist that the respondents did not. In the present petition, the petitioners reiterate that there was a blatant non-observance of the rules when the respondents did not amend their answer to invoke the grounds for dismissal which were raised only during the pre-trial and, subsequently, in the subject motion to dismiss.[44]

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[43] Section 1. Defenses and objections not pleaded. — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

[44] *Rollo,* p. 22.

The divergent findings of the CA and the petitioners' arguments are essentially factual issues. Time and again, we have held that the jurisdiction of the Court in a petition for review on *certiorari* under Rule 45, such as the present case, is limited only to questions of law, save for certain exceptions. One of these is attendant herein, which is, when the findings are conclusions without citation of specific evidence on which they are based.[45]

In the petition filed with the CA, the respondents made a passing allegation that, as affirmative defenses in their answer, they raised the issue that the petitioners are not the real parties in interest.[46] On the other hand, the petitioners consistently argued otherwise in their opposition[47] to the motion to dismiss, and in their comment[48] and in their memorandum[49] on the respondents' petition before the CA.

Our examination of the records shows that the CA had no basis in its finding that the respondents alleged the grounds as affirmative defenses in their answer. The respondents merely stated in their petition for *certiorari* that they alleged the subject grounds in their answer. However, nowhere in the petition did they support this allegation; they did not even attach a copy of their answer to the petition. It is basic that the respondents had the duty to prove by substantial evidence their positive assertions. Considering that the petition for *certiorari* is an original and not an appellate action, the CA had no records of the RTC's proceedings upon which the CA could refer to in order to validate the respondents' claim. Clearly, other than the respondents' bare allegations, the CA had no basis to rule, without proof, that the

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[45] *Insular Investment and Trust Corporation v. Capital One Equities Corp.*, G.R. No. 183308, April 25, 2012, 671 SCRA 112, 125; and *Conrada O. Almagro v. Sps. Manuel Amaya, Sr., et al.*, G.R. No. 179685, June 19, 2013.

[46] CA *rollo*, p. 6.

[47] *Id.* at 118.

[48] *Id.* at 112.

[49] *Id.* at 133, 136.

respondents alleged the grounds for dismissal as affirmative defenses in the answer. The respondents, as the parties with the burden of proving that they timely raised their grounds for dismissal, could have at least attached a copy of their answer to the petition. This simple task they failed to do.

That the respondents did not allege in their answer the subject grounds is made more apparent through their argument, both in their motion to dismiss[50] and in their comment,[51] that it was only during the pre-trial stage that they verbally manifested and invited the attention of the lower court on their grounds for dismissal. In order to justify such late invocation, they heavily relied on Section 2(g) and (i), Rule 18[52] of the Rules of Court that the nature and purpose of the pre-trial include, among others, the propriety of dismissing the action should there be a valid ground therefor and matters which may aid in the prompt disposition of the action.

The respondents are not correct. The rules are clear and require no interpretation. Pursuant to Section 1, Rule 9 of the Rules of Court, a motion to dismiss based on the grounds invoked by the respondents may be waived if not raised in a motion to dismiss or alleged in their answer. On the other hand, "the pre-trial is primarily intended to make certain that all issues necessary to the disposition of a case are properly raised. The purpose is to obviate the element of surprise, hence, the parties are expected to disclose at the pre-trial conference all issues of law and fact which they intend to raise at the trial, except such as may involve privileged or impeaching matter."[53] The issues submitted

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[50] *Id.* at 83.

[51] *Id.* at 73-77.

[52] Section 2. Nature and purpose. — The pre-trial is mandatory. The court shall consider: xxx (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist; x x x (i) Such other matters as may aid in the prompt disposition of the action.

[53] *Sps. Mercader v. Dev't Bank of the Phils. (Cebu Br.),* 387 Phil. 828, 843 (2000).

during the pre-trial are thus the issues that would govern the trial proper. The dismissal of the case based on the grounds invoked by the respondents are specifically covered by Rule 16 and Rule 9 of the Rules of Court which set a period when they should be raised; otherwise, they are deemed waived.

The Dabuco ruling is inapplicable in the present case; the ground for dismissal "failure to state a cause of action" distinguished from "lack of cause of action"

To justify the belated filing of the motion to dismiss, the CA reasoned out that the ground for dismissal of "lack of cause of action" may be raised at any time during the proceedings, pursuant to *Dabuco v. Court of Appeals*.[54] This is an erroneous interpretation and application of *Dabuco* as will be explained below.

First, in *Dabuco*, the grounds for dismissal were raised as affirmative defenses in the answer which is in stark contrast to the present case. *Second*, in *Dabuco*, the Court distinguished between the dismissal of the complaint for "failure to state a cause of action" and "lack of cause of action." The Court emphasized that in a dismissal of action for lack of cause of action, "questions of fact are involved, [therefore,] courts hesitate to declare a plaintiff as lacking in cause of action. Such declaration is postponed until the insufficiency of cause is apparent from a preponderance of evidence. Usually, this is done only after the parties have been given the opportunity to present all relevant evidence on such questions of fact."[55] In fact, in *Dabuco*, the Court held that even the preliminary hearing on the propriety of lifting the restraining order was declared insufficient for purposes of dismissing the complaint for lack of cause of action. This is so because the issues of fact had not yet been adequately ventilated at that preliminary stage. For these reasons, the Court declared in *Dabuco* that the dismissal by the trial court of the complaint was premature.

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[54] *Supra* note 25.

[55] *Id.* at 946.

In the case of *Macaslang v. Zamora*,[56] the Court noted that the incorrect appreciation by both the RTC and the CA of the distinction between the dismissal of an action, based on "failure to state a cause of action" and "lack of cause of action," prevented it from properly deciding the case, and we quote:

> Failure to state a cause of action and lack of cause of action are really different from each other. On the one hand, failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the *Rules of Court*. On the other hand, lack of cause [of] action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. Justice Regalado, a recognized commentator on remedial law, has explained the distinction:
>
>> x x x What is contemplated, therefore, is a *failure to state* a cause of action which is provided in Sec. 1(g) of Rule 16. This is a matter of insufficiency of the *pleading*. Sec. 5 of Rule 10, which was also included as the last mode for raising the issue to the court, refers to the situation where the evidence *does not prove* a cause of action. This is, therefore, a matter of insufficiency of *evidence*. Failure to state a cause of action is different from failure to prove a cause of action. The remedy in the first is to move for dismissal of the pleading, while the remedy in the second is to demur to the evidence, hence reference to Sec. 5 of Rule 10 has been eliminated in this section. The procedure would consequently be to require the pleading to state a cause of action, by timely objection to its deficiency; or, at the trial, to file a demurrer to evidence, if such motion is warranted. [italics supplied]

Based on this discussion, the Court cannot uphold the dismissal of the present case based on the grounds invoked by the respondents which they have waived for failure to invoke them within the period prescribed by the Rules. The Court cannot also dismiss the case based on "lack of cause of action" as this would require at least a preponderance of evidence which is yet to be appreciated by the trial court.

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[56] G.R. No. 156375, May 30, 2011, 649 SCRA 92, 106-107, citing Regalado, *Remedial Law Compendium*, Volume I, Ninth Revised Ed. (2005), p. 182.

Therefore, the RTC did not commit grave abuse of discretion in issuing the assailed orders denying the respondents' motion to dismiss and motion for reconsideration. The Court shall not resolve the merits of the respondents' grounds for dismissal which are considered as waived.

Other heirs of the spouses Pacaña to be impleaded in the case

It should be emphasized that insofar as the petitioners are concerned, the respondents have waived the dismissal of the complaint based on the ground of failure to state a cause of action because the petitioners are not the real parties in interest.

At this juncture, a distinction between a real party in interest and an indispensable party is in order. In *Carandang v. Heirs of de Guzman, et al.*,[57] the Court clarified these two concepts and held that "[a] ***real party in interest*** is the party who stands to be benefited or injured by the judgment of the suit, or the party entitled to the avails of the suit. On the other hand, an ***indispensable party*** is a party in interest without whom no final determination can be had of an action, in contrast to a ***necessary party***, which is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action. x x x If a suit is not brought in the name of or against the real party in interest, a motion to dismiss may be filed on the ground that the complaint states no cause of action. However, the dismissal on this ground entails an examination of <u>whether the parties presently pleaded are interested in the outcome of the litigation</u>, and **not** <u>whether all persons interested in such outcome are actually pleaded</u>. The latter query is relevant in discussions concerning <u>indispensable and necessary parties</u>, but **not** in discussions concerning <u>real parties in interest</u>. Both indispensable and necessary parties are considered as real parties in interest, since

[57] 538 Phil. 319, 333-334 (2006).

both classes of parties stand to be benefited or injured by the judgment of the suit."

At the inception of the present case, both the spouses Pacaña were not impleaded as parties-plaintiffs. The Court notes, however, that they are indispensable parties to the case as the alleged owners of Rovila Water Supply. Without their inclusion as parties, there can be no final determination of the present case. They possess such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence. Their interest in the subject matter of the suit and in the relief sought is inextricably intertwined with that of the other parties.[58]

Jurisprudence on the procedural consequence of the inclusion or non-inclusion of an indispensable party is divided in our jurisdiction. Due to the non-inclusion of indispensable parties, the Court dismissed the case in *Lucman v. Malawi, et al*.[59] and *Go v. Distinction Properties Development Construction, Inc*.,[60] while in *Casals, et al. v. Tayud Golf and Country Club et al*.,[61] the Court annulled the judgment which was rendered without the inclusion of the indispensable parties.

In *Arcelona et al. v. Court of Appeals*[62] and *Bulawan v. Aquende*,[63] and *Metropolitan Bank & Trust Company v. Alejo et al*.[64] the Court ruled that the burden to implead or order the impleading of an indispensable party rests on the plaintiff and on the trial court, respectively. Thus, the non-inclusion of the indispensable parties, despite notice of this infirmity, resulted in the annulment of these cases.

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[58] *Republic v. Marcos-Manotoc*, G.R. No. 171701, February 8, 2012, 665 SCRA 367, 392.

[59] 540 Phil. 289, 301-303, 305-306 (2006).

[60] G.R. No. 194024, April 25, 2012, 671 SCRA 461, 475-478, 482.

[61] G.R. No. 183105, July 22, 2009, 593 SCRA 468, 503.

[62] 345 Phil. 250, 275 (1997).

[63] G.R. No. 182819, June 22, 2011, 652 SCRA 585, 597.

[64] 417 Phil. 303, 318 (2001).

In *Plasabas, et al. v. Court of Appeals, et al.*,[65] the Court held that the trial court and the CA committed reversible error when they summarily dismissed the case, after both parties had rested their cases following a protracted trial, on the sole ground of failure to implead indispensable parties. Non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable.

However, in the cases of *Quilatan, et al. v. Heirs of Quilatan, et al.*[66] and *Lagunilla, et al. v. Monis, et al.*,[67] the Court remanded the case to the RTC for the impleading of indispensable parties. On the other hand, in *Lotte Phil. Co., Inc. v. Dela Cruz*,[68] *PepsiCo, Inc. v. Emerald Pizza,*[69] and *Valdez-Tallorin, v. Heirs of Tarona, et al.*,[70] the Court directly ordered that the indispensable parties be impleaded.

Mindful of the differing views of the Court as regards the legal effects of the non-inclusion of indispensable parties, the Court clarified in *Republic of the Philippines v. Sandiganbayan, et al.*,[71] that the failure to implead indispensable parties is a **curable error** and the foreign origin of our present rules on indispensable parties permitted this corrective measure. This cited case held:

Even in those cases where it might reasonably be argued that the failure of the Government to implead the sequestered corporations as defendants is indeed a procedural aberration x x x, slight reflection would nevertheless lead to the conclusion that the defect is not fatal,

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[65] G.R. No. 166519, March 31, 2009, 582 SCRA 686, 692-693.

[66] G.R. No. 183059, August 28, 2009, 597 SCRA 519, 525.

[67] G.R. No. 169276, June 16, 2009, 589 SCRA 224, 236.

[68] 502 Phil. 816, 822 (2005).

[69] 556 Phil. 711, 720 (2007).

[70] G.R. No. 177429, November 24, 2009, 605 SCRA 259, 266.

[71] 453 Phil. 1060, 1147-1149, citing *Republic v. Sandiganbayan*, 240 SCRA 376, 469.

but one correctible under applicable adjective rules – *e.g.*, Section 10, Rule 5 of the Rules of Court [specifying the remedy of amendment during trial to authorize or to conform to the evidence]; Section 1, Rule 20 [governing amendments before trial], in relation to the rule respecting omission of so-called necessary or indispensable parties, set out in Section 11, Rule 3 of the Rules of Court. It is relevant in this context to advert to the old familiar doctrines that the omission to implead such parties "is a mere technical defect which can be cured at any stage of the proceedings even after judgment"; and that, particularly in the case of indispensable parties, since their presence and participation is essential to the very life of the action, for without them no judgment may be rendered, amendments of the complaint in order to implead them should be freely allowed, even on appeal, in fact even after rendition of judgment by this Court, where it appears that the complaint otherwise indicates their identity and character as such indispensable parties."

Although there are decided cases wherein the non-joinder of indispensable parties in fact led to the dismissal of the suit or the annulment of judgment, such cases do not jibe with the matter at hand. The better view is that non-joinder is not a ground to dismiss the suit or annul the judgment. The rule on joinder of indispensable parties is founded on equity. And the spirit of the law is reflected in Section 11, Rule 3 of the 1997 Rules of Civil Procedure. It prohibits the dismissal of a suit on the ground of non-joinder or misjoinder of parties and allows the amendment of the complaint at any stage of the proceedings, through motion or on order of the court on its own initiative.

Likewise, jurisprudence on the Federal Rules of Procedure, from which our Section 7, Rule 3 on indispensable parties was copied, allows the joinder of indispensable parties even after judgment has been entered if such is needed to afford the moving party full relief. Mere delay in filing the joinder motion does not necessarily result in the waiver of the right as long as the delay is excusable.

In *Galicia, et al. v. Vda. De Mindo, et al.*,[72] the Court ruled that in line with its policy of promoting a just and inexpensive disposition of a case, it allowed the intervention of the

[72] 549 Phil. 595, 610 (2007).

indispensable parties instead of dismissing the complaint. Furthermore, in *Commissioner Domingo v. Scheer*,[73] the Court cited *Salvador, et al. v. Court of Appeals, et al.*[74] and held that the Court has full powers, apart from that power and authority which are inherent, to amend the processes, pleadings, proceedings and decisions by substituting as party-plaintiff the real party in interest. The Court has the power to avoid delay in the disposition of this case, and to order its amendment in order to implead an indispensable party.

With these discussions as premises, the Court is of the view that the proper remedy in the present case is to implead the indispensable parties especially when their non-inclusion is merely a technical defect. To do so would serve proper administration of justice and prevent further delay and multiplicity of suits. Pursuant to Section 9, Rule 3 of the Rules of Court, parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action. If the plaintiff refuses to implead an indispensable party despite the order of the court, then the court may dismiss the complaint for the plaintiff's failure to comply with a lawful court order.[75] The operative act that would lead to the dismissal of the case would be the refusal to comply with the directive of the court for the joinder of an indispensable party to the case.[76]

Obviously, in the present case, the deceased Pacañas can no longer be included in the complaint as indispensable parties because of their death during the pendency of the case. Upon their death, however, their ownership and rights over their properties were transmitted to their heirs, including herein petitioners, pursuant to Article 774[77] in relation with Article

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[73] 466 Phil. 235, 266 (2004).

[74] G.R. No. 109910, April 5, 1995, 243 SCRA 239.

[75] *Lagunilla v. Velasco*, *supra*; and *Plasabas v. Court of Appeals, supra*.

[76] *Nocom v. Camerino, et al.*, G.R. No. 182984, Feb. 10, 2009, 578 SCRA 390, 413.

[77] Article 774. Succession is a mode of acquisition by virtue of which the property, rights and obligations to the extent of the value of the inheritance,

777[78] of the Civil Code. In *Orbeta, et al. v. Sendiong*,[79] the Court acknowledged that the heirs, whose hereditary rights are to be affected by the case, are deemed indispensable parties who should have been impleaded by the trial court.

Therefore, to obviate further delay in the proceedings of the present case and given the Court's authority to order the inclusion of an indispensable party at any stage of the proceedings, the heirs of the spouses Pacaña, except the petitioners who are already parties to the case and Lagrimas Pacaña-Gonzalez who intervened in the case, are hereby ordered impleaded as parties-plaintiffs.

WHEREFORE, the petition is **GRANTED.** The decision dated January 27, 2005 and the resolution dated June 6, 2005 of the Court of Appeals in CA-G.R. SP No. 71551 are **REVERSED** and **SET ASIDE.** The heirs of the spouses Luciano and Lourdes Pacaña, except herein petitioners and Lagrimas Pacaña-Gonzalez, are **ORDERED IMPLEADED** as parties-plaintiffs and the RTC is directed to proceed with the trial of the case with **DISPATCH.**

SO ORDERED.

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

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of a person are transmitted through his death to another or others either by his will or by operation of law.

[78] Article 777. The rights to the succession are transmitted from the moment of the death of the decedent.

[79] 501 Phil. 482, 490-492 (2005).

SECOND DIVISION

[G.R. No. 184496. December 2, 2013]

HADJI HASHIM ABDUL, *petitioner, vs.* **HONORABLE SANDIGANBAYAN (FIFTH DIVISION) and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; MOOT AND ACADEMIC ISSUES; THE ACQUITTAL OF THE PETITIONER OPERATES AS A SUPERVENING EVENT THAT MOOTED THE PETITION TO INVALIDATE THE ORDER OF HIS SUSPENSION FROM OFFICE.—** For a court to exercise its power of adjudication, there must be an actual case or controversy. Thus, in *Mattel, Inc. v. Francisco* we have ruled that "[w]here the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereof would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest however intellectually challenging." In the present case, the acquittal of herein petitioner operates as a supervening event that mooted the present Petition. Any resolution on the validity or invalidity of the issuance of the order of suspension could no longer affect his rights as a ranking public officer, for legally speaking he did not commit the offense charged.

2. **CRIMINAL LAW; VIOLATION OF ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3029); FALSIFICATION OF PUBLIC DOCUMENTS IS CONSIDERED FRAUD UPON GOVERNMENT OR PUBLIC FUNDS OR PROPERTY; SUSTAINED.—** The relevant question now is whether falsification of public documents is considered as fraud upon government or public funds or property. This issue is not of first impression. Close but not exactly similar with the factual backdrop of this case is *Bustillo v. Sandiganbayan*. Petitioner therein was charged with falsifying municipal vouchers which, as used in government, are official documents. He asserted the said offense does not involve "fraud or property;" hence, his suspension

finds no basis in Section 13 of RA 3019. In construing the term "fraud" as used in Section 13 of RA 3019, the Court held in said case that the same is understood in its general sense, that is, referring to "an instance or an act of trickery or deceit especially when involving misrepresentation." And since vouchers are official documents signifying a cash outflow from government coffers, falsification thereof invariably involves fraud upon public funds. Again, in *Bartolo v. Sandiganbayan, Second Division*, the Court citing *Bustillo* underscored the fact that "the term fraud as used in Section 13 of [RA] 3019 is understood in its generic sense." In upholding the suspension of therein petitioner, the Court held that "the allegation of falsification of the three public documents by making it appear that the flood control project was 100% complete [when in fact it was not,] constitutes fraud upon public funds." In the same vein, the act imputed against petitioner constitutes fraud upon government or public funds.

APPEARANCES OF COUNSEL

Maria Nympha Mandagan for petitioner.

D E C I S I O N

DEL CASTILLO, *J.*:

"Where the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereof would be of no practical use or value as courts do not sit to satisfy scholarly interest, however intellectually challenging."[1]

Challenged in the instant Petition for *Certiorari*[2] with prayer for Temporary Restraining Order (TRO) is the May 14, 2008 Resolution[3] of respondent *Sandiganbayan* (respondent) in

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[1] *Mattel, Inc. v. Francisco*, 582 Phil. 492, 501 (2008).

[2] *Rollo*, pp. 2-23.

[3] *Sandiganbayan rollo*, Vol. 3, pp. 317-321; penned by Associate Justice Ma. Cristina G. Cortez-Estrada and concurred in by Associate Justices Roland B. Jurado and Rodolfo A. Ponferrada.

Criminal Case No. 27744. Said Resolution suspended for a period of 90 days petitioner Hadji Hasim Abdul (petitioner), Tan-Alem Abdul (Abdul) and Candidato S. Domado (Domado) from their respective official positions as Municipal Mayor, Human Resource Management Officer, and Budget Officer of the Municipality of Mulondo, Lanao del Sur. Likewise questioned is respondent's Resolution[4] of September 2, 2008 denying petitioner's Motion for Reconsideration.

The Undisputed Facts

Petitioner was first elected as municipal mayor of Mulondo, Lanao del Sur in the May 1998 election and re-elected for a second term in the May 2001 election. It was while serving his second term as municipal mayor when the Office of the Ombudsman-Mindanao filed an Information on September 5, 2002 charging petitioner, along with Abdul and Domado, with falsification of public documents, defined and penalized under Article 171(2) of the Revised Penal Code (RPC).[5] The Information[6] states:

That sometime on 22 April 1999, or prior or subsequent thereto, in the Municipality of Mulondo, Lanao del Sur, and within the jurisdiction of this Honorable Court, the accused HADJI HASHIM ABDUL, being then the Municipal Mayor of the Municipality of Mulondo, Lanao del Sur, a high ranking official, TAN-ALEM ABDUL, being then the Human Resource Management Officer, and

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[4] *Id.*, Vol. 4, pp. 46-52; penned by Associate Justice Ma. Cristina G. Cortez-Estrada and concurred in by Associate Justices Roland B. Jurado and Napoleon E. Inoturan.

[5] Article 171. Falsification by public officer, employee; or notary or ecclesiastical minister. — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official function, shall falsify a document by committing any of the following acts:

x x x x x x x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

[6] *Sandiganbayan rollo*, Vol. 3, p. 1.

CANDIDATO S. DOMADO, being then the Budget Officer, all public officers, taking advantage of their official positions and committing the offense in relation to their office, did then and there willfully, unlawfully and feloniously, conspiring with one another, make it appear that Engr. Zubair F. Murad as Municipal Engineer prepared and signed the Local Budget Preparation Form Nos. 152, 153 and 154 known as the Program Appropriation and Obligation by Object, Personnel Schedule and Functional Statement and General Objective, respectively, when in truth and in fact, as the accused well knew that said Zubair F. Murad was never employed as Municipal Engineer of the said Municipality, to the damage and prejudice of public interest.

CONTRARY TO LAW.[7]

During the arraignment, petitioner and his co-accused pleaded not guilty to the offense charged.

Before the commencement of the trial, the Office of the Special Prosecutor (OSP) moved for the suspension *pendente lite* of the petitioner and his co-accused as mandated under Section 13 of Republic Act No. 3019 (RA 3019) or the Anti-Graft and Corrupt Practices Act,[8] which provides:

Section 13. Suspension and loss of benefits. – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title Seven, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. x x x

The OSP averred that suspension under the above-quoted section is mandatory.

In his Comment,[9] petitioner asserted that he cannot be suspended *pendente lite* because the crime for which he was

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[7] *Id*.

[8] See Motion To Suspend Accused *Pendente Lit*e, *id*., Vol. 1, pp. 322-329.

[9] *Id*. at 337-341.

charged is not among those enumerated under Section 13 of RA 3019. He was not charged under RA 3019 or Title Seven, Book II of the RPC. Neither does fraud upon government or public funds or property cover falsification of public document nor fraud *per se,* an ingredient of the offense of falsification of public document.

Finding the charge as squarely falling within the ambit of Section 13, RA 3019, respondent granted in its Resolution[10] of October 9, 2003 the OSP's motion and accordingly ordered the suspension *pendente lite* of the petitioner and his co-accused from their respective positions and from any other public office which they may now or hereafter be holding for a period of 90 days from notice.

Petitioner moved for reconsideration,[11] but the same was denied in a Resolution[12] dated February 11, 2004. Thus, on March 2, 2004 he filed with this Court a Petition for *Certiorari* with Prayer for TRO[13] alleging that the suspension order was issued with grave abuse of discretion amounting to lack of jurisdiction. In a Resolution[14] dated March 10, 2004, the Court dismissed the Petition, which dismissal attained finality on July 12, 2004.[15] The suspension order, however, was no longer implemented because it was superseded by the expiration of petitioner's second term as municipal mayor and his unsuccessful bid for re-election during the May 2004 election.

During the May 2007 election, petitioner emerged as the winner in the mayoralty race and again sat as Mayor of Mulondo, Lanao del Sur. On February 21, 2008, the OSP once again moved for

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[10] *Id.*, Vol. 2, pp. 17-23; penned by Presiding Justice Minita V. Chico-Nazario and concurred in by Associate Justices Ma. Cristina G. Cortez-Estrada and Diosdado M. Peralta (now a Member of this Court).

[11] *Id.* at 32-39.

[12] *Id.* at 112-117.

[13] *Id.* at 130-148.

[14] *Id.* at 284.

[15] See Entry of Judgment, *id.* at 341.

his and his co-accused's suspension *pendente lite* to implement respondent's final and executory suspension order of October 9, 2003.[16] In his Comment and Opposition,[17] petitioner called attention to respondent's pronouncement in its Resolution[18] dated December 20, 2004 that his defeat in the May 2004 election has effectively rendered his suspension moot and academic. Nonetheless, respondent, through its Resolution of May 14, 2008,[19] ordered anew the suspension of petitioner from his present position for a period of 90 days. Petitioner moved for reconsideration,[20] but the same was denied in a Resolution[21] dated September 2, 2008.

Undeterred, petitioner filed on October 2, 2008 the present Petition for *Certiorari* with prayer for TRO submitting again the sole issue of whether the *Sandiganbayan* acted with grave abuse of discretion amounting to lack or excess of jurisdiction in suspending him *pendente lite* from his position as mayor of Mulondo, Lanao del Sur.

On December 3, 2008, the Court issued a TRO enjoining the implementation of the suspension Order.[22] Subsequently, on November 24, 2009 while the present Petition was pending before the Court, respondent *Sandiganbayan* promulgated its Decision[23] acquitting petitioner and his co-accused of the offense charged.

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[16] See Manifestation and Motion To Suspend Accused *Pendente Lite, id.*, Vol. 3, pp. 256-262.

[17] *Id.* at 272-274.

[18] *Id.*, Vol. 2, pp. 349-351.

[19] *Id.*, Vol. 3, pp. 317-321.

[20] See Motion for Reconsideration of the Resolution Promulgated on May 14, 2008, *id.* at 382-386, and Supplement to Motion for Reconsideration dated May 30, 2008, *id.* at 395-398.

[21] *Id.*, Vol. 4, pp. 46-52.

[22] *Rollo,* pp. 57-59.

[23] *Sandiganbayan rollo*, Vol. 4, pp. 410-440; penned by Presiding Justice Ma. Cristina G. Cortez-Estrada and concurred in the Associate Justices Roland B. Jurado and Napoleon E. Inoturan.

Our Ruling

We dismiss the Petition for being moot and academic.

For a court to exercise its power of adjudication, there must be an actual case or controversy. Thus, in *Mattel, Inc. v. Francisco*[24] we have ruled that "[w]here the issue has become moot and academic, there is no justiciable controversy, and an adjudication thereof would be of no practical use or value as courts do not sit to adjudicate mere academic questions to satisfy scholarly interest however intellectually challenging." In the present case, the acquittal of herein petitioner operates as a supervening event that mooted the present Petition. Any resolution on the validity or invalidity of the issuance of the order of suspension could no longer affect his rights as a ranking public officer, for legally speaking he did not commit the offense charged.

Notwithstanding the mootness of the present Petition, petitioner nevertheless implores us to make a clear and categorical resolution on whether the offense of falsification of public documents under Article 171 of the RPC is included in the term "fraud" as contemplated under Section 13 of RA 3019.

As earlier quoted, to warrant the suspension of a public officer under the said Section 13, he must be charged with an offense (1) under RA 3019, or (2) under Title Seven, Book II of the RPC, or (3) involving fraud upon government or public funds or property. Admittedly, petitioner in this case was not charged under RA 3019. Neither was he charged under Title Seven,[25] Book II of the RPC as the crime of falsification of public documents under Article 171 of the RPC is covered by Title Four,[26] Book II thereof. The relevant question now is whether falsification of public documents is considered as fraud upon government or public funds or property.

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[24] *Supra* note 1.

[25] Crimes Committed by Public Officers.

[26] Crimes Against Public Interest.

This issue is not of first impression. Close but not exactly similar with the factual backdrop of this case is *Bustillo v. Sandiganbayan*.[27] Petitioner therein was charged with falsifying municipal vouchers which, as used in government, are official documents.[28] He asserted the said offense does not involve "fraud or property;" hence, his suspension finds no basis in Section 13 of RA 3019. In construing the term "fraud" as used in Section 13 of RA 3019, the Court held in said case that the same is understood in its general sense, that is, referring to "an instance or an act of trickery or deceit especially when involving misrepresentation."[29] And since vouchers are official documents signifying a cash outflow from government coffers, falsification thereof invariably involves fraud upon public funds.[30]

Again, in *Bartolo v. Sandiganbayan, Second Division*,[31] the Court citing *Bustillo* underscored the fact that "the term fraud as used in Section 13 of [RA] 3019 is understood in its generic sense."[32] In upholding the suspension of therein petitioner, the Court held that "the allegation of falsification of the three public documents by making it appear that the flood control project was 100% complete [when in fact it was not,] constitutes fraud upon public funds."[33]

In the same vein, the act imputed against petitioner constitutes fraud upon government or public funds. This was aptly explained by respondent in its Resolution[34] dated October 9, 2003, *viz*:

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[27] 521 Phil. 43 (2006).

[28] *Id*. at 51.

[29] *Id*.

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

[31] G.R. No. 172123, April 16, 2009, 585 SCRA 387.

[32] *Id*. at 393.

[33] *Id*.

[34] *Sandiganbayan rollo*, Vol. 2, pp. 17-23.

x x x The existence of fraud in the commission of the offense charged can be easily ascertained from the nature of the acts of herein accused when they made it appear that Engr. Zubair F. Murad was then the Municipal Engineer who prepared and signed Local Budget Preparation Forms No. 152, 153 and 154, when in truth and in fact, said Engr. Murad was not even an employee of the Municipality of Mulondo, Lanao del Sur. As a consequence of this act, several projects, their costs and extent, were authorized without the careful assessment of [the] legitimate municipal engineer. This alone is sufficient to justify the Court's conclusion that, indeed, the alleged act of accused constitutes fraud upon the government.[35]

In fine, we reiterate that the issue on the validity or invalidity of petitioner's suspension had been mooted considering his acquittal by the *Sandiganbayan* in its November 24, 2009 Decision. As such, there is no justiciable controversy for this Court to adjudicate.

WHEREFORE, the Petition is **DISMISSED** for being moot and academic.

No pronouncement as to costs.

SO ORDERED.

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

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[35] *Id*. at 20.

SECOND DIVISION

[G.R. No. 188267. December 2, 2013]

BAGUIO CENTRAL UNIVERSITY, *petitioner, vs.* **IGNACIO GALLENTE,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; IN REVIEWING THE LEGAL CORRECTNESS OF THE COURT OF APPEALS (CA) DECISION IN LABOR CASES TAKEN UNDER RULE 65, THE SUPREME COURT'S POWER IS LIMITED TO THE REVIEW OF QUESTIONS OF LAW RAISED AGAINST THE ASSAILED CA DECISION; EXCEPTION; CASE AT BAR.—** Our power of review under the present petition is limited to legal errors that the CA might have committed in issuing its assailed decision, in contrast with the review for jurisdictional errors which we undertake in an original *certiorari* (Rule 65) action. In reviewing the legal correctness of the CA decision in a labor case taken under Rule 65, we examine the CA decision based on how it determined the presence or absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. Moreover, the Court's power in a Rule 45 petition limits us to a review of questions of law raised against the assailed CA decision. A question of law arises when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts. In contrast, a question of fact exists when a doubt or difference arises as to the truth or falsehood of facts. x x x We deem it proper to review the conflicting factual findings of the LA and the CA, on the one hand, and the NLRC, on the other, as an exception to the Rule 45 requirement which allows us to undertake a factual review, based on the record, when the factual findings of the tribunals below are in conflict. This rule allows us to arrive at a complete resolution of this case's merits.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; LOSS OF TRUST AND CONFIDENCE AS A JUST CAUSE; TWO CONDITIONS, EXPLAINED.—** Loss of trust and confidence is a just cause for dismissal under Article 282(c) of the Labor Code. Article 282(c) provides that an employer may terminate an employment for "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." However, in order for the employer to properly invoke this ground, the employer must satisfy two conditions. *First,* the employer must show that the employee concerned holds a position of trust and confidence. Jurisprudence provides for two classes of positions of trust. The first class consists of managerial employees, or those who by the nature of their position, are entrusted with confidential and delicate matters and from whom greater fidelity to duty is correspondingly expected. Article 212(m) of the Labor Code defines managerial employees as those who are "vested with powers or prerogatives to lay down and execute management polices and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions." The second class includes "cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property" *Second,* the employer must establish the existence of an act justifying the loss of trust and confidence. To be a valid cause for dismissal, the act that betrays the employer's trust must be real, *i.e.,* founded on clearly established facts, and the employee's breach of the trust must be willful, *i.e.,* it was done intentionally, knowingly and purposely, without justifiable excuse.

3. **ID.; ID.; ID.; GUIDELINES FOR THE APPLICATION OF LOSS OF CONFIDENCE, ELUCIDATED.—** In *Lopez v. Keppel Bank Philippines, Inc.,* the Court repeated the guidelines for the application of loss of confidence as follows: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith. As applied to the dismissal of managerial

employees, employers – as a rule – enjoy wider latitude of discretion. They are not required to present proof beyond reasonable doubt as the mere existence of a basis for believing that such employee has breached the trust of the employer would suffice for the dismissal. Thus, as long as the employer "has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position," the dismissal on this ground is valid.

4. **ID.; ID.; ID.; PROCEDURAL DUE PROCESS IN LABOR CASES; REQUIREMENTS.—** "The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or x x x to seek a reconsideration of the action or ruling complained of." Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code, in relation to Article 282 of the Labor Code, provides the due process requirements prior to the termination of employment, namely: (1) a written notice specifying the ground or grounds for termination; (2) a hearing or conference to give the employee concerned the opportunity to respond to the charge; and (3) a written notice of termination.

APPEARANCES OF COUNSEL

Estrada Claver Cruz and Associates Law Office for petitioner.
Basa Adquilen & Balagtey Law Office for respondent.

D E C I S I O N

BRION, ***J.:***

We resolve in this petition for review on *certiorari*[1] the challenge to the March 12, 2009 decision[2] and the May 26,

[1] *Rollo*, pp. 3-21.

[2] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Bienvenido L. Reyes and Isaias P. Dicdican, *id.* at 27-39.

2009 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. Sp No. 104144. This CA decision vacated the November 28, 2007 decision[4] of the National Labor Relations Commission *(NLRC)* in NLRC NCR CA No. 050099-06 (NLRC CASE NO. RAB-CAR-12-0657-05) which, in turn, modified the June 30, 2006 decision[5] of the Labor Arbiter *(LA)* declaring that respondent Ignacio ***Gallente*** had been illegally dismissed.

The Factual Antecedents

In October 1991, petitioner Baguio Central University *(BCU)* hired Gallente as an instructor. The BCU subsequently promoted and appointed Gallente as Dean of the BCU's Colleges of Arts and Sciences and Public Administration.

On February 5, 2005, Gallente, using the name "Genesis Gallente," along with six other incorporators, organized the GRC Review and Language Center, Inc. *(GRC)*.[6] The GRC's Articles of Incorporation[7] *(AOI)* listed its primary purpose as "to conduct review classes for teachers, nursing, engineering and other professional and technical for Board Licensure examinations and Civil Service Professional examination," and its secondary purpose as "to conduct tutorial and proficiency trainings for foreign languages." This AOI also listed the BCU as the GRC's primary address.

The BCU's President, Dr. Margarita ***Fernandez***, subsequently called Gallente's attention regarding the establishment of the GRC and his use of the BCU as the GRC's address and of the BCU's resources. The BCU's officers conducted grievance meetings[8]

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[3] *Id*. at 24-25.

[4] Penned by Commissioner Perlita B. Velasco, *id*. at 40-49.

[5] Penned by Labor Arbiter Monroe C. Tabingan, *id*. at 52-65.

[6] Certificate of Incorporation issued by the Securities and Exchange Commission on March 31, 2005, CA *rollo,* p. 143.

[7] *Id*. at 117-122.

[8] Minutes of the three grievance meetings held on September 21, 23, and 29, 2005, *id*. at 135-140.

with Gallente to allow him to explain his side. On September 30, 2005, Gallente tendered his resignation by letter.[9]

On December 8, 2005, Gallente filed before the LA a complaint for illegal (constructive) dismissal, non-payment of vacation and sick leave pay for 2005, tax refund for the same year and attorney's fees.

In the June 30, 2006 decision,[10] the LA found that Gallente was illegally dismissed and ordered the BCU and Fernandez to pay Gallente separation pay, backwages, 13th month pay, vacation and sick leave pay, service incentive leave benefits, tax refund for the year 2005 and attorney's fees. The LA essentially held that, *first* Gallente's resignation was not voluntary. The LA noted that while the BCU conducted grievance meetings, the BCU had already decided to terminate Gallente's employment and practically coerced him to resign. Thus, to the LA, the BCU constructively dismissed Gallente.

And *second,* the BCU's bases for the loss-of-trust-and-confidence charge did not sufficiently justify Gallente's dismissal. The LA pointed out that: (1) Gallente did not benefit from the GRC nor did the GRC's incorporation cause the BCU any damage or besmirch its reputation; (2) the claimed competition between the BCU and the GRC was highly speculative; (3) Gallente's position as Dean did not conflict with his position as organizer of the GRC since his intention was to help the BCU alumni; and (4) the BCU failed to show that Gallente's performance of his duties as Dean suffered when he organized the GRC.

The NLRC's Ruling

In its decision[11] of November 28, 2007, the NLRC partially granted the BCU's appeal. In contrast with the LA's ruling, the NLRC found justifiable grounds for the BCU's loss of trust

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[9] *Id.* at 141.

[10] *Supra* note 5. The LA held the BCU's President, Dr. Fernandez, jointly and solidarily liable with the BCU.

[11] *Supra* note 4.

and confidence that rendered Gallente's dismissal valid. The NLRC noted that Fernandez permitted Gallente only to conduct review classes for the Civil Service Examination, but not to organize the GRC or to conduct review courses for other government regulated examinations (that the BCU also offered) nor to give tutorial and proficiency trainings for foreign languages. The NLRC declared that by offering these other activities that were clearly beyond what Fernandez permitted, Gallente betrayed the BCU's trust and directly competed with the latter. Thus, Gallente was guilty of conflict of interest and disloyalty.

Further, the NLRC pointed out that the absence of pecuniary loss on the BCU's part or the GRC's failure to fully operate did not excuse Gallente from culpability for his acts. To the NLRC, actual damage or loss is not necessary to render Gallente liable for willful breach of trust and confidence; as a Dean and as the holder of a responsible and sensitive position, he owed utmost fidelity to his employer's interests. Accordingly, the NLRC reversed the LA's illegal dismissal findings and deleted the award of backwages and separation pay.

Gallente moved to reconsider[12] this NLRC ruling, which the NLRC denied in its March 18, 2008 resolution.[13]

The CA's Ruling

In its March 12, 2009 decision,[14] the CA reversed the NLRC's ruling and reinstated the LA's June 30, 2006 decision. The CA significantly affirmed the LA's findings on the insufficiency of the BCU's bases for the loss-of-trust charge. Additionally, the CA pointed out that at the time Gallente organized the GRC, the BCU's Review Center did not yet exist; also, the GRC did not successfully operate because it failed to comply with certain legal requirements. The CA submitted that even if it were to assume that Gallente committed a breach, this breach was ordinary

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[12] CA *rollo*, pp. 26-30.

[13] *Id.* at 23-25.

[14] *Supra* note 2.

and was not sufficient to warrant his dismissal; to be a legally sufficient basis, the employee's breach must be willful and intentional. Since the BCU failed to prove willful breach of trust, the CA declared Gallente's dismissal to be invalid.

The BCU filed the present petition after the CA denied its motion for reconsideration[15] in the CA's May 26, 2009 resolution.[16]

The Petition

The BCU argues that it validly dismissed Gallente for willful breach of trust and confidence.[17] It points out that as Dean and, therefore, as a managerial employee, Gallente owed utmost fidelity to it as an educational institution and to its business interests. To the BCU, Gallente effectively competed with it and breached the trust that his position held when he organized the GRC that offered review courses for other government examinations, aside from the civil service examination and tutorial and proficiency training in foreign languages that BCU similarly offers. The BCU also claims that Gallente created a conflict of interest when he offered thesis dissertation courses in the GRC. Thesis dissertation was part of its (the BCU's) own graduate school program and Gallente, as Dean, sits as member of the judgment panel during oral defenses of thesis dissertations. The BCU thus maintains that regardless of the presence or absence of pecuniary benefit, it validly terminated Gallente's employment as these acts, alone, justified his dismissal.

The BCU adds that Gallente's use of the BCU, as the GRC's principal address in the AOI and his use of BCU's property when he posted the GRC's streamer advertisement outside the BCU's premises — both of which were made without its permission — negate Gallente's claim of good faith. The BCU argues that by doing so, Gallente not only lied before the Securities and Exchange Commission *(SEC)* but also represented to the

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[15] CA *rollo,* pp. 265-271.

[16] *Supra* note 3.

[17] *Supra* note 1.

public that BCU gave the GRC its imprimatur. Moreover, the BCU points out that while it did not yet have a review center when Gallente organized the GRC, it had, at this time, already been conducting review classes for the nursing examination and thesis dissertation. Although the GRC failed to fully operate, the BCU insists that Gallente unquestionably engaged in a venture that directly conflicted with its interests.

The BCU concludes that whether Gallente voluntarily resigned or was dismissed, the termination of Gallente's employment was valid for it was for a just cause, *i.e.,* loss of trust and confidence. Accordingly, since Gallente was validly dismissed, the BCU argues that Gallente is not entitled to the awarded separation pay, backwages, allowances and other benefits.

The Case for the Respondent

In his comment,[18] Gallente maintains that he was illegally dismissed as the ground on which the BCU relied for his dismissal had no basis. He argues that the BCU failed to prove that he willfully breached its trust and that he competed with it, intentionally or otherwise, when he organized the GRC. He points to the following reasons.

First, he never offered any review course; the most that the BCU could have used as basis for its claim of competition was the advertisement that he posted and handed out for the conduct of review courses for the civil service examination. Even then, the competition actually took place, as the GRC failed to fully operate.

Second, even if the civil service examination review course that he advertised pushed through, the BCU was not yet offering similar review courses that could have directly competed with it.

Third, although the GRC's AOI included programs or courses that the BCU had already been offering, he did not intend the GRC to offer these courses; if he did, he would have otherwise included these programs or courses in the advertisement.

[18] *Rollo,* pp. 68-82.

Fourth, he merely included the review courses for other government examinations in the GRC's AOI on advice of the local SEC official.

Finally, the BCU did not yet have its own review center at the time he organized the GRC.

Procedurally, Gallente argues that the present petition's issues and arguments are factual and are not allowed in a Rule 45 petition. Moreover, the BCU's arguments fail to show that the CA gravely abused its discretion to warrant the CA decision's reversal.

The Issues

In sum, the core issue is the presence or absence of loss of trust and confidence as basis. In the context of the Rule 65 petition before the CA, the issue is whether the CA correctly found the NLRC in grave abuse of discretion in ruling that the BCU validly dismissed Gallente on this ground.

The Court's Ruling

We resolve to **GRANT** the petition.

Preliminary considerations; Nature of the issues; Montoya ruling and the factual-issue-bar rule

In this Rule 45 petition for review on *certiorari*, we review the CA's decision rendered under Rule 65 of the Rules of Court. Our power of review under the present petition is limited to legal errors that the CA might have committed in issuing its assailed decision,[19] in contrast with the review for jurisdictional errors which we undertake in an original *certiorari* (Rule 65) action.[20]

In reviewing the legal correctness of the CA decision in a labor case taken under Rule 65, we examine the CA decision

[19] *Montoya v. Transmed Manila Corporation,* G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342.

[20] *Ibid.*

based on how it determined the presence or absence of grave abuse of discretion in the NLRC decision before it and not on the basis of whether the NLRC decision on the merits of the case was correct.[21] In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it.[22]

Moreover, the Court's power in a Rule 45 petition limits us to a review of questions of law raised against the assailed CA decision.[23] A question of law arises when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts.[24] In contrast, a question of fact exists when a doubt or difference arises as to the truth or falsehood of facts.[25]

In this petition, the BCU essentially asks the question – whether, under the circumstances and the presented evidence, the termination of Gallente's employment was valid. As framed, therefore, the question before us is a proscribed factual issue that we cannot generally consider in this Rule 45 petition, except to the extent necessary to determine *whether the CA correctly found the NLRC in grave abuse of its discretion in considering and appreciating this factual issue.*[26]

All the same, we deem it proper to review the conflicting factual findings of the LA and the CA, on the one hand, and the

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[21] *Ibid*.

[22] *Career Philippines Shipmanagement, Inc. v. Serna,* G.R. No. 172086, December 3, 2012, 686 SCRA, 676, 683-684, citing *Montoya v. Transmed Manila Corporation*, *supra* note 19.

[23] See *Baron v. National Labor Relations Commission,* G.R. No. 182299, February 22, 2010, 613 SCRA 351, 359; *Oasay, Jr. v. Palacio Del Gobernador Condominium Corporation,* G.R. No. 194306, February 6, 2012, 665 SCRA 68, 76; and *Lima Land, Inc. v. Cuevas,* G.R. No. 169523, June 16, 2010, 621 SCRA 36, 41.

[24] See *Cosmos Bottling Corp. v. Nagrama, Jr.,* 571 Phil. 281, 296 (2008).

[25] *Ibid*.

[26] *Montoya v. Transmed Manila Coporation, supra* note 19.

NLRC, on the other, as an exception to the Rule 45 requirement[27] which allows us to undertake a factual review, based on the record, when the factual findings of the tribunals below are in conflict. This rule allows us to arrive at a complete resolution of this case's merits.

On the issue of whether Gallente's employment was validly terminated; Loss of trust and confidence as ground for dismissal

Our Constitution, statutes and jurisprudence uniformly guarantee to every employee or worker tenurial security. What this means is that an employer shall not dismiss an employee except for just or authorized cause[28] and only after due process is observed.[29] Thus, for an employee's dismissal to be valid, the employer must meet these basic requirements of: (1) just or authorized cause (which constitutes the substantive aspect of a valid dismissal); and (2) observance of due process (the procedural aspect).

1. Substantive aspect; dismissal based on loss of trust and confidence

Loss of trust and confidence is a just cause for dismissal under Article 282(c) of the Labor Code.[30] Article 282(c) provides

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[27] See *Cosmos Bottling Corp. v. Nagrama, Jr., supra*, note 24, at 298; *Jumuad v. Hi-Flyer Food, Inc.,* G.R. No. 187887, September 7, 2011, 657 SCRA 288, 299; and *Lynvil Fishing Enterprises, Inc. v. Ariola,* G.R. No. 181974, February 1, 2012, 664 SCRA 679, 690.

[28] See Article 279 of the Labor Code.

[29] *Baron v. National Labor Relations Commission, supra* note 23, at 360. See also *Lima Land, Inc. v. Cuevas, supra* note 23, at 42-43; and *Oasay, Jr. v. Palacio del Gobernador Condominuim Corporation, supra* note 23, at 77-78.

[30] Article 282 of the Labor Code reads in full:

Article 282. *TERMINATION BY EMPLOYER*. – An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

that an employer may terminate an employment for "fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative." However, in order for the employer to properly invoke this ground, the employer must satisfy two conditions.

First, the employer must show that the employee concerned holds a position of trust and confidence. Jurisprudence provides for two classes of positions of trust. The first class consists of managerial employees, or those who by the nature of their position, are entrusted with confidential and delicate matters and from whom greater fidelity to duty is correspondingly expected.[31] Article 212(m) of the Labor Code defines managerial employees as those who are "vested with powers or prerogatives to lay down and execute management polices and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions." The second class includes "cashiers, auditors, property custodians, or those who, in the normal and routine exercise of their functions, regularly handle significant amounts of [the employer's] money or property"[32]

Second, the employer must establish the existence of an act justifying the loss of trust and confidence.[33] To be a valid cause for dismissal, the act that betrays the employer's trust must be real, *i.e.,* founded on clearly established facts,[34] and the

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(c) Fraud or **willful breach by the employee of the trust reposed in him by his employer or duly authorized representative**;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing. (Emphasis ours)

[31] *Supra* note 23, at 46.

[32] *Lopez v. Keppel Bank Philippines, Inc.,* G.R. No. 176800, September 5, 2011, 656 SCRA 718, 727.

[33] *Philippine Plaza Holdings, Inc. v. Episcope,* G.R. No. 192826, February 27, 2013.

[34] See *Bristol Myers Squibb (Phils.), Inc. v. Baban,* G.R. No. 167449, December 17, 2008, 574 SCRA, 198, 206.

employee's breach of the trust must be willful, *i.e.,* it was done intentionally, knowingly and purposely, without justifiable excuse.[35]

In *Lopez v. Keppel Bank Philippines, Inc.,*[36] the Court repeated the guidelines for the application of loss of confidence as follows: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith.

As applied to the dismissal of managerial employees, employers – as a rule – enjoy wider latitude of discretion.[37] They are not required to present proof beyond reasonable doubt as the mere existence of a basis for believing that such employee has breached the trust of the employer would suffice for the dismissal.[38] Thus, as long as the employer "has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position,"[39] the dismissal on this ground is valid.

Applying these outlined legal parameters to the present case, we find sufficient basis to dismiss Gallente for loss of trust and confidence. For greater clarity, we elaborate below on the application of the parameters to the present case.

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[35] See *Baron v. NLRC, supra* note 23, at 362.

[36] *Supra* note 32, at 729 (citation omitted); *Ancheta v. Destiny Financial Plans, Inc.,* G.R. No. 179702, February 16, 2010, 612 SCRA 648, 660.

[37] See *Ancheta v. Destiny Financial Plans, Inc.,* G.R. No. 179702, February 16, 2010, 612 SCRA 648, 661; *Bristol Myers Squibb (Phils.), Inc. v. Baban,* G.R. No. 167449, December 17, 2008, 574 SCRA, 198, 208.

[38] See *Lima Land, Inc. v. Cuevas*, *supra* note 23, at 46-47; and *Ancheta v. Destiny Financial Plans, Inc., supra* note 37, at 661.

[39] *Lima Land, Inc. v. Cuevas*, *supra* note 23, at 46-47; *Etcuban, Jr. v. Sulpicio Lines, Inc.,* 489 Phil. 483, 497 (2005). See also *Paulino v. National Labor Relations Commission,* G.R. No. 176184, June 13, 2012, 672 SCRA 234, 240.

1.A. Gallente held a position of trust and confidence

The established facts reveal that Gallente was the Dean of two of the BCU's departments. As Dean, Gallente was tasked, among others, to assist the school head in all matters affecting the general policies of the entire institution, to direct and advise the students in their programs of study, and to approve their subject load and exercise educational leadership among his faculty.[40] Undoubtedly, Gallente was a managerial employee as these duties involved the exercise of powers and prerogatives equivalent to managerial actions described above. Gallente, in short, clearly held a position of trust and confidence consistent with the first legal requirement.

1.B. Gallente committed willful breach of trust sufficient to justify dismissal

In finding Gallente illegally dismissed, the LA essentially weighed the sufficiency of the claimed conflict-of-interest acts in terms of the presence or, as the LA eventually concluded, the absence of damage caused to the BCU and its interests. The NLRC, on the other hand, found these same acts legally sufficient to support the loss-of-trust-and-confidence charge as it considered the presence/absence-of-damage test to be irrelevant.

This reversal of the LA ruling made by the NLRC led the CA to conclude that grave abuse of discretion intervened in the NLRC's ruling. To the CA, this ruling was unsupported by established facts and contrary to settled jurisprudence. In so ruling, the CA similarly put premium on the presence/absence-of-damage test on which the LA relied upon. The CA likewise found Gallente's good-faith claim to be significantly persuasive.

We cannot support these CA's reasons on several points.

First, that the BCU suffered no damage or, conversely, that Gallente obtained no pecuniary benefit were clearly beside the point. The heart of the loss-of-trust charge is the employee's

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[40] CA *rollo*, p. 98.

betrayal of the employer's trust.[41] "Damage aggravates the charge but its absence does not mitigate nor negate the employee's liability."[42] Thus, in assessing whether Gallente's purported breach-of-trust acts warrants dismissal, the LA, and the CA as it affirmed the LA, needed to consider only Gallente's position as Dean and the correlative fidelity that this position called for; whether Gallente was indeed responsible for the alleged acts; and whether the nature of his participation rendered him unworthy of the vested trust.

To reiterate, as long as the act that breached the employer's trust is founded on established facts, the employee's dismissal on this ground is justified. After all, the BCU could not be expected to wait until Gallente has caused actual and irreparable material damage before it had taken steps to protect its interests.

Second, that the GRC failed to fully operate or that the BCU did not yet have its own review center at the time Gallente organized the GRC are factual considerations we likewise deem immaterial. Gallente betrayed his owed fidelity the moment he engaged in a venture that required him to perform tasks and make calculated decisions which his duty to the BCU would have equally required him to perform or would have otherwise required him to oppose. In fact, we are convinced that actual conflict of interest existed when Gallente sought to conduct review courses for nursing examination (as included in the GRC's primary purpose), knowing that the BCU was already offering similar class. We are likewise convinced that, far from being voluntary, Gallente discontinued the GRC's operation plainly because of the legal and procedural obstacles.

Further, had Gallente really no intention of having the GRC offer review courses for the other government examinations,

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[41] See *Lopez v. NLRC,* 513 Phil. 731, 738 (2005); *Lima Land, Inc. v. Cuevas, supra* note 23, at 46.

[42] *Lopez v. NLRC, supra* note 41, at 738. See also *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM) – Katipunan,* G.R. No. 164016, March 15, 2010, 615 SCRA 240, 252, quoting *United South Dockhandlers, Inc. v. National Labor Relations Commission,* 335 Phil. 76, 81-82, (1997).

he should not have included these in the GRC's AOI, notwithstanding the local SEC official's advice. As matters then stood, he included them in the GRC's AOI so that he could have offered these other courses had the GRC continued in its operation. We are, therefore, inclined to believe that he had every intention to pursue these other course offerings had it not been for the legal and procedural obstacles that prevented the GRC from successfully operating.

Third, Gallente's good intentions, assuming them to be true, were beside the point. Ultimately, the determinant is his deliberate engagement in a venture that would have directly conflicted with the BCU's interests. If Gallente merely intended to help the BCU and its students in increasing their chances of passing the Civil Service Examination, he could have just offered, as part of the BCU's course curriculum, review classes for the Civil Service Examination instead of altogether organizing a review center that obviously will offer the course to everyone minded to enroll. Incorporating review classes in the BCU's course curriculum would have been easier – as he no longer had to go through the required procedures for incorporation. It would also have been more effective in achieving the intended assistance to the BCU students – as the review effort would obviously be focused on these students. It would have also been the more appropriate course of action considering the nature of his position.

As Dean, Gallente was responsible for the over-all administration of his departments. This responsibility includes ensuring that his departments' curriculum and program of study, to be adopted by the BCU, are up to date, relevant and reflective of the scholastic requirements for the respective fields. And, to say the least, this curriculum and program of study should be sufficient so that students would pass the requisite government examination, even without enrolling in any review course. This responsibility also involves formulating the educational policies in his departments as well as enforcing the BCU's policies, rules and regulations on subject loads, subject sequence and subject pre-requisites and on admission and registration of

students. In short, as Dean, Gallente was duty-bound to uphold the BCU's interest above all.

Obviously, these duties will conflict with his responsibilities as organizer and President of the GRC. In these latter positions, Gallente would have likewise been obligated to recommend or formulate the GRC's program of study as well as the hiring of reviewers and regulating their topical or subject assignments. He would have also been compelled to secure the numerical sufficiency of the enrollees. After all, the review center was still a business venture that required, for its guaranteed success, enrollees as the source of its income. Most of all, he would have likewise been duty-bound to uphold the GRC's interests above all. Clearly, therefore, he could not have upheld the interest of either the BCU's or the GRC's, above all, without sacrificing the interest of the other.

Last, Gallente appropriated for his and the GRC's benefit the BCU's property when he did not secure prior authority in using the BCU as the GRC's primary address in the AOI and in posting the GRC's streamer advertisement outside the BCU's main gate. What is worse, by these acts, Gallente represented to the public that the GRC is a BCU-sponsored venture, which clearly it was not. In our view, these acts showed dishonesty and negates Gallente's claim of good faith. While Gallente maintains that he properly secured prior authority, yet he fatally failed to substantiate this allegation which he was obligated to prove.

Under the prevailing factual circumstances, we find that Gallente's acts rendered him unworthy of the BCU's trust and confidence. Hence, we find the BCU's termination of his employment reasonable and appropriate, and a valid exercise of management prerogative. An employer may not be compelled to continue in its employ a person whose continuance in the service would patently be inimical to its interests.[43]

Thus, from the perspective of this Rule 45 petition, the CA's findings on the matter of the BCU's loss-of-trust charge

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[43] See *Lopez v. NLRC, supra* note 41, at 737.

clearly lacked factual and legal basis; hence the CA's ruling must fall.

2. Procedural aspect

"The essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or x x x to seek a reconsideration of the action or ruling complained of."[44] Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code, in relation to Article 282 of the Labor Code, provides the due process requirements prior to the termination of employment, namely: (1) a written notice specifying the ground or grounds for termination; (2) a hearing or conference to give the employee concerned the opportunity to respond to the charge; and (3) a written notice of termination.[45]

The LA, the NLRC and the CA in this case unanimously declared that Gallente did not voluntarily resign and that the BCU failed to observe the due process requirements as outlined above. We agree and we will not disturb their findings on this

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[44] *Lima Land, Inc. v. Cuevas, supra* note 23, at 43.

[45] Section 2(d), Rule I of the Implementing Rules of Book VI of the Labor Code, in part, provides:

Section 2. Security of tenure. – xxx

x x x x x x x x x

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i.) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii.) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii.) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. [Emphasis ours]

point. We, therefore, find proper the NLRC's award of ₱30,000.00 as nominal damages in accordance with this Court's ruling in *Agabon v. NLRC.*[46]

In sum, we find the NLRC's appreciation of the parties' arguments and presented evidence in this case to be proper, as its findings were supported by the established facts, the law and jurisprudence. The CA, on the other hand, incorrectly found grave abuse of discretion in appreciating the NLRC's rulings.

WHEREFORE, in light of these considerations, we hereby **GRANT** the petition. We **REVERSE** and **SET ASIDE** the decision dated March 12, 2009 and the resolution dated May 26, 2009 of the Court of Appeals in CA-G.R. Sp No. 104144 and accordingly **REINSTATE** the decision dated November 28, 2007 of the National Labor Relations Commission in NLRC NCR CA No. 050099-06 (NLRC CASE NO. RAB-CAR-12-0657-05).

SO ORDERED.

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

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[46] 485 Phil. 248, 288 (2004). See also *Concepcion v. Minex Import Corporation/Minerama Corporation,* G.R. No. 153569, January 24, 2012, 663 SCRA 496, 512.

SECOND DIVISION

[G.R. No. 200265. December 2, 2013]

LAURA E. PARAGUYA, *petitioner, vs.* **SPOUSES ALMA ESCUREL-CRUCILLO and EMETERIO CRUCILLO,*** **and the REGISTER OF DEEDS OF SORSOGON,** *respondents.*

SYLLABUS

1. **CIVIL LAW; PROPERTY; PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE NO. 1529); THE PERIOD TO CONTEST THE DECREE OF REGISTRATION IS ONE (1) YEAR FROM THE DATE OF ENTRY OF SUCH DECREE OF REGISTRATION; APPLICATION IN CASE AT BAR.—** It is an established rule that a Torrens certificate of title is not conclusive proof of ownership. Verily, a party may seek its annulment on the basis of fraud or misrepresentation. However, such action must be seasonably filed, else the same would be barred. In this relation, Section 32 of PD 1529 provides that the period to contest a decree of registration shall be one (1) year from the date of its entry and that, after the lapse of the said period, the Torrens certificate of title issued thereon becomes incontrovertible and indefeasible. x x x In view of the foregoing, the Court is impelled to sustain the CA' s dismissal of Paraguya's complaint for annulment of OCT No. P-17729 since it was filed only on December 19, 1990, or more than eleven (11) years from the title's date of entry on **August 24, 1979**. Based on Section 32 of PD 1529, said title had become incontrovertible and indefeasible after the lapse of one (1) year from the date of its entry, thus barring Paraguya's action for annulment of title.

2. **ID.; PRESCRIPTION OF ACTIONS; THE PRESCRIPTION PERIOD FOR ACTIONS FOR RECONVEYANCE IS TEN (10) YEARS RECKONED FROM THE DATE OF ISSUANCE OF THE CERTIFICATE OF TITLE; EXCEPTION; NOT**

* Both deceased. Substituted by their heirs, namely, Ella E. Crucillo, Emelina Crucillo-Resurreccion, Emily Crucillo-Fajardo, Arnel E. Crucillo, Elaine E. Crucillo and Alex E. Crucillo; *Rollo*, p. 14.

APPLICABLE IN CASE AT BAR.— The Court likewise takes note that Paraguya's complaint is likewise in the nature of an action for reconveyance because it also prayed for the trial court to order Sps. Crucillo to "surrender ownership and possession of the properties in question to [Paraguya], vacating them altogether x x x." Despite this, Paraguya's complaint remains dismissible on the same ground because the prescriptive period for actions for reconveyance is ten (10) years reckoned from the date of issuance of the certificate of title, except when the owner is in possession of the property, in which case the action for reconveyance becomes imprescriptible. Such exception is, however, inapplicable in this case because as stipulated by the parties herein, it is Sps. Crucillo, and not Paraguya, who are in possession of the land covered by OCT No. P-1 7729.

3. **ID.; PROPERTY; LAND REGISTRATION; BASED ON SECTION 1 OF PRESIDENTIAL DECREE NO. 892, SPANISH TITLES CAN NO LONGER BE USED AS EVIDENCE OF OWNERSHIP STARTING AUGUST 16, 1976.—** Paraguya's complaint for annulment of title should be dismissed altogether since she merely relied on the *titulo posesorio* issued in favor of Estabillo sometime in 1893 or 1895. Based on Section 1 of PD 892, entitled "Discontinuance of the Spanish Mortgage System of Registration and of the Use of Spanish Titles as Evidence in Land Registration Proceedings," Spanish titles can no longer be used as evidence of ownership after six (6) months from the effectivity of the law, or starting August 16, 1976. x x x Hence, since Paraguya only presented the *titulo posesorio* during the pendency of the instant case, or during the 1990's onwards, the CA was correct in not giving any credence to it at all.

APPEARANCES OF COUNSEL

Juan Sanchez Dealca for petitioner.
Ferdinand M. Tena for the public respondent.
Roberto T. Labitag for private respondents.

RESOLUTION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 27, 2011 and Resolution[3] dated January 9, 2012 of the Court of Appeals (CA) in CA-G.R. CV. No. 94764 reversing the Decision[4] dated April 22, 2009 of the Regional Trial Court of Gubat, Sorsogon, Branch 54 (RTC) in Civil Case No. 1583 which ordered respondents-spouses Alma Escurel-Crucillo (Escurel) and Emeterio Crucillo (Sps. Crucillo) to surrender ownership and possession of certain parcels of land located at Maragadao, Villareal, Gubat, Sorsogon (subject properties) in favor of petitioner Laura E. Paraguya (Paraguya), and for respondent Register of Deeds of Sorsogon (RD) to cancel Original Certificate of Title (OCT) No. P-17729[5] covering the foregoing properties.

The Facts

On December 19, 1990, Paraguya filed before the RTC a Complaint[6] against Sps. Crucillo and the RD for the annulment of OCT No. P-17729 and other related deeds, with prayer for receivership and damages, alleging that Escurel obtained the aforesaid title through fraud and deceit. Paraguya claimed that she is the lawful heir to the subject properties left by her paternal grandfather, the late Ildefonso Estabillo[7] (Estabillo), while Escurel was merely their administrator and hence, had no right over the same.[8]

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[1] *Id*. at 10-46.

[2] *Id*. at 49-61. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Danton Q. Bueser, concurring.

[3] *Id*. at 97-98.

[4] *Id*. at 62-70. Penned by Judge Fred G. Jimena.

[5] Records, p. 6.

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

[7] "Estavillo" in some parts of the records.

[8] *Rollo*, p. 50.

On January 18, 1991, the RD filed its answer and denied any involvement in the aforesaid fraud, maintaining that its issuance of OCT No. P-17729 was his ministerial duty.[9]

Thereafter, or on February 7, 1991, Sps. Crucillo filed their answer with motion to dismiss, averring that Paraguya's complaint had already been barred by laches and/or prescription.[10] They further alleged, among others, that Escurel, through her father, the late Angel Escurel, applied for a free patent over the subject properties, resulting in the issuance of Free Patent No. V-3 005844 under OCT No. P-17729 in her name.

During pre-trial, the parties stipulated on the following: *(a)* the identity of the subject properties which are covered by OCT No. P-17729 in the name of Escurel; *(b)* the fact that the subject properties were originally owned by Estabillo, the common ancestor of Paraguya and Escurel, being the former's grandfather and the latter's great-grandfather; and *(c)* the fact that Sps. Crucillo are in actual possession of the subject properties.[11]

During trial, Paraguya testified as to how she came about owning the subject properties, presenting a document entitled Recognition of Ownership and Possession dated December 1, 1972 executed by her siblings, as well as a *titulo posesorio* issued sometime in 1893 or 1895 in the name of Estabillo. A representative of the Community Environment and Natural Resources Office (CENRO), by the name of Ramon Escanilla, also testified in Paraguya's favor, stating that aside from an affidavit dated December 17, 1976[12] executed by Escurel's brother, Adonis Escurel (Adonis), there were no other documents of ownership presented before the Bureau of Lands in support of Escurel's application for title.[13]

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[9] *Id*.

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

[11] *Id*. at 65.

[12] See records, p. 199.

[13] *Rollo*, p. 52.

For their part, Sps. Crucillo presented several witnesses who testified that Escurel had been in possession of the subject properties in the concept of an owner as early as 1957. Escurel then admitted that her brother, Adonis, executed an affidavit dated December 17, 1976 in her favor. She likewise admitted that she executed an affidavit, entitled Ratification of Ownership (affidavit of adjudication), on the same date, in support of the free patent application with the Bureau of Lands.[14]

The RTC Ruling

In a Decision[15] dated April 22, 2009, the RTC granted Paraguya's complaint, ordering the annulment of OCT No. P-17729. Accordingly, it directed the RD to cancel the said title and Sps. Escurillo to surrender ownership and possession of the subject properties to Paraguya.

It found that there was a discrepancy in the area of the subject properties applied for registration, as Adonis's affidavit — which was made as the basis of Escurel's affidavit of adjudication — stated that the actual area thereof was only 8,392 square meters (sq.m.) whereas OCT No. P-17729 indicated that the foregoing properties had an area of 30,862 sq.m. In this regard, the RTC concluded that the requisites for the application for registration were not complied with. Likewise, it observed that Escurel's ownership over the subject properties was not proven, adding that the affidavit of adjudication made by her and submitted to the CENRO was self-serving. Based on its findings, it then concluded that there was fraud in Escurel's acquisition of the above-mentioned title.[16]

On May 15, 2009, a motion for reconsideration was filed by the Heirs of Sps. Crucillo, who had substituted the latter due to their supervening death. The said motion was, however, denied

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[14] *Id*. at 52-53.

[15] *Id*. at 62-70.

[16] *Id*. at 69-70.

on December 16, 2009, prompting them to elevate the case to the CA.[17]

The CA Ruling

In a Decision[18] dated June 27, 2011, the CA reversed the RTC's ruling and ordered the dismissal of Paraguya's complaint.

Citing Section 32 of Presidential Decree No. (PD) 1529,[19] otherwise known as the "Property Registration Decree," it held that OCT No. P-17729 became indefeasible and incontrovertible after the lapse of one (1) year from its issuance on August 24, 1979, thus barring Paraguya's complaint.[20] Moreover, it found that the express trust relationship between Escurel and Estabillo was not sufficiently established. Finally, it pointed out that Paraguya was not a real-party-interest since she has not proven her title over the subject properties, stating that the *titulo posesorio* she held could no longer be used as evidence of ownership.

Aggrieved, Paraguya moved for reconsideration[21] which was, however, denied on January 9, 2012.[22] Hence, this petition.

Issue Before the Court

The sole issue in this case is whether or not the CA correctly dismissed Paraguya's complaint for annulment of title.

The Court's Ruling

The petition has no merit.

It is an established rule that a Torrens certificate of title is not conclusive proof of ownership. Verily, a party may seek its

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[17] *Id*. at 53.

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

[19] "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES."

[20] *Rollo*, pp. 55-56.

[21] *Id*. at 71-82.

[22] *Id*. at 97-98.

annulment on the basis of fraud or misrepresentation. However, such action must be seasonably filed, else the same would be barred.[23]

In this relation, Section 32 of PD 1529 provides that the period to contest a decree of registration shall be one (1) year from the date of its entry and that, after the lapse of the said period, the Torrens certificate of title issued thereon becomes incontrovertible and indefeasible, *viz.*:

Sec. 32. Review of decree of registration; Innocent purchaser for value. The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration **not later than one year from and after the date of the entry of such decree of registration,** but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud. (Emphases and underscoring supplied)

In view of the foregoing, the Court is impelled to sustain the CA's dismissal of Paraguya's complaint for annulment of OCT

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[23] "It may be argued that the certificate of title is not conclusive of ownership when the issue of fraud and misrepresentation in obtaining it is raised. However, this issue must be raised seasonably." (*Heirs of the Late Fernando S. Falcasantos v. Tan,* G.R. No. 172680, August 28, 2009, 597 SCRA 411, 414; citations omitted)

No. P-17729[24] since it was filed only on December 19, 1990, or more than eleven (11) years from the title's date of entry on August 24, 1979.[25] Based on Section 32 of PD 1529, said title had become incontrovertible and indefeasible after the lapse of one (1) year from the date of its entry, thus barring Paraguya's action for annulment of title.

The Court likewise takes note that Paraguya's complaint is likewise in the nature of an action for reconveyance because it also prayed for the trial court to order Sps. Crucillo to "surrender ownership and possession of the properties in question to [Paraguya], vacating them altogether x x x."[26] Despite this, Paraguya's complaint remains dismissible on the same ground because the prescriptive period for actions for reconveyance is ten (10) years reckoned from the date of issuance of the certificate of title, except when the owner is in possession of the property, in which case the action for reconveyance becomes imprescriptible.[27] Such exception is, however, inapplicable in this case because as stipulated by the parties herein, it is Sps. Crucillo, and not Paraguya, who are in possession of the land covered by OCT No. P-17729.

As a final point, it is well to note that even if the barring effect of Section 32 and the above-stated prescriptive period for reconveyance are discounted, Paraguya's complaint for annulment of title should be dismissed altogether since she merely relied on the *titulo posesorio* issued in favor of Estabillo sometime in 1893 or 1895. Based on Section 1 of PD 892, entitled "Discontinuance of the Spanish Mortgage System of Registration and of the Use of Spanish Titles as Evidence in Land Registration Proceedings," Spanish titles can no longer be used as evidence of ownership after six (6)

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[24] See records, pp. 1-5.

[25] See OCT No. P-17729, *id*. at 6.

[26] *Id*. at 4.

[27] See *Orduña v. Fuentebella*, G.R. No. 176841, June 29, 2010, 622 SCRA 146, 162, citing *Heirs of Salvador Hermosilla v. Spouses Remoquillo,* 542 Phil. 390, 396 (2007).

months from the effectivity of the law, or starting August 16, 1976,[28] *viz.*:

Section 1. The system of registration under the Spanish Mortgage Law is discontinued, and all lands recorded under said system which are not yet covered by Torrens title shall be considered as unregistered lands.

All holders of Spanish titles or grants should apply for registration of their lands under Act No. 496, otherwise known as the Land Registration Act, **within six (6) months from the effectivity of this decree**. **Thereafter, Spanish titles cannot be used as evidence of land ownership in any registration proceedings under the Torrens system**. (Emphasis and underscoring supplied)

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Hence, since Paraguya only presented the *titulo posesorio* during the pendency of the instant case, or during the 1990's onwards, the CA was correct in not giving any credence to it at all.

WHEREFORE, the petition is **DENIED.** Accordingly, the Court of Appeal's Decision dated June 27, 2011 and Resolution dated January 9, 2012 in CA-G.R. CV. No. 94764 are hereby **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 205413. December 2, 2013]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROGELIO MANICAT *Y* DE GUZMAN,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.—** For the charge of rape (under Article 266-A of the Revised Penal Code [*RPC*], as amended) to prosper, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.
2. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; POSITIVE IDENTIFICATION OF THE ACCUSED, WHEN CATEGORICAL AND CONSISTENT WITHOUT ANY SHOWING OF ILL MOTIVE ON THE PART OF THE WITNESS, SHOULD PREVAIL OVER MERE DENIAL OF THE ACCUSED.—** "As a matter of settled jurisprudence, rape is subjective and not all victims react in the same way; there is no typical form of behavior for a woman when facing a traumatic experience such as a sexual assault." In addition, the appellant's denial cannot overturn his conviction in light of AAA's positive testimony. We have consistently held that positive identification of the accused, when categorical and consistent and without any showing of ill motive of the part of the eyewitness testifying, should prevail over the mere denial of the appellant whose testimony is not substantiated by clear and convincing evidence.
3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; IMPOSABLE PENALTY, EXPLAINED.—** We reject the appellant's argument that the phrase "without eligibility for parole" is a penalty which is appropriate only to qualified rape. Article 266-B of the RPC is explicit that rape committed through force, threat, or intimidation is punishable by *reclusion perpetua.* On the other hand, Resolution No. 24-4-10 states

that those convicted of offenses punishable by *reclusion perpetua* are disqualified for parole. Thus, the RTC did not alter the appropriate penalty for simple rape as it merely reflected the consequence of having been convicted of a crime punishable by *reclusion perpetua.*

APPEARANCES OF COUNSEL

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

D E C I S I O N

BRION, *J.*:

We resolve the appeal, filed by Rogelio Manicat *y* de Guzman (*appellant*), from the decision[1] of the Court of Appeals (*CA*), dated May 4, 2012 in CA-G.R. CR-HC No. 03930. The decision affirmed with modification the January 14, 2009 decision[2] of the Regional Trial Court (*RTC*), Branch 169, Malabon City, in Crim. Case No. 24550-MN, finding the appellant guilty beyond reasonable doubt of the crime of rape, and sentencing him to suffer the penalty of *reclusion perpetua,* without eligibility for parole.

<u>The RTC Ruling</u>

In its January 14, 2009 decision, the RTC found the appellant guilty beyond reasonable doubt of simple rape. It gave credence to the testimony of AAA, the 13-year old victim, that while she was on her way to buy coffee and sugar, the appellant pulled her inside his house, undressed her, and then forced her to lie down on her back. The appellant afterwards inserted his penis inside her vagina. AAA explained that she felt pain but she did not cry because the appellant threatened to kill her if she made

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[1] *Rollo,* pp. 2-20; penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Associate Justices Jose C. Reyes, Jr. and Franchito N. Diamante.

[2] CA *rollo,* pp. 11-21.

any noise. According to the RTC, the fact that AAA is afflicted with mild mental retardation with a mental age of 7-8 years old does not make her an incompetent witness, as she testified in a clear and straightforward manner. Thus, the RTC sentenced the appellant to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordered him to pay the victim the sum of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages.

The CA Decision

On appeal, the CA affirmed the RTC judgment with the modification that the award of exemplary damages in the amount of ₱25,000.00 be deleted. The CA held that AAA testified in a "straightforward, candid and convincing manner."[3] Her testimony was corroborated by Medico Legal Report No. M-257-01 dated April 29, 2001 stating that the victim is in a non-virgin physical state. The CA noted that the Clinical Abstract issued by the National Center for Mental Health does not indicate whether AAA's condition impairs her capacity as a witness. It also explained that AAA's credibility cannot be impaired by her behavior as a rape victim because rape victims do not all react in the same way. The CA rejected the appellant's defense of denial and alibi for failure to substantiate these defenses. Lastly, the CA found that the penalty of "*reclusion perpetua,* without eligibility for parole" was proper because under Resolution No. 24-4-10,[4] those convicted of offenses punished with *reclusion perpetua* are disqualified from the benefit of parole.

Our Ruling

We **deny** the appeal, but modify the awarded indemnities.

For the charge of rape (under Article 266-A of the Revised Penal Code [*RPC*], as amended) to prosper, the prosecution

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

[4] RE: Amending and Repealing Certain Rules and Sections of the Rules on Parole and Amended Guidelines for Recommending Executive Clemency of the 2006 Revised Manual of the Board of Pardons and Parole.

must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished this act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.

In the present case, the prosecution established the elements of rape required under Article 266-A of the RPC. ***First,*** the appellant had carnal knowledge of the victim. AAA was straightforward when she testified that the appellant inserted his penis into her vagina. Her testimony was supported by Medico Legal Report No. M-257-01 dated April 29, 2001, reflecting the victim's non-virgin physical state. We have held that when the testimony of a rape victim is consistent with the medical findings, there is sufficient basis to conclude that there has been carnal knowledge.[5]

Second, the appellant employed threat, force and intimidation to satisfy his lust. AAA categorically testified that she resisted when the appellant pulled her inside his house. She also recalled that she cried when the appellant inserted his penis into her vagina. Nonetheless, she was helpless and afraid to make further noise because the appellant threatened to kill her. These facts sufficiently indicate that the appellant's acts were *against AAA's will.*

Being afflicted with mild mental retardation does not mean that AAA's testimony was merely imagined. We agree with the RTC and the CA's conclusion that the testimony of a mental retardate depends on the quality of her perceptions and the manner she can make these known to the court.[6] In the present case, the questions asked were couched in terms that AAA could easily understand, as recommended by Ma. Cristina P. Morelos, M.D., Medical Officer III.[7] Hence, we are convinced that AAA

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[5] *People v. Mercado,* G.R. No. 189847, May 30, 2011, 649 SCRA 499, 503.

[6] Citing *People v. Macapal,* 501 Phil. 675 (2005).

[7] *Rollo,* p. 11.

understood the questions propounded to her, which she answered in a clear and straightforward manner.

Contrary to the appellant's argument, the behavior of the victim does not establish the truth or falsity of her accusation. "As a matter of settled jurisprudence, rape is subjective and not all victims react in the same way; there is no typical form of behavior for a woman when facing a traumatic experience such as a sexual assault."[8]

In addition, the appellant's denial cannot overturn his conviction in light of AAA's positive testimony. We have consistently held that positive identification of the accused, when categorical and consistent and without any showing of ill motive of the part of the eyewitness testifying, should prevail over the mere denial of the appellant whose testimony is not substantiated by clear and convincing evidence.[9]

We reject the appellant's argument that the phrase "without eligibility for parole" is a penalty which is appropriate only to qualified rape. Article 266-B of the RPC[10] is explicit that rape committed through force, threat, or intimidation is punishable by *reclusion perpetua.* On the other hand, Resolution No. 24-4-10[11] states that those convicted of offenses punishable by *reclusion perpetua* are disqualified for parole. Thus, the RTC did not alter the appropriate penalty for simple rape as it merely

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[8] *People v. Barberos,* G.R. No. 187494, December 23, 2009, 609 SCRA 381, 400.

[9] *Id.* at 401.

[10] Article 266-B. Penalty. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

[11] RULE 2.2. Disqualifications for Parole — Pursuant to Section 2 of Act No. 4103, as amended, otherwise known as the "Indeterminate Sentence Law," parole shall not be granted to the following inmates:

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i. **Those convicted of offenses punished with *reclusion perpetua*,** or whose sentences were reduced to *reclusion perpetua* by reason of Republic Act No. 9346 enacted on June 24, 2006, amending Republic Act No. 7659 dated January 1, 2004[.] [emphasis and underscore ours]

reflected the consequence of having been convicted of a crime punishable by *reclusion perpetua.*

We reinstate the award of exemplary damages to deter similar conduct and to set an example against persons who abuse and corrupt the youth. We set the amount of ₱30,000.00 to conform to prevailing jurisprudence.

Finally, interest at rate of six percent (6%) per annum shall be applied to the award of civil indemnity, moral damages and exemplary damages from the finality of judgment until fully paid.

WHEREFORE, the decision of the Court of Appeals dated May 4, 2012 in CA-G.R. CR-HC No. 03930 is **AFFIRMED** with the following **MODIFICATIONS:**

(a) the appellant is further ordered to pay AAA ₱30,000.00 as exemplary damages; and

(b) he is ordered to pay interest, at the rate of 6% per annum to the award of civil indemnity, moral damages, and exemplary damages from finality of judgment until fully paid.

SO ORDERED.

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

EN BANC

[A.C. No. 10050. December 3, 2013]

VICTORIA C. HEENAN, *complainant, vs.* **ATTY. ERLINDA ESPEJO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; DISCIPLINE OF LAWYERS; DELIBERATE FAILURE TO PAY JUST DEBTS AND THE ISSUANCE OF WORTHLESS CHECKS CONSTITUTE GROSS MISCONDUCT FOR WHICH A LAWYER MAY BE SANCTIONED; PRESENT IN CASE AT BAR.—** It has already been settled that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned. Verily, lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. In *Tomlin II v. Moya II*, We explained that the prompt payment of financial obligations is one of the duties of a lawyer. x x x The fact that Atty. Espejo obtained the loan and issued the worthless checks in her private capacity and not as an attorney of Victoria is of no moment. As We have held in several cases, a lawyer may be disciplined not only for malpractice and dishonesty in his profession but also for gross misconduct outside of his professional capacity. While the Court may not ordinarily discipline a lawyer for misconduct committed in his nonprofessional or private capacity, the Court may be justified in suspending or removing him as an attorney where his misconduct outside of the lawyer's professional dealings is so gross in character as to show him morally unfit and unworthy of the privilege which his licenses and the law confer.

2. **ID.; ID.; ID.; THE MISCONDUCT OF A LAWYER IS AGGRAVATED BY UNJUSTIFIED REFUSAL TO OBEY THE ORDERS OF THE INTEGRATED BAR OF THE PHILIPPINES DIRECTING THE FILING OF AN ANSWER TO THE COMPLAINT AND TO APPEAR AT THE SCHEDULED MANDATORY CONFERENCE; PROPER PENALTY.—** The misconduct of Atty. Espejo is aggravated by her unjustified refusal to obey the orders of the IBP directing

her to file an answer to the complaint of Victoria and to appear at the scheduled mandatory conference. This constitutes blatant disrespect for the IBP which amounts to conduct unbecoming a lawyer. In *Almendarez, Jr. v. Langit*, We held that a lawyer must maintain respect not only for the courts, but also for judicial officers and other duly constituted authorities, including the IBP: x x x We find the penalty of suspension from the practice of law for two (2) years, as recommended by the IBP, commensurate under the circumstances.

3. **ID.; ID.; DISCIPLINARY PROCEEDINGS AGAINST LAWYERS DO NOT INVOLVE A TRIAL OF AN ACTION, BUT INVESTIGATIONS BY THE COURT INTO THE CONDUCT OF ONE OF ITS OFFICERS; APPLICATION IN CASE AT BAR.—** We, however, cannot sustain the IBP's recommendation ordering Atty. Espejo to return the money she borrowed from Victoria. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other. Furthermore, disciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the Court into the conduct of one of its officers. The only question for determination in these proceedings is whether or not the attorney is still fit to be allowed to continue as a member of the Bar. Thus, this Court cannot rule on the issue of the amount of money that should be returned to the complainant.

APPEARANCES OF COUNSEL

Emil Bien F. Ongkiko for complainant.

D E C I S I O N

VELASCO, JR., *J.*:

This resolves the administrative complaint filed by Victoria Heenan (Victoria) against Atty. Erlinda Espejo (Atty. Espejo) before the Commission on Bar Discipline (CBD) of the Integrated

Bar of the Philippines (IBP) for violation of lawyer's oath, docketed as CBD Case No. 10-2631.

The Facts

Sometime in January 2009, Victoria met Atty. Espejo through her godmother, Corazon Eusebio (Corazon). Following the introduction, Corazon told Victoria that Atty. Espejo was her lawyer in need of money and wanted to borrow two hundred fifty thousand pesos (PhP 250,000) from her (Victoria). Shortly thereafter, Victoria went to the house of Corazon for a meeting with Atty. Espejo where they discussed the terms of the loan. Since Atty. Espejo was introduced to her as her godmother's lawyer, Victoria found no reason to distrust the former. Hence, during the same meeting, Victoria agreed to accomodate Atty. Espejo and there and then handed to the latter the amount of PhP 250,000. To secure the payment of the loan, Atty. Espejo simultaneously issued and turned over to Victoria a check[1] dated February 2, 2009 for two hundred seventy-five thousand pesos (PhP 275,000) covering the loan amount and agreed interest.

On due date, Atty. Espejo requested Victoria to delay the deposit of the check for the reason that she was still waiting for the release of the proceeds of a bank loan to fund the check. However, after a couple of months of waiting, Victoria received no word from Atty. Espejo as to whether or not the check was already funded enough.

In July 2009, Victoria received an Espejo-issued check dated July 10, 2009 in the amount of fifty thousand pesos (PhP 50,000)[2] representing the interest which accrued due to the late payment of the principal obligation. Victoria deposited the said check but, to her dismay, the check bounced due to insufficiency of funds. Atty. Espejo failed to pay despite Victoria's repeated demands.

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[1] *Rollo*, p. 34. The Real Bank Check No. 3026852, Annex "A" of Victoria C. Heenan's Position Paper.

[2] *Id*. at 35. The Real Bank Check No. 3152815, Annex "B" of Victoria C. Heenan's Position Paper.

Worried that she would not be able to recover the amount thus lent, Victoria decided to deposit to her account the first check in the amount of PhP 275,000, but without notifying Atty. Espejo of the fact. However, the said check was also dishonored due to insufficiency of funds.

Victoria thereafter became more aggressive in her efforts to recover her money. She, for instance, personally handed to Atty. Espejo a demand letter dated August 3, 2009.[3] When Atty. Espejo still refused to pay, Victoria filed a criminal complaint against Atty. Espejo on August 18, 2009 for violation of *Batas Pambansa Blg.* 22 and Estafa under Article 315 of the Revised Penal Code, as amended, before the Quezon City Prosecutor's Office.[4]

Atty. Espejo disregarded the notices and subpoenas issued by the Quezon City Prosecutor's Office which she personally received and continued to ignore Victoria's demands. She attended only one (1) scheduled preliminary investigation where she promised to pay her loan obligation.[5]

In November 2009, Atty. Espejo issued another check dated December 8, 2009 in the amount of two hundred seventy five thousand pesos (PhP 275,000.). However, to Victoria's chagrin, the said check was again dishonored due to insufficiency of funds.[6]

Atty. Espejo did not file any counter-affidavit or pleading to answer the charges against her. On November 17, 2009, the case was submitted for resolution without Atty. Espejo's participation.[7]

Victoria thereafter filed the instant administrative case against Atty. Espejo before the CBD.

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[3] *Id*. at 36. Annex "C" of Victoria C. Heenan's Position Paper.

[4] *Id*. at 38.

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

[6] *Id*. at 50.

[7] *Id*. at 22.

On March 1, 2010, the CBD, through Director for Bar Discipline Alicia A. Risos-Vidal, issued an Order[8] directing Atty. Espejo to submit her Answer to Victoria's administrative complaint failing which would render her in default. The warning, notwithstanding, Atty. Espejo did not submit any Answer.

On May 5, 2010, IBP Commissioner Rebecca Villanueva-Malala (Commissioner Villanueva-Malala) notified the parties to appear for a mandatory conference set on June 2, 2010. The notice stated that non-appearance of either of the parties shall be deemed a waiver of her right to participate in further proceedings.[9]

At the mandatory conference, only Victoria appeared.[10] Thus, Commissioner Villanueva-Malala issued an Order[11] noting Atty. Espejo's failure to appear during the mandatory conference and her failure to file an Answer. Accordingly, Atty. Espejo was declared in default. Victoria, on the other hand, was directed to file her verified position paper, which she filed on June 11, 2010.[12]

Findings and Recommendation of the IBP

In its Report and Recommendation[13] dated July 15, 2010, the CBD recommended the suspension of Atty. Espejo from the practice of law and as a member of the Bar for a period of five (5) years. The CBD reasoned:

> The failure of a lawyer to answer the complaint for disbarment despite due notice and to appear on the scheduled hearings set, shows his flouting resistance to lawful orders of the court and illustrates his deficiency for his oath of office as a lawyer, which deserves disciplinary sanction.

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[8] *Id.* at 10.

[9] *Id.* at 11.

[10] *Id.* at 12.

[11] *Id.* at 13.

[12] *Id.* at 17-45

[13] *Id.* at 49-51.

Moreover, respondent['s] acts of issuing checks with insufficient funds and despite repeated demands [she] failed to comply with her obligation and her disregard and failure to appear for preliminary investigation and to submit her counter-affidavit to answer the charges against her for Estafa and Violation of BP 22, constitute grave misconduct that also warrant disciplinary action against respondent.

On December 14, 2012, the Board of Governors passed a Resolution[14] adopting the Report and Recommendation of the CBD with the modification lowering Atty. Espejo's suspension from five (5) years to two (2) years. Atty. Espejo was also ordered to return to Victoria the amount of PhP 250,000 within thirty (30) days from receipt of notice with legal interest reckoned from the time the demand was made. The Resolution reads:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and applicable laws and rules, and considering respondent's grave misconduct, Atty. Erlinda Espejo is hereby **SUSPENDED from the practice of law for two (2) years** and Ordered to Return to complainant the amount of Two Hundred Fifty Thousand (₱250,000.00) Pesos within thirty (30) days from receipt of notice with legal interest reckoned from the time the demand was made.

On August 8, 2013, the CBD transmitted to this Court the Notice of the Resolution pertaining to Resolution No. XX-2012-419 along with the records of this case.[15]

The Court's Ruling

We sustain the findings of the IBP and adopt its recommendation in part.

Atty. Espejo did not deny obtaining a loan from Victoria or traverse allegations that she issued unfunded checks to pay her obligation. It has already been settled that the deliberate failure to pay just debts and the issuance of worthless checks constitute

[14] *Id*. at 48.

[15] *Id*. at 47.

gross misconduct, for which a lawyer may be sanctioned.[16] Verily, lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. In *Tomlin II v. Moya II*, We explained that the prompt payment of financial obligations is one of the duties of a lawyer, thus:

> In the present case, respondent admitted his monetary obligations to the complaint but offered no justifiable reason for his continued refusal to pay. Complainant made several demands, both verbal and written, but respondent just ignored them and even made himself scarce. Although he acknowledged his financial obligations to complainant, respondent never offered nor made arrangements to pay his debt. On the contrary, he refused to recognize any wrong doing nor shown remorse for issuing worthless checks, an act constituting gross misconduct. Respondent must be reminded that it is his duty as a lawyer to faithfully perform at all times his duties to society, to the bar, to the courts and to his clients. As part of his duties, he must promptly pay his financial obligations.[17]

The fact that Atty. Espejo obtained the loan and issued the worthless checks in her private capacity and not as an attorney of Victoria is of no moment. As We have held in several cases, a lawyer may be disciplined not only for malpractice and dishonesty in his profession but also for gross misconduct outside of his professional capacity. While the Court may not ordinarily discipline a lawyer for misconduct committed in his non-professional or private capacity, the Court may be justified in suspending or removing him as an attorney where his misconduct outside of the lawyer's professional dealings is so gross in character as to show him morally unfit and unworthy of the privilege which his licenses and the law confer.[18]

In *Wilkie v. Limos*, We reiterated that the issuance of a series of worthless checks, which is exactly what Atty. Espejo committed in this case, manifests a lawyer's low regard for her commitment to her oath, for which she may be disciplined. Thus:

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[16] *Lao v. Medel*, A.C. No. 5916, July 1, 2003, 405 SCRA 227.

[17] A.C. No. 6971, February 23, 2006, 483 SCRA 154, 159-160.

[18] *Lao v. Medel*, *supra* note 16, at 233.

We have held that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on her. It shows a lack of personal honesty and good moral character as to render her unworthy of public confidence. The issuance of a series of worthless checks also shows the remorseless attitude of respondent, unmindful to the deleterious effects of such act to the public interest and public order. It also manifests a lawyer's low regard to her commitment to the oath she has taken when she joined her peers, seriously and irreparably tarnishing the image of the profession she should hold in high esteem.

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In *Barrios v. Martinez*, we disbarred the respondent who issued worthless checks for which he was convicted in the criminal case filed against him.

In *Lao v. Medel*, we held that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with one-year suspension from the practice of law. The same sanction was imposed on the respondent-lawyer in *Rangwani v. Dino* having been found guilty of gross misconduct for issuing bad checks in payment of a piece of property the title of which was only entrusted to him by the complainant.[19]

Further, the misconduct of Atty. Espejo is aggravated by her unjustified refusal to obey the orders of the IBP directing her to file an answer to the complaint of Victoria and to appear at the scheduled mandatory conference. This constitutes blatant disrespect for the IBP which amounts to conduct unbecoming a lawyer. In *Almendarez, Jr. v. Langit*, We held that a lawyer must maintain respect not only for the courts, but also for judicial officers and other duly constituted authorities, including the IBP:

The misconduct of respondent is aggravated by his unjustified refusal to heed the orders of the IBP requiring him to file an answer to the complaint-affidavit and, afterwards, to appear at the mandatory conference. Although respondent did not appear at the conference,

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[19] *Wilkie v. Limos*, A.C. No. 7505, October 24, 2008, 570 SCRA 1, 8, 10.

the IBP gave him another chance to defend himself through a position paper. Still, respondent ignored this directive, exhibiting a blatant disrespect for authority. Indeed, he is justly charged with conduct unbecoming a lawyer, for a lawyer is expected to uphold the law and promote respect for legal processes. Further, a lawyer must observe and maintain respect not only to the courts, but also to judicial officers and other duly constituted authorities, including the IBP. Under Rule 139-B of the Rules of Court, the Court has empowered the IBP to conduct proceedings for the disbarment, suspension, or discipline of attorneys.[20]

Undoubtedly, Atty. Espejo's issuance of worthless checks and her blatant refusal to heed the directives of the Quezon City Prosecutor's Office and the IBP contravene Canon 1, Rule 1.01; Canon 7, Rule 7.03; and Canon11 of the Code of Professional Responsibility, which provide:

CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR THE LAW AND LEGAL PROCESSES.

Rule 1.01. – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

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.

CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICES AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

We find the penalty of suspension from the practice of law for two (2) years, as recommended by the IBP, commensurate under the circumstances.

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[20] A.C. No. 7057, July 25, 2006, 496 SCRA 402, 408.

We, however, cannot sustain the IBP's recommendation ordering Atty. Espejo to return the money she borrowed from Victoria. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other.[21] Furthermore, disciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the Court into the conduct of one of its officers. The only question for determination in these proceedings is whether or not the attorney is still fit to be allowed to continue as a member of the Bar. Thus, this Court cannot rule on the issue of the amount of money that should be returned to the complainant.[22]

WHEREFORE, We find Atty. Erlinda B. Espejo **GUILTY** of gross misconduct and of violating Canons 1, 7 and 11 of the Code of Professional Responsibility. We **SUSPEND** respondent from the practice of law for two (2) years, effective immediately.

Let copies of this Decision be furnished the Office of the Court Administrator for dissemination to all courts, the Integrated Bar of the Philippines and the Office of the Bar Confidant and recorded in the personal files of respondent.

SO ORDERED.

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

Leonardo-de Castro, J., on official leave.

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[21] *Roa v. Moreno*, A.C. No. 8232, April 21, 2010, 618 SCRA 693, 700.

[22] *Ronquillo v. Cezar*, A.C. No. 6288, June 16, 2006, 491 SCRA 1, 8.

EN BANC

[G.R. No. 175356. December 3, 2013]

MANILA MEMORIAL PARK, INC. AND LA FUNERARIA PAZ-SUCAT, INC., *petitioners, vs.* **SECRETARY OF THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT and THE SECRETARY OF THE DEPARTMENT OF FINANCE,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; REQUISITES; ACTUAL CONTROVERSY IS PRESENT IN CASE AT BAR.—** When the constitutionality of a law is put in issue, judicial review may be availed of only if the following requisites concur: "(1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the [question of constitutionality]; (3) recourse to judicial review is made at the earliest opportunity; and (4) the [question of constitutionality] is the *lis mota* of the case." x x x An actual case or controversy exists when there is "a conflict of legal rights" or "an assertion of opposite legal claims susceptible of judicial resolution." The Petition must therefore show that "the governmental act being challenged has a direct adverse effect on the individual challenging it." In this case, the tax deduction scheme challenged by petitioners has a direct adverse effect on them. Thus, it cannot be denied that there exists an actual case or controversy.

2. **ID.; STATE; INHERENT POWERS; POLICE POWER AND EMINENT DOMAIN; DEFINED.—** Police power is the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare. The only limitation is that the restriction imposed should be reasonable, not oppressive. In other words, to be a valid exercise of police power, it must have a lawful subject or objective and a lawful method of accomplishing the goal. Under the police power of the State, "property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government." The State "may interfere with personal liberty,

property, lawful businesses and occupations to promote the general welfare [as long as] the interference [is] reasonable and not arbitrary." Eminent domain, on the other hand, is the inherent power of the State to take or appropriate private property for public use. The Constitution, however, requires that private property shall not be taken without due process of law and the payment of just compensation.

3. **ID.; ID.; ID.; ID.; TRADITIONAL DISTINCTIONS, EXEMPLIFIED.—** Traditional distinctions exist between police power and eminent domain. In the exercise of police power, a property right is impaired by regulation, or the use of property is merely prohibited, regulated or restricted to promote public welfare. In such cases, there is no compensable taking, hence, payment of just compensation is not required. Examples of these regulations are property condemned for being noxious or intended for noxious purposes (*e.g.*, a building on the verge of collapse to be demolished for public safety, or obscene materials to be destroyed in the interest of public morals) as well as zoning ordinances prohibiting the use of property for purposes injurious to the health, morals or safety of the community (*e.g.*, dividing a city's territory into residential and industrial areas). It has, thus, been observed that, in the exercise of police power (as distinguished from eminent domain), although the regulation affects the right of ownership, none of the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. On the other hand, in the exercise of the power of eminent domain, property interests are appropriated and applied to some public purpose which necessitates the payment of just compensation therefor. Normally, the title to and possession of the property are transferred to the expropriating authority. Examples include the acquisition of lands for the construction of public highways as well as agricultural lands acquired by the government under the agrarian reform law for redistribution to qualified farmer beneficiaries. However, it is a settled rule that the acquisition of title or total destruction of the property is not essential for "taking" under the power of eminent domain to be present. Examples of these include establishment of easements such as where the land owner is perpetually deprived of his proprietary rights because of the hazards posed by electric transmission lines constructed above his property or the compelled interconnection of the telephone system between the government

and a private company. In these cases, although the private property owner is not divested of ownership or possession, payment of just compensation is warranted because of the burden placed on the property for the use or benefit of the public.

4. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT), AS AMENDED BY REPUBLIC ACT NO. 9257 (EXPANDED SENIOR CITIZENS ACT OF 2003); THE VALIDITY OF THE 20% SENIOR CITIZENS DISCOUNT AND TAX DEDUCTION SCHEME UNDER RA 9257, AS AN EXERCISE OF POLICE POWER OF THE STATE HAS ALREADY BEEN SETTLED; SUSTAINED.—** ***The validity of the 20% senior citizen discount and tax deduction scheme under RA 9257, as an exercise of police power of the State, has already been settled in Carlos Superdrug Corporation.*** We agree with petitioners' observation that there are statements in *Central Luzon Drug Corporation describing* the 20% discount as an exercise of the power of eminent domain, *viz.*: x x x The present case, thus, affords an opportunity for us to clarify the above-quoted statements in *Central Luzon Drug Corporation* and *Carlos Superdrug Corporation*. First, we note that the above-quoted disquisition on eminent domain in *Central Luzon Drug Corporation* is *obiter dicta* and, thus, not binding precedent. As stated earlier, in *Central Luzon Drug Corporation*, we ruled that the BIR acted *ultra vires* when it effectively treated the 20% discount as a tax deduction, under Sections 2.i and 4 of RR No. 2-94, despite the clear wording of the previous law that the same should be treated as a tax credit. We were, therefore, not confronted in that case with the issue as to whether the 20% discount is an exercise of police power or eminent domain. Second, although we adverted to *Central Luzon Drug Corporation* in our ruling in *Carlos Superdrug Corporation*, this referred only to preliminary matters. A fair reading of *Carlos Superdrug Corporation* would show that we categorically ruled therein that the 20% discount is a valid exercise of police power. Thus, even if the current law, through its tax deduction scheme (which abandoned the tax credit scheme under the previous law), does not provide for a peso for peso reimbursement of the 20% discount given by private establishments, no constitutional infirmity obtains because, being a valid exercise of police power, payment of just compensation is not warranted. We have carefully reviewed the basis of our ruling in *Carlos*

Superdrug Corporation and we find no cogent reason to overturn, modify or abandon it. We also note that petitioners' arguments are a mere reiteration of those raised and resolved in *Carlos Superdrug Corporation*.

5. **ID.; ID.; THE PURPOSE OF THE LAW IS TO IMPROVE THE WELFARE OF SENIOR CITIZENS; NATURE AND EFFECT THEREOF, EXPLAINED.—** The 20% discount is intended to improve the welfare of senior citizens who, at their age, are less likely to be gainfully employed, more prone to illnesses and other disabilities, and, thus, in need of subsidy in purchasing basic commodities. It may not be amiss to mention also that the discount serves to honor senior citizens who presumably spent the productive years of their lives on contributing to the development and progress of the nation. This distinct cultural Filipino practice of honoring the elderly is an integral part of this law. As to its nature and effects, the 20% discount is a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern. In turn, this affects the amount of profits or income/gross sales that a private establishment can derive from senior citizens. In other words, the subject regulation affects the pricing, and, hence, the profitability of a private establishment. However, it does not purport to appropriate or burden specific properties, used in the operation or conduct of the business of private establishments, for the use or benefit of the public, or senior citizens for that matter, but merely regulates the pricing of goods and services relative to, and the amount of profits or income/gross sales that such private establishments may derive from, senior citizens. The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. x x x The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. Nonetheless, to the degree material to the resolution of this case, the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affect the profitability of establishments subjected thereto.

6. ID.; ID.; THE SENIOR CITIZENS DISCOUNT AND TAX DEDUCTION SCHEME ARE VALID EXERCISES OF POLICE POWER OF THE STATE ABSENT A CLEAR SHOWING THAT IT IS ARBITRARY, OPPRESSIVE OR CONFISCATORY; ELUCIDATED.— Because all laws enjoy the presumption of constitutionality, courts will uphold a law's validity if any set of facts may be conceived to sustain it. On its face, we find that there are at least two conceivable bases to sustain the subject regulation's validity absent clear and convincing proof that it is unreasonable, oppressive or confiscatory. Congress may have legitimately concluded that business establishments have the capacity to absorb a decrease in profits or income/gross sales due to the 20% discount without substantially affecting the reasonable rate of return on their investments considering (1) not all customers of a business establishment are senior citizens and (2) the level of its profit margins on goods and services offered to the general public. Concurrently, Congress may have, likewise, legitimately concluded that the establishments, which will be required to extend the 20% discount, have the capacity to revise their pricing strategy so that whatever reduction in profits or income/gross sales that they may sustain because of sales to senior citizens, can be recouped through higher mark-ups or from other products not subject of discounts. As a result, the discounts resulting from sales to senior citizens will not be confiscatory or unduly oppressive. In sum, we sustain our ruling in *Carlos Superdrug Corporation* that the 20% senior citizen discount and tax deduction scheme are valid exercises of police power of the State absent a clear showing that it is arbitrary, oppressive or confiscatory. x x x In a way, this law pursues its social equity objective in a non-traditional manner unlike past and existing direct subsidy programs of the government for the poor and marginalized sectors of our society. Verily, Congress must be given sufficient leeway in formulating welfare legislations given the enormous challenges that the government faces relative to, among others, resource adequacy and administrative capability in implementing social reform measures which aim to protect and uphold the interests of those most vulnerable in our society. In the process, the individual, who enjoys the rights, benefits and privileges of living in a democratic polity, must bear his share in supporting measures intended for the common good. This is only fair. In fine, without the requisite showing

of a clear and unequivocal breach of the Constitution, the validity of the assailed law must be sustained.

7. **ID.; ID.; EVIDENCE IS INDISPENSABLE BEFORE A DETERMINATION OF A CONSTITUTIONAL VIOLATION CAN BE MADE; RATIONALE; APPLICATION IN CASE AT BAR.—** In the case at bar, evidence is indispensable before a determination of a constitutional violation can be made because of the following reasons. First, the assailed law, by imposing the senior citizen discount, does not take any of the properties used by a business establishment like, say, the land on which a manufacturing plant is constructed or the equipment being used to produce goods or services. Second, rather than taking specific properties of a business establishment, the senior citizen discount law *merely regulates* the prices of the goods or services being sold to senior citizens by mandating a 20% discount. x x x Third, because the law impacts the prices of the goods or services of a particular establishment relative to its sales to senior citizens, its profits or income/gross sales are affected. The extent of the impact would, however, depend on the profit margin of the business establishment on a particular good or service. x x x Fourth, when the law imposes the 20% discount in favor of senior citizens, it *does not* prevent the business establishment from revising its pricing strategy. x x x Verily, we cannot invalidate the assailed law based on assumptions and conjectures. Without adequate proof, the presumption of constitutionality must prevail. x x x We maintain that the correct rule in determining whether the subject regulatory measure has amounted to a "taking" under the power of eminent domain is the one laid down in *Alalayan v. National Power Corporation* and followed in *Carlos Superdrug Corporation* consistent with long standing principles in police power and eminent domain analysis. Thus, the deprivation or reduction of profits or income/gross sales must be clearly shown to be unreasonable, oppressive or confiscatory. Under the specific circumstances of this case, such determination can only be made upon the presentation of competent proof which petitioners failed to do. A law, which has been in operation for many years and promotes the welfare of a group accorded special concern by the Constitution, cannot and should not be summarily invalidated on a mere allegation that it reduces the profits or income/gross sales of business establishments.

VELASCO, JR., ***J., concurring opinion:***

1. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT), AS AMENDED BY REPUBLIC ACT NO. 9257 (EXPANDED SENIOR CITIZENS ACT OF 2003); THE LAW IS NO MORE THAN A REGULATION OF THE RIGHT TO PROFITS OF CERTAIN TAXPAYERS IN ORDER TO BENEFIT A SIGNIFICANT SECTOR OF SOCIETY THUS A VALID EXERCISE OF POLICE POWER OF THE STATE.—** Sec. 4 of RA 9257 is no more than a regulation of the right to profits of certain taxpayers in order to benefit a significant sector of society. It is, thus, a valid exercise of the police power of the State. The right to profit, as distinguished from profit itself, is not subject to expropriation as it is of a mercurial character that denies the possibility of taking for a public purpose. It is a right solely within the discretion of the taxpayers that cannot be appropriated by the government. The mandated 20% discount for the benefit of senior citizens is not a property already vested with the taxpayer before the sale of the product or service. Such percentage of the sale price may include both the markup on the cost of the good or service and the income to be gained from the sale. Without the sale and corresponding purchase by senior citizens, there is no gain derived by the taxpayer. This nebulous nature of the financial gain of the seller deters the acquisition by the state of the "domain" or ownership of the right to such financial gain through expropriation. At best, the State is empowered to **regulate this *right* to the acquisition of this financial gain** to benefit senior citizens by ensuring that the good or service be sold to them at a price 20% less than the regular selling price. x x x The fact that the State has not fixed an amount to be deducted from the selling price of certain goods and services to senior citizens indicates that RA 9257 is a regulatory law under the police power of the State. It is an acknowledgment that proprietors can and will factor in the potential deduction of 20% of the price given to some of their customers, *i.e.,* the senior citizens, in the overall pricing strategy of their products and services. RA 9257 has to be sure not obliterated the right of taxpayers to profit nor divested them of profits already earned; it simply regulated the right to the attainment of these profits. The enforcement of the 20% discount in favor of senior citizens

does not, therefore, partake the nature of "taking" in the context of eminent domain. As such, proprietors like petitioners cannot insist that they are entitled to a peso-for-peso compensation for complying with the valid regulation embodied in RA 9257 that restricts their right to profit.

2. **ID.; ID.; THE 20% DISCOUNT GIVEN TO SENIOR CITIZENS AS A TAX DEDUCTION IS NOT INTENDED AS COMPENSATION BUT A RECOGNITION THAT NO INCOME WAS REALIZED BY THE TAX PAYER.—** As it is a regulatory law, not a law implementing the power of eminent domain, the assertion that the use of the 20% discount as a deduction negates its role as a "just compensation" is mislaid and irrelevant. In the first place, as RA 9257 is a regulatory law, the allowance to use the 20% discount, as a deduction from the gross income for purposes of computing the income tax payable to the government, is not intended as compensation. Rather, it is simply a recognition of the fact that no income was realized by the taxpayer to the extent of the 20% of the selling price by virtue of the discount given to senior citizens. Be that as it may, the logical result is that no tax on income can be imposed by the State. In other words, by forcing some businesses to give a 20% discount to senior citizens, the government is likewise foregoing the taxes it could have otherwise earned from the earnings pertinent to the 20% discount. This is the real import of Sec. 4 of RA 9257. As RA 9257 does not sanction any taking of private property, the regulatory law does not require the payment of compensation.

BERSAMIN, *J., concurring opinion:*

1. **POLITICAL LAW; STATE; INHERENT POWERS; EMINENT DOMAIN, DEFINED.—** Eminent domain is defined as –[T]he power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon payment of just compensation." It is acknowledged as "an inherent political right, founded on a common necessity and interest of appropriating the property of individual members of the community to the great necessities of the whole community.

2. **ID.; ID.; ID.; ID.; TAKING IN EMINENT DOMAIN; REQUISITES; NOT PRESENT IN CASE AT BAR.—** The

State's exercise of the power of eminent domain is not without limitations, but is constrained by Section 9, Article III of the Constitution, which requires that private property shall not be taken for public use without just compensation, as well as by the Due Process Clause found in Section 1, Article III of the Constitution. According to *Republic v. Vda. de Castellvi*, the requisites of taking in eminent domain are as follows: *first*, the expropriator must enter a private property; *second*, the entry into private property must be for more than a momentary period; *third*, the entry into the property should be under warrant or color of legal authority; *fourth*, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and, *fifth*, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. The essential component of the proper exercise of the power of eminent domain is, therefore, the existence of *compensable taking*. x x x As I see it, the nature and effects of the 20% senior citizen discount do not meet all the requisites of *taking* for purposes of exercising the power of eminent domain as delineated in *Republic v. Vda. de Castellvi*, considering that the second of the requisites, that the taking must be for more than a momentary period, is not met. I base this conclusion on the universal understanding of the term *momentary*, rendered in *Republic v. Vda. De Castellvi.* x x x In concept, discount is an abatement or reduction made from the gross amount or value of anything; a reduction from a price made to a specific customer or class of customers. Under the *Expanded Senior Citizens Act*, the 20% senior citizen discount is a special privilege granted only to senior citizens or the elderly, as defined by law, when a sale is made or a service is rendered by a covered establishment to a senior citizen or an elderly. The income or revenue corresponding to the amount of the discount granted to a senior citizen is thus unrealized only in the event that a sale is made or a service is rendered to a senior citizen. Verily, the discount is not availed of when there is no sale or service rendered to a senior citizen. The amount of unrealized revenue or lost *potential* profits on the part of the covered establishment – should it be subsequently shown that the 20% senior citizen discount granted could have covered operating expenses – lacks the character of indefiniteness and permanence considering that the *taking* was conditioned upon the occurrence of a sale

or service to a senior citizen. The tax deduction scheme is, therefore, not the compensation contemplated under Section 9, Article III of the Constitution.

3. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT), AS AMENDED BY REPUBLIC ACT NO. 9257 (EXPANDED SENIOR CITIZENS ACT OF 2003); UNLIKE TRADITIONAL REGULATORY LEGISLATIONS, THE EXPANDED SENIOR CITIZENS ACT DOES NOT INTEND TO PREVENT ANY EVIL OR DESTROY ANYTHING OBNOXIOUS, BUT REMAINS A VALID EXERCISE OF POLICE POWER; ELUCIDATED.—** The 20% senior citizen discount forbids a covered establishment from selling certain goods or rendering services to senior citizens in excess of 80% of the offered price, thereby causing a diminution in the revenue or profits of the covered establishment. The amount corresponding to the discount, instead of being converted to income of the covered establishments, is *retained* by the senior citizen to be used by him in order to promote his well-being, to recognize his important role in society, and to maximize his contribution to nation-building. Although a form of regulation of or limitation on property right is thereby manifest, what the law clearly and primarily intends is to grant benefits and special privileges to senior citizens. x x x Police power, insofar as it is being exercised by the State, is depicted as a regulating, prohibiting, and punishing power. It is neither benevolent nor generous. Unlike traditional regulatory legislations, however, the *Expanded Senior Citizens Act* does not intend to prevent any evil or destroy anything obnoxious. Even so, the *Expanded Senior Citizens Act* remains a valid exercise of the State's police power. The ruling in *Binay v. Domingo*, which involves police power as exercised by a local government unit pursuant to the general welfare clause, proves instructive x x x The *Expanded Senior Citizens Act* is similar to the municipal resolution in *Binay* because both accord benefits to a specific class of citizens, and both on their faces do not primarily intend to burden or regulate any person in giving such benefit. On the one hand, the *Expanded Senior Citizens Act* aims to achieve this by, among others, requiring select establishments to grant senior citizens the 20% discount for their goods or services, while, on the other, the municipal resolution in *Binay* appropriated money from the Municipal Treasury to achieve its goal of giving support to the poor. If

the Court sustained in *Binay* a municipality's exercise of police power to enact benevolent and beneficial resolutions, we have a greater reason to uphold the State's exercise of the same power through the enactment of a law of a similar nature. Indeed, it is but opportune for the Court to now make an unequivocal and definitive pronouncement on this new dimension of the State's police power.

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

1. **POLITICAL LAW; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT), AS AMENDED BY REPUBLIC ACT NO. 9257 (EXPANDED SENIOR CITIZENS ACT OF 2003); THE IMPOSITION OF THE SENIOR CITIZEN DISCOUNT IS AN EXERCISE OF POLICE POWER WHILE THE DETERMINATION THAT IT WILL BE A TAX DEDUCTION IS AN EXERCISE OF THE POWER TO TAX; RATIONALE.—** The imposition of the senior citizen discount is an exercise of police power. The determination that it will be a tax deduction, not a tax credit, is an exercise of the power to tax. The imposition of a discount for senior citizens affects the price. It is thus an inherently regulatory function. However, nothing in the law controls the prices of the goods subject to such discount. Legislation interferes with the autonomy of contractual arrangements in that it imposes a two-tiered pricing system. There will be two prices for every good or service: one is the regular price for everyone except for senior citizens who get a twenty percent (20%) discount. Businesses' discretion to fix the regular price or improve the costs of the goods or the service that they offer to the public — and therefore determine their profit — is not affected by the law. Of course, rational businesses will take into consideration economic factors such as price elasticity, the market structure, the kind of competition businesses face, the barriers to entry that will make possible the expansion of suppliers should there be a change in the prices and the profits that can be made in that industry. Taxes, which include qualifications such as exemptions, exclusions and deductions, will be part of the cost of doing business for all such businesses. x x x *[L]osses are not inevitable. On this basis alone, the constitutional challenge should fail. The case is premised on the inevitable loss to be suffered by the petitioners. There is*

no factual basis for that kind of certainty. We do not decide constitutional issues on the basis of inchoate losses and uncertain burdens.

2. **ID.; STATE; INHERENT POWERS; POWER TO TAX; THE SCOPE OF THE LEGISLATIVE POWER TO TAX NECESSARILY INCLUDES NOT ONLY THE POWER TO DETERMINE THE RATE OF TAX BUT THE METHOD OF COLLECTION AS WELL; SUSTAINED.—** The power to tax is "a principal attribute of sovereignty." Such inherent power of the State anchors on its "social contract with its citizens [which] obliges it to promote public interest and common good." The scope of the legislative power to tax necessarily includes not only the power to determine the rate of tax but the method of its collection as well. We have held that Congress has the power to "define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom (or what) it shall be imposed and *where it shall be imposed.*" In fact, the State has the power "to make reasonable and natural classifications for the purposes of taxation x x x [w]hether it relates to the subject of taxation, the kind of property, the rates to be levied, or the amounts to be raised, the *methods of assessment, valuation and collection*, the State's power is entitled to presumption of validity x x x." This means that the power to tax also allows Congress to determine matters as whether tax rates will be applied to gross income or net income and whether costs such as discounts may be allowed as a deduction from gross income or a tax credit from net income after tax.

3. **ID.; ID.; ID.; ID.; LIMITATIONS; NOT APPLICABLE IN CASE AT BAR.—** While the power to tax has been considered the strongest of all of government's powers with taxes as the "lifeblood of the government," this power has its limits. In a number of cases, we have referred to our discussion in the 1988 case of *Commissioner of Internal Revenue v. Algue.* x x x The Constitution provides for limitations on the power of taxation. First, "[t]he rule of taxation shall be uniform and equitable." This requirement for uniformity and equality means that "all taxable articles or kinds of property of the same class [shall] be taxed at the same rate." The tax deduction scheme for the 20% discount applies equally and uniformly to all the private establishments covered by the law. Thus, it complies

with this limitation. Second, taxes must neither be confiscatory nor arbitrary as to amount to a "[deprivation] of property without due process of law." x x x In the present case, there is no showing that the tax deduction scheme is confiscatory. The portion of the 20% discount petitioners are made to bear under the tax deduction scheme will not result in a complete loss of business for private establishments. x x x Neither is the scheme arbitrary. Rules and Regulations have been issued by agencies as respondent Department of Finance to serve as guidelines for the implementation of the 20% discount and its tax deduction scheme. In fact, this Court has consistently upheld the doctrine that "taxing power may be used as an implement of police power" in order to promote the general welfare of the people.

4. **ID.; ID.; ID.; EMINENT DOMAIN, DEFINED; PROFIT IS NOT ONLY INTANGIBLE PROPERTY BUT ALSO INCHOATE RIGHT WHICH IS NOT THE PRIVATE PROPERTY REFERRED TO IN THE CONSTITUTION THAT CAN BE TAKEN AND WOULD REQUIRE THE PAYMENT OF JUST COMPENSATION.—** Profits are not only intangible personal property. They are also inchoate rights. An inchoate right means that the right "has not fully developed, matured, or vested." It may or may not ripen. The existence of profits, more so its specific amount, is uncertain. Business decisions are made every day dealing with factors such as price, quantity, and cost in order to manage potential outcomes of profit or loss at any given point. Profits are thus considered as "future economic benefits" which, at best, entitles petitioners only to an inchoate right. This is not the private property referred in the Constitution that can be taken and would require the payment of just compensation. Just compensation has been defined "to be the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation."

CARPIO, ***J., dissenting opinion:***

1. **POLITICAL LAW; STATE; INHERENT POWERS; THE CONCEPT OF TAKING IN POLICE POWER AND EMINENT DOMAIN, DISTINGUISHED.—** While it is true that police power is similar to the power of eminent domain because both have the general welfare of the people for their

object, we need to clarify the concept of taking in eminent domain as against taking in police power to prevent any claim of police power when the power actually exercised is eminent domain. When police power is exercised, there is no just compensation to the citizen who loses his private property. When eminent domain is exercised, there must be just compensation. Thus, the Court must clarify taking in police power and taking in eminent domain. Government officials cannot just invoke police power when the act constitutes eminent domain. In the early case of *People v. Pomar,* the Court acknowledged that "[b]y reason of the constant growth of public opinion in a developing civilization, the term 'police power' has never been, and we do not believe can be, clearly and definitely defined and circumscribed." The Court stated that the "definition of the police power of the state must depend upon the particular law and the particular facts to which it is to be applied." **However, it was considered even then that police power, when applied to taking of property without compensation, refers to property that are destroyed or placed outside the commerce of man**. x x x **Clearly, taking under the exercise of police power does not require any compensation because the property taken is either destroyed or placed outside the commerce of man**. x x x In order to be valid, the taking of private property by the government under eminent domain has to be for public use and there must be just compensation. x x x The State can take over private property without compensation in times of war or other national emergency under Section 23(2), Article VI of the 1987 Constitution **but only for a limited period** and subject to such restrictions as Congress may provide. Under its police power, the State may also **temporarily** limit or suspend business activities. x x x However, any form of **permanent** taking of private property is an exercise of eminent domain that requires the State to pay just compensation. **The police power to regulate business cannot negate another provision of the Constitution like the eminent domain clause, which requires just compensation to be paid for the taking of private property for public use. The State has the power to regulate the conduct of the business of private establishments as long as the regulation is reasonable, but when the regulation amounts to permanent taking of private property for public use, there**

must be just compensation because the regulation now reaches the level of eminent domain.

2. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 7432 (SENIOR CITIZENS ACT OF 2003); THE TAKING OF PROPERTY UNDER SECTION 4 OF R.A. 7432 (PRIVILEGES FOR THE SENIOR CITIZENS) IS AN EXERCISE OF POWER OF EMINENT DOMAIN AND NOT THAT OF POLICE POWER OF THE STATE; RATIONALE. — The amount of mandatory discount is money that belongs to the private establishment. For sure, money or cash is private property because it is something of value that is subject to private ownership.** The taking of property under Section 4 of R.A. 7432 is an exercise of the power of eminent domain and not an exercise of the police power of the State. **A clear and sharp distinction should be made because private property owners will be left at the mercy of government officials if these officials are allowed to invoke police power when what is actually exercised is the power of eminent domain.** Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation. The private property referred to for purposes of taking could be inherited, donated, purchased, mortgaged, or as in this case, part of the gross sales of private establishments. They are all private property and any taking should be attended by a corresponding payment of just compensation. The 20% discount granted to senior citizens belongs to private establishments, whether these establishments make a profit or suffer a loss. In fact, the 20% discount applies to **non-profit establishments** like country, social, or golf clubs which are open to the public and not only for exclusive membership. The issue of profit or loss to the establishments is immaterial. Just compensation is "the full and fair equivalent of the property taken from its owner by the expropriator." x x x The 32% of the discount that the private establishments could recover under the tax deduction scheme cannot be considered real, substantial, full and ample compensation. In *Carlos Superdrug Corporation,* the Court conceded that **"[t]he permanent reduction in [private establishments'] total revenue is a forced subsidy corresponding to the taking of private property for public use or benefit."** The Court ruled that **"[t)his constitutes compensable taking for which petitioners**

would ordinarily become entitled to a just compensation." Despite these pronouncements admitting there was compensable taking, **the Court still proceeded to rule that "the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program."** There may be valid instances when the State can impose burdens on private establishments that effectively subsidize a government program. However, the moment a constitutional threshold is crossed — when the burden constitutes a taking of private property for public use — then the burden becomes an exercise of eminent domain for which just compensation is required. x x x In the present case, the private establishments are only compensated about 32% of the 20% discount granted to senior citizens. They shoulder 68% of the discount they are forced to give to senior citizens. The Court should correct this situation as it clearly violates Section 9, Article III of the Constitution which provides that "[p]rivate property shall not be taken for public use without just compensation." *Carlos Superdrug Corporation* should be abandoned by this Court and *Central Luzon Drug Corporation* re-affirmed.

3. **ID.; ID.; ID.; THE ABILITY TO INCREASE PRICES BY THE PRIVATE ESTABLISHMENTS CANNOT LEGALLY VALIDATE A VIOLATION OF THE EMINENT DOMAIN CLAUSE; EXPLAINED.—** The explanation by the majority that private establishments can always increase their prices to recover the mandatory discount will only encourage private establishments to adjust their prices upwards to the prejudice of customers who do not enjoy the 20% discount. It was likewise suggested that if a company increases its prices, despite the application of the 20% discount, the establishment becomes more profitable than it was before the implementation of R.A. 7432. Such an economic justification is self-defeating, for more consumers will suffer from the price increase than will benefit from the 20% discount. Even then, such ability to increase prices cannot legally validate a violation of the eminent domain clause.

4. **ID.; ID.; THE PROVISION THAT THE 20% DISCOUNT MAY BE CLAIMED BY PRIVATE ESTABLISHMENTS AS TAX DEDUCTION THAT IS OPPRESSIVE AND CONFISCATORY; EFFECT THEREOF, EXPLAINED.—**

Finally, the 20% discount granted to senior citizens is not *per se* unreasonable. It is the provision that the 20% discount may be claimed by private establishments as tax deduction, and no longer as tax credit, that is oppressive and confiscatory. x x x Due to the patent unconstitutionality of Section 4 of R.A. 7432, as amended by R.A. 9257, providing that private establishments may claim the 20% discount to senior citizens as tax deduction, the old law, or Section 4 of R.A. 7432, which allows the 20% discount as tax credit, is automatically reinstated. Where amendments to a statute are declared unconstitutional, the original statute as it existed before the amendment remains in force. An amendatory law, if declared null and void, in legal contemplation does not exist. The private establishments should therefore be allowed to claim the 20% discount granted to senior citizens as tax credit.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioners.
The Solicitor General for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

When a party challenges the constitutionality of a law, the burden of proof rests upon him.[1]

Before us is a Petition for Prohibition[2] under Rule 65 of the Rules of Court filed by petitioners Manila Memorial Park, Inc. and La Funeraria Paz-Sucat, Inc., domestic corporations engaged in the business of providing funeral and burial services, against public respondents Secretaries of the Department of Social Welfare and Development (DSWD) and the Department of Finance (DOF).

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[1] *Cordillera Broad Coalition v. Commission on Audit*, 260 Phil. 528, 535 (1990).

[2] *Rollo*, pp. 3-36.

Petitioners assail the constitutionality of Section 4 of Republic Act (RA) No. 7432,[3] as amended by RA 9257,[4] and the implementing rules and regulations issued by the DSWD and DOF insofar as these allow business establishments to claim the 20% discount given to senior citizens as a tax deduction.

Factual Antecedents

On April 23, 1992, RA 7432 was passed into law, granting senior citizens the following privileges:

SECTION 4. Privileges for the Senior Citizens. – The senior citizens shall be entitled to the following:

a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment[s], restaurants and recreation centers and purchase of medicine anywhere in the country: Provided, That private establishments may claim the cost as tax credit;

b) a minimum of twenty percent (20%) discount on admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals and other similar places of culture, leisure, and amusement;

c) exemption from the payment of individual income taxes: Provided, That their annual taxable income does not exceed the property level as determined by the National Economic and Development Authority (NEDA) for that year;

d) exemption from training fees for socioeconomic programs undertaken by the OSCA as part of its work;

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[3] AN ACT TO MAXIMIZE THE CONTRIBUTION OF SENIOR CITIZENS TO NATION BUILDING, GRANT BENEFITS AND SPECIAL PRIVILEGES AND FOR OTHER PURPOSES, otherwise known as the Senior Citizens Act. Approved April 23, 1992.

[4] AN ACT GRANTING ADDITIONAL BENEFITS AND PRIVILEGES TO SENIOR CITIZENS AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 7432, OTHERWISE KNOWN AS "AN ACT TO MAXIMIZE THE CONTRIBUTION OF SENIOR CITIZENS TO NATION BUILDING, GRANT BENEFITS AND SPECIAL PRIVILEGES AND FOR OTHER PURPOSES," otherwise known as the Expanded Senior Citizens Act of 2003. Approved February 26, 2004.

e) free medical and dental services in government establishment[s] anywhere in the country, subject to guidelines to be issued by the Department of Health, the Government Service Insurance System and the Social Security System;

f) to the extent practicable and feasible, the continuance of the same benefits and privileges given by the Government Service Insurance System (GSIS), Social Security System (SSS) and PAG-IBIG, as the case may be, as are enjoyed by those in actual service.

On August 23, 1993, Revenue Regulations (RR) No. 02-94 was issued to implement RA 7432. Sections 2(i) and 4 of RR No. 02-94 provide:

Sec. 2. DEFINITIONS. – For purposes of these regulations:

i. Tax Credit – refers to the amount representing the 20% discount granted to a qualified senior citizen by all establishments relative to their utilization of transportation services, hotels and similar lodging establishments, restaurants, drugstores, recreation centers, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture, leisure and amusement, which discount shall be deducted by the said establishments from their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes.

x x x x x x x x x

Sec. 4. RECORDING/BOOKKEEPING REQUIREMENTS FOR PRIVATE ESTABLISHMENTS. – Private establishments, *i.e.*, transport services, hotels and similar lodging establishments, restaurants, recreation centers, drugstores, theaters, cinema houses, concert halls, circuses, carnivals and other similar places of culture[,] leisure and amusement, giving 20% discounts to qualified senior citizens are required to keep separate and accurate record[s] of sales made to senior citizens, which shall include the name, identification number, gross sales/receipts, discounts, dates of transactions and invoice number for every transaction.

The amount of 20% discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of the VAT and other percentage taxes.

In *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[5] the Court declared Sections 2(i) and 4 of RR No. 02-94 as erroneous because these contravene RA 7432,[6] thus:

RA 7432 specifically allows private establishments to claim as tax credit the amount of discounts they grant. In turn, the Implementing Rules and Regulations, issued pursuant thereto, provide the procedures for its availment. To deny such credit, despite the plain mandate of the law and the regulations carrying out that mandate, is indefensible.

First, the definition given by petitioner is erroneous. It refers to tax credit as the amount representing the 20 percent discount that "shall be deducted by the said establishments from their gross income for income tax purposes and from their gross sales for value-added tax or other percentage tax purposes." In ordinary business language, the tax credit represents the amount of such discount. However, the manner by which the discount shall be credited against taxes has not been clarified by the revenue regulations.

By ordinary acceptation, a discount is an "abatement or reduction made from the gross amount or value of anything." To be more precise, it is in business parlance "a deduction or lowering of an amount of money;" or "a reduction from the full amount or value of something, especially a price." In business there are many kinds of discount, the most common of which is that affecting the income statement or financial report upon which the income tax is based.

x x x x x x x x x

Sections 2.i and 4 of Revenue Regulations No. (RR) 2-94 define tax credit as the 20 percent discount deductible from gross income for income tax purposes, or from gross sales for VAT or other percentage tax purposes. In effect, the tax credit benefit under RA 7432 is related to a sales discount. This contrived definition is improper, considering that the latter has to be deducted from gross sales in order to compute the gross income in the income statement and cannot be deducted again, even for purposes of computing the income tax.

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[5] 496 Phil. 307 (2005).

[6] *Id*. at 325-326 and 332-333.

When the law says that the cost of the discount may be claimed as a tax credit, it means that the amount — when claimed — shall be treated as a reduction from any tax liability, plain and simple. The option to avail of the tax credit benefit depends upon the existence of a tax liability, but to limit the benefit to a sales discount — which is not even identical to the discount privilege that is granted by law — does not define it at all and serves no useful purpose. The definition must, therefore, be stricken down.

Laws Not Amended by Regulations

Second, the law cannot be amended by a mere regulation. In fact, a regulation that "operates to create a rule out of harmony with the statute is a mere nullity"; it cannot prevail.

It is a cardinal rule that courts "will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it x x x." In the scheme of judicial tax administration, the need for certainty and predictability in the implementation of tax laws is crucial. Our tax authorities fill in the details that "Congress may not have the opportunity or competence to provide." The regulations these authorities issue are relied upon by taxpayers, who are certain that these will be followed by the courts. Courts, however, will not uphold these authorities' interpretations when clearly absurd, erroneous or improper.

In the present case, the tax authorities have given the term tax credit in Sections 2.i and 4 of RR 2-94 a meaning utterly in contrast to what RA 7432 provides. Their interpretation has muddled x x x the intent of Congress in granting a mere discount privilege, not a sales discount. The administrative agency issuing these regulations may not enlarge, alter or restrict the provisions of the law it administers; it cannot engraft additional requirements not contemplated by the legislature.

In case of conflict, the law must prevail. A "regulation adopted pursuant to law is law." Conversely, a regulation or any portion thereof not adopted pursuant to law is no law and has neither the force nor the effect of law.[7]

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[7] *Id*. at 325-333.

On February 26, 2004, RA 9257[8] amended certain provisions of RA 7432, to wit:

SECTION 4. Privileges for the Senior Citizens. – The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

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The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

To implement the tax provisions of RA 9257, the Secretary of Finance issued RR No. 4-2006, the pertinent provision of which provides:

SEC. 8. AVAILMENT BY ESTABLISHMENTS OF SALES DISCOUNTS AS DEDUCTION FROM GROSS INCOME. – Establishments enumerated in subparagraph (6) hereunder granting sales discounts to senior citizens on the sale of goods and/or services specified thereunder are entitled to deduct the said discount from gross income subject to the following conditions:

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[8] Amended by Republic Act No. 9994 (February 15, 2010), AN ACT GRANTING ADDITIONAL BENEFITS AND PRIVILEGES TO SENIOR CITIZENS, FURTHER AMENDING REPUBLIC ACT NO. 7432, AS AMENDED, OTHERWISE KNOWN AS "AN ACT TO MAXIMIZE THE CONTRIBUTION OF SENIOR CITIZENS TO NATION BUILDING, GRANT BENEFITS AND SPECIAL PRIVILEGES AND FOR OTHER PURPOSES."

(1) Only that portion of the gross sales EXCLUSIVELY USED, CONSUMED OR ENJOYED BY THE SENIOR CITIZEN shall be eligible for the deductible sales discount.

(2) The gross selling price and the sales discount MUST BE SEPARATELY INDICATED IN THE OFFICIAL RECEIPT OR SALES INVOICE issued by the establishment for the sale of goods or services to the senior citizen.

(3) Only the actual amount of the discount granted or a sales discount not exceeding 20% of the gross selling price can be deducted from the gross income, net of value added tax, if applicable, for income tax purposes, and from gross sales or gross receipts of the business enterprise concerned, for VAT or other percentage tax purposes.

(4) The discount can only be allowed as deduction from gross income for the same taxable year that the discount is granted.

(5) The business establishment giving sales discounts to qualified senior citizens is required to keep separate and accurate record[s] of sales, which shall include the name of the senior citizen, TIN, OSCA ID, gross sales/receipts, sales discount granted, [date] of [transaction] and invoice number for every sale transaction to senior citizen.

(6) Only the following business establishments which granted sales discount to senior citizens on their sale of goods and/or services may claim the said discount granted as deduction from gross income, namely:

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(i) Funeral parlors and similar establishments – The beneficiary or any person who shall shoulder the funeral and burial expenses of the deceased senior citizen shall claim the discount, such as casket, embalmment, cremation cost and other related services for the senior citizen upon payment and presentation of [his] death certificate.

The DSWD likewise issued its own Rules and Regulations Implementing RA 9257, to wit:

RULE VI

DISCOUNTS AS TAX DEDUCTION OF ESTABLISHMENTS

Article 8. Tax Deduction of Establishments. – The establishment may claim the discounts granted under Rule V, Section 4 – Discounts for Establishments, Section 9, Medical and Dental Services in Private Facilities and Sections 10 and 11 – Air, Sea and Land Transportation as tax deduction based on the net cost of the goods sold or services rendered. *Provided,* That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted; *Provided, further,* That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended; Provided, finally, that the implementation of the tax deduction shall be subject to the Revenue Regulations to be issued by the Bureau of Internal Revenue (BIR) and approved by the Department of Finance (DOF).

Feeling aggrieved by the tax deduction scheme, petitioners filed the present recourse, praying that Section 4 of RA 7432, as amended by RA 9257, and the implementing rules and regulations issued by the DSWD and the DOF be declared unconstitutional insofar as these allow business establishments to claim the 20% discount given to senior citizens as a tax deduction; that the DSWD and the DOF be prohibited from enforcing the same; and that the tax credit treatment of the 20% discount under the former Section 4 (a) of RA 7432 be reinstated.

Issues

Petitioners raise the following issues:

A.

WHETHER THE PETITION PRESENTS AN ACTUAL CASE OR CONTROVERSY.

B.

WHETHER SECTION 4 OF REPUBLIC ACT NO. 9257 AND X X X ITS IMPLEMENTING RULES AND REGULATIONS, INSOFAR AS THEY PROVIDE THAT THE TWENTY PERCENT (20%) DISCOUNT TO SENIOR CITIZENS MAY BE CLAIMED AS A

TAX DEDUCTION BY THE PRIVATE ESTABLISHMENTS, ARE INVALID AND UNCONSTITUTIONAL.[9]

Petitioners' Arguments

Petitioners emphasize that they are not questioning the 20% discount granted to senior citizens but are only assailing the constitutionality of the tax deduction scheme prescribed under RA 9257 and the implementing rules and regulations issued by the DSWD and the DOF.[10]

Petitioners posit that the tax deduction scheme contravenes Article III, Section 9 of the Constitution, which provides that: "[p]rivate property shall not be taken for public use without just compensation."[11] In support of their position, petitioners cite *Central Luzon Drug Corporation,*[12] where it was ruled that the 20% discount privilege constitutes taking of private property for public use which requires the payment of just compensation,[13] and *Carlos Superdrug Corporation v. Department of Social Welfare and Development,*[14] where it was acknowledged that the tax deduction scheme does not meet the definition of just compensation.[15]

Petitioners likewise seek a reversal of the ruling in *Carlos Superdrug Corporation*[16] that the tax deduction scheme adopted by the government is justified by police power.[17] They assert that "[a]lthough both police power and the power of eminent domain have the general welfare for their object, there are still

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[9] *Rollo*, p. 392.

[10] *Id*. at 383.

[11] Id. at 401-420.

[12] *Supra* note 5.

[13] *Rollo,* pp. 402-403.

[14] 553 Phil. 120 (2007).

[15] *Rollo,* pp. 405-409.

[16] *Supra*.

[17] *Rollo,* pp. 410-420.

traditional distinctions between the two"[18] and that "eminent domain cannot be made less supreme than police power."[19] Petitioners further claim that the legislature, in amending RA 7432, relied on an erroneous contemporaneous construction that prior payment of taxes is required for tax credit.[20]

Petitioners also contend that the tax deduction scheme violates Article XV, Section 4[21] and Article XIII, Section 11[22] of the Constitution because it shifts the State's constitutional mandate or duty of improving the welfare of the elderly to the private sector.[23] Under the tax deduction scheme, the private sector shoulders 65% of the discount because only 35%[24] of it is actually returned by the government.[25] Consequently, the implementation of the tax deduction scheme prescribed under Section 4 of RA 9257 affects the businesses of petitioners.[26] Thus, there exists an actual case or controversy of transcendental importance which deserves judicious disposition on the merits by the highest court of the land.[27]

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[18] *Id.* at 411-412.

[19] *Id.* at 413.

[20] *Id.* at 427-436.

[21] Sec. 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

[22] Sec. 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

[23] *Rollo,* pp. 421-427.

[24] Now 30% (Section 27 of the National Internal Revenue Code, as amended by Republic Act No. 9337, AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 228 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.)

[25] *Rollo,* p. 425.

[26] *Id.* at 424.

[27] *Id.* at 394-401.

Respondents' Arguments

Respondents, on the other hand, question the filing of the instant Petition directly with the Supreme Court as this disregards the hierarchy of courts.[28] They likewise assert that there is no justiciable controversy as petitioners failed to prove that the tax deduction treatment is not a "fair and full equivalent of the loss sustained" by them.[29] As to the constitutionality of RA 9257 and its implementing rules and regulations, respondents contend that petitioners failed to overturn its presumption of constitutionality.[30] More important, respondents maintain that the tax deduction scheme is a legitimate exercise of the State's police power.[31]

Our Ruling

The Petition lacks merit.

There exists an actual case or controversy.

We shall first resolve the procedural issue.

When the constitutionality of a law is put in issue, judicial review may be availed of only if the following requisites concur: "(1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the [question of constitutionality]; (3) recourse to judicial review is made at the earliest opportunity; and (4) the [question of constitutionality] is the *lis mota* of the case."[32]

In this case, petitioners are challenging the constitutionality of the tax deduction scheme provided in RA 9257 and the implementing rules and regulations issued by the DSWD and

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[28] *Id*. at 363-364.

[29] *Id*. at 359-363.

[30] *Id*. at 368-370.

[31] *Id*. at 364-368.

[32] *General v. Urro*, G.R. No. 191560, March 29, 2011, 646 SCRA 567, 577.

the DOF. Respondents, however, oppose the Petition on the ground that there is no actual case or controversy. We do not agree with respondents.

An actual case or controversy exists when there is "a conflict of legal rights" or "an assertion of opposite legal claims susceptible of judicial resolution."[33] The Petition must therefore show that "the governmental act being challenged has a direct adverse effect on the individual challenging it."[34] In this case, the tax deduction scheme challenged by petitioners has a direct adverse effect on them. Thus, it cannot be denied that there exists an actual case or controversy.

The validity of the 20% senior citizen discount and tax deduction scheme under RA 9257, as an exercise of police power of the State, has already been settled in Carlos Superdrug Corporation.

Petitioners posit that the resolution of this case lies in the determination of whether the legally mandated 20% senior citizen discount is an exercise of police power or eminent domain. If it is police power, no just compensation is warranted. But if it is eminent domain, the tax deduction scheme is unconstitutional because it is not a peso for peso reimbursement of the 20% discount given to senior citizens. Thus, it constitutes taking of private property without payment of just compensation.

At the outset, we note that this question has been settled in *Carlos Superdrug Corporation.*[35] In that case, we ruled:

> Petitioners assert that Section 4(a) of the law is unconstitutional because it constitutes deprivation of private property. Compelling drugstore owners and establishments to grant the discount will result

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[33] *Republic Telecommunications Holdings, Inc. v. Santiago*, G.R. No. 140338, August 7, 2007, 529 SCRA 232, 242.

[34] *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 270.

[35] *Supra* note 14.

in a loss of profit and capital because 1) drugstores impose a mark-up of only 5% to 10% on branded medicines; and 2) the law failed to provide a scheme whereby drugstores will be justly compensated for the discount.

Examining petitioners' arguments, it is apparent that what petitioners are ultimately questioning is the validity of the tax deduction scheme as a reimbursement mechanism for the twenty percent (20%) discount that they extend to senior citizens.

Based on the afore-stated DOF Opinion, the tax deduction scheme does not fully reimburse petitioners for the discount privilege accorded to senior citizens. This is because the discount is treated as a deduction, a tax-deductible expense that is subtracted from the gross income and results in a lower taxable income. Stated otherwise, it is an amount that is allowed by law to reduce the income prior to the application of the tax rate to compute the amount of tax which is due. Being a tax deduction, the discount does not reduce taxes owed on a peso for peso basis but merely offers a fractional reduction in taxes owed.

Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.

The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. This constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word **just** is used to intensify the meaning of the word **compensation**, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens,

can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.

The Senior Citizens Act was enacted primarily to maximize the contribution of senior citizens to nation-building, and to grant benefits and privileges to them for their improvement and well-being as the State considers them an integral part of our society.

The priority given to senior citizens finds its basis in the Constitution as set forth in the law itself. Thus, the Act provides:

> SEC. 2. Republic Act No. 7432 is hereby amended to read as follows:
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> SECTION 1. *Declaration of Policies and Objectives.* — Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: "The State shall provide social justice in all phases of national development." Further, Article XIII, Section 11, provides: "The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children." Consonant with these constitutional principles the following are the declared policies of this Act:
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> . . . .
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> **(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership.**

To implement the above policy, the law grants a twenty percent discount to senior citizens for medical and dental services, and diagnostic and laboratory fees; admission fees charged by theaters, concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement; fares for domestic land, air and sea travel; utilization of services in hotels and similar lodging establishments, restaurants and recreation centers; and purchases of medicines for

the exclusive use or enjoyment of senior citizens. As a form of reimbursement, the law provides that business establishments extending the twenty percent discount to senior citizens may claim the discount as a tax deduction.

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.

In treating the discount as a tax deduction, petitioners insist that they will incur losses because, referring to the DOF Opinion, for every ₱1.00 senior citizen discount that petitioners would give, ₱0.68

will be shouldered by them as only ₱0.32 will be refunded by the government by way of a tax deduction.

To illustrate this point, petitioner Carlos Super Drug cited the anti-hypertensive maintenance drug *Norvasc* as an example. According to the latter, it acquires *Norvasc* from the distributors at ₱37.57 per tablet, and retails it at ₱39.60 (or at a margin of 5%). If it grants a 20% discount to senior citizens or an amount equivalent to ₱7.92, then it would have to sell *Norvasc* at ₱31.68 which translates to a loss from capital of ₱5.89 per tablet. Even if the government will allow a tax deduction, only ₱2.53 per tablet will be refunded and not the full amount of the discount which is ₱7.92. In short, only 32% of the 20% discount will be reimbursed to the drugstores.

Petitioners' computation is flawed. For purposes of reimbursement, the law states that the cost of the discount shall be deducted from gross income, the amount of income derived from all sources before deducting allowable expenses, which will result in net income. Here, petitioners tried to show a loss on a per transaction basis, which should not be the case. An income statement, showing an accounting of petitioners' sales, expenses, and net profit (or loss) for a given period could have accurately reflected the effect of the discount on their income. Absent any financial statement, petitioners cannot substantiate their claim that they will be operating at a loss should they give the discount. In addition, the computation was erroneously based on the assumption that their customers consisted wholly of senior citizens. Lastly, the 32% tax rate is to be imposed on income, not on the amount of the discount.

Furthermore, it is unfair for petitioners to criticize the law because they cannot raise the prices of their medicines given the cutthroat nature of the players in the industry. It is a business decision on the part of petitioners to peg the mark-up at 5%. Selling the medicines below acquisition cost, as alleged by petitioners, is merely a result of this decision. Inasmuch as pricing is a property right, petitioners cannot reproach the law for being oppressive, simply because they cannot afford to raise their prices for fear of losing their customers to competition.

The Court is not oblivious of the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, petitioners must accept the realities of business and the State, in the exercise of police

power, can intervene in the operations of a business which may result in an impairment of property rights in the process.

Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as x x x reminder[s] that the right to property can be relinquished upon the command of the State for the promotion of public good.

Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4 (a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably detrimental to petitioners, the Court will refrain from quashing a legislative act.[36] (Bold in the original; underline supplied)

We, thus, found that the 20% discount as well as the tax deduction scheme is a valid exercise of the police power of the State.

No compelling reason has been proffered to overturn, modify or abandon the ruling in Carlos Superdrug Corporation.

Petitioners argue that we have previously ruled in *Central Luzon Drug Corporation*[37] that the 20% discount is an exercise of the power of eminent domain, thus, requiring the payment of just compensation. They urge us to re-examine our ruling in *Carlos Superdrug Corporation*[38] which allegedly reversed the ruling in *Central Luzon Drug Corporation*.[39] They also point

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[36] *Id.* at 128-147.

[37] *Supra* note 5.

[38] *Supra* note 14.

[39] *Supra* note 5.

out that *Carlos Superdrug Corporation*[40] recognized that the tax deduction scheme under the assailed law does not provide for sufficient just compensation.

We agree with petitioners' observation that there are statements in *Central Luzon Drug Corporation*[41] *describing* the 20% discount as an exercise of the power of eminent domain, *viz.*:

> [T]he privilege enjoyed by senior citizens does not come *directly* from the State, but rather from the private establishments concerned. Accordingly, the *tax credit* benefit granted to these establishments **can be deemed** as their *just compensation* for private property taken by the State for public use.
>
> The concept of *public use* is no longer confined to the traditional notion of *use by the public*, but held synonymous with *public interest, public benefit, public welfare,* and *public convenience*. The discount privilege to which our senior citizens are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The discounts given would have entered the coffers and formed part of the *gross sales* of the private establishments concerned, were it not for RA 7432. The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for *public use or benefit*.
>
> As a result of the 20 percent discount imposed by RA 7432, respondent becomes entitled to a *just compensation*. This term refers not only to the issuance of a *tax credit* certificate indicating the correct amount of the discounts given, but also to the promptness in its release. Equivalent to the payment of property taken by the State, such issuance — when not done within a *reasonable time* from the grant of the discounts — cannot be considered as *just compensation*. In effect, respondent is made to suffer the consequences of being immediately deprived of its revenues while awaiting actual receipt, through the certificate, of the equivalent amount it needs to cope with the reduction in its revenues.
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> Besides, the taxation power can also be used as an implement for the exercise of the power of eminent domain. Tax measures are but "enforced contributions exacted on pain of penal sanctions" and

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[40] *Supra* note 14.

[41] *Supra* note 5.

"clearly imposed for a *public purpose*." In recent years, the power to tax has indeed become a most effective tool to realize social justice, *public welfare*, and the equitable distribution of wealth.

While it is a declared commitment under Section 1 of RA 7432, social justice "cannot be invoked to trample on the rights of property owners who under our Constitution and laws are also entitled to protection. The social justice consecrated in our [C]onstitution [is] not intended to take away rights from a person and give them to another who is not entitled thereto." For this reason, a just compensation for income that is taken away from respondent becomes necessary. It is in the *tax credit* that our legislators find support to realize social justice, and no administrative body can alter that fact.

To put it differently, a private establishment that merely breaks even — without the discounts yet — will surely start to incur losses because of such discounts. The same effect is expected if its mark-up is less than 20 percent, and if all its sales come from retail purchases by senior citizens. Aside from the observation we have already raised earlier, it will also be grossly unfair to an establishment if the discounts will be treated merely as deductions from either its *gross income* or its *gross sales*. Operating at a loss through no fault of its own, it will realize that the *tax credit* limitation under RR 2-94 is inutile, if not improper. Worse, profit-generating businesses will be put in a better position if they avail themselves of tax credits denied those that are losing, because no taxes are due from the latter.[42] (Italics in the original; emphasis supplied)

The above was partly incorporated in our ruling in *Carlos Superdrug Corporation*[43] when we stated *preliminarily* that—

Petitioners assert that Section 4(a) of the law is unconstitutional because it constitutes deprivation of private property. Compelling drugstore owners and establishments to grant the discount will result in a loss of profit and capital because 1) drugstores impose a mark-up of only 5% to 10% on branded medicines; and 2) the law failed to provide a scheme whereby drugstores will be justly compensated for the discount.

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[42] *Id.* at 335-337.

[43] *Supra* note 14.

Examining petitioners' arguments, it is apparent that what petitioners are ultimately questioning is the validity of the tax deduction scheme as a reimbursement mechanism for the twenty percent (20%) discount that they extend to senior citizens.

Based on the afore-stated DOF Opinion, the tax deduction scheme does not fully reimburse petitioners for the discount privilege accorded to senior citizens. This is because the discount is treated as a deduction, a tax-deductible expense that is subtracted from the gross income and results in a lower taxable income. Stated otherwise, it is an amount that is allowed by law to reduce the income prior to the application of the tax rate to compute the amount of tax which is due. Being a tax deduction, the discount does not reduce taxes owed on a peso for peso basis but merely offers a fractional reduction in taxes owed.

Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.

The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. This constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word **just** is used to intensify the meaning of the word **compensation**, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.[44]

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[44] *Id.* at 128-130.

This, notwithstanding, we went on to rule in *Carlos Superdrug Corporation*[45] that the 20% discount and tax deduction scheme is a valid exercise of the police power of the State.

The present case, thus, affords an opportunity for us to clarify the above-quoted statements in *Central Luzon Drug Corporation*[46] and *Carlos Superdrug Corporation*.[47]

First, we note that the above-quoted disquisition on eminent domain in *Central Luzon Drug Corporation*[48] is *obiter dicta* and, thus, not binding precedent. As stated earlier, in *Central Luzon Drug Corporation*,[49] we ruled that the BIR acted *ultra vires* when it effectively treated the 20% discount as a tax deduction, under Sections 2.i and 4 of RR No. 2-94, despite the clear wording of the previous law that the same should be treated as a tax credit. We were, therefore, not confronted in that case with the issue as to whether the 20% discount is an exercise of police power or eminent domain.

Second, although we adverted to *Central Luzon Drug Corporation*[50] in our ruling in *Carlos Superdrug Corporation*,[51] this referred only to preliminary matters. A fair reading of *Carlos Superdrug Corporation*[52] would show that we categorically ruled therein that the 20% discount is a valid exercise of police power. Thus, even if the current law, through its tax deduction scheme (which abandoned the tax credit scheme under the previous law), does not provide for a peso for peso reimbursement of the 20% discount given by private establishments, no constitutional infirmity obtains because, being a valid exercise of police power, payment of just compensation is not warranted.

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[45] *Supra* note 14.

[46] *Supra* note 5.

[47] *Supra* note 14.

[48] *Supra* note 5.

[49] *Id*.

[50] *Id*.

[51] *Supra* note 14.

[52] *Id*.

We have carefully reviewed the basis of our ruling in *Carlos Superdrug Corporation*[53] and we find no cogent reason to overturn, modify or abandon it. We also note that petitioners' arguments are a mere reiteration of those raised and resolved in *Carlos Superdrug Corporation*.[54] Thus, we sustain *Carlos Superdrug Corporation*.[55]

Nonetheless, we deem it proper, in what follows, to amplify our explanation in *Carlos Superdrug Corporation*[56] as to why the 20% discount is a valid exercise of police power and why it may not, *under the specific circumstances of this case*, be considered as an exercise of the power of eminent domain contrary to the *obiter* in *Central Luzon Drug Corporation*.[57]

Police power versus eminent domain.

Police power is the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare.[58] The only limitation is that the restriction imposed should be reasonable, not oppressive.[59] In other words, to be a valid exercise of police power, it must have a lawful subject or objective and a lawful method of accomplishing the goal.[60] Under the police power of the State, "property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government."[61] The State "may interfere with personal

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[53] *Id*.

[54] *Id*.

[55] *Id*.

[56] *Id*.

[57] *Supra* note 5.

[58] *Gerochi v. Department of Energy*, 554 Phil. 563, 579 (2007).

[59] *Mirasol v. Department of Public Works and Highways,* 523 Phil. 713, 747 (2006).

[60] *Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777, 808-809 (1989).

[61] *Social Justice Society (SJS) v. Atienza, Jr.,* G.R. No. 156052, February 13, 2008, 545 SCRA 92, 139.

liberty, property, lawful businesses and occupations to promote the general welfare [as long as] the interference [is] reasonable and not arbitrary."[62] Eminent domain, on the other hand, is the inherent power of the State to take or appropriate private property for public use.[63] The Constitution, however, requires that private property shall not be taken without due process of law and the payment of just compensation.[64]

Traditional distinctions exist between police power and eminent domain.

In the exercise of police power, a property right is impaired by regulation,[65] or the use of property is merely prohibited, regulated or restricted[66] to promote public welfare. In such cases, there is no compensable taking, hence, payment of just compensation is not required. Examples of these regulations are property condemned for being noxious or intended for noxious purposes (*e.g.*, a building on the verge of collapse to be demolished for public safety, or obscene materials to be destroyed in the interest of public morals)[67] as well as zoning ordinances prohibiting the use of property for purposes injurious to the health, morals or safety of the community (*e.g.*, dividing a city's territory into residential and industrial areas).[68] It has, thus, been observed that, in the exercise of police power (as distinguished from eminent domain), although the regulation affects the right of ownership, none of the bundle of rights which

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[62] *Id.* at 139-140.

[63] *Apo Fruits Corporation v. Land Bank*, G.R. No. 164195, October 12, 2010, 632 SCRA 727, 739.

[64] *Heirs of Suguitan v. City of Mandaluyong,* 384 Phil. 676, 688 (2000).

[65] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary,* at 420 (2003).

[66] De Leon and De Leon, Jr., *Philippine Constitutional Law: Principles and Cases Vol. 1,* at 696 (2012).

[67] *Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform*, *supra* note 60 at 804.

[68] *Seng Kee & Co. v. Earnshaw,* 56 Phil. 204 (1931) cited in Bernas, *supra*.

constitute ownership is appropriated for use by or for the benefit of the public.[69]

On the other hand, in the exercise of the power of eminent domain, property interests are appropriated and applied to some public purpose which necessitates the payment of just compensation therefor. Normally, the title to and possession of the property are transferred to the expropriating authority. Examples include the acquisition of lands for the construction of public highways as well as agricultural lands acquired by the government under the agrarian reform law for redistribution to qualified farmer beneficiaries. However, it is a settled rule that the acquisition of title or total destruction of the property is not essential for "taking" under the power of eminent domain to be present.[70] Examples of these include establishment of easements such as where the land owner is perpetually deprived of his proprietary rights because of the hazards posed by electric transmission lines constructed above his property[71] or the compelled interconnection of the telephone system between the government and a private company.[72] In these cases, although the private property owner is not divested of ownership or possession, payment of just compensation is warranted because of the burden placed on the property for the use or benefit of the public.

The 20% senior citizen discount is an exercise of police power.

It may not always be easy to determine whether a challenged governmental act is an exercise of police power or eminent domain. The very nature of police power as elastic and responsive to various social conditions[73] as well as the evolving meaning and

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[69] Bernas, *supra* at 421.

[70] *Id*. at 420.

[71] *National Power Corporation v. Gutierrez*, 271 Phil. 1 (1991) cited in Bernas, *supra* at 422-423.

[72] *Republic v. Philippine Long Distance Telephone Co.,* 136 Phil. 20 (1969) cited in Bernas, *supra* at 423-424.

[73] *Philippine Long Distance Telephone Company v. City of Davao*, 122 Phil. 478, 489 (1965).

scope of public use[74] and just compensation[75] in eminent domain evinces that these are not static concepts. Because of the exigencies of rapidly changing times, Congress may be compelled to adopt or experiment with different measures to promote the general welfare which may not fall squarely within the traditionally recognized categories of police power and eminent domain. The judicious approach, therefore, is to look at the nature and effects of the challenged governmental act and decide, on the basis thereof, whether the act is the exercise of police power or eminent domain. Thus, we now look at the nature and effects of the 20% discount to determine if it constitutes an exercise of police power or eminent domain.

The 20% discount is intended to improve the welfare of senior citizens who, at their age, are less likely to be gainfully employed, more prone to illnesses and other disabilities, and, thus, in need of subsidy in purchasing basic commodities. It may not be amiss to mention also that the discount serves to honor senior citizens who presumably spent the productive years of their lives on contributing to the development and progress of the nation. This distinct cultural Filipino practice of honoring the elderly is an integral part of this law.

As to its nature and effects, the 20% discount is a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern.[76] In turn, this affects the amount of profits or income/gross sales that a private establishment can derive from senior citizens. In other words, the subject regulation affects the pricing,

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[74] *See Heirs of Ardona v. Reyes*, 210 Phil. 187, 197-201 (1983).

[75] *See Association of Small Landowners in the Phils., Inc. v. Secretary of Agrarian Reform, supra* note 60 at 819-822.

[76] Article XIII, Section 11 of the Constitution provides:

The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.

and, hence, the profitability of a private establishment. However, it does not purport to appropriate or burden specific properties, used in the operation or conduct of the business of private establishments, for the use or benefit of the public, or senior citizens for that matter, but merely regulates the pricing of goods and services relative to, and the amount of profits or income/ gross sales that such private establishments may derive from, senior citizens.

The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures.[77] These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate of return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. Nonetheless, to the degree material to the resolution of this case, the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affect the profitability of establishments subjected thereto.

On its face, therefore, the subject regulation is a police power measure.

The *obiter* in *Central Luzon Drug Corporation*,[78] however, describes the 20% discount as an exercise of the power of eminent domain and the tax credit, under the previous law, equivalent

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[77] See *Munn v. Illinois*, 94 U.S. 113 (1877); *People v. Chu Chi*, 92 Phil. 977 (1953); and *Alalayan v. National Power Corporation*, 133 Phil. 279 (1968). The rate-making or rate-regulation by governmental bodies of public utilities is included in this category of police power measures.

[78] *Supra* note 5.

to the amount of discount given as the just compensation therefor. The reason is that (1) the discount would have formed part of the gross sales of the establishment were it not for the law prescribing the 20% discount, and (2) the permanent reduction in total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit.

The flaw in this reasoning is in its premise. It presupposes that the subject regulation, which impacts the pricing and, hence, the profitability of a private establishment, *automatically* amounts to a deprivation of property without due process of law. If this were so, then all price and rate of return on investment control laws would have to be invalidated because they impact, at some level, the regulated establishment's profits or income/gross sales, yet there is no provision for payment of just compensation. It would also mean that government cannot set price or rate of return on investment limits, which reduce the profits or income/ gross sales of private establishments, if no just compensation is paid *even if* the measure is not confiscatory. The *obiter* is, thus, at odds with the settled doctrine that the State can employ police power measures to regulate the pricing of goods and services, and, hence, the profitability of business establishments in order to pursue legitimate State objectives for the common good, provided that the regulation does not go too far as to amount to "taking."[79]

In *City of Manila v. Laguio, Jr.*,[80] we recognized that—

> x x x a taking also could be found if government regulation of the use of property went "too far." When regulation reaches a certain magnitude, in most if not in all cases there must be an exercise of eminent domain and compensation to support the act. While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.
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> No formula or rule can be devised to answer the questions of what is too far and when regulation becomes a taking. In *Mahon*, Justice Holmes recognized that it was "a question of degree and

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[79] See *Munn v. Illinois*, 94 U.S. 113 (1877).

[80] 495 Phil. 289 (2005).

therefore cannot be disposed of by general propositions." On many other occasions as well, the U.S. Supreme Court has said that the issue of when regulation constitutes a taking is a matter of considering the facts in each case. The Court asks whether justice and fairness require that the economic loss caused by public action must be compensated by the government and thus borne by the public as a whole, or whether the loss should remain concentrated on those few persons subject to the public action.[81]

The impact or effect of a regulation, such as the one under consideration, must, thus, be determined on a case-to-case basis. Whether that line between permissible regulation under police power and "taking" under eminent domain has been crossed must, under the specific circumstances of this case, be subject to proof and the one assailing the constitutionality of the regulation carries the heavy burden of proving that the measure is unreasonable, oppressive or confiscatory. The time-honored rule is that the burden of proving the unconstitutionality of a law rests upon the one assailing it and "the burden becomes heavier when police power is at issue."[82]

The 20% senior citizen discount has not been shown to be unreasonable, oppressive or confiscatory.

In *Alalayan v. National Power Corporation*,[83] petitioners, who were franchise holders of electric plants, challenged the validity of a law limiting their allowable net profits to no more than 12% per annum of their investments plus two-month operating expenses. In rejecting their plea, we ruled that, in an earlier case, it was found that 12% is a reasonable rate of return and that petitioners failed to prove that the aforesaid rate is confiscatory in view of the presumption of constitutionality.[84]

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[81] *Id.* at 320-321.

[82] *Mirasol v. Department of Public Works and Highways, supra* note 59.

[83] 133 Phil. 279 (1968).

[84] *Id.* at 292.

We adopted a similar line of reasoning in *Carlos Superdrug Corporation*[85] when we ruled that petitioners therein failed to prove that the 20% discount is arbitrary, oppressive or confiscatory. We noted that no evidence, such as a financial report, to establish the impact of the 20% discount on the overall profitability of petitioners was presented in order to show that they would be operating at a loss due to the subject regulation or that the continued implementation of the law would be unconscionably detrimental to the business operations of petitioners. In the case at bar, petitioners proceeded with a hypothetical computation of the alleged loss that they will suffer similar to what the petitioners in *Carlos Superdrug Corporation*[86] did. Petitioners went directly to this Court without first establishing the factual bases of their claims. Hence, the present recourse must, likewise, fail.

Because all laws enjoy the presumption of constitutionality, courts will uphold a law's validity if any set of facts may be conceived to sustain it.[87] On its face, we find that there are at least two conceivable bases to sustain the subject regulation's validity absent clear and convincing proof that it is unreasonable, oppressive or confiscatory. Congress may have legitimately concluded that business establishments have the capacity to absorb a decrease in profits or income/gross sales due to the 20% discount without substantially affecting the reasonable rate of return on their investments considering (1) not all customers of a business establishment are senior citizens and (2) the level of its profit margins on goods and services offered to the general public. Concurrently, Congress may have, likewise, legitimately concluded that the establishments, which will be required to extend the 20% discount, have the capacity to revise their pricing strategy so that whatever reduction in profits or income/gross sales that they may sustain because of

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[85] *Supra* note 14.

[86] *Id*.

[87] *Basco v. Philippine Amusements and Gaming Corporation*, 274 Phil. 323, 335 (1991).

sales to senior citizens, can be recouped through higher mark-ups or from other products not subject of discounts. As a result, the discounts resulting from sales to senior citizens will not be confiscatory or unduly oppressive.

In sum, we sustain our ruling in *Carlos Superdrug Corporation*[88] that the 20% senior citizen discount and tax deduction scheme are valid exercises of police power of the State absent a clear showing that it is arbitrary, oppressive or confiscatory.

Conclusion

In closing, we note that petitioners hypothesize, consistent with our previous ratiocinations, that the discount will force establishments to raise their prices in order to compensate for its impact on overall profits or income/gross sales. The general public, or those not belonging to the senior citizen class, are, thus, made to effectively shoulder the subsidy for senior citizens. This, in petitioners' view, is unfair.

As already mentioned, Congress may be reasonably assumed to have foreseen this eventuality. But, more importantly, this goes into the wisdom, efficacy and expediency of the subject law which is not proper for judicial review. In a way, this law pursues its social equity objective in a non-traditional manner unlike past and existing direct subsidy programs of the government for the poor and marginalized sectors of our society. Verily, Congress must be given sufficient leeway in formulating welfare legislations given the enormous challenges that the government faces relative to, among others, resource adequacy and administrative capability in implementing social reform measures which aim to protect and uphold the interests of those most vulnerable in our society. In the process, the individual, who enjoys the rights, benefits and privileges of living in a democratic polity, must bear his share in supporting measures intended for the common good. This is only fair.

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[88] *Supra* note 14.

In fine, without the requisite showing of a clear and unequivocal breach of the Constitution, the validity of the assailed law must be sustained.

Refutation of the Dissent

The main points of Justice Carpio's Dissent may be summarized as follows: (1) the discussion on eminent domain in *Central Luzon Drug Corporation*[89] is not *obiter dicta*; (2) allowable taking, in police power, is limited to property that is destroyed or placed outside the commerce of man for public welfare; (3) the amount of mandatory discount is private property within the ambit of Article III, Section 9[90] of the Constitution; and (4) the permanent reduction in a private establishment's total revenue, arising from the mandatory discount, is a taking of private property for public use or benefit, hence, an exercise of the power of eminent domain requiring the payment of just compensation.

I

We maintain that the discussion on eminent domain in *Central Luzon Drug Corporation*[91] is *obiter dicta*.

As previously discussed, in *Central Luzon Drug Corporation,*[92] the BIR, pursuant to Sections 2.i and 4 of RR No. 2-94, treated the senior citizen discount in the previous law, RA 7432, as a tax deduction instead of a tax credit despite the *clear* provision in that law which stated –

SECTION 4. *Privileges for the Senior Citizens*. – The senior citizens shall be entitled to the following:

a) The grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels

[89] *Supra* note 5.

[90] Section 9. Private property shall not be taken for public use without just compensation.

[91] *Supra* note 5.

[92] *Id*.

and similar lodging establishment, restaurants and recreation centers and purchase of medicines anywhere in the country: Provided, That private establishments may claim the cost as **tax credit**; (Emphasis supplied)

Thus, the Court ruled that the subject revenue regulation violated the law, *viz*:

The 20 percent discount required by the law to be given to senior citizens is a tax credit, not merely a tax deduction from the gross income or gross sale of the establishment concerned. A tax credit is used by a private establishment only after the tax has been computed; a tax deduction, before the tax is computed. RA 7432 unconditionally grants a tax credit to all covered entities. Thus, the provisions of the revenue regulation that withdraw or modify such grant are void. Basic is the rule that administrative regulations cannot amend or revoke the law.[93]

As can be readily seen, the discussion on eminent domain was *not necessary* in order to arrive at this conclusion. All that was needed was to point out that the revenue regulation contravened the law which it sought to implement. And, precisely, this was done in *Central Luzon Drug Corporation*[94] by comparing the wording of the previous law *vis-à-vis* the revenue regulation; employing the rules of statutory construction; and applying the settled principle that a regulation cannot amend the law it seeks to implement.

A close reading of *Central Luzon Drug Corporation*[95] would show that the Court *went on* to state that the tax credit "can be deemed" as just compensation only to explain *why* the previous law provides for a tax credit instead of a tax deduction. The Court *surmised* that the tax credit was a form of just compensation given to the establishments covered by the 20% discount. However, the reason why the previous law provided for a tax credit and not a tax deduction was *not necessary* to

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[93] *Id.* at 315.

[94] *Id.*

[95] *Id.*

resolve the issue as to whether the revenue regulation contravenes the law. Hence, the discussion on eminent domain is *obiter dicta.*

A court, in resolving cases before it, may look into the possible purposes or reasons that impelled the enactment of a particular statute or legal provision. However, statements made relative thereto are not always necessary in resolving the actual controversies presented before it. This was the case in *Central Luzon Drug Corporation*[96] resulting in that unfortunate statement that the tax credit "can be deemed" as just compensation. This, in turn, led to the erroneous conclusion, by deductive reasoning, that the 20% discount is an exercise of the power of eminent domain. The Dissent essentially adopts this theory and reasoning which, as will be shown below, is contrary to settled principles in police power and eminent domain analysis.

II

The Dissent discusses at length the doctrine on "taking" in police power which occurs when private property is destroyed or placed outside the commerce of man. Indeed, there is a whole class of police power measures which justify the destruction of private property in order to preserve public health, morals, safety or welfare. As earlier mentioned, these would include a building on the verge of collapse or confiscated obscene materials as well as those mentioned by the Dissent with regard to property used in violating a criminal statute or one which constitutes a nuisance. In such cases, no compensation is required.

However, it is equally true that there is another class of police power measures which do not involve the destruction of private property but *merely regulate* its use. The minimum wage law, zoning ordinances, price control laws, laws regulating the operation of motels and hotels, laws limiting the working hours to eight, and the like would fall under this category. The examples cited by the Dissent, likewise, fall under this category: Article 157 of the Labor Code, Sections 19 and 18 of the Social Security Law, and Section 7 of the Pag-IBIG Fund Law. These laws

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[96] *Id.*

merely regulate or, to use the term of the Dissent, burden the conduct of the affairs of business establishments. In such cases, payment of just compensation is not required because they fall within the sphere of permissible police power measures. The senior citizen discount law falls under this latter category.

III

The Dissent proceeds from the theory that the permanent reduction of profits or income/gross sales, due to the 20% discount, is a "taking" of private property for public purpose without payment of just compensation.

At the outset, it must be emphasized that petitioners **never** presented **any evidence** to establish that they were forced to suffer enormous losses or operate at a loss due to the effects of the assailed law. They came directly to this Court and provided a hypothetical computation of the loss they would allegedly suffer due to the operation of the assailed law. The central premise of the Dissent's argument that the 20% discount results in a permanent reduction in profits or income/gross sales, or forces a business establishment to operate at a loss is, thus, **wholly unsupported** by competent evidence. To be sure, the Court can invalidate a law which, on its face, is arbitrary, oppressive or confiscatory.[97] But this is not the case here.

In the case at bar, evidence is indispensable before a determination of a constitutional violation can be made because of the following reasons.

First, the assailed law, by imposing the senior citizen discount, does not take any of the properties used by a business establishment like, say, the land on which a manufacturing plant is constructed or the equipment being used to produce goods or services.

Second, rather than taking specific properties of a business establishment, the senior citizen discount law *merely regulates* the prices of the goods or services being sold to senior citizens

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[97] See, for instance, *City of Manila v. Laguio, Jr., supra* note 80.

by mandating a 20% discount. Thus, if a product is sold at ₱10.00 to the general public, then it shall be sold at ₱8.00 (*i.e.*, ₱10.00 less 20%) to senior citizens. Note that the law does not impose at what *specific* price the product shall be sold, only that a 20% discount shall be given to senior citizens based on the price set by the business establishment. A business establishment is, thus, free to adjust the prices of the goods or services it provides to the general public. Accordingly, it can increase the price of the above product to ₱20.00 but is required to sell it at ₱16.00 (*i.e.*, ₱20.00 less 20%) to senior citizens.

Third, because the law impacts the prices of the goods or services of a particular establishment relative to its sales to senior citizens, its profits or income/gross sales are affected. The extent of the impact would, however, depend on the profit margin of the business establishment on a particular good or service. If a product costs ₱5.00 to produce and is sold at ₱10.00, then the profit[98] is ₱5.00[99] or a profit margin[100] of 50%.[101] Under the assailed law, the aforesaid product would have to be sold at ₱8.00 to senior citizens yet the business would still earn ₱3.00[102] or a 30%[103] profit margin. On the other hand, if the product costs ₱9.00 to produce and is required to be sold at ₱8.00 to senior citizens, then the business would experience a loss of ₱1.00.[104] But note that since not all customers of a business

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[98] Profit= selling price-cost price

[99] 10-5=5

[100] Profit margin= profit/selling price.

[101] 5/10= .50

[102] 8-5=3

This example merely illustrates the effect of the 20% discount on the selling price and profit. To be more accurate, however, the business will not only earn a profit of ₱3.00 but will also be entitled to a tax deduction pertaining to the 20% discount given. In short, the profit would be greater than ₱3.00.

[103] 3/10= .30

[104] By parity of reasoning, as in *supra* note 102, the exact loss will not necessarily be ₱1.00 because the business may claim the 20% discount as a tax deduction so that the loss may be less than ₱1.00.

establishment are senior citizens, the business establishment may continue to earn ₱1.00 from non-senior citizens which, in turn, can offset any loss arising from sales to senior citizens.

Fourth, when the law imposes the 20% discount in favor of senior citizens, it *does not* prevent the business establishment from revising its pricing strategy. By revising its pricing strategy, a business establishment can recoup any reduction of profits or income/gross sales which would otherwise arise from the giving of the 20% discount. To illustrate, suppose A has two customers: X, a senior citizen, and Y, a non-senior citizen. Prior to the law, A sells his products at ₱10.00 a piece to X and Y resulting in income/gross sales of ₱20.00 (₱10.00 + ₱10.00). With the passage of the law, A must now sell his product to X at ₱8.00 (*i.e.*, ₱10.00 less 20%) so that his income/gross sales would be ₱18.00 (₱8.00 + ₱10.00) or lower by ₱2.00. To prevent this from happening, A decides to increase the price of his products to ₱11.11 per piece. Thus, he sells his product to X at ₱8.89 (*i.e.*, ₱11.11 less 20%) and to Y at ₱11.11. As a result, his income/gross sales would still be ₱20.00[105] (₱8.89 + ₱11.11). The capacity, then, of business establishments to revise their pricing strategy makes it possible for them not to suffer any reduction in profits or income/gross sales, or, in the alternative, mitigate the reduction of their profits or income/gross sales even after the passage of the law. In other words, business establishments have the capacity to adjust their prices so that they may remain profitable even under the operation of the assailed law.

The Dissent, however, states that –

> The explanation by the majority that private establishments can always increase their prices to recover the mandatory discount will only encourage private establishments to adjust their prices upwards

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[105] This merely illustrates how a company can adjust its prices to recoup or mitigate any possible reduction of profits or income/gross sales under the operation of the assailed law. However, to be more accurate, if A were to raise the price of his products to ₱11.11 a piece, he would not only retain his previous income/gross sales of ₱20.00 but would be better off because he would be able to claim a tax deduction equivalent to the 20% discount he gave to X.

to the prejudice of customers who do not enjoy the 20% discount. It was likewise suggested that if a company increases its prices, despite the application of the 20% discount, the establishment becomes more profitable than it was before the implementation of R.A. 7432. Such an economic justification is self-defeating, for more consumers will suffer from the price increase than will benefit from the 20% discount. Even then, such ability to increase prices cannot legally validate a violation of the eminent domain clause.[106]

But, if it is possible that the business establishment, by adjusting its prices, will suffer no reduction in its profits or income/gross sales (or suffer some reduction but continue to operate profitably) despite giving the discount, what would be the basis to strike down the law? If it is possible that the business establishment, by adjusting its prices, will not be unduly burdened, how can there be a finding that the assailed law is an unconstitutional exercise of police power or eminent domain?

That there may be a burden placed on business establishments or the consuming public as a result of the operation of the assailed law is not, by itself, a ground to declare it unconstitutional for this goes into the wisdom and expediency of the law. The cost of most, if not all, regulatory measures of the government on business establishments is ultimately passed on to the consumers but that, by itself, does not justify the wholesale nullification of these measures. It is a basic postulate of our democratic system of government that the Constitution is a social contract whereby the people have surrendered their sovereign powers to the State for the common good.[107] All persons may be burdened by regulatory measures intended for the common good or to serve some important governmental interest, such as protecting or improving the welfare of a special class of people for which the Constitution affords preferential concern. Indubitably, the one assailing the law has the heavy burden of proving that the regulation is unreasonable, oppressive or confiscatory, or has gone "too far" as to amount to a "taking." Yet, here, the Dissent

[106] Dissenting Opinion, p. 14.

[107] *Marcos v. Manglapus*, 258 Phil. 479, 504 (1989).

would have this Court nullify the law without any proof of such nature.

Further, this Court is not the proper forum to debate the economic theories or realities that impelled Congress to shift from the tax credit to the tax deduction scheme. It is not within our power or competence to judge which scheme is more or less burdensome to business establishments or the consuming public and, thereafter, to choose which scheme the State should use or pursue. The shift from the tax credit to tax deduction scheme is a policy determination by Congress and the Court will respect it for as long as there is no showing, as here, that the subject regulation has transgressed constitutional limitations.

Unavoidably, the lack of evidence constrains the Dissent to rely on *speculative* and *hypothetical* argumentation when it states that the 20% discount is a significant amount and not a minimal loss (which erroneously assumes that the discount automatically results in a loss when it is possible that the profit margin is greater than 20% and/or the pricing strategy can be revised to prevent or mitigate any reduction in profits or income/gross sales as illustrated above),[108] and not all private establishments make a 20% profit margin (which conversely implies that there are those who make more and, thus, would not be greatly affected by this regulation).[109]

In fine, because of the *possible* scenarios discussed above, we cannot assume that the 20% discount results in a permanent reduction in profits or income/gross sales, much less that business establishments are forced to operate at a loss under the assailed law. And, even if we gratuitously assume that the 20% discount results in *some* degree of reduction in profits or income/gross sales, we cannot assume that such reduction is arbitrary, oppressive or confiscatory. To repeat, there is no actual proof to back up this claim, and it could be that the loss suffered by a business establishment was occasioned through its fault or

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[108] Parenthetical comment supplied.

[109] *Id*.

negligence in not adapting to the effects of the assailed law. The law uniformly applies to all business establishments covered thereunder. There is, therefore, no unjust discrimination as the aforesaid business establishments are faced with the same constraints.

The necessity of proof is all the more pertinent in this case because, as similarly observed by Justice Velasco in his *Concurring Opinion*, the law has been in operation for over nine years now. However, the grim picture painted by petitioners on the unconscionable losses to be indiscriminately suffered by business establishments, which should have led to the closure of numerous business establishments, has not come to pass.

Verily, we cannot invalidate the assailed law based on assumptions and conjectures. Without adequate proof, the presumption of constitutionality must prevail.

IV

At this juncture, we note that the Dissent modified its original arguments by including a new paragraph, to wit:

> Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation. The private property referred to for purposes of taking could be inherited, donated, purchased, mortgaged, or as in this case, part of the gross sales of private establishments. They are all private property and any taking should be attended by corresponding payment of just compensation. The 20% discount granted to senior citizens belong to private establishments, whether these establishments make a profit or suffer a loss. In fact, the 20% discount applies to **non-profit establishments** like country, social, or golf clubs which are open to the public and not only for exclusive membership. The issue of profit or loss to the establishments is immaterial.[110]

Two things may be said of this argument.

First, it contradicts the rest of the arguments of the Dissent. After it states that the issue of profit or loss is immaterial, the

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[110] Dissenting Opinion, p. 9.

Dissent proceeds to argue that the 20% discount is not a minimal loss[111] and that the 20% discount forces business establishments to operate at a loss.[112] Even the obiter in *Central Luzon Drug Corporation*,[113] which the Dissent essentially adopts and relies on, is premised on the permanent reduction of total revenues and the loss that business establishments will be forced to suffer in arguing that the 20% discount constitutes a "taking" under the power of eminent domain. Thus, when the Dissent now argues that the issue of profit or loss is immaterial, it contradicts itself because it later argues, in order to justify that there is a "taking" under the power of eminent domain in this case, that the 20% discount forces business establishments to suffer a significant loss or to operate at a loss.

Second, this argument suffers from the same flaw as the Dissent's original arguments. It is an erroneous characterization of the 20% discount.

According to the Dissent, the 20% discount is part of the gross sales and, hence, private property belonging to business establishments. However, as previously discussed, the 20% discount is not private property actually owned and/or used by the business establishment. It should be distinguished from properties like lands or buildings actually used in the operation of a business establishment which, if appropriated for public use, would amount to a "taking" under the power of eminent domain.

Instead, the 20% discount is a regulatory measure which impacts the pricing and, hence, the profitability of business establishments. At the time the discount is imposed, no particular property of the business establishment can be said to be "taken." That is, the State does not acquire or take anything from the business establishment in the way that it takes a piece of private land to build a public road. While the 20% discount may form

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[111] *Id*. at 12.

[112] *Id*. At 13.

[113] *Supra* note 5.

part of the potential profits or income/gross sales[114] of the business establishment, as similarly characterized by Justice Bersamin in his Concurring Opinion, potential profits or income/gross sales are not private property, specifically cash or money, already belonging to the business establishment. They are a mere expectancy because they are potential fruits of the successful conduct of the business.

Prior to the sale of goods or services, a business establishment may be subject to State regulations, such as the 20% senior citizen discount, which may impact the level or amount of profits or income/gross sales that can be generated by such establishment. For this reason, the validity of the discount is to be determined based on its overall effects on the operations of the business establishment.

Again, as previously discussed, the 20% discount does not automatically result in a 20% reduction in profits, or, to align it with the term used by the Dissent, the 20% discount does not mean that a 20% reduction in gross sales necessarily results. Because (1) the profit margin of a product is not necessarily less than 20%, (2) not all customers of a business establishment are senior citizens, and (3) the establishment may revise its pricing strategy, such reduction in profits or income/gross sales may be prevented or, in the alternative, mitigated so that the business establishment continues to operate profitably. Thus,

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[114] The Dissent uses the term "gross sales" instead of "income" but "income" and "gross sales" are used in the same sense throughout this *ponencia*. That is, they are money derived from the sale of goods or services. The reference to or mention of "income"/"gross sales", apart from "profits," is intentionally made because the 20% discount may cover more than the profits from the sale of goods or services in cases where the profit margin is less than 20% and the business establishment does not adjust its pricing strategy.

Income/gross sales is a broader concept *vis-a-vis* profits because income/ gross sales less cost of the goods or services equals profits. If the subject regulation affects income/gross sales, then it follows that it affects profits and vice versa. The shift in the use of terms, *i.e.*, from "profits" to "gross sales," cannot erase or conceal the materiality of profits or losses in determining the validity of the subject regulation in this case.

even if we gratuitously assume that some degree of reduction in profits or income/gross sales occurs because of the 20% discount, it does not follow that the regulation is unreasonable, oppressive or confiscatory because the business establishment may make the necessary adjustments to continue to operate profitably. No evidence was presented by petitioners to show otherwise. In fact, no evidence was presented by petitioners at all.

Justice Leonen, in his *Concurring and Dissenting Opinion*, characterizes "profits" (or income/gross sales) as an inchoate right. Another way to view it, as stated by Justice Velasco in his Concurring Opinion, is that the business establishment merely has a right to profits. The Constitution adverts to it as the right of an enterprise to a reasonable return on investment.[115] Undeniably, this right, like any other right, may be regulated under the police power of the State to achieve important governmental objectives like protecting the interests and improving the welfare of senior citizens.

It should be noted though that potential profits or income/ gross sales are relevant in police power and eminent domain analyses because they may, in appropriate cases, serve as an indicia when a regulation has gone "too far" as to amount to a "taking" under the power of eminent domain. When the deprivation or reduction of profits or income/gross sales is shown to be unreasonable, oppressive or confiscatory, then the challenged governmental regulation may be nullified for being a "taking" under the power of eminent domain. In such a case, it is not profits or income/gross sales which are actually taken and appropriated for public use. Rather, when the regulation causes an establishment to incur losses in an unreasonable, oppressive or confiscatory manner, what is actually taken is capital and the right of the business establishment to a reasonable return on investment. If the business losses are not halted because of the continued operation of the regulation, this eventually leads to the destruction of the business and the total loss of the capital

[115] Article XIII, Section 3.

invested therein. But, again, petitioners in this case failed to prove that the subject regulation is unreasonable, oppressive or confiscatory.

V.

The Dissent further argues that we erroneously used price and rate of return on investment control laws to justify the senior citizen discount law. According to the Dissent, only profits from industries imbued with public interest may be regulated because this is a condition of their franchises. Profits of establishments without franchises cannot be regulated permanently because there is no law regulating their profits. The Dissent concludes that the permanent reduction of total revenues or gross sales of business establishments without franchises is a taking of private property under the power of eminent domain.

In making this argument, it is unfortunate that the Dissent quotes only a portion of the *ponencia* –

> The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate of return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. x x x[116]

The above paragraph, in full, states –

> The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police

[116] Dissenting Opinion, p. 12.

power measures. These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate of return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to the class of senior citizens. **Nonetheless, to the degree material to the resolution of this case, the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affects the profitability of establishments subjected thereto**. (Emphasis supplied)

The point of this paragraph is to simply show that the State has, in the past, regulated prices and profits of business establishments. In other words, this type of regulatory measures is traditionally recognized as police power measures so that the senior citizen discount may be considered as a police power measure as well. What is more, the substantial distinctions between price and rate of return on investment control laws *vis-à-vis* the senior citizen discount law provide *greater reason* to uphold the validity of the senior citizen discount law. As previously discussed, the ability to adjust prices allows the establishment subject to the senior citizen discount to prevent or mitigate any reduction of profits or income/gross sales arising from the giving of the discount. In contrast, establishments subject to price and rate of return on investment control laws cannot adjust prices accordingly.

Certainly, there is no intention to say that price and rate of return on investment control laws are the justification for the senior citizen discount law. Not at all. The justification for the senior citizen discount law *is* the plenary powers of Congress. The legislative power to regulate business establishments is broad and covers a wide array of areas and subjects. It is well within Congress' legislative powers to regulate the profits or income/ gross sales of industries and enterprises, *even those without franchises*. For what are franchises but mere legislative enactments?

There is nothing in the Constitution that prohibits Congress from regulating the profits or income/gross sales of industries and enterprises without franchises. On the contrary, the social justice provisions of the Constitution enjoin the State to regulate the "acquisition, ownership, use, and disposition" of property and its increments.[117] This may cover the regulation of profits or income/gross sales of all businesses, without qualification, to attain the objective of diffusing wealth in order to protect and enhance the right of all the people to human dignity.[118] Thus, under the social justice policy of the Constitution, business establishments may be compelled to contribute to uplifting the plight of vulnerable or marginalized groups in our society provided that the regulation is not arbitrary, oppressive or confiscatory, or is not in breach of some specific constitutional limitation.

When the Dissent, therefore, states that the "profits of private establishments which are non-franchisees cannot be regulated **permanently**, and there is no such law regulating their profits permanently,"[119] it is assuming what it ought to prove. First, there *are* laws which, in effect, permanently regulate profits or income/gross sales of establishments without franchises, and RA 9257 *is* one such law. And, second, Congress *can* regulate such profits or income/gross sales because, as previously noted, there is nothing in the Constitution to prevent it from doing so. Here, again, it must be emphasized that petitioners failed to present any proof to show that the effects of the assailed law on their operations has been unreasonable, oppressive or confiscatory.

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[117] Article XIII, Section 1 of the Constitution states:

The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.

[118] *Id*.

[119] Dissenting Opinion, p. 13.

The *permanent* regulation of profits or income/gross sales of business establishments, even those without franchises, is not as uncommon as the Dissent depicts it to be.

For instance, the minimum wage law allows the State to set the minimum wage of employees in a given region or geographical area. Because of the added labor costs arising from the minimum wage, a permanent reduction of profits or income/gross sales would result, assuming that the employer does not increase the prices of his goods or services. To illustrate, suppose it costs a company ₱5.00 to produce a product and it sells the same at ₱10.00 with a 50% profit margin. Later, the State increases the minimum wage. As a result, the company incurs greater labor costs so that it now costs ₱7.00 to produce the same product. The profit per product of the company would be reduced to ₱3.00 with a profit margin of 30%. The net effect would be the same as in the earlier example of granting a 20% senior citizen discount. As can be seen, the minimum wage law could, likewise, lead to a permanent reduction of profits. Does this mean that the minimum wage law should, likewise, be declared unconstitutional on the mere plea that it results in a permanent reduction of profits? Taking it a step further, suppose the company decides to increase the price of its product in order to offset the effects of the increase in labor cost; does this mean that the minimum wage law, following the reasoning of the Dissent, is unconstitutional because the consuming public is effectively made to subsidize the wage of a group of laborers, *i.e.*, minimum wage earners?

The same reasoning can be adopted relative to the examples cited by the Dissent which, according to it, are valid police power regulations. Article 157 of the Labor Code, Sections 19 and 18 of the Social Security Law, and Section 7 of the Pag-IBIG Fund Law would effectively increase the labor cost of a business establishment. This would, in turn, be integrated as part of the cost of its goods or services. Again, if the establishment does not increase its prices, the net effect would be a permanent reduction in its profits or income/gross sales. Following the reasoning of the Dissent that "any form of **permanent** taking

of private property (including profits or income/gross sales)[120] is an exercise of eminent domain that requires the State to pay just compensation,"[121] then these statutory provisions would, likewise, have to be declared unconstitutional. It does not matter that these benefits are deemed part of the employees' legislated wages because the net effect is the same, that is, it leads to higher labor costs and a permanent reduction in the profits or income/gross sales of the business establishments.[122]

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[120] Parenthetical comment supplied.

[121] Dissenting Opinion, p. 14.

[122] According to the Dissent, these statutorily mandated employee benefits are valid police power measures because the employer is deemed fully compensated therefor as they form part of the employee's legislated wage.

The Dissent confuses police power with eminent domain.

In police power, no compensation is required, and it is not necessary, as the Dissent mistakenly assumes, to show that the employer is deemed fully compensated in order for the statutorily mandated benefits to be a valid exercise of police power. It is immaterial whether the employer is deemed fully compensated because the justification for these statutorily mandated benefits is the overriding State interest to protect and uphold the welfare of employees. This State interest is principally rooted in the historical abuses suffered by employees when employers solely determined the terms and conditions of employment. Further, the direct or incidental benefit derived by the employer (*i.e.*, healthier work environment which presumably translates to more productive employees) from these statutorily mandated benefits is not a requirement to make them valid police power measures. Again, it is the paramount State interest in protecting the welfare of employees which justifies these measures as valid exercises of police power subject, of course, to the test of reasonableness as to the means adopted to achieve such legitimate ends.

That the assailed law benefits senior citizens and not employees of a business establishment makes no material difference because, precisely, police power is employed to protect and uphold the welfare of marginalized and vulnerable groups in our society. Police power would be a meaningless State attribute if an individual, or a business establishment for that matter, can only be compelled to accede to State regulations provided he (or it) is directly or incidentally benefited thereby. Precisely in instances when the individual resists or opposes a regulation because it burdens him or her that the State exercises its police power in order to uphold the common good. Many laudable existing police power measures would have to be invalidated if, as a condition for their validity, the individual subjected thereto should be directly or incidentally benefited by such measures.

The point then is this – most, if not all, regulatory measures imposed by the State on business establishments impact, at some level, the latter's prices and/or profits or income/gross sales.[123] If the Court were to sustain the Dissent's theory, then a wholesale nullification of such measures would inevitably result. The police power of the State and the social justice provisions of the Constitution would, thus, be rendered nugatory.

There is nothing sacrosanct about profits or income/gross sales. This, we made clear in *Carlos Superdrug Corporation*:[124]

> Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.
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> x x x x x x x x x
>
> The Court is not oblivious of the retail side of the pharmaceutical industry and the competitive pricing component of the business. While the Constitution protects property rights, petitioners must accept the realities of business and the State, in the exercise of police power, can intervene in the operations of a business which may result in an impairment of property rights in the process.
>
> Moreover, the right to property has a social dimension. While Article XIII of the Constitution provides the precept for the protection of property, various laws and jurisprudence, particularly on agrarian reform and the regulation of contracts and public utilities, continuously serve as a reminder that the right to property can be relinquished upon the command of the State for the promotion of public good.

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[123] See De Leon and De Leon, Jr., *Philippine Constitutional Law: Principles and Cases Vol. 1,* at 671-673 (2012), for a list of police power measures upheld by this Court. A good number of these measures impact, directly or indirectly, the profitability of business establishments yet the same were upheld by the Court because they were not shown to be unreasonable, oppressive or confiscatory.

[124] *Supra* note 14.

Undeniably, the success of the senior citizens program rests largely on the support imparted by petitioners and the other private establishments concerned. This being the case, the means employed in invoking the active participation of the private sector, in order to achieve the purpose or objective of the law, is reasonably and directly related. Without sufficient proof that Section 4(a) of R.A. No. 9257 is arbitrary, and that the continued implementation of the same would be unconscionably detrimental to petitioners, the Court will refrain from quashing a legislative act.[125]

In conclusion, we maintain that the correct rule in determining whether the subject regulatory measure has amounted to a "taking" under the power of eminent domain is the one laid down in *Alalayan v. National Power Corporation*[126] and followed in *Carlos Superdrug Corporation*[127] consistent with long standing principles in police power and eminent domain analysis. Thus, the deprivation or reduction of profits or income/gross sales must be clearly shown to be unreasonable, oppressive or confiscatory. Under the specific circumstances of this case, such determination can only be made upon the presentation of competent proof which petitioners failed to do. A law, which has been in operation for many years and promotes the welfare of a group accorded special concern by the Constitution, cannot and should not be summarily invalidated on a mere allegation that it reduces the profits or income/gross sales of business establishments.

WHEREFORE, the Petition is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Sereno, C.J., Abad, Villarama, Jr., Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Velasco, Jr. and *Bersamin, JJ.,* see concurring opinions.

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[125] *Id.* at 132-135.

[126] *Supra* note 83.

[127] *Supra* note 14.

Leonardo-de Castro and *Peralta, JJ.,* the *C.J*. certifies that *J.* de Castro and *J.* Peralta left their votes concurring with *ponencia* of *J.* del Castillo.

Leonen, J., see concurring and dissenting opinion.

Carpio, J., see dissenting opinion.

Brion, J., no part.

CONCURRING OPINION

VELASCO, JR., *J.*:

The issue in the present case hinges upon the consequence of a reclassification of a mandated discount as a deduction from the gross income instead of a tax credit deductible from the tax liability of affected taxpayers. In particular, the petition questions the constitutionality of Section 4 of Republic Act No. (RA) 9257, and its implementing rules, which has allowed the amount representing the 20% forcible discount to senior citizens as a deduction from gross income rather than a tax credit.

As cited by the *ponencia*, this Court had previously resolved the issue in *Carlos Superdrug v. DSWD* (*Carlos Superdrug*) by sustaining the reclassification as a proper implement of the police power of the State. A view, however, has been advanced that We should take a second look at the doctrine laid down in *Carlos Superdrug* and declare Sec. 4 of RA 9257 as an improper exercise of the power of eminent domain by the State as it permits the deprivation of private property without just compensation.

Indeed, the practice of allowing taking of private property without just compensation is an abhorrent policy. However, I do not agree that such policy underpins Sec. 4 of RA 9257. Rather, it is my humble opinion that Sec. 4 of RA 9257 is no more than a regulation of the right to profits of certain taxpayers in order to benefit a significant sector of society. It is, thus, a valid exercise of the police power of the State.

The right to profit, as distinguished from profit itself, is not subject to expropriation as it is of a mercurial character that denies the possibility of taking for a public purpose. It is a right solely within the discretion of the taxpayers that cannot be appropriated by the government. The mandated 20% discount for the benefit of senior citizens is not a property already vested with the taxpayer before the sale of the product or service. Such percentage of the sale price may include both the markup on the cost of the good or service and the income to be gained from the sale. Without the sale and corresponding purchase by senior citizens, there is no gain derived by the taxpayer. This nebulous nature of the financial gain of the seller deters the acquisition by the state of the "domain" or ownership of the right to such financial gain through expropriation. At best, the State is empowered to **regulate this *right* to the acquisition of this financial gain** to benefit senior citizens by ensuring that the good or service be sold to them at a price 20% less than the regular selling price.

Time and again, this Court has recognized the fundamental police power of the State to regulate the exercise of various rights holding that "equally fundamental with the private right is that of the public to regulate it in the common interest."[1] This Court has, for instance, recognized the power of the State to regulate and temper the right of employers to dismiss their employees.[2] Similarly, We have sustained the State's power to regulate the right to acquire and possess arms.[3] Contractual rights are also subject to the regulatory police power of the State.[4] The right to profit is not immune from this regulatory power of the State intended to promote the common good and

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[1] *Philippine American Life Insurance Company v. Auditor General*, No. L-19255, January 18, 1968; citing *Nebbia v. New York*, 291 U.S. 502, 523, 78 L. ed. 940, 948-949.

[2] *Gelmart Industries, Inc. v. National Labor Relations Commission*, G.R. No. 85668, August 10, 1989, 176 SCRA 295.

[3] *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004, 431 SCRA 534.

[4] *Philippine American Life Insurance Company*, *supra* note 1.

the attainment of social justice. As early as the first half of the past century, this Court has rejected the doctrine of *laissez faire* as an axiom of economic theory and has upheld the power of the State to regulate businesses even to the extent of limiting their profit.[5] Thus, the imposition of price control is recognized as a valid exercise of police power that does not give businessmen the right to be compensated for the amount of what they could have earned considering the demand of the market. The effect of RA 9257 is not dissimilar to a price control law.

The fact that the State has not fixed an amount to be deducted from the selling price of certain goods and services to senior citizens indicates that RA 9257 is a regulatory law under the police power of the State. It is an acknowledgment that proprietors can and will factor in the potential deduction of 20% of the price given to some of their customers, *i.e.*, the senior citizens, in the overall pricing strategy of their products and services. RA 9257 has to be sure not obliterated the right of taxpayers to profit nor divested them of profits already earned; it simply regulated the right to the attainment of these profits. The enforcement of the 20% discount in favor of senior citizens does not, therefore, partake the nature of "taking" in the context

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[5] *Ermita-Malate Hotel and Hotel Operators Association, Inc., et al. v. City Mayor of Manila*, No. L-24693, July 31, 1967, 20 SCRA 849. See also *Edu v. Ericta*, No. L-32096, October 24, 1970, citing *Pampanga Bus Co. v. Pambusco's Employees' Union*, 68 Phil. 541 (1939); *Manila Trading and Supply Co. v. Zulueta*, 69 Phil. 485 (1940); *International Hardwood and Veneer Company v. The Pangil Federation of Labor*, 70 Phil. 602 (1940); *Antamok Goldfields Mining Company v. Court of Industrial Relations*, 70 Phil. 340 (1940); *Tapang v. Court of Industrial Relations*, 72 Phil. 79 (1941); *People v. Rosenthal*, 68 Phil. 328 (1939); *Pangasinan Trans. Co., Inc. v. Public Service Com.*, 70 Phil. 221 (1940); *Camacho v. Court of Industrial Relations*, 80 Phil. 848 (1948); *Ongsiaco v. Gamboa*, 86 Phil. 50 (1950); *De Ramas v. Court of Agrarian Relations*, No. L-19555, May 29, 1964, 11 SCRA 171; *Del Rosario v. De los Santos*, No. L-20589, March 21, 1968, 22 SCRA 1196; *Ichong v. Hernandez*, 101 Phil. 1155 (1957); *Phil. Air Lines Employees' Asso. v. Phil Air Lines, Inc.*, No. L-18559, June 30, 1964, 11 SCRA 387; *People v. Chu Chi*, 92 Phil. 977 (1953); *Roman Catholic Archbishop of Manila v. Social Security Com.*, No. L-15045, January 20, 1961, 1 SCRA 10. cf. *Director of Forestry v. Muñoz*, No. L-24746, June 28, 1968, 23 SCRA 1183.

of eminent domain. As such, proprietors like petitioners cannot insist that they are entitled to a peso-for-peso compensation for complying with the valid regulation embodied in RA 9257 that restricts their right to profit.

As it is a regulatory law, not a law implementing the power of eminent domain, the assertion that the use of the 20% discount as a deduction negates its role as a "just compensation" is mislaid and irrelevant. In the first place, as RA 9257 is a regulatory law, the allowance to use the 20% discount, as a deduction from the gross income for purposes of computing the income tax payable to the government, is not intended as compensation. Rather, it is simply a recognition of the fact that no income was realized by the taxpayer to the extent of the 20% of the selling price by virtue of the discount given to senior citizens. Be that as it may, the logical result is that no tax on income can be imposed by the State. In other words, by forcing some businesses to give a 20% discount to senior citizens, the government is likewise foregoing the taxes it could have otherwise earned from the earnings pertinent to the 20% discount. This is the real import of Sec. 4 of RA 9257. As RA 9257 does not sanction any taking of private property, the regulatory law does not require the payment of compensation.

Finally, it must be noted that the issue of validity of Sec. 4 of RA 9257 has already been settled. After years of implementation of the law, economic progress has not been put to a halt. In fact, it has not been alleged that a business establishment commonly patronized by senior citizens and covered by RA 9257 had shut down because of the mandate to give the 20% discount and the supposed deficient "compensation" under Sec. 4 of RA 9257. This clearly shows that the regulation made in the subject law is a minimal encumbrance to businesses that must not be employed to overthrow an otherwise reasonable, logical, and just instrument of the social justice policy of our Constitution.

CONCURRING OPINION

BERSAMIN, *J.*:

At issue is the constitutionality of the treatment as a tax deduction by covered establishments of the 20% discount granted to senior citizens under Republic Act (RA) No. 9257 (*Expanded Senior Citizens Act of 2003*)[1] and the implementing rules and regulations issued by the Department of Social Welfare and Development (DSWD) and Department of Finance (DOF).

The assailed provision is Section 4 of the *Expanded Senior Citizens Act of 2003*, which provides —

SECTION 2. Republic Act. No. 7432 is hereby amended to read as follows:

x x x x x x x x x

SEC. 4. *Privileges for the Senior Citizens*. – The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x x x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: Provided That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

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[1] Amended by RA No. 9994, February 15, 2010.

The petitioners contend that Section 4, *supra*, violates Section 9, Article III of the Constitution, which mandates that "[p]rivate property shall not be taken for public use without just compensation."

On the other hand, Justice del Castillo observes in his opinion ably written for the Majority that the validity of the 20% senior citizen discount must be upheld as an exercise by the State of its police power; and reminds that the issue has already been settled in *Carlos Superdrug Corporation v. Department of Social Welfare and Development*,[2] with the Court pronouncing therein that:

Theoretically, the treatment of the discount as a deduction reduces the net income of the private establishments concerned. The discounts given would have entered the coffers and formed part of the gross sales of the private establishments, were it not for R.A. No. 9257.

The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. This constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word **just** is used to intensify the meaning of the word **compensation**, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.

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[2] G.R. No. 166494, June 29, 2007, 526 SCRA 130.

The Senior Citizens Act was enacted primarily to maximize the contribution of senior citizens to nation-building, and to grant benefits and privileges to them for their improvement and well-being as the State considers them an integral part of our society.

The priority given to senior citizens finds its basis in the Constitution as set forth in the law itself. Thus, the Act provides:

> SEC. 2. Republic Act No. 7432 is hereby amended to read as follows:
>
> SECTION 1. *Declaration of Policies and Objectives.* – Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: "The State shall provide social justice in all phases of national development." Further, Article XIII, Section 11, provides: "The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged sick, elderly, disabled, women and children." Consonant with these constitutional principles the following are the declared policies of this Act:
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> x x x x x x x x x
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> **(f) To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership**.

To implement the above policy, the law grants a twenty percent discount to senior citizens for medical and dental services, and diagnostic and laboratory fees; admission fees charged by theaters, concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement; fares for domestic land, air and sea travel; utilization of services in hotels and similar lodging establishments, restaurants and recreation centers; and purchases of medicines for the exclusive use or enjoyment of senior citizens. As a form of reimbursement, the law provides that business establishments extending the twenty percent discount to senior citizens may claim the discount as a tax deduction.

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.[3]

The Majority hold that the 20% senior citizen discount is, by its nature and effects, "a regulation affecting the ability of private establishments to price their products and services relative to a special class of individuals, senior citizens, for which the Constitution affords preferential concern."[4] As such, the discount may be properly viewed as a price regulatory measure that affects the profitability of establishments subjected thereto, only that: (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given

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[3] *Id*. at 141-144.

[4] Decision, p. 19.

establishment but only to the class of senior citizens.[5] Nonetheless, the Majority posits that the discount has not been proved to be unreasonable, oppressive or confiscatory in the absence of evidence showing that its continued implementation causes an establishment to operate at a loss, or will be unconscionably detrimental to the business operations of covered establishments such as that of the petitioners.[6]

Submissions

I **JOIN** the Majority.

I **VOTE** for the dismissal of the petition in order to uphold the constitutionality of the tax deduction scheme as a valid exercise of the State's police power.

I.
The 20% senior citizen discount under the *Expanded Senior Citizens Act* does not amount to compensable taking

The petitioners' claim of unconstitutionality of the tax deduction scheme under the *Expanded Senior Citizens Act* rests on the premise that the 20% senior citizen discount was enacted by Congress in the exercise of its power of eminent domain.

Like the Majority, I cannot sustain the claim of the petitioners, because I find that the imposition of the discount does not emanate from the exercise of the power of eminent domain, but from the exercise of police power.

Let me explain.

Eminent domain is defined as –

> [T]he power of the nation or a sovereign state to take, or to authorize the taking of, private property for a public use without the owner's consent, conditioned upon payment of just compensation." It is acknowledged as "an inherent political right, founded on a common

[5] *Id*. at 20.

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

necessity and interest of appropriating the property of individual members of the community to the great necessities of the whole community.[7]

The State's exercise of the power of eminent domain is not without limitations, but is constrained by Section 9, Article III of the Constitution, which requires that private property shall not be taken for public use without just compensation, as well as by the Due Process Clause found in Section 1,[8] Article III of the Constitution. According to *Republic v. Vda. de Castellvi*,[9] the requisites of taking in eminent domain are as follows: *first*, the expropriator must enter a private property; *second*, the entry into private property must be for more than a momentary period; *third*, the entry into the property should be under warrant or color of legal authority; *fourth*, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected; and, *fifth*, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property.

The essential component of the proper exercise of the power of eminent domain is, therefore, the existence of *compensable taking*. There is *taking* when –

> [T]he owner is actually deprived or dispossessed of his property; when there is a practical destruction or a material impairment of the value of his property or when he is deprived of the ordinary use thereof. There is a "taking" in this sense when the expropriator enters private property not only for a momentary period but for a more permanent duration, for the purpose of devoting the property to a public use in such a manner as to oust the owner and deprive him of all beneficial enjoyment thereof. For ownership, after all, "is nothing without the inherent rights of possession, control and

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[7] *Barangay Sindalan, San Fernando, Pampanga v. Court of Appeals,* G.R. No. 150640, March 22, 2007, 518 SCRA 649, 657-658.

[8] Section 1. No person shall be deprived of his/her life, liberty, or property without due process of law.

[9] No. L-20620, August 15, 1974, 58 SCRA 336, 350-352.

enjoyment." Where the owner is deprived of the ordinary and beneficial use of his property or of its value by its being diverted to public use, there is taking within the Constitutional sense.[10]

As I see it, the nature and effects of the 20% senior citizen discount do not meet all the requisites of *taking* for purposes of exercising the power of eminent domain as delineated in *Republic v. Vda. de Castellvi*, considering that the second of the requisites, that the taking must be for more than a momentary period, is not met. I base this conclusion on the universal understanding of the term *momentary*, rendered in *Republic v. Vda. de Castellvi* thusly*:*

"Momentary" means, "lasting but a moment; of but a moment's duration" (The Oxford English Dictionary, Volume VI, page 596); "lasting a very short time; transitory; having a very brief life; operative or recurring at every moment" (Webster's Third International Dictionary, 1963 edition.) The word "momentary" when applied to possession or occupancy of (real) property should be construed to mean "a limited period" — not indefinite or permanent.[11]

In concept, discount is an abatement or reduction made from the gross amount or value of anything; a reduction from a price made to a specific customer or class of customers.[12] Under the *Expanded Senior Citizens Act*, the 20% senior citizen discount is a special privilege granted only to senior citizens or the elderly, as defined by law,[13] when a sale is made or a service is rendered by a covered establishment to a senior citizen or an elderly. The income or revenue corresponding to the amount of the discount granted to a senior citizen is thus unrealized only in the event that a sale is made or a service is rendered to a senior citizen. Verily, the discount is not availed of when there is no sale or service rendered to a senior citizen.

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[10] *Ansaldo v. Tantuico, Jr.*, G.R. No. 50147, August 3, 1990, 188 SCRA 300, 304.

[11] *Supra* note 9, at 350.

[12] *Webster's Third New International Dictionary*, p. 646.

[13] "Senior citizen" or "elderly" shall mean any resident citizen of the Philippines at least sixty (60) years old. (Section 2(a), RA No. 9257).

The amount of unrealized revenue or lost *potential* profits on the part of the covered establishment – should it be subsequently shown that the 20% senior citizen discount granted could have covered operating expenses – lacks the character of indefiniteness and permanence considering that the *taking* was conditioned upon the occurrence of a sale or service to a senior citizen. The tax deduction scheme is, therefore, not the compensation contemplated under Section 9, Article III of the Constitution.

Even assuming that the unrealized revenue or lost potential profits resulting from the grant of the 20% senior citizen discount qualifies as *taking* within the contemplation of the power of eminent domain, the tax deduction scheme suffices as a form of just compensation. For that purpose, just compensation is defined as —

> [T]he full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be **real**, substantial, full, and ample. Indeed, the "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.[14]

The petitioners, relying on the ruling in *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*,[15] appear to espouse the view that the tax credit method, rather than the tax deduction scheme, meets the definition of just compensation. This, because "a *tax credit* reduces the tax due, including – whenever applicable – the *income tax* that is determined after applying the corresponding tax rates to *taxable income*" while a "*tax deduction*, on the other, reduces the income that is subject to tax in order to arrive at *taxable income*."[16]

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[14] *National Power Corporation v. Diato-Bernal,* G.R. No. 180979, December 15, 2010, 638 SCRA 660, 669 (bold emphasis is supplied).

[15] G.R. No. 159647, April 15, 2005, 456 SCRA 414.

[16] *Id.* at 428-429.

At the time when the supposed *taking* happens, *i.e.*, upon the sale of the goods or the rendition of a service to a senior citizen, the loss incurred by the covered establishment represents only the *gross amount of discount* granted to the senior citizen. At that point, the **real** equivalent of the property taken is the amount of unrealized income or revenue of the covered establishment, without the benefit of operating expenses and exemptions, if any. The tax deduction scheme substantially compensates such loss, therefore, because the loss corresponds to the real and actual value of the property at the time of taking.

II.
The 20% senior citizen discount is a *taking* in the form of regulation; thus, just compensation is not required

In *Didipio Earth Savers' Multi-Purpose Association, Inc. v. Gozun*,[17] the Court has distinguished the element of *taking* in eminent domain from the concept of *taking* in the exercise of police power, *viz*:

> Property condemned under police power is usually noxious or intended for a noxious purpose; hence, no compensation shall be paid. Likewise, in the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state. Thus, an ordinance prohibiting theaters from selling tickets in excess of their seating capacity (which would result in the diminution of profits of the theater-owners) was upheld valid as this would promote the comfort, convenience and safety of the customers. In *U.S. v. Toribio,* the court upheld the provisions of Act No. 1147, a statute regulating the slaughter of carabao for the purpose of conserving an adequate supply of draft animals, as a valid exercise of police power, notwithstanding the property rights impairment that the ordinance imposed on cattle owners. A zoning ordinance prohibiting the operation of a lumber yard within certain areas was assailed as unconstitutional in that it was an invasion of the property rights of the lumber yard owners in *People v. De Guzman.* The Court nonetheless ruled that the regulation was a valid exercise of police

[17] G.R. No. 157882, March 30, 2006, 485 SCRA 586, 604-607.

power. A similar ruling was arrived at in *Seng Kee S Co. v. Earnshaw and Piatt* where an ordinance divided the City of Manila into industrial and residential areas.

A thorough scrutiny of the extant jurisprudence leads to a cogent deduction that where a property interest is merely restricted because the continued use thereof would be injurious to public welfare, or where property is destroyed because its continued existence would be injurious to public interest, there is no compensable taking. However, when a property interest is appropriated and applied to some public purpose, there is compensable taking.

According to noted constitutionalist, Fr. Joaquin Bernas, SJ, in the exercise of its police power regulation, the state restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. Use of the property by the owner was limited, but no aspect of the property is used by or for the public. The deprivation of use can in fact be total and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein.

If, however, in the regulation of the use of the property, somebody else acquires the use or interest thereof, such restriction constitutes compensable taking.

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While the power of eminent domain often results in the appropriation of title to or possession of property, it need not always be the case. Taking may include trespass without actual eviction of the owner, material impairment of the value of the property or prevention of the ordinary uses for which the property was intended such as the establishment of an easement.

In order to determine whether a challenged legislation involves regulation or taking, the purpose of the law should be revisited, analyzed, and scrutinized.[18] There is no more direct and better way to do so now than to look at the declared policies and objectives of the *Expanded Seniors Citizens Act*, to wit:

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[18] Bernas, *The 1987 Constitution of the Republic of the Philippines A Commentary*, 2009 ed., p. 435.

SECTION 1. *Declaration of Policies and Objectives*. — Pursuant to Article XV, Section 4 of the Constitution, it is the duty of the family to take care of its elderly members while the State may design programs of social security for them. In addition to this, Section 10 in the Declaration of Principles and State Policies provides: 'The State shall provide social justice in all phases of national development.' Further, Article XIII, Section 11 provides: 'The State shall adopt an integrated and comprehensive approach to health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underpriviledged, sick, elderly, disabled, women and children.' Consonant with these constitution principles the following are the declared policies of this Act:

(a) To motivate and encourage the senior citizens to contribute to nation building;

(b) To encourage their families and the communities they live with to reaffirm the valued Filipino tradition of caring for the senior citizens;

(c) **To give full support to the improvement of the total well-being of the elderly and their full participation in society considering that senior citizens are integral part of Philippine society**;

(d) **To recognize the rights of senior citizens to take their proper place in society. This must be the concern of the family, community, and government**;

(e) **To provide a comprehensive health care and rehabilitation system for disabled senior citizens to foster their capacity to attain a more meaningful and productive ageing**; and

(f) **To recognize the important role of the private sector in the improvement of the welfare of senior citizens and to actively seek their partnership**.

In accordance with these policies, this Act aims to:

(1) establish mechanism whereby the contribution of the senior citizens are maximized;

(2) **adopt measures whereby our senior citizens are assisted and appreciated by the community as a whole**;

(3) **establish a program beneficial to the senior citizens, their families and the rest of the community that they serve**; and

(4) establish community-based health and rehabilitation programs in every political unit of society. (Bold emphasis supplied)

As the foregoing shows, the 20% senior citizen discount forbids a covered establishment from selling certain goods or rendering services to senior citizens in excess of 80% of the offered price, thereby causing a diminution in the revenue or profits of the covered establishment. The amount corresponding to the discount, instead of being converted to income of the covered establishments, is *retained* by the senior citizen to be used by him in order to promote his well-being, to recognize his important role in society, and to maximize his contribution to nation-building. Although a form of regulation of or limitation on property right is thereby manifest, what the law clearly and primarily intends is to grant benefits and special privileges to senior citizens.

A new question necessarily arises. Can a law, whose chief purpose is to give benefits to a special class of citizens, be justified as a valid exercise of the State's police power?

Police power, insofar as it is being exercised by the State, is depicted as a regulating, prohibiting, and punishing power. It is neither benevolent nor generous. Unlike traditional regulatory legislations, however, the *Expanded Senior Citizens Act* does not intend to prevent any evil or destroy anything obnoxious. Even so, the *Expanded Senior Citizens Act* remains a valid exercise of the State's police power. The ruling in *Binay v. Domingo*,[19] which involves police power as exercised by a local government unit pursuant to the general welfare clause, proves instructive. Therein, the erstwhile Municipality of Makati had passed a resolution granting burial assistance of ₱500.00 to qualified beneficiaries, to be taken out of the unappropriated available existing funds from the Municipal Treasury.[20] The Commission on Audit disallowed on the ground that there was "no perceptible connection or relation between the objective

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[19] G.R. No. 92389, September 11, 1991, 201 SCRA 508.

[20] *Id*. at 511.

sought to be attained under Resolution No. 60, s. 1988, *supra*, and the alleged public safety, general welfare, *etc*. of the inhabitants of Makati."[21] In upholding the validity of the resolution, the Court ruled:

> Municipal governments exercise this power under the general welfare clause: pursuant thereto they are clothed with authority to 'enact such ordinances and issue such regulations as may be necessary to carry out and discharge the responsibilities conferred upon it by law, and such as shall be necessary and proper to provide for the health, safety, comfort and convenience, maintain peace and order, improve public morals, promote the prosperity and general welfare of the municipality and the inhabitants thereof, and insure the protection of property therein.' (Sections 91, 149, 177 and 208, BP 337). And under Section 7 of BP 337, 'every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary and proper for governance such as to promote health and safety, enhance prosperity, improve morals, and maintain peace and order in the local government unit, and preserve the comfort and convenience of the inhabitants therein.'
>
> **Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order or safety and general welfare of the people. It is the most essential, insistent, and illimitable of powers. In a sense it is the greatest and most powerful attribute of the government. It is elastic and must be responsive to various social conditions.** (*Sangalang, et al. vs. IAC,* 176 SCRA 719). On it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property, and it has been said to be the very foundation on which our social system rests. (16 C.J.S., p. 896) **However, it is not confined within narrow circumstances of precedents resting on past conditions; it must follow the legal progress of a democratic way of life.** (*Sangalang, et al. vs. IAC, supra*).
>
> In the case at bar, COA is of the position that there is 'no perceptible connection or relation between the objective sought to be attained under Resolution No. 60, s. 1988, *supra*, and the alleged public

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[21] *Id*. at 512.

safety, general welfare *etc*. of the inhabitants of Makati.' (*Rollo*, Annex "G", p. 51).

Apparently, COA tries to redefine the scope of police power by circumscribing its exercise to 'public safety, general welfare, *etc.* of the inhabitants of Makati.'

In the case of *Sangalang vs. IAC, supra*, We ruled that police power is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensiveness. Its scope, over-expanding to meet the exigencies of the times, even to anticipate the future where it could be done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuring the greatest benefits.

The police power of a municipal corporation is broad, and has been said to be commensurate with, but not to exceed, the duty to provide for the real needs of the people in their health, safety, comfort, and convenience as consistently as may be with private rights. It extends to all the great public needs, and, in a broad sense includes all legislation and almost every function of the municipal government. It covers a wide scope of subjects, and, while it is especially occupied with whatever affects the peace, security, health, morals, and general welfare of the community, it is not limited thereto, but is broadened to deal with conditions which exist so as to bring out of them the greatest welfare of the people by promoting public convenience or general prosperity, and to everything worthwhile for the preservation of comfort of the inhabitants of the corporation (62 C.J.S. Sec. 128). Thus, it is deemed inadvisable to attempt to frame any definition which shall absolutely indicate the limits of police power.

COA's additional objection is based on its contention that 'Resolution No. 60 is still subject to the limitation that the expenditure covered thereby should be for a public purpose, x x x should be for the benefit of the whole, if not the majority, of the inhabitants of the Municipality and not for the benefit of only a few individuals as in the present case.' (*Rollo*, Annex 'G', p. 51).

COA is not attuned to the changing of the times. Public purpose is not unconstitutional merely because it incidentally benefits a limited number of persons. As correctly pointed out by the Office of the Solicitor General, 'the drift is towards social welfare legislation geared towards state policies to provide adequate social services (Section 9, Art. II, Constitution), the promotion of the general

welfare (Section 5, *ibid*) social justice (Section 10, *ibid*) as well as human dignity and respect for human rights (Section 11, *ibid*).' (Comment, p. 12)

The care for the poor is generally recognized as a public duty. The support for the poor has long been an accepted exercise of police power in the promotion of the common good.[22] (Bold emphasis supplied.)

The *Expanded Senior Citizens Act* is similar to the municipal resolution in *Binay* because both accord benefits to a specific class of citizens, and both on their faces do not primarily intend to burden or regulate any person in giving such benefit. On the one hand, the *Expanded Senior Citizens Act* aims to achieve this by, among others, requiring select establishments to grant senior citizens the 20% discount for their goods or services, while, on the other, the municipal resolution in *Binay* appropriated money from the Municipal Treasury to achieve its goal of giving support to the poor.

If the Court sustained in *Binay* a municipality's exercise of police power to enact benevolent and beneficial resolutions, we have a greater reason to uphold the State's exercise of the same power through the enactment of a law of a similar nature. Indeed, it is but opportune for the Court to now make an unequivocal and definitive pronouncement on this new dimension of the State's police power.

ACCORDINGLY, I vote to **DISMISS** the petition.

CONCURRING AND DISSENTING OPINION

LEONEN, *J*.,

This case involves the constitutionality of Section 4 of Republic Act No. 7432 as amended by Republic Act No. 9257[1] as well

[22] *Id*. at 514-516.

[1] Republic Act No. 9257 is otherwise known as the Expanded Seniors Citizens Act of 2003. It was amended by Republic Act No. 9994, February 15, 2010

as the implementing rules and regulations issued by respondents Department of Social Welfare and Development and Department of Finance. The provisions allow the 20% discount given by business establishments to senior citizens only as ***a tax deduction*** from their gross income. The provisions amend an earlier law that allows the senior citizen discount as ***a tax credit*** from their total tax liability.

I concur with the *ponencia* in denying the constitutional challenge.

The enactment of the provision as well as its implementing rules is a proper exercise of the inherent power to tax and police power. However, I regret I cannot join my esteemed colleagues Justice Mariano del Castillo as the *ponencia* and Justice Antonio Carpio in his thoughtful dissent that the power of eminent domain is also involved. It is for these reasons that I offer this separate opinion.

The Petition

Before us is a Petition for Prohibition[2] filed by Manila Memorial Park, Inc. and La Funeraria Paz-Sucat, Inc. against the Secretaries of the Department of Social Welfare and Development and the Department of Finance. Petitioners are domestic corporations engaged in the business of providing funeral and burial services.

On April 23, 1992, Republic Act No. 7432 was passed granting senior citizens privileges. Section 4(a) grants them a 20% discount from certain establishments provided "[t]hat private establishments may claim the cost as tax credit."

On August 23, 1993, Revenue Regulation No. 02-94 was issued to implement Republic Act No. 7432. Section 2(i) on the definition of "tax credit" provides that the discount "shall be deducted by the said establishments from their gross income x x x." Section 4 on bookkeeping requirements for private establishments similarly states that "[t]he amount of 20%

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[2] Petition is filed pursuant to Rule 65 of the Rules of Court.

discount shall be deducted from the gross income for income tax purposes and from gross sales of the business enterprise concerned for purposes of VAT and other percentage taxes."

Commissioner of Internal Revenue v. Central Luzon Drug Corporation[3] later declared these sections of Revenue Regulation No. 02-94 as erroneous for contravening Republic Act No. 7432, which specifically allows establishments to claim a tax credit.

On February 26, 2004, Republic Act No. 9257 was passed amending certain provisions of Republic Act No. 7432. Specifically, Section 4 now provides as follows:

SECTION 4. Privileges for the Senior Citizens. — The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishments, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x x x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended.

The Secretary of Finance issued Revenue Regulation No. 4-2006 to implement Republic Act No. 9257. The Department of Social Welfare and Development also issued its own Rules and Regulations Implementing Republic Act No. 9257.

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[3] 496 Phil. 307 (2005).

Petitioners, thus, filed this Petition urging that Section 4 of Republic Act No. 7432 as amended by Republic Act No. 9257, as well as the implementing rules and regulations issued by respondents, be declared unconstitutional insofar as these allow business establishments to claim the 20% discount given as a tax deduction; that respondents be prohibited from enforcing them; and that the tax credit treatment of the 20% discount under the former Section 4(a) of Republic Act No. 7432 be reinstated.[4]

The most salient issue is as follows: whether Section 4 of Republic Act No. 7432 as amended by Republic Act No. 9257, as well as its implementing rules and regulations, insofar as they provide that the 20% discount to senior citizens may be claimed as a tax deduction by private establishments, is invalid and unconstitutional.

The arguments of the parties as summarized in the *ponencia* are as follows:

Petitioners contend that the tax deduction scheme contravenes Article III, Section 9 of the Constitution, which states that: "[p]rivate property shall not be taken for public use without just compensation."[5] Moreover, petitioners cite *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*[6] ruling that the 20% discount privilege constitutes taking of private property for public use which requires the payment of just compensation,[7] and *Carlos Superdrug Corporation v. Department of Social Welfare and Development*[8] acknowledging that the tax deduction scheme does not meet the definition of just compensation.[9]

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[4] *Rollo,* p. 31.

[5] *Id.* at 401-402.

[6] 496 Phil. 307 (2005).

[7] *Rollo,* pp. 402-403.

[8] 553 Phil. 120 (2007).

[9] *Rollo,* pp. 405-409.

Petitioners also seek a reversal of the ruling in *Carlos Superdrug* that the tax deduction scheme is justified by police power.[10] They assert that "[a]lthough both police power and the power of eminent domain have the general welfare for their object, there are still traditional distinctions between the two"[11] and that "eminent domain cannot be made less supreme than police power."[12] They claim that in amending Republic Act No. 7432, the legislature relied on an erroneous contemporaneous construction that prior payment of taxes is required for tax credit.[13]

Petitioners likewise argue that the tax deduction scheme violates Article XV, Section 4, and Article XIII, Section 11 of the Constitution because it shifts the State's constitutional mandate or duty of improving the welfare of the elderly to the private sector.[14] Under the tax deduction scheme, the private sector shoulders 65% of the discount because only 35% (now 30%) of it is actually returned by the government.[15] Consequently, its implementation affects petitioners' businesses,[16] and there exists an actual case or controversy of transcendental importance.[17]

Respondents, on the other hand, question the filing of the instant Petition directly with this Court in disregard of the hierarchy of courts.[18] They assert that there is no justiciable controversy as petitioners failed to prove that the tax deduction treatment is not a "fair and full equivalent of the loss sustained" by them.[19] On the constitutionality of Republic Act No. 9257

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[10] *Id*. at 410-420.

[11] *Id*. at 411-412.

[12] *Id*. at 413.

[13] *Id*. at 427-436.

[14] *Id*. at 421-427.

[15] *Id*. at 425.

[16] *Id*. at 424.

[17] *Id*. at 394-401.

[18] *Id*. at 363-364.

[19] *Id*. at 359-363.

and its implementing rules and regulations, respondents argue that petitioners failed to overturn its presumption of constitutionality.[20] They maintain that the tax deduction scheme is a legitimate exercise of the State's police power.[21]

I

Uncertain Burdens and Inchoate Losses

What is in question here is ***not*** the actual imposition of a senior citizen discount; ***rather, it is the treatment of that senior citizen discount for taxation purposes***. From being a tax credit, it is now only a tax deduction. The imposition of the senior citizen discount is an exercise of police power. The determination that it will be a tax deduction, not a tax credit, is an exercise of the power to tax.

The imposition of a discount for senior citizens affects the price. It is thus an inherently regulatory function. However, nothing in the law controls the prices of the goods subject to such discount. Legislation interferes with the autonomy of contractual arrangements in that it imposes a two-tiered pricing system. There will be two prices for every good or service: one is the regular price for everyone except for senior citizens who get a twenty percent (20%) discount.

Businesses' discretion to fix the regular price or improve the costs of the goods or the service that they offer to the public — and therefore determine their profit — is not affected by the law. Of course, rational businesses will take into consideration economic factors such as price elasticity,[22] the market structure, the kind of competition businesses face, the barriers to entry that will make possible the expansion of suppliers should there be a change in the prices and the profits that can be made in that industry. Taxes, which include qualifications such as

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[20] *Id.* at 368-370.

[21] *Id.* at 364-368.

[22] "[Price elasticity] measures how much the quantity demanded of a good changes when its price changes." P. A. SAMUELSON AND W. D. NORDHAUS, *ECONOMICS* 66 (Eighteenth Edition, 2005).

exemptions, exclusions and deductions, will be part of the cost of doing business for all such businesses.

No price restriction, no certain losses

There is no restriction in the law for businesses to attempt to recover the same amount of profits for the businesses affected by the law.

To put this idea in perspective, let us assume that Company A is in the business of the sale of memorial lots. The demand for memorial lots is not usually influenced by price fluctuations. There will always be a static demand for memorial lots because it is strictly based on a non-negotiable preference of the purchaser.

Let us also assume, for purposes of argument, that Company A acquired the plots of land at zero cost. This means that the price of the plot multiplied by the number of plots sold will always be considered revenue.[23] To simplify, consider this formula:

$$R = P \times Q$$

Where R = Revenue
P = Price per unit
Q = Quantity sold

Given these assumptions, let us presume that in any given year before the promulgation of any law for senior citizen discounting, Company A sells 1,600 square meters of memorial plots at the price of ₱100.00 per square meter. Considering the formula, the total profit of Company A will be:

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[23] Revenue in the economic sense is not usually subject to such simplistic treatment. Costs must be taken into consideration. In economics, to evaluate the combination of factors to be used by a profit-maximizing firm, an analysis of the marginal product of inputs is compared to the marginal revenue. Economists usually compare if an additional unit of labor will contribute to additional productivity. For a more comprehensive explanation, refer to P. A. SAMUELSON AND W. D. NORDHAUS, *ECONOMICS* 225-239 (Eighteenth Edition, 2005).

$$R_0 = P \times Q$$
$$R_0 = ₱100.00 \times 1{,}600 \text{ sq. m.}$$
$$R_0 = \mathbf{₱160{,}000.00}$$

Let us assume further that out of the 1,600 square meters sold, only 320 square meters are bought by senior citizens, and 1,280 square meters are bought by ordinary citizens.

When Congress enacted Republic Act No. 7432, Company A was forced to give a 20% discount to senior citizens. There will be a price discrimination scheme wherein senior citizens can avail a square meter of a memorial plot for only ₱80.00 per square meter. The total revenue received by Company A will now constitute revenue derived from plots sold to senior citizens added to the revenue derived from plots sold to ordinary citizens. Hence, the formula becomes:

$$R_T = R_S + R_C$$
$$R_S = P_S \times Q_S$$
$$R_C = P_C \times Q_C$$
$$\mathbf{R_T = (P_S \times Q_S) + (P_C \times Q_C)}$$

Where R_T =Total Revenue
R_S =Revenue from Senior Citizens
R_C =Revenue from Ordinary Citizens
P_S =Price for Senior Citizens per Unit
Q_S =Quantity Sold to Senior Citizens
P_C =Price for Ordinary Citizens per Unit
Q_C =Quantity Sold to Ordinary Citizens

In our example, this means that the total revenue of Company A becomes:

$$R_{T1} = (P_S \times Q_S) + (P_C \times Q_C)$$
$$R_{T1} = (₱80.00 \times 320 \text{ sq. m.}) + (₱100.00 \times 1{,}280 \text{ sq. m.})$$
$$R_{T1} = ₱25{,}600.00 + ₱128{,}000.00$$
$$R_{T1} = \mathbf{₱153{,}600.00}$$

Obviously, the Total Revenue after the discount was applied is lower than the Revenue derived by Company A before the discount was imposed.

The natural consequence of Company A, in order to maintain its profitability, is to increase the price per square meter of a memorial lot. Assume that the price increase was ₱10.00. This makes the price for ordinary citizens go up to ₱110.00 per square meter. Meanwhile, the discounted price for senior citizens becomes ₱88.00 per square meter. The effects of that with respect to total revenue of Company A become:

$$R_{T2} = (P_S \; x \; Q_S) + (P_C \; x \; Q_C)$$
$$R_{T2} = (₱88.00 \text{ x } 320 \text{ sq. m.}) + (₱110.00 \text{ x } 1{,}280 \text{ sq. m.})$$
$$R_{T2} = ₱28{,}160.00 + ₱140{,}800.00$$
$$R_{T2} = \mathbf{₱168{,}960.00}$$

After Company A increases its prices, despite the application of the mandated discount rates, Company A becomes more profitable than it was before the implementation of Republic Act No. 7432.

Again, nothing in the law prohibits Company A from increasing its prices for regular customers.[24]

The tax implications of Republic Act No. 7432 *vis-à-vis* the tax implications of the amendment introduced in Republic Act No. 9257 are also augmented by controlling the price. If we compute for the tax liability and the net income of Company A after the implementation of Republic Act No. 7432 and after treating the discount given to senior citizens becomes tax credit for Company A, we will get:

Gross Income (R_{T1})	₱ 153,600
Less: Deductions	(₱60,000)
Taxable Income	₱ 93,600

[24] To determine the price for both ordinary customers and senior citizens that will retain the same level of profitability, the formula for the price for ordinary customers is $\boldsymbol{P_C = R_0 / (0.8Q_S + Q_C)}$ where R_0 is the total revenue before the senior citizen discount was given.

Income Tax Rate	30%
Income Tax Liability	₱ 28,080
Less: Senior Citizen Discount ***Tax Credit***	(₱ 6,400)
Final Income Tax Liability	**₱ 21,680**
Net Income	**₱ 131,920**

Given the changes made in Republic Act No. 9257, senior citizen discount is considered a deduction. Hence:

Gross Income (R_{T1})	₱ 153,600
Less: Deductions	(₱60,000)
Less: Senior Citizen Discount	(₱6,400)
Taxable Income	₱ 87,200
Income Tax Rate	30%
Income Tax Liability	₱ 26,160
Less: Tax Credit	₱ 0
Final Income Tax Liability	**₱26,160**
Net Income	**₱127,440**

Keeping the number of units sold to senior citizens and ordinary citizens constant, Republic Act No. 9257 will mean a smaller net income for Company A. However, if Company A uses pricing to respond to Republic Act No. 9257, as discussed in the earlier example where Company A increased its prices from ₱100.00 to ₱110.00, the net income becomes:

Gross Income (R_{T2})	₱ 168,960
Less: Deductions	(₱ 60,000)
Less: Senior Citizen Discount	(₱ 7,040)
Taxable Income	₱ 101,920
Income Tax Rate	30%
Income Tax Liability	₱ 30,576
Less: Tax Credit	₱ 0
Final Income Tax Liability	**₱ 30,576**
Net Income	**₱ 138,384**

It becomes apparent that despite converting the discount from tax credit to an income deduction, Company A could improve its net income than in the situation where the senior citizen discount was treated as a tax credit if it imposes a price increase. Note that the price increase we provided in this example was even less than the discount given to senior citizens.

The decision to increase price as well as its magnitude depends upon a number of non-legal factors. Businesses, for instance, will consider whether they are in a situation of near monopoly or a competitive market. They will want to know whether the change in their prices would encourage customers to shift their preferences to cremating their loved ones instead of burying them.[25] They might also want to determine if the subsequent increase in relative profits will encourage the setting up of more competition into their market.

Losses, therefore, are not guaranteed by the change in legislation challenged in this Petition. Put simply, losses are not inevitable. On this basis alone, the constitutional challenge should fail. The case is premised on the inevitable loss to be suffered by the petitioners. There is no factual basis for that kind of certainty. We do not decide constitutional issues on the basis of inchoate losses and uncertain burdens.

Furthermore, income and profits are not vested rights. They are the results of good or bad business judgments occasioned by the proper response to their economic environment. Profits and the maintenance of a steady stream of income should be the reward of business acumen of entrepreneurship. Courts read law and in doing so provide the givens in a business environment. We should not allow ourselves to become the tools for good business results for some businesses.

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[25] This sensitivity is referred to as price elasticity. "The precise definition of price elasticity is the percentage change in quantity demanded divided by the percentage change in price." P. A. SAMUELSON AND W. D. NORDHAUS, *ECONOMICS* 66 (Eighteenth Edition, 2005).

Profits can improve with efficiency

Apart from increasing the price of goods and services, efficiency in the business can also maintain or even increase profits. A more restrictive business environment should occasion a review of the cost structure of the economic agent.[26] We cannot simply assume that businesses, including the businesses of petitioners, are at their optimum level of efficiency. The change in the tax treatment of senior citizen's discount, therefore, in some cases, can be better for the economy although it may, without any certainty, occasion some pain on some businesses. Our view should be more all-encompassing.

Besides, compensating for the alleged losses of the petitioners assumes that we accept their current pricing as correct. That is, it is the price that covers their costs and provides them with profits that a competitive market can bear. We cannot have the situation where establishments can just set any price and come to court to recover whatever profit they were enjoying prior to a regulatory measure.

II
Power to Tax

The power to tax is "a principal attribute of sovereignty."[27] Such inherent power of the State anchors on its "social contract with its citizens [which] obliges it to promote public interest and common good."[28]

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[26] Another algebraic formula will show us how costs should be minimized to retain the same level of profitability. The formula is $C_1 = C_0 - [(20\% \times P_C) \times Q_S]$ where:

C_1 = Cost of producing all quantities after the discount policy

C_0 = Cost of producing all quantities before the discount policy

P_C = Price per unit for Ordinary Citizens

Q_S = Quantity sold to Senior Citizens

[27] *National Power Corporation v. City of Cabanatuan,* 449 Phil. 233, 247 (2003) *citing Hong Kong & Shanghai Banking Corp. v. Rafferty*, 39 Phil. 145 (1918); *Wee Poco & Co. v. Posadas*, 64 Phil. 640 (1937); *Reyes v. Almanzor*, 273 Phil. 558, 564 (1991).

[28] *National Power Corporation v. City of Cabanatuan, supra* at 248.

The scope of the legislative power to tax necessarily includes not only the power to determine the rate of tax but the method of its collection as well.[29] We have held that Congress has the power to "define what tax shall be imposed, why it should be imposed, how much tax shall be imposed, against whom (or what) it shall be imposed and *where it shall be imposed.*"[30] In fact, the State has the power "to make reasonable and natural classifications for the purposes of taxation x x x [w]hether it relates to the subject of taxation, the kind of property, the rates to be levied, or the amounts to be raised, the *methods of assessment, valuation and collection*, the State's power is entitled to presumption of validity x x x."[31] This means that the power to tax also allows Congress to determine matters as whether tax rates will be applied to gross income or net income and whether costs such as discounts may be allowed as a deduction from gross income or a tax credit from net income after tax.

While the power to tax has been considered the strongest of all of government's powers[32] with taxes as the "lifeblood of the government," this power has its limits. In a number of cases,[33]

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[29] For instance, Republic Act No. 9337 introducing further reforms to the Value Added Tax (VAT) system was upheld as constitutional. Sections 106, 107, and 108 of the Tax Code were amended to impose a Value Added Tax rate of 10% to be increased to 12% upon satisfaction of enumerated conditions. Relevant portions of Sections 110 and 114 of the Tax Code were also amended, providing for limitations on a taxpayer's claim for input tax. *See Abakada Guro Party List v. Executive Secretary,* 506 Phil. 1 (2005).

[30] *Chamber of Real Estate and Builders' Associations, Inc. v. Executive Secretary Romulo,* G.R. No. 160756, March 9, 2010, 614 SCRA 605, 626. (Emphasis supplied)

[31] *Abakada Guro Party List v. Executive Secretary Ermita, supra* at 129. (Emphasis supplied)

[32] *Reyes v. Almanzor,* 273 Phil. 558, 564 (1991).

[33] *See for instance Lascona Land Co. v. Commissioner of Internal Revenue,* G.R. No. 171251, March 5, 2012, 667 SCRA 455; *Commissioner of Internal Revenue v. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010, 637 SCRA 633, 647-648.

we have referred to our discussion in the 1988 case of *Commissioner of Internal Revenue v. Algue,*[34] as follows:

Taxes are the lifeblood of the government and so should be collected without unnecessary hindrance. On the other hand, such collection should be made in accordance with law as any arbitrariness will negate the very reason for government itself. It is therefore necessary to reconcile the apparently conflicting interests of the authorities and the taxpayers so that the real purpose of taxation, which is the promotion of the common good, may be achieved.

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It is said that taxes are what we pay for civilized society. Without taxes, the government would be paralyzed for lack of the motive power to activate and operate it. Hence, despite the natural reluctance to surrender part of one's hard-earned income to the taxing authorities, every person who is able to must contribute his share in the running of the government. The government, for its part, is expected to respond in the form of tangible and intangible benefits intended to improve the lives of the people and enhance their moral and material values. This symbiotic relationship is the rationale of taxation and should dispel the erroneous notion that it is an arbitrary method of exaction by those in the seat of power.

But even as we concede the inevitability and indispensability of taxation, it is a requirement in all democratic regimes that it be exercised reasonably and in accordance with the prescribed procedure. If it is not, then the taxpayer has a right to complain and the courts will then come to his succor. For all the awesome power of the tax collector, he may still be stopped in his tracks if the taxpayer can demonstrate, as it has here, that the law has not been observed.[35] (Emphasis supplied)

The Constitution provides for limitations on the power of taxation. First, "[t]he rule of taxation shall be uniform and equitable."[36]

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[34] 241 Phil. 829 (1988).

[35] *Id*. at 830-836.

[36] CONSTITUTION, Art. VI, Sec. 28 (1).

Sec. 28 (1) The rule of taxation shall be uniform and equitable. The Congress shall evolve a progressive system of taxation.

This requirement for uniformity and equality means that "all taxable articles or kinds of property of the same class [shall] be taxed at the same rate."[37] The tax deduction scheme for the 20% discount applies equally and uniformly to all the private establishments covered by the law. Thus, it complies with this limitation.

Second, taxes must neither be confiscatory nor arbitrary as to amount to a "[deprivation] of property without due process of law."[38] In *Chamber of Real Estate and Builders' Associations, Inc. v. Executive Secretary Romulo,*[39] petitioners questioned the constitutionality of the Minimum Corporate Income Tax (MCIT) alleging among others that "pegging the tax base of the MCIT to a corporation's gross income is tantamount to a confiscation of capital because gross income, unlike net income, is not 'realized gain.'"[40] In dismissing the Petition, this Court discussed the due process limitation on the power to tax:

As a general rule, the power to tax is plenary and unlimited in its range, acknowledging in its very nature no limits, so that the principal check against its abuse is to be found only in the responsibility of the legislature (which imposes the tax) to its constituency who are to pay it. Nevertheless, it is circumscribed by constitutional limitations. At the same time, like any other statute, tax legislation carries a presumption of constitutionality.

The constitutional safeguard of due process is embodied in the fiat "[no] person shall be deprived of life, liberty or property without due process of law." In *Sison, Jr. v. Ancheta, et al.*, we held that the due process clause may properly be invoked to invalidate, in appropriate cases, a revenue measure when it amounts to a confiscation of property. But in the same case, we also explained that we will

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[37] *Tolentino v. Secretary of Finance,* 319 Phil. 755, 795 (1995).

[38] CONSTITUTION, Art. III, Sec. 1.

Sec. 1 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 laws.

[39] G.R. No. 160756, March 9, 2010, 614 SCRA 605.

[40] *Id.* at 625.

not strike down a revenue measure as unconstitutional (for being violative of the due process clause) on the mere allegation of arbitrariness by the taxpayer. There must be a factual foundation to such an unconstitutional taint. This merely adheres to the authoritative doctrine that, where the due process clause is invoked, considering that it is not a fixed rule but rather a broad standard, there is a need for proof of such persuasive character. (Citations omitted)[41]

In the present case, there is no showing that the tax deduction scheme is confiscatory. The portion of the 20% discount petitioners are made to bear under the tax deduction scheme will not result in a complete loss of business for private establishments. As illustrated earlier, these establishments are free to adjust factors as prices and costs to recoup the 20% discount given to senior citizens. Neither is the scheme arbitrary. Rules and Regulations have been issued by agencies as respondent Department of Finance to serve as guidelines for the implementation of the 20% discount and its tax deduction scheme.

In fact, this Court has consistently upheld the doctrine that "taxing power may be used as an implement of police power"[42] in order to promote the general welfare of the people.

III
Eminent Domain

Even assuming that the losses and the burdens can be determined and are specific, these are not enough to show that eminent domain is involved. It is not enough to conclude that there is a violation of Article III, Section 9 of the Constitution. This provision mandates that "[p]rivate property shall not be taken for public use without just compensation."

Petitioners claim that there is taking by the government of that portion of the 20% discount they are required to give senior

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[41] *Id.* at 626-627.

[42] *Gerochi v. Department of Energy,* 554 Phil. 563, 582 (2007) *citing Osmeña v. Orbos*, G.R. No. 99886, March 31, 1993, 220 SCRA 703, 710-711; *Gaston v. Republic Planters Bank*, 242 Phil. 377 (1988); *Tio v. Videogram Regulatory Board*, 235 Phil. 198 (1987); and *Lutz v. Araneta*, 98 Phil. 148 (1955).

citizens under Republic Act No. 9257 but are not allowed to deduct from their tax liability in full as a tax credit. They argue that they are inevitably made to bear a portion of the loss from the 20% discount required by law. In their view, these speculative losses are to be provided with just compensation.

Thus, they seek to declare as unconstitutional Section 4 of Republic Act No. 7432 as amended by Republic Act No. 9257, as well as the implementing rules and regulations issued by respondents Department of Social Welfare and Development and Department of Finance, for only allowing the 20% discount as a tax deduction from gross income, and not as a tax credit from total tax liability.

Petitioners cannot be faulted for this view. *Carlos Superdrug Corporation v. Department of Social Welfare and Development,*[43] cited in the *ponencia*, hinted:

The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for public use or benefit. This constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain but the owner's loss. The word just is used to intensify the meaning of the word compensation, and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

A tax deduction does not offer full reimbursement of the senior citizen discount. As such, it would not meet the definition of just compensation.

Having said that, this raises the question of whether the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program.

The Court believes so.[44]

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[43] *Supra* note 8.

[44] *Id*. at 129-130. (Citations omitted)

The *ponencia* is, however, open to the possibility that eminent domain will apply. While the main opinion held that the 20% senior citizen discount is a valid exercise of police power, it explained that this is due to the absence of any clear showing that the discount is unreasonable, oppressive or confiscatory as to amount to a taking under eminent domain requiring the payment of just compensation.[45] *Alalayan v. National Power Corporation*[46] and *Carlos Superdrug Corp. v. Department of Social Welfare and Development*[47] were cited as examples when there was failure to prove that the limited rate of return for franchise holders, or the required 20% senior citizens discount, "were arbitrary, oppressive or confiscatory."[48] It found that petitioners similarly did not establish the factual bases of their claims and relied on hypothetical computations.[49]

The *ponencia* refers to *City of Manila v. Hon. Laguio, Jr.*[50] citing the U.S. case of *Pennsylvania Coal v. Mahon* in that we must determine on a case to case basis as to when the regulation of property becomes a taking under eminent domain.[51] It cites

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[45] *Ponencia,* p. 21.

[46] 133 Phil. 279 (1968).

[47] *Supra* note 8.

[48] *Ponencia,* p. 22.

[49] *Id.* at 22.

[50] 495 Phil. 289 (2005).

[51] *Id.* at 320-321 *citing Pennsylvania Coal v. Mahon*, 260 U.S. 393, 415 (1922) and *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).

No formula or rule can be devised to answer the questions of what is too far and when regulation becomes a taking. In *Mahon,* Justice Holmes recognized that it was "a question of degree and therefore cannot be disposed of by general propositions." On many other occasions as well, the U.S. Supreme Court has said that the issue of when regulation constitutes a taking is a matter of considering the facts in each case. The Court asks whether justice and fairness require that the economic loss caused by public action must be compensated by the government and thus borne by the public as a whole, or whether the loss should remain concentrated on those few persons subject to the public action.

the U.S. case of *Munn v. Illinois*[52] in that the State can employ police power measures to regulate pricing pursuant to the common good "provided that the regulation does not go too far as to amount to 'taking'."[53] This concept of regulatory taking, as opposed to ordinary taking, is amorphous and has not been applied in our jurisdiction. What we have is indirect expropriation amounting to compensable taking.

In *National Power Corporation v. Sps. Gutierrez,*[54] for example, we held that "the easement of right-of-way [due to electric transmission lines constructed over the property] is definitely a taking under the power of eminent domain. x x x the limitation imposed by NPC against the use of the land for an indefinite period deprives private respondents of its ordinary use."[55]

The *ponencia* also compares the tax deduction scheme for the 20% discount with price controls or rate of return on investment control laws which are valid exercises of police power. While it acknowledges that there are differences between these laws and the subject tax deduction scheme,[56] it held that "the 20% discount may be properly viewed as belonging to the category of price regulatory measures which affects the profitability of establishments subjected thereto."[57]

I disagree.

The eminent domain clause will still not apply even if we assume, without conceding, that the 20% discount or a portion of it is lost profits for petitioners. Profits are intangible personal property[58]

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[52] 94 U.S. 113 (1877).

[53] *Ponencia,* p. 20.

[54] 271 Phil. 1 (1991).

[55] *Id*. at 7. *See also Republic of the Phil. v. PLDT,* 136 Phil. 20 (1969).

[56] *Ponencia,* p. 20.

[57] *Id*. at 20.

[58] *See* CIVIL CODE, Article 416. This provides for the definition of personal property.

for which petitioners merely have an inchoate right. These are types of property which cannot be "taken."

Nature of Profits: Inchoate and Intangible Property

Eminent domain has been defined as "an inherent power of the State that enables it to forcibly acquire private lands intended for public use upon payment of just compensation to the owner."[59] Most if not all jurisprudence on eminent domain involves real property, specifically that of land. Although Rule 67 of the Rules of Court, the rules governing expropriation proceedings, requires the complaint to "describe the real *or personal property* sought to be expropriated,"[60] this refers to tangible personal property for which the court will deliberate as to its value for purposes of just compensation.[61]

In a sense, the forced nature of a sale under eminent domain is more justified for real property such as land. The common situation is that the government needs a specific plot, for the construction of a public highway for example, and the private owner cannot move his land to avoid being part of the project. On the other hand, most tangible personal or movable property need not be subject of a forced sale when the government can procure these items in a public bidding with several able and willing private sellers.

In *Republic of the Philippines v. Vda. de Castelvi,*[62] this Court also laid down five (5) "circumstances [that] must be present in the 'taking' of property for purposes of eminent domain"[63] as follows:

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[59] *Association of Small Land Owners in the Phil., Inc. v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 809 (1989).

[60] RULES OF COURT, Rule 67, Sec. 1.

[61] *See National Power Corporation v. Tuazon*, G.R. No. 193023, June 29, 2011, 653 SCRA 84, 95 where this Court held that "[t]he determination of just compensation in expropriation cases is a function addressed to the discretion of the courts x x x."

[62] 157 Phil. 329 (1974).

[63] *Id.* at 345.

First, the expropriator must enter a private property. x x x.

Second, the entrance into private property must be for more than a momentary period. x x x.

Third, the entry into the property should be under warrant or color of legal authority. x x x.

Fourth, the property must be devoted to a public use or otherwise informally appropriated or injuriously affected. x x x.

Fifth, the utilization of the property for public use must be in such a way as to oust the owner and deprive him of all beneficial enjoyment of the property. x x x.[64]

The requirement for "entry" or the element of "oust[ing] the owner" is not possible for intangible personal property such as profits.

Profits are not only intangible personal property. They are also inchoate rights. An inchoate right means that the right "has not fully developed, matured, or vested."[65] It may or may not ripen. The existence of profits, more so its specific amount, is uncertain. Business decisions are made every day dealing with factors such as price, quantity, and cost in order to manage potential outcomes of profit or loss at any given point. Profits are thus considered as "future economic benefits" which, at best, entitles petitioners only to an inchoate right.[66]

This is not the private property referred in the Constitution that can be taken and would require the payment of just compensation.[67] Just compensation has been defined "to be the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation."[68]

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[64] *Id.* at 345-346.

[65] *Black's Law Dictionary* 777 (Eighth Ed., 2004).

[66] *See Ermita v. Aldecoa-Delorino,* G.R. No. 177130, June 7, 2011, 651 SCRA 128,143.

[67] Constitution, Art. III, Sec. 9.

[68] *National Power Corporation v. Gutierrez,* 271 Phil. 1, 7 (1991) *citing Province of Tayabas v. Perez,* 66 Phil. 467 (1938); *Assoc. of Small Land*

Petitioners' position in seeking just compensation for the 20% discount assumes that the discount always translates to lost profits. This is not always the case. There may be taxable periods when they will be reporting a loss in their ending balance as a result of other factors such as high costs of goods sold. Moreover, not all their sales are made to senior citizens.

At most, profits can materialize in the form of cash, but even then, this is not the private property contemplated by the Constitution and whose value will be deliberated by courts for purposes of just compensation. We cannot compensate cash for cash.

Justice Carpio submits in his dissent that the Constitution speaks of private property without distinction, thus, the issue of profit or loss to private establishments like petitioners is immaterial. The 20% discount belongs to them whether they make a profit or suffer a loss.[69]

When the 20% discount is given to customers who are senior citizens, there is a *perceived* loss for the establishment for that same amount at that precise moment. However, this moment is fleeting and the perceived loss can easily be recouped by sales to ordinary citizens at higher prices. The concern that more consumers will suffer as a result of a price increase[70] is a matter better addressed to the wisdom of the Congress. As it stands, Republic Act No. 9257 does not establish a price control. For non-profit establishments, they may cut down on costs and make other business decisions to optimize performance. Business decisions like these have been made even before the 20% discount became law, and will continue to be made to adapt to the ever changing market. We cannot consider this fluid concept of possible loss and potential profit as private property belonging to private establishments. They are inchoate. They may or may not exist depending on many factors, some of which are within the control

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[69] *Dissenting Opinion of Justice Carpio,* p. 9.

Owners of the Phils., Inc. v. Hon. Secretary of Agrarian Reform, Acuna v. Arroyo, Pabrico v. Juico, *Manaay v. Juico*, 256 Phil. 777 (1989).

[70] *Id.* at 14.

of the private establishments. There is nothing concrete, earmarked, actual or specific for taking in this scenario. Necessarily, there is nothing to compensate.

Our determination of profits as a form of personal property that can be taken in a constitutional sense as a result of valid regulation would invite untold consequences on our legal system. Loss of profits will be difficult to prove and will tax the imagination and speculative abilities of judges and justices. Every piece of legislation in the future would cause the filing of cases that will ask us to determine the loss or damage caused to an ongoing business. This certainly is not the intent of the eminent domain provisions in our bill of rights. This is not the sort of protection to property imagined by our constitutional order.

Final Note

Article XIII was introduced in the 1987 Constitution to specifically address Social Justice and Human Rights. For this purpose, the state may regulate the acquisition, ownership, use, and disposition of property and its increments, *viz*:

Section 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments.[71]

Thus, in the exercise of its police power and in promoting senior citizens' welfare, the government "can impose upon private establishments [like petitioners] the burden of partly subsidizing a government program."[72]

Accordingly, I vote to DENY the Petition and hold that the challenge to the constitutionality of Section 4 of Republic Act

[71] *CONSTITUTION*, Art. XIII, Sec. 1.

[72] *Carlos Superdrug Corp. v. Department of Social Welfare and Development, supra* note 8, at 130.

No. 7432 as amended by Republic Act No. 9257, as well as the implementing rules and regulations issued by respondents Department of Social Welfare and Development and Department of Finance, should fail.

DISSENTING OPINION

CARPIO, *J.*:

The main issue in this case is the constitutionality of Section 4 of Republic Act No. 7432[1] (R.A. 7432), as amended by Republic Act No. 9257[2] (R.A. 9257), which states that establishments may claim the 20% mandatory discount to senior citizens as tax deduction, and thus no longer as tax credit. Manila Memorial Park, Inc. and La Funeraria Paz-Sucat, Inc. (petitioners) allege that the tax deduction scheme under R.A. 9257 violates Section 9, Article III of the Constitution which provides that "[p]rivate property shall not be taken for public use without just compensation."

Section 4 of R.A. 7432, as amended by R.A. 9257, provides:

> SEC. 4. *Privileges for the Senior Citizens*. – The senior citizens shall be entitled to the following:
>
> (a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

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[1] An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes.

[2] An Act Granting Additional Benefits and Privileges to Senior Citizens Amending for the Purpose Republic Act No. 7432, Otherwise Known as "An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and For Other Purposes." It was further amended by R.A. No. 9994, or the "Expanded Senior Citizens Act of 2010.

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The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: **Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted.** Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis supplied)

The constitutionality of Section 4(a) of R.A. 7432, as amended by R.A. 9257, had been passed upon by the Court in *Carlos Superdrug Corporation v. Department of Social Welfare and Development.*[3]

In *Carlos Superdrug Corporation,* the Court made a distinction between the tax credit scheme under Section 4 of R.A. 7432 (the old Senior Citizens Act) and the tax deduction scheme under R.A. 9257 (the Expanded Senior Citizens Act). Under the tax credit scheme, the establishments are paid back 100% of the discount they give to senior citizens. Under the tax deduction scheme, they are only paid back about 32% of the 20% discount granted to senior citizens.

The Court cited in *Carlos Superdrug Corporation* the clarification by the Department of Finance, through Director IV Ma. Lourdes B. Recente, which explained the difference between tax credit and tax deduction, as follows:

1) The difference between the Tax Credit (under the Old Senior Citizens Act) and Tax Deduction (under the Expanded Senior Citizens Act).

1.1. The provision of Section 4 of R.A. No. 7432 (the old Senior Citizens Act) grants twenty percent (20%) discount from all establishments relative to the utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation

[3] 553 Phil. 120 (2007).

centers and purchase of medicines anywhere in the country, the costs of which may be claimed by the private establishments concerned as **tax credit**.

Effectively, a **tax credit** is a peso-for-peso deduction from a taxpayer's tax liability due to the government of the amount of discounts such establishment has granted to a senior citizen. The establishment recovers the full amount of discount given to a senior citizen and hence, the government shoulders 100% of the discounts granted.

It must be noted, however, that conceptually, a **tax credit** scheme under the Philippine tax system, necessitates that prior payments of taxes have been made and the taxpayer is attempting to recover this tax payment from his/her income tax due. The tax credit scheme under R.A. No. 7432 is, therefore, inapplicable since no tax payments have previously occurred.

1.2. The provision under R.A. No. 9257, on the other hand, provides that the establishment concerned may claim the discounts under Section 4(a), (f), (g) and (h) as **tax deduction** from gross income, based on the net cost of goods sold or services rendered.

Under this scheme, the establishment concerned is allowed to deduct from gross income, in computing for its tax liability, the amount of discounts granted to senior citizens. Effectively, the government loses in terms of foregone revenues an amount equivalent to the marginal tax rate the said establishment is liable to pay the government. This will be an amount equivalent to 32% of the twenty percent (20%) discounts so granted. The establishment shoulders the remaining portion of the granted discounts.[4] (Emphasis in the original)

Thus, under the tax deduction scheme, there is no full compensation for the 20% discount that private establishments are forced to give to senior citizens.

The justification for the validity of the tax deduction, which the majority opinion adopts, was explained by the Court in *Carlos Superdrug Corporation* as a lawful exercise of police power. The Court ruled:

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

The law is a legitimate exercise of police power which, similar to the power of eminent domain, has general welfare for its object. Police power is not capable of an exact definition, but has been purposely veiled in general terms to underscore its comprehensiveness to meet all exigencies and provide enough room for an efficient and flexible response to conditions and circumstances, thus assuring the greatest benefits. Accordingly, it has been described as "the most essential, insistent and the least limitable of powers, extending as it does to all the great public needs." It is "[t]he power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same."

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor.

Given these, it is incorrect for petitioners to insist that the grant of the senior citizen discount is unduly oppressive to their business, because petitioners have not taken time to calculate correctly and come up with a financial report, so that they have not been able to show properly whether or not the tax deduction scheme really works greatly to their disadvantage.[5]

In the case before us, the majority opinion declares that it finds no reason to overturn or modify the ruling in *Carlos Superdrug Corporation*. The majority opinion also declares that the Court's earlier decision in *Commissioner of Internal Revenue v. Central Luzon Drug Corporation*[6] (*Central Luzon Drug*

[5] *Id*. at 132-133. Citations omitted.

[6] 496 Phil. 307 (2005).

Corporation) holding that "the *tax credit* benefit granted to these establishments can be deemed as their *just compensation* for private property taken by the State for public use"[7] and that the permanent reduction in the total revenues of private establishments is "a forced subsidy corresponding to the taking of private property for *public use or benefit*"[8] is an *obiter dictum* and is not a binding precedent. The majority opinion reasons that the Court in *Central Luzon Drug Corporation* was not confronted with the issue of whether the 20% discount was an exercise of police power or eminent domain.

The sole issue, according to the Court's decision in *Central Luzon Drug Corporation,* was whether a private establishment may claim the cost of the 20% discount granted to senior citizens as a tax credit even though an establishment operates at a loss. However, a reading of the decision shows that petitioner raised the issue of "**[w]hether the Court of Appeals erred in holding that respondent may claim the 20% sales discount as a tax credit instead of as a tax deduction from gross income or gross sales**."[9] In that case, the BIR erroneously treated the 20% discount as a tax deduction under Sections 2.i and 4 of Revenue Regulations No. 2-94 (RR 2-94), despite the provision of the law mandating that it should be treated as a tax credit. The erroneous treatment by the BIR under RR 2-94 necessitated the discussion explaining why the tax credit benefit given to private establishments should be deemed just compensation. The Court explained in *Central Luzon Drug Corporation*:

> *Fourth*, Sections 2.i and 4 of RR 2-94 deny the exercise by the State of its power of eminent domain. Be it stressed that the privilege enjoyed by senior citizens does not come *directly* from the State, but rather from the private establishments concerned. **Accordingly, the *tax credit* benefit granted to these establishments can be deemed as their *just compensation* for private property taken by the State for public use**.

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[7] *Id.* at 335.

[8] *Id.*

[9] *Id.* at 318.

The concept of *public use* is no longer confined to the traditional notion of *use by the public*, but held synonymous with *public interest*, *public benefit*, *public welfare*, and *public convenience*. The discount privilege to which our senior citizens are entitled is actually a benefit enjoyed by the general public to which these citizens belong. The discounts given would have entered the coffers and formed part of the *gross sales* of the private establishments concerned, were it not for RA 7432. **The permanent reduction in their total revenues is a forced subsidy corresponding to the taking of private property for *public use or benefit*.**

As a result of the 20 percent discount imposed by RA 7432, respondent becomes entitled to a *just compensation*. This term refers not only to the issuance of a *tax credit* certificate indicating the correct amount of the discounts given, but also to the promptness in its release. Equivalent to the payment of property taken by the State, such issuance — when not done within a *reasonable time* from the grant of the discounts — cannot be considered as *just compensation*. In effect, respondent is made to suffer the consequences of being immediately deprived of its revenues while awaiting actual receipt, through the certificate, of the equivalent amount it needs to cope with the reduction in its revenues.

Besides, the taxation power can also be used as an implement for the exercise of the power of eminent domain. Tax measures are but "enforced contributions exacted on pain of penal sanctions" and "clearly imposed for a *public purpose*." In recent years, the power to tax has indeed become a most effective tool to realize social justice, *public welfare*, and the equitable distribution of wealth.

While it is a declared commitment under Section 1 of RA 7432, social justice "cannot be invoked to trample on the rights of property owners who under our Constitution and laws are also entitled to protection. The social justice consecrated in our [C]onstitution [is] not intended to take away rights from a person and give them to another who is not entitled thereto." For this reason, a just compensation for income that is taken away from respondent becomes necessary. It is in the *tax credit* that our legislators find support to realize social justice, and no administrative body can alter that fact.

To put it differently, a private establishment that merely breaks even— without the discounts yet — will surely start to incur losses because of such discounts. The same effect is expected if its mark-

up is less than 20 percent, and if all its sales come from retail purchases by senior citizens. Aside from the observation we have already raised earlier, it will also be grossly unfair to an establishment if the discounts will be treated merely as deductions from either its *gross income* or its *gross sales*. Operating at a loss through no fault of its own, it will realize that the *tax credit* limitation under RR 2-94 is inutile, if not improper. Worse, profit-generating businesses will be put in a better position if they avail themselves of *tax credits* denied those that are losing, because no taxes are due from the latter.[10] (Emphasis supplied)

The foregoing discussion formed part of the explanation of this Court in *Central Luzon Drug Corporation* why Sections 2.i and 4 of RR 2-94 were erroneously issued. The foregoing discussion was certainly **not** unnecessary or immaterial in the resolution of the case;[11] hence, the discussion is definitely **not** *obiter dictum*.

As regards *Carlos Superdrug Corporation,* a second look at the case shows that it barely distinguished between police power and eminent domain. While it is true that police power is similar to the power of eminent domain because both have the general welfare of the people for their object, we need to clarify the concept of taking in eminent domain as against taking in police power to prevent any claim of police power when the power actually exercised is eminent domain. When police power is exercised, there is no just compensation to the citizen who loses his private property. When eminent domain is exercised, there must be just compensation. Thus, the Court must clarify taking in police power and taking in eminent domain. Government officials cannot just invoke police power when the act constitutes eminent domain.

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[10] *Id.* at 335-337. Citations omitted.

[11] In *Sta. Lucia Realty and Development, Inc. v. Cabrigas*, 411 Phil. 369, 382-383 (2001), the Court defined *obiter dictum* as "words of a prior opinion entirely unnecessary for the decision of the case" ("*Black's Law Dictionary,*" p. 1222, citing the case of "*Noel v. Olds*," 78 U.S. App. D.C. 155) or an incidental and collateral opinion uttered by a judge and therefore not material to his decision or judgment and not binding ("*Webster's Third New International Dictionary*," p. 1555).

In the early case of *People v. Pomar,*[12] the Court acknowledged that "[b]y reason of the constant growth of public opinion in a developing civilization, the term 'police power' has never been, and we do not believe can be, clearly and definitely defined and circumscribed."[13] The Court stated that the "definition of the police power of the state must depend upon the particular law and the particular facts to which it is to be applied."[14] **However, it was considered even then that police power, when applied to taking of property without compensation, refers to property that are destroyed or placed outside the commerce of man.** The Court declared in *Pomar*:

It is believed and confidently asserted that no case can be found, in civilized society and well-organized governments, where individuals have been deprived of their property, under the police power of the state, without compensation, *except* in cases where the property in question was used for the purpose of violating some law legally adopted, or constitutes a nuisance. Among such cases may be mentioned: Apparatus used in counterfeiting the money of the state; firearms illegally possessed; opium possessed in violation of law; apparatus used for gambling in violation of law; buildings and property used for the purpose of violating laws prohibiting the manufacture and sale of intoxicating liquors; and all cases in which the property itself has become a nuisance and dangerous and detrimental to the public health, morals and general welfare of the state. In all of such cases, and in many more which might be cited, the destruction of the property is permitted in the exercise of the police power of the state. But it must first be established that such property was used as the instrument for the violation of a valid existing law. (*Mugler vs. Kansan,* 123 U.S. 623; Slaughter-House Cases, 16 Wall. [U.S.] 36; *Butchers' Union, etc., Co. vs. Crescent City, etc.,* Co., 111 U.S. 746; John Stuart Mill — "On Liberty," 28, 29)

Without further attempting to define what are the peculiar subjects or limits of the police power, it may safely be affirmed, that every

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[12] 46 Phil. 440 (1924).

[13] *Id.* at 445.

[14] *Id.*

law for the restraint and punishment of crimes, for the preservation of the public peace, health, and morals, must come within this category. But the state, when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to and is controlled by the paramount authority of the constitution of the state, and will not be permitted to violate rights secured or guaranteed by that instrument or interfere with the execution of the powers and rights guaranteed to the people under their law – the constitution. (*Mugler vs. Kansan,* 123 U.S. 623)[15] (Emphasis supplied)

In *City Government of Quezon City v. Hon. Judge Ericta*,[16] the Court quoted with approval the trial court's decision declaring null and void Section 9 of Ordinance No. 6118, S-64, of the Quezon City Council, thus:

We start the discussion with a restatement of certain basic principles. Occupying the forefront in the bill of rights is the provision which states that 'no person shall be deprived of life, liberty or property without due process of law. (Art. III, Section 1 subparagraph 1, Constitution)

On the other hand, there are three inherent powers of government by which the state interferes with the property rights, namely — (1) police power, (2) eminent domain, [and] (3) taxation. These are said to exist independently of the Constitution as necessary attributes of sovereignty.

Police power is defined by Freund as 'the power of promoting the public welfare by restraining and regulating the use of liberty and property' (Quoted in Political Law by Tañada and Carreon, V-11, p. 50). It is usually exerted in order to merely regulate the use and enjoyment of property of the owner. ***If he is deprived of his property outright, it is not taken for public use but rather to destroy in order to promote the general welfare.*** **In police power, the owner does not recover from the government for injury sustained in consequence thereof (12 C.J. 623)**. It has been said that police power is the most essential of government powers, at times the most insistent, and always one of the least limitable of the powers of government (*Ruby vs. Provincial Board*, 39 Phil. 660;

[15] *Id.* at 454-455.

[16] 207 Phil. 648 (1983).

Ichong vs. Hernandez, L-7995, May 31, 1957). This power embraces the whole system of public regulation (*U.S. vs. Linsuya Fan*, 10 Phil. 104). The Supreme Court has said that police power is so far-reaching in scope that it has almost become impossible to limit its sweep. As it derives its existence from the very existence of the state itself, it does not need to be expressed or defined in its scope. Being coextensive with self-preservation and survival itself, it is the most positive and active of all governmental processes, the most essential insistent and illimitable. Especially it is so under the modern democratic framework where the demands of society and nations have multiplied to almost unimaginable proportions. The field and scope of police power have become almost boundless, just as the fields of public interest and public welfare have become almost all embracing and have transcended human foresight. Since the Court cannot foresee the needs and demands of public interest and welfare, they cannot delimit beforehand the extent or scope of the police power by which and through which the state seeks to attain or achieve public interest and welfare. (*Ichong vs. Hernandez,* 7995, May 31, 1957).

The police power being the most active power of the government and the due process clause being the broadest limitation on governmental power, the conflict between this power of government and the due process clause of the Constitution is oftentimes inevitable.

It will be seen from the foregoing authorities that police power is usually exercised in the form of mere regulation or restriction in the use of liberty or property for the promotion of the general welfare. It does not involve the taking or confiscation of property with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare as for instance, the confiscation of an illegally possessed article, such as opium and firearms.[17] (Boldfacing and italicization supplied)

Clearly, taking under the exercise of police power does not require any compensation because the property taken is either destroyed or placed outside the commerce of man.

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[17] *Id.* at 654-655.

On the other hand, the power of eminent domain has been described as —

> x x x 'the highest and most exact idea of property remaining in the government' that may be acquired for some public purpose through a method in the nature of a forced purchase by the State. It is a right to take or reassert dominion over property within the state for public use or to meet public exigency. It is said to be an essential part of governance even in its most primitive form and thus inseparable from sovereignty. The only direct constitutional qualification is that "private property should not be taken for public use without just compensation." This proscription is intended to provide a safeguard against possible abuse and so to protect as well the individual against whose property the power is sought to be enforced.[18]

In order to be valid, the taking of private property by the government under eminent domain has to be for public use and there must be just compensation.[19]

Fr. Joaquin G. Bernas, S.J., expounded:

> Both police power and the power of eminent domain have the general welfare for their object. The former achieves its object by regulation while the latter by "taking". When property right is impaired by regulation, compensation is not required; whereas, when property is taken, the Constitution prescribes just compensation. **Hence, a sharp distinction must be made between regulation and taking**.
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> When title to property is transferred to the expropriating authority, there is a clear case of compensable taking. However, as will be seen, it is a settled rule that neither acquisition of title nor total destruction of value is essential to taking. It is in cases where title remains with the private owner that inquiry must be made whether the impairment of property right is merely regulation or already amounts to compensable taking.
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> **An analysis of existing jurisprudence yields the rule that when a property interest is appropriated and applied to some public purpose, there is compensable taking. Where, however, a property**

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[18] *Manosca v. CA*, 322 Phil. 442, 448 (1996).

[19] *Moday v. Court of Appeals*, 335 Phil. 1057 (1997).

interest is merely restricted because continued unrestricted use would be injurious to public welfare or where property is destroyed because continued existence of the property would be injurious to public interest, there is no compensable taking.[20] (Emphasis supplied)

In Section 4 of R.A. 7432, it is undeniable that there is taking of property for public use. Private property is anything that is subject to private ownership. The property taken for public use applies not only to land but also to other proprietary property, including the mandatory discounts given to senior citizens which form part of the gross sales of the private establishments that are forced to give them. **The amount of mandatory discount is money that belongs to the private establishment. For sure, money or cash is private property because it is something of value that is subject to private ownership**. The taking of property under Section 4 of R.A. 7432 is an exercise of the power of eminent domain and not an exercise of the police power of the State. **A clear and sharp distinction should be made because private property owners will be left at the mercy of government officials if these officials are allowed to invoke police power when what is actually exercised is the power of eminent domain**.

Section 9, Article III of the 1987 Constitution speaks of private property without any distinction. It does not state that there should be profit before the taking of property is subject to just compensation. The private property referred to for purposes of taking could be inherited, donated, purchased, mortgaged, or as in this case, part of the gross sales of private establishments. They are all private property and any taking should be attended by a corresponding payment of just compensation. The 20% discount granted to senior citizens belongs to private establishments, whether these establishments make a profit or suffer a loss. In fact, the 20% discount applies to **non-profit establishments** like country, social, or golf clubs which are

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[20] J. Bernas, S.J., THE 1987 *CONSTITUTION OF THE PHILIPPINES, A COMMENTARY* 379 (1996 ed.)

open to the public and not only for exclusive membership.[21] The issue of profit or loss to the establishments is immaterial.

Just compensation is "the full and fair equivalent of the property taken from its owner by the expropriator."[22] The Court explained:

> x x x. The measure is not the taker's gain, but the owner's loss. The word 'just' is used to qualify the meaning of the word 'compensation' and to convey thereby the idea that **the amount to be tendered for the property to be taken shall be real, substantial, full and ample**. x x x.[23] (Emphasis supplied)

The 32% of the discount that the private establishments could recover under the tax deduction scheme cannot be considered real, substantial, full and ample compensation. In *Carlos Superdrug Corporation*, the Court conceded that "**[t]he permanent reduction in [private establishments'] total revenue is a forced subsidy corresponding to the taking of private property for public use or benefit**."[24] The Court ruled that "**[t]his constitutes compensable taking for which petitioners would ordinarily become entitled to a just compensation**."[25] Despite these pronouncements admitting there was compensable taking, **the Court still proceeded to rule that "the State, in promoting the health and welfare of a special group of citizens, can impose upon private establishments the burden of partly subsidizing a government program."**

There may be valid instances when the State can impose burdens on private establishments that effectively subsidize a government program. However, the moment a constitutional threshold is crossed – when the burden constitutes a taking of

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[21] See Section 4, Rule IV, Implementing Rules and Regulations of R.A. No. 9994.

[22] *National Power Corporation v. Spouses Zabala*, G.R. No. 173520, 30 January 2013, 689 SCRA 554.

[23] *Id*. at 562.

[24] *Supra* note 3, at 129-130.

[25] *Id*. at 130.

private property for public use – then the burden becomes an exercise of eminent domain for which just compensation is required.

An example of a burden that can be validly imposed on private establishments is the requirement under Article 157 of the Labor Code that employers with a certain number of employees should maintain a clinic and employ a registered nurse, a physician, and a dentist, depending on the number of employees. Article 157 of the Labor Code provides:

Art. 157. Emergency medical and dental services. — It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:

a. The services of a full-time registered nurse when the number of employees exceeds fifty (50) but not more than two hundred (200) except when the employer does not maintain hazardous workplaces, in which case, the services of a graduate first-aider shall be provided for the protection of workers, where no registered nurse is available. The Secretary of Labor and Employment shall provide by appropriate regulations, the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order, hazardous workplaces for purposes of this Article;

b. The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300); and

c. The services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees when the number of employees exceeds three hundred (300).

x x x x x x x x x

Article 157 is a burden imposed by the State on private employers to complement a government program of promoting a healthy workplace. The employer itself, however, benefits fully from this burden because the health of its workers while

in the workplace is a legitimate concern of the private employer. Moreover, the cost of maintaining the clinic and staff is part of the **legislated wages** for which the private employer is **fully compensated** by the services of the employees. In the case of the senior citizen's discount, the private establishment is compensated only in the equivalent amount of 32% of the mandatory discount. There are no services rendered by the senior citizens, or any other form of payment, that could make up for the 68% balance of the mandatory discount. Clearly, the private establishments cannot recover the full amount of the discount they give and thus there is taking to the extent of the amount that cannot be recovered.

Another example of a burden that can be validly imposed on a private establishment is the requirement under Section 19 in relation to Section 18 of the Social Security Law[26] and Section 7 of the Pag-IBIG Fund[27] for the employer to contribute a certain amount to fund the benefits of its employees. The amounts contributed by private employers form part of the **legislated wages** of employees. The private employers are deemed **fully compensated** for these amounts by the services rendered by the employees.

In the present case, the private establishments are only compensated about 32% of the 20% discount granted to senior citizens. They shoulder 68% of the discount they are forced to give to senior citizens. The Court should correct this situation as it clearly violates Section 9, Article III of the Constitution which provides that "[p]rivate property shall not be taken for public use without just compensation." *Carlos Superdrug Corporation* should be abandoned by this Court and *Central Luzon Drug Corporation* re-affirmed.

Carlos Superdrug Corporation admitted that the permanent reduction in the total revenues of private establishments is a

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[26] Republic Act No. 8282, otherwise known as the Social Security Act of 1997, which amended Republic Act No. 1161.

[27] Republic Act No. 9679, otherwise known as the Home Development Mutual Fund Law of 2009.

"**compensable taking for which petitioners would ordinarily become entitled to a just compensation**."[28] However, *Carlos Superdrug Corporation* considered that there was sufficient basis for taking without compensation by invoking the exercise of police power of the State. In doing so, the Court failed to consider that a **permanent** taking of property for public use is an exercise of eminent domain for which the government must pay compensation. Eminent domain is a sub-class of police power and its exercise is subject to certain conditions, that is, the taking of property for public use and payment of just compensation.

It is incorrect to say that private establishments only suffer a minimal loss when they give a 20% discount to senior citizens. Under R.A. 9257, the 20% discount applies to "**all establishments** relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens";[29] "admission fees charged by theaters, cinema houses and concert halls, circuses, carnivals, and other similar places of culture, leisure and amusement for the exclusive use or enjoyment of senior citizens";[30] "medical and dental services, and diagnostic and laboratory fees provided under Section 4(e) including professional fees of attending doctors in all private hospitals and medical facilities, in accordance with the rules and regulations to be issued by the Department of Health, in coordination with the Philippine Health Insurance Corporation";[31] "fare for domestic air and sea travel for the exclusive use or enjoyment of senior citizens";[32] and "public railways, skyways and bus fare for the exclusive use and enjoyment of senior citizens."[33] **The 20% discount cannot be**

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[28] *Supra* note 3, at 130.

[29] Section 4(a).

[30] Section 4(b).

[31] Section 4(f).

[32] Section 4(g).

[33] Section 4(h).

considered minimal because not all private establishments make a 20% margin of profit. Besides, on its face alone, a 20% mandatory discount based on the gross selling price is huge. The 20% mandatory discount is more than the 12% Value Added Tax, itself not an insignificant amount.

The majority opinion states that the grant of 20% discount to senior citizens is a regulation of businesses similar to the regulation of public utilities and businesses imbued with public interest. The majority opinion states:

> The subject regulation may be said to be similar to, but with substantial distinctions from, price control or rate of return on investment control laws which are traditionally regarded as police power measures. These laws generally regulate public utilities or industries/enterprises imbued with public interest in order to protect consumers from exorbitant or unreasonable pricing as well as temper corporate greed by controlling the rate or return on investment of these corporations considering that they have a monopoly over the goods or services that they provide to the general public. The subject regulation differs therefrom in that (1) the discount does not prevent the establishments from adjusting the level of prices of their goods and services, and (2) the discount does not apply to all customers of a given establishment but only to a class of senior citizens. x x x.[34]

However, the majority opinion admits that the 20% mandatory discount is **only** "**similar to, but with substantial distinctions** from price control or rate of return on investment control laws" which "regulate public utilities or industries/enterprises imbued with public interest." Since there are admittedly "**substantial distinctions**," regulatory laws on public utilities and industries imbued with public interest cannot be used as justification for the 20% mandatory discount without payment of just compensation. The profits of public utilities are regulated because they operate under franchises granted by the State. Only those who are granted franchises by the State can operate public utilities, and these franchisees have agreed to limit their profits

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[34] Decision, p. 20.

as condition for the grant of the franchises. The profits of industries imbued with public interest, but which do not enjoy franchises from the State, can only be regulated **temporarily** during emergencies like calamities. There has to be an emergency to trigger price control on businesses and only for the duration of the emergency. The profits of private establishments which are non-franchisees cannot be regulated **permanently**, and there is no such law regulating their profits permanently. The majority opinion cites a case[35] that allegedly allows the State to limit the net profits of private establishments. However, the case cited by the majority opinion refers to **franchise holders of electric plants**.

The State cannot compel private establishments without franchises to grant discounts, or to operate at a loss, because that constitutes taking of private property for public use without just compensation. The State can take over private property without compensation in times of war or other national emergency under Section 23(2), Article VI of the 1987 Constitution **but only for a limited period** and subject to such restrictions as Congress may provide. Under its police power, the State may also **temporarily** limit or suspend business activities. One example is the two-day liquor ban during elections under Article 261 of the Omnibus Election Code but this, again, is only **for a limited period**. This is a valid exercise of police power of the State.

However, any form of **permanent** taking of private property is an exercise of eminent domain that requires the State to pay just compensation. **The police power to regulate business cannot negate another provision of the Constitution like the eminent domain clause, which requires just compensation to be paid for the taking of private property for public use. The State has the power to regulate the conduct of the business of private establishments as long as the regulation is reasonable, but when the regulation amounts to permanent taking of private property for public use, there must be just compensation because the regulation now reaches the level of eminent domain**.

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[35] *Alalayan v. National Power Corporation*, 133 Phil. 279 (1968).

The explanation by the majority that private establishments can always increase their prices to recover the mandatory discount will only encourage private establishments to adjust their prices upwards to the prejudice of customers who do not enjoy the 20% discount. It was likewise suggested that if a company increases its prices, despite the application of the 20% discount, the establishment becomes more profitable than it was before the implementation of R.A. 7432. Such an economic justification is self-defeating, for more consumers will suffer from the price increase than will benefit from the 20% discount. Even then, such ability to increase prices cannot legally validate a violation of the eminent domain clause.

Finally, the 20% discount granted to senior citizens is not *per se* unreasonable. It is the provision that the 20% discount may be claimed by private establishments as tax deduction, and no longer as tax credit, that is oppressive and confiscatory.

Prior to its amendment, Section 4 of R.A. 7432 reads:

SEC. 4. *Privileges for the Senior Citizens*. — The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments, relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: **Provided, That private establishments may claim the cost as tax credit**;

x x x x x x x x x (Emphasis supplied)

Under R.A. 9257, the amendment reads:

SEC. 4. *Privileges for the Senior Citizens*. — The senior citizens shall be entitled to the following:

(a) the grant of twenty percent (20%) discount from all establishments relative to the utilization of services in hotels and similar lodging establishment, restaurants and recreation centers, and purchase of medicines in all establishments for the exclusive use or enjoyment of senior citizens, including funeral and burial services for the death of senior citizens;

x x x x x x x x x

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: **Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted**. Provided, further, That the total amount of the claimed tax deduction net of value added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis supplied)

Due to the patent unconstitutionality of Section 4 of R.A. 7432, as amended by R.A. 9257, providing that private establishments may claim the 20% discount to senior citizens as tax deduction, the old law, or Section 4 of R.A. 7432, which allows the 20% discount as tax credit, is automatically reinstated. Where amendments to a statute are declared unconstitutional, the original statute as it existed before the amendment remains in force.[36] An amendatory law, if declared null and void, in legal contemplation does not exist.[37] The private establishments should therefore be allowed to claim the 20% discount granted to senior citizens as tax credit.

ACCORDINGLY, I vote to **GRANT** the petition.

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[36] See *Government of the Philippine Islands v. Agoncillo*, 50 Phil. 348 (1927), citing *Eberle v. Michigan* 232 U.S. 700 [1914], *People v. Mensching*, 187 N.Y.S., 8, 10 L.R.A., 625 [1907].

[37] See *Coca-Cola Bottlers Phils., Inc. v. City of Manila*, 526 Phil. 249 (2006).

EN BANC

[G.R. No. 204828. December 3, 2013]

JAIME C. REGIO, *petitioner, vs.* **COMMISSION ON ELECTIONS and RONNIE C. CO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ELECTION LAWS; ACT PROVIDING FOR THE SYNCHRONIZED *BARANGAY* AND *SANGGUNIANG KABATAAN* ELECTIONS (R.A. NO. 9164); WITH THE ELECTION OF A NEW *PUNONG BARANGAY* DURING THE OCTOBER 28, 2013 ELECTIONS, THE ISSUE OF WHO IS THE RIGHTFUL WINNER OF THE 2010 *BARANGAY* ELECTIONS HAS ALREADY BEEN RENDERED MOOT AND ACADEMIC.—** At the outset, it must be noted that the protest case is dismissible for being moot and academic. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Generally, courts will not determine a moot question in a case in which no practical relief can be granted. In *Malaluan v. COMELEC*, this Court settled the matter on when an election protest case becomes moot and academic: When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of mayor **the term of which had expired**, the appeal is dismissible on that ground, unless the rendering of a decision on the merits would be of practical value. In the case now before the Court, the position involved is that of a *punong barangay*. The governing law, therefore, is Republic Act No. (RA) 9164, as amended by RA 9340. Sec. 4 of the law states: Sec. 4. Assumption of Office. — The term of office of the *barangay* and *sangguniang kabataan* officials elected under this Act shall commence on August 15, 2002, next following their elections. The term of office of the *barangay* and *sangguniang kabataan* officials elected in the October 2007 election and subsequent elections **shall commence at noon of November 30 next following their election**. The court takes judicial notice of the holding of *barangay* elections last October 28, 2013.

Following the elections, the new set of *barangay* officials already assumed office as of noon of November 30, 2013. It goes without saying, then, that the term of office of those who were elected during the October 2010 *barangay* elections also expired by noon on November 30, 2013. In fine, with the election of a new *punong barangay* during the October 28, 2013 elections, the issue of who the rightful winner of the 2010 *barangay* elections has already been rendered moot and academic.

2. **ID.; ID.; ID.; ID.; DESPITE THE MOOTNESS OF THE CASE, THE COURT WILL DECIDE THE CASE ON ITS MERITS; THE COMMISSION ON ELECTIONS (COMELEC) *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION DUE TO ITS GRAVE CONTRAVENTION OF ESTABLISHED RULES OF EVIDENCE IN THE ELECTION PROTEST CASE.—** Notwithstanding the mootness of the case, We find the need to decide the petition on its merits, in view of the finding of the COMELEC *En Banc* that protestant Co should have been declared the winner for the post of *punong barangay* for the term 2010-2013. We find that the grave abuse of discretion committed by the COMELEC *En Banc*, specifically in ignoring the rules on evidence, merits consideration. Still in line with the Court's decision in *Malaluan* to the effect that the Court can decide on the merits a moot protest if there is practical value in so doing, We find that the nullification of the COMELEC *En Banc*'s Resolution is in order, due to its gross contravention of established rules on evidence in election protest cases. We shall discuss the issues jointly, related as they are to the finding of the COMELEC *En Banc* giving primacy to the results of the revision proceedings over the results of the canvassing as reflected in the election returns.

3. **ID.; ID.; OMNIBUS ELECTION CODE; ELECTION PROTEST; REVISION OF BALLOTS; GUIDING STANDARDS IN AN ELECTION CONTEST ENUNCIATED IN *ROSAL V. COMELEC*; *ROSAL* WAS PROMULGATED TO PRECISELY HONOR THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS OF THE BOARD OF ELECTION TELLERS (BET) AND THE BOARD OF CANVASSERS (BOC).—** In *Rosal*, this Court summarized the standards to be observed in an election contest predicated on the theory that the election returns do not accurately reflect the will of the voters due to alleged

irregularities in the appreciation and counting of ballots. These guiding standards are: (1) The ballots cannot be used to overturn the official count as reflected in the election returns unless it is first shown affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and suspicion of change, abstraction or substitution; (2) The burden of proving that the integrity of the ballots has been preserved in such a manner is on the protestant; (3) Where a mode of preserving the ballots is enjoined by law, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end; (4) It is only when the protestant has shown substantial compliance with the provisions of law on the preservation of ballots that the burden of proving actual tampering or likelihood thereof shifts to the protestee; and (5) Only if it appears to the satisfaction of the court of COMELEC that the integrity of the ballots has been preserved should it adopt the result as shown by the recount and not as reflected in the election returns. In the same case, the Court referred to various provisions in the Omnibus Election Code providing for the safe-keeping and preservation of the ballots, more specifically Secs. 160, 217, 219, and 220 of the Code. *Rosal* was promulgated precisely to honor the presumption of regularity in the performance of official functions. Following *Rosal*, it is presumed that the BET and Board of Canvassers had faithfully performed the solemn duty reposed unto them during the day of the elections. Thus, primacy is given to the official results of the canvassing, even in cases where there is a discrepancy between such results and the results of the revision proceedings. It is only when the protestant has successfully discharged the burden of proving that the re-counted ballots are the very same ones counted during the revision proceedings, will the court or the Commission, as the case may be, even consider the revision results.

4. **ID.; ID.; ID.; ID.; ID.; THE RESULTS OF THE REVISION WILL NOT AUTOMATICALLY BE GIVEN MORE WEIGHT OVER THE OFFICIAL CANVASSING OF RESULTS OR THE ELECTION RETURNS; THE *ROSAL* DOCTRINE ENSURES THAT IN ELECTION PROTEST CASES, THE SUPREME MANDATE OF THE PEOPLE IS ULTIMATELY DETERMINED.—** Even then, the results

of the revision will not automatically be given more weight over the official canvassing results or the election returns. What happens in the event of discrepancy between the revision results and the election returns is that the burden of proof shifts to the protestee to provide evidence of actual tampering of the ballots, or at least a likelihood of tampering. It is only when the court or the COMELEC is fully satisfied that the ballots have been well preserved, and that there had been no tampering of the ballots, that it will accord credibility to the results of the revision. In *Varias v. COMELEC*, the Court said: The *Rosal* ruling, to be sure, does not involve issues merely related to the appreciation or calibration of evidence; its critical ruling is on the propriety of relying on the revision of ballot results instead of the election returns in the proclamation of a winning candidate. In deciding this issue, what it notably established was a critical guide in arriving at its conclusion — the need to determine whether the court or the COMELEC looked at the correct considerations in making its ruling. This Court had long stated that "[u]pholding the sovereignty of the people is what democracy is all about. When the sovereignty of the people expressed thru the ballot is at stake, it is not enough for this Court to make a statement but it should do everything to have that sovereignty obeyed by all. Well done is always better than well said." This is really what the *Rosal* doctrine is all about. The *Rosal* doctrine ensures that in election protest cases, the supreme mandate of the people is ultimately determined. In laying down the rules in appreciating the conflicting results of the canvassing and the results of a revision later made, the Court has no other intention but to determine the will of the electorate.

5. **ID.; ID.; ID.; ID.; ID.; RESPONDENT FAILED TO DISCHARGE HIS BURDEN UNDER THE *ROSAL* DOCTRINE; THERE WAS NO INDEPENDENT, DIRECT OR INDIRECT EVIDENCE TO PROVE THE PRESERVATION OF THE BALLOTS AND OTHER ELECTION PARAPHERNALIA, RESPONDENT MERELY RELIED ON THE REPORT OF THE REVISION COMMITTEE.—** Applying *Rosal*, viewed in conjunction with A.M. No. 07-4-15-SC, this Court rules that the COMELEC *En Banc* committed grave abuse of discretion in ruling that private respondent had successfully discharged the burden of proving that the ballots counted during the revision proceedings are the same ballots cast and counted

during the day of the elections. That is the essence of the second paragraph in the *Rosal* doctrine. It is well to note that the respondent Co did not present any testimonial evidence to prove that the election paraphernalia inside the protested ballot boxes had been preserved. He mainly relied on the report of the revision committee. There was no independent, direct or indirect, evidence to prove the preservation of the ballots and other election paraphernalia. This leads Us to no other conclusion but that respondent Co failed to discharge his burden under the *Rosal* doctrine. With no independent evidence to speak of, respondent Co cannot simply rely on the report of the revision committee, and from there conclude that the report itself is proof of the preservation of the ballots. What he needs to provide is evidence independent of the revision proceedings. Without any such evidence, the Court or the COMELEC, as the case may be, will be constrained to honor the presumption established in A.M. No. 07-4-15-SC, that the data and information supplied by the members of the Boards of Election Inspectors in the accountable forms are true and correct.

6. **ID.; ID.; ID.; ID.; ID.; RESPONDENT CANNOT SIMPLY RELY ON THE ALLEGED ABSENCE OF EVIDENCE OF REPORTS OF UNTOWARD INCIDENTS, AND FROM THERE IMMEDIATELY CONCLUDE THAT THE BALLOTS HAVE BEEN PRESERVED.—** We hold, however, that the foregoing statements do not, by themselves, constitute sufficient evidence that the ballots have been preserved. Respondent Co cannot simply rely on the alleged absence of evidence of reports of untoward incidents, and from there immediately conclude that the ballots have been preserved. What he should have presented are concrete pieces of evidence, independent of the revision proceedings that will tend to show that the ballots counted during the revision proceedings were the very same ones counted by the BETs during the elections, and the very same ones cast by the public. He cannot evade his duty by simply relying on the absence of reports of untoward incidents that happened to the ballot boxes. At best, this reliance on the condition of the ballot boxes themselves is speculative; at worst, it is self-serving. Without presenting to the court any evidence outside of the proceedings, respondent Co as protestant may simply claim that the ballot boxes themselves are the proof that they were properly preserved. This goes contrary to the doctrine in *Rosal*.

7. **ID.; ID.; ID.; ID.; ID.; RESPONDENT'S WITNESSES WHOSE AFFIDAVITS WERE ATTACHED TO THE PROTEST WERE NEVER PRESENTED DURING THE TRIAL AND RESPONDENT HAS NOT OFFERED ANY EXPLANATION WHATSOEVER WHY HE FAILED TO PRESENT HIS WITNESSES; SAID ATTACHMENTS TO THE PROTEST WILL NOT BE CONSIDERED UNLESS FORMALLY OFFERED.—** The respective custodians of the ballot boxes, from the time they were used in the elections until they were delivered to the court, were not, to stress, presented in court. They could have testified as to the security afforded the ballot boxes while in their custody. Moreover, no witness at all was presented by respondent Co during the proceedings in the trial court. The Court reminds respondent Co that the trial court's consideration of the case is confined to whatever evidence is presented before it. This is amply stated in Rule 13, Sec. 2 of A.M. No. 07-4-15-SC. x x x Unfortunately for respondent Co, the witnesses whose affidavits he attached to his Protest were never presented during trial. While he again raised the tenor of these affidavits in his Comment filed before Us, those cannot be considered anymore due to his failure to present them before the trial court. Respondent cannot simplistically insist on the consideration of said affidavits, the trial court not having been given the opportunity to observe their testimonies, and petitioner not having been accorded the opportunity to cross-examine them. The fact that respondent attached the affidavits in his Protest does not mean that the trial court is bound to consider them, precisely because they have not been formally offered before the court. The attachments to the Protest will not be considered unless formally offered. The Court notes that respondent Co has offered no explanation whatsoever why he failed to present his witnesses. Nevertheless, he would have this Court consider as evidence their purported testimonies. This would be incongruously unfair to petitioner, who endeavored to prove his case by presenting evidence before the trial court.

8. **ID.; ID.; ID.; ID.; ID.; THE TECHNICAL EXAMINATION REPORT, WHICH MERELY STATES THAT THE BALLOTS ARE GENUINE, WITHOUT MORE, IS NOT EVIDENCE OF PRESERVATION, AS REQUIRED BY *ROSAL*.—** Moreover, the Technical Examination Report, is not, without more, evidence of preservation. The Report merely

states that the ballots are genuine. What the protestant should endeavor to prove, however, in presenting evidence of preservation, is not that the ballots themselves are genuine or official, but that they are the very same ones cast by the electorate. The Report cannot possibly determine that. While it may be that the ballots themselves are official ballots, there is still a dearth of evidence on whether or not they were the same official ballots cast by the public during the elections. The Report, therefore, cannot be considered as evidence of the preservation, as required by *Rosal*.

9. **ID.; ID.; ID.; ID.; ID.; NEITHER CAN RESPONDENT DISCLAIM RESPONSIBILITY ON THE ARGUMENT THAT THE PETITIONER NEVER RAISED AS AN ISSUE THE PRESERVATION OF THE BALLOT BOXES; THE FAILURE OF THE PROTESTEE TO RAISE IT AS AN ISSUE WILL NOT *IPSO FACTO* MEAN THAT THE PROTESTANT NEED NOT PRESENT EVIDENCE BEFORE THE TRIAL COURT.—** Neither can respondent Co disclaim responsibility on the argument that the petitioner never raised as an issue the preservation of the ballot boxes. Inherent in all election protest cases is the duty of the protestant to provide evidence of such preservation. The failure of the protestee to raise that as an issue will not *ipso facto* mean that protestant need not present evidence to that effect. x x x The fact of preservation is not, as respondent Co claims, "incontrovertible." In fact, there is total absence of evidence to that effect. The incontrovertible fact is that private respondent, during the proceedings before the trial court, did not present any independent evidence to prove his claim. Without any independent evidence, the trial court, the COMELEC, as well as this Court, is constrained to affirm as a fact the disputable presumption that the ballots were properly counted during the counting and canvassing of votes. In sum, We find that the COMELEC gravely abused its discretion in ruling that private respondent had discharged the burden of proving the integrity of the ballots. We rule, on the contrary, that there is utter lack of evidence to that effect.

10. **ID.; ID.; ID.; ID.; ID.; THE DUTY OF THE PROTESTEE IN AN ELECTION CONTEST TO PROVIDE EVIDENCE OF ACTUAL TAMPERING OR ANY LIKELIHOOD ARISES ONLY WHEN THE PROTESTANT HAS FIRST**

SUCCESSFULLY DISCHARGED THE BURDEN OF PROVING THAT THE BALLOTS HAVE BEEN SECURED TO PREVENT TAMPERING OR SUSCEPTIBILITY OF CHANGE, ABSTRACTION OR SUBSTITUTION; SUCH NEED TO PRESENT PROOF OF TAMPERING DID NOT ARISE IN CASE AT BAR SINCE PROTESTANT HIMSELF FAILED TO PROVIDE EVIDENCE OF THE INTEGRITY OF THE BALLOTS.— Corollarily, the COMELEC *En Banc* had ruled that petitioner, as protestee, failed to adduce evidence that the ballots found inside the ballot boxes were compromised and tampered. This strikes us as baseless and a clear departure from the teachings of *Rosal*. The duty of the protestee in an election contest to provide evidence of actual tampering or any likelihood arises only when the protestant has first successfully discharged the burden of proving that the ballots have been secured to prevent tampering or susceptibility of change, abstraction or substitution. Such need to present proof of tampering did not arise since protestant himself failed to provide evidence of the integrity of the ballots. A candidate for a public elective position ought to familiarize himself with election laws, pertinent jurisprudence, and COMELEC resolutions, rules and regulations. Alternatively, he should have an experienced and knowledgeable election lawyer to guide him on the different aspects of elections. Sans competent legal advice and representation, a victory in the elections may turn out to be a crushing defeat for the candidate who actually got the nod of the electorate. Unfortunately for respondent Co, he committed several miscues that eventually led to his debacle in the instant election protest.

APPEARANCES OF COUNSEL

Larrazabal Law Office for petitioner.
The Solicitor General for public respondent.
Chang & Padilla Law Office for private respondent.

DECISION

VELASCO, JR., *J.*:

The Case

This Petition for *Certiorari* filed under Rule 64, in relation to Rule 65, seeks to nullify and set aside the Resolution dated December 7, 2012 of the Commission on Elections (COMELEC) *En Banc* in EAC (BRGY-SK) No. 161-2011. The assailed Resolution reversed and set aside the Resolution of the COMELEC First Division dated August 23, 2011, which, in turn, affirmed the May 4, 2011 Decision in Election Case No. 02480-EC of the Metropolitan Trial Court (MeTC), Branch 4 in Manila.

The Facts

Petitioner Jaime C. Regio (Regio) and private respondent Ronnie C. Co (Co), among other candidates, ran in the October 25, 2010 *barangay* elections in *Barangay* 296, Zone 28, District III of the City of Manila for the position of *punong barangay*.

Immediately following the counting and canvassing of the votes from seven clustered precincts in the adverted *barangay*, Regio, who garnered four hundred seventy-eight (478) votes, as against the three hundred thirty-six (336) votes obtained by Co, was proclaimed winner for the contested post of *punong barangay*. The detailed tally of the votes per precinct, as reflected in the Statement of Votes, is as follows:[1]

Candidate	**Clustered Precinct Number**				**Total**
	1302A 1306A	**1303A 1307A**	**1304A**	**1305A 1307B**	
Co, Ronnie C.	76	113	48	99	336
Regio, Jaime C.	171	151	73	83	478

[1] *Rollo*, p. 70.

On November 4, 2010, Co filed an election protest before the MeTC. He claimed, among other things, that the Board of Election Tellers (BET) did not follow COMELEC Resolution No. 9030, as it: (1) did not permit his supporters to vote; (2) allowed "flying voters" to cast votes; and (3) ignored the rules on appreciation of ballots, resulting in misreading, miscounting, and misappreciation of ballots. Additionally, he alleged that Regio committed vote-buying, and engaged in distribution of sample ballots inside the polling centers during the day of the elections.[2]

Of the seven clustered precincts (CPs) initially protested, Co would later exclude CP Nos. 1304A and 1305A from the protest. During the preliminary conference, the trial court allowed the revision of ballots. The revision of ballots occurred on January 13-14, 2011.[3] Per the report of the revision committee, the number of votes obtained by both candidates in the contested precincts, as shown below, indicated a substantial recovery on the part of Co:

Candidate	**Clustered Precinct Number**				**Total**
	1302A **1306A**	**1303A** **1307A**	**1304A**	**1305A** **1307B**	321 232
Co, Ronnie C.	**160**	—	**63**	98	
Regio, Jaime C.	**86**	—	**62**	84	

During his turn to present evidence, Co limited his offer to the revision committee report, showing that he garnered the highest number of votes.

Regio, on the other hand, denied that the elections were tainted with irregularities. He claimed that the results of the revision are products of post-elections operations, as the ballots were tampered with, switched, and altered drastically to change the

[2] *Id.* at 85.

[3] *Id.* at 71.

results of the elections. He presented as witnesses the following: poll watchers Evangeline Garcia, Cezar Regio, and Ruben Merilles, who all testified that there were no instances of electoral fraud, irregularities, and anomalies during the day of the elections. Presented too were volunteers Love Agpaoa and Romy Que, who belied allegations of miscounting, misreading, and misappreciation of the ballots during the counting, and Dominador Dela Cruz, Chairperson of the BET for CP Nos. 1302A/1303A, as well as Erlina Hernandez, Chairperson of the BET for CP No. 1306A, who both testified that they followed the rules and regulations in conducting the elections in *Barangay* 296, and that each ballot was correctly tabulated.[4]

The results of the revision notwithstanding, the trial court, in its Decision of May 4, 2011, dismissed Co's protest and declared Regio as the duly-elected *punong barangay* of *Barangay* 296. It disposed of the case, as follows:

> WHEREFORE, the proclamation of protestee Jaime C. Regio as the duly elected "Punong Barangay" or "Barangay Chairman" of Barangay 296, District III, Manila by the Barangay Board of Canvassers is affirmed by this court. The election protest filed by the protestant Ronnie C. Co is dismissed for lack of merit.[5]

According to the trial court, before it can accord credence to the results of the revision, it should first be ascertained that the ballots found in the box during the revision are the same ballots deposited by the voters. In fine, the court "should first be convinced that the ballots counted during the revision have not been tampered with before it can declare the ballots a) as superior evidence of how the electorate voted, and b) as sufficient evidence to set aside the election returns. For the ballots to be considered the best evidence of how the voters voted, their integrity should be satisfactorily established."[6]

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[4] *Id.* at 71-72.

[5] *Id.* at 83.

[6] *Id.* at 73.

Invoking *Rosal v. COMELEC*,[7] the trial court ruled that Co failed to sufficiently show that the integrity of the contested ballots had been preserved. It then cited the presumption that election returns are genuine, and that the data and information supplied by the board of election inspectors are true and correct.[8] The trial court said:

> A closer scrutiny of the premise made by the protestant will reveal that he is trying to prove the misreading, miscounting, and misappreciation of ballots by introducing as evidence the marked difference of the results of the revision and of the results in the election returns. This premise is too presumptuous. The marked difference cannot be used to prove the misreading, miscounting, and misappreciation of ballots because the misreading, miscounting, and misappreciation of ballots is precisely what the protestant needs to prove to justify the marked difference in the results. Prudence dictates that the protestant should first explain where this huge discrepancy is coming from before using it as evidence. In other words, the misreading, miscounting, and misappreciation of ballots should be proven by other independent evidence.
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> Without any evidence, the allegation of misreading, miscounting, and misappreciation of ballots remains a mere allegation without any probative value.[9]

Traversing the allegations of post-elections tampering, the trial court rejected Co's allegation that the ballot boxes were properly locked and sealed. In fact, the trial court said, the envelope containing the ballots for CP Nos. 1302A/1303A was glued on both sides, prompting protestee's revisor to comment that the envelope appears to be re-pasted and tampered. In CP No. 1306A, the report stated that the ballots were not placed in a sealed envelope.[10]

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[7] G.R. Nos. 168253 & 172741, March 16, 2007, 518 SCRA 473.

[8] *Cf.* RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND BARANGAY OFFICIALS, Rule 13, Sec. 6.

[9] *Rollo*, pp. 75-76.

[10] *Id*. at 77.

Corollarily, the trial court stated the observation that Regio has presented credible witnesses to prove that there were no irregularities or anomalies during the casting and counting of votes.

Aggrieved, Co filed an appeal before the COMELEC, arguing that the trial court erred:

1.) In disregarding the result of the physical count of the revised ballots found in Precinct Nos. 1302A/1303A and 1306A;

2.) In declaring that the protestant appellant was not able to sufficiently show that the integrity of the contested ballots in Precinct Nos. 1302A/1303A and 1306A was preserved;

3.) In declaring that protestant-appellant was not able to overcome the presumption of regularity of the election, counting, and canvassing proceedings in the protested precincts of Barangay 296, Manila;

4.) In declaring that the votes obtained by the parties in Precinct Nos. 1302A/1303A and 1306A as reflected in their respective Election Returns are [the] true and actual results of the elections;

5.) In giving weight to the incredulous and conflicting testimonies of the obviously biased witnesses of the protestee-appellee;

6.) In refusing to lend credence to the testimony of the expert witness from the Commission on Elections that the ballots obtained from Precinct Nos. 1302A/1303A and 1306A are genuine ballots; and

7.) In refusing to appreciate the contested and revised ballots for Precinct Nos. 1302A/1303A and 1306A and the appreciation of the contested ballots found in Precinct No. 1307A/1307B.[11]

In a Resolution dated August 23, 2011, the COMELEC First Division[12] dismissed the appeal, noting, as the MeTC did, that

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

[12] Composed of Commissioners Rene V. Sarmiento, Armando C. Velasco, and Christian Robert S. Lim.

Co failed to show that the integrity of the ballots in question was in fact preserved. Echoing the trial court, the COMELEC First Division ruled that the absence of any report or record of tampering of the ballot boxes does not preclude the possibility of ballot tampering.[13] It also affirmed the rejection of Co's reliance on the revision committee report as proof that no post-election tampering occurred. The COMELEC First Division observed:

> We note that protestant-appellant did not offer any evidence to prove his claims of misreading, miscounting, and misappreciation of the ballots; he posits that the variance between the election results according to the election documents and the revision of the ballots is in itself enough to prove his allegations of misreading, miscounting, and misappreciation of the ballots by the Board of Election Tellers. Protestant-appellant begs the question instead of laying support to his claims.
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> Since it could not divine the will of the electorate from the ballots, the trial court had no other recourse other than to rely on the available election documents. And, We cannot fault the trial court for doing so when there was no question as to the election documents' authenticity and validity.
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> Protestant-appellant harps that the election documents are "mere by-products of the electoral fraud committed to benefit (protestee-appellee) including but not limited to **misreading, miscounting, and misappreciation of ballots by the Chairpersons of the Board of Election Tellers in order to increase the votes of the Protestee-Appellee and decrease the votes that should have been properly credited to Protestant-Appellant Co."** (emphasis in the original)
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> As previously mentioned, protestant-appellant's assertion is specious x x x. The records of the case is bereft of any evidence supporting protestant-appellant's claims of electoral fraud and, thus, We concur with the trial court stating, "(w)ithout any evidence, the allegation of misreading, miscounting, and misappreciation of ballots remains a mere allegation without probative value."[14]

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[13] *Rollo*, p. 90.

[14] *Id*. at 91-93.

The COMELEC First Division noted that Co could have, but did not, presented testimonies of witnesses to substantiate his claims of electoral fraud, albeit he attached affidavits of various witnesses in his protest. The affidavits, the COMELEC First Division said, asserted, in one form or another, the electoral malfeasance or misfeasance allegedly committed by the BET. In dismissing the arguments of Co for his failure to present evidence, the COMELEC commented, "[I]t appears that protestant-appellant [Co] rested on laurels after seeing the result of the physical count of the revised ballots and the conclusion of the Technical Examination. In fine, protestant-appellant proverbially lost the war for want of a nail."[15] The *fallo* of the COMELEC First Division Resolution reads:

> **WHEREFORE**, premises considered, the Commission (*First Division*) **RESOLVED,** as it hereby **RESOLVES**, to **DENY** the protestant's Appeal for **LACK OF MERIT**. The Decision dated 04 May 2011 by Metropolitan Trial Court-Branch 04 City of Manila is hereby **AFFIRMED**.[16]

Co then filed a Motion for Reconsideration. In its assailed December 7, 2012 Resolution, the COMELEC *En Banc*[17] reconsidered the August 23, 2011 Resolution of the First Division, and accordingly declared Co as the duly elected *punong barangay*. Vital to the *En Banc*'s disposition is its finding that the ballots subjected to revision were genuine. The *En Banc* found:

> x x x [W]e find merit in appellant's motion for reconsideration. For, protestant [Co] has sufficiently established that no untoward incident had attended the preservation of the ballots after the termination of the proceedings of the Board of Election Tellers or from the time the custody of the ballot boxes is transferred from the

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[15] *Id*. at 95.

[16] *Id*. at 96.

[17] Signed by Chairperson Sixto S. Brillantes, Jr., Commissioners Rene V. Sarmiento, Lucenito N. Tagle, Elias Yusoph, and Maria Gracia Cielo M. Padaca. Commissioners Armando C. Velasco and Christian Robert S. Lim dissented and voted to affirm the Resolution of the First Division.

BET to the City Treasurer and finally to the trial court. Protestee who cried post-election fraud is duty-bound to establish that the genuine ballots found inside the boxes were compromised and tampered at any time during that period and before the revision. However, no such proof has been adduced by protestee except the discrepancy between the figures in the ERs and the physical count on revision. But then, said discrepancy could have been caused by errors in the transposition of the numbers from the ballots to the ERs during the canvassing and not due to tampering.

As earlier intimated, the discrepancy could be attributed to ER manipulation during the canvassing and not because of the tampering of the ballots which were already found by an expert and independent body to be genuine and authentic.[18]

The *fallo* of the COMELEC *En Banc*'s Resolution reads:

WHEREFORE, premises considered, the Commission RESOLVED as it hereby RESOLVES to reconsider its Resolution dated August 23, 2011 and proclaim protestant-appellant as the duly elected Punong Barangay of Barangay 296, District III, Manila.[19]

Thus, the present recourse, on the argument that the COMELEC *En Banc* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it arbitrarily set aside the Decision of the MeTC and the Resolution of the COMELEC First Division, in the choice between the revision results in the protested precincts and the official vote count recorded in the election returns. Petitioner further argues that the COMELEC gravely abused its discretion when it demanded from protestee direct proof of actual tampering of ballots to justify consideration of the use of the election returns in determining the winning candidate in the elections. In fine, petitioner questions the ruling of the COMELEC giving precedence to the results of the revision over the official canvassing results.

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[18] *Rollo*, pp. 59-60.

[19] *Id*. at 69.

The Issues

I.

WHETHER THE RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT PRIVATE RESPONDENT CO HAD SUCCESSFULLY DISCHARGED THE BURDEN OF PROVING THE INTEGRITY OF THE BALLOTS SUBJECTED TO REVISION.

II.

WHETHER THE RESPONDENT COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REVERSING THE RULING OF THE COMELEC FIRST DIVISION, TO THE EFFECT THAT PETITIONER REGIO IS THE DULY-ELECTED *PUNONG BARANGAY*.

The Court's Ruling

At the outset, it must be noted that the protest case is dismissible for being moot and academic. A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Generally, courts will not determine a moot question in a case in which no practical relief can be granted.[20] In *Malaluan v. COMELEC*,[21] this Court settled the matter on when an election protest case becomes moot and academic:

> When the appeal from a decision in an election case has already become moot, the case being an election protest involving the office of mayor **the term of which had expired**, the appeal is dismissible on that ground, unless the rendering of a decision on the merits would be of practical value. (emphasis added)

In the case now before the Court, the position involved is that of a *punong barangay*. The governing law, therefore, is

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[20] *Baldo v. COMELEC*, G.R. No. 176135, June 16, 2009, 589 SCRA 306, 311

[21] 324 Phil. 676, 683 (1996).

Republic Act No. (RA) 9164, as amended by RA 9340. Sec. 4 of the law states:

> Sec. 4. Assumption of Office. — The term of office of the barangay and sangguniang kabataan officials elected under this Act shall commence on August 15, 2002, next following their elections. The term of office of the barangay and sangguniang kabataan officials elected in the October 2007 election and subsequent elections **shall commence at noon of November 30 next following their election**. (emphasis added)

The court takes judicial notice of the holding of *barangay* elections last October 28, 2013. Following the elections, the new set of *barangay* officials already assumed office as of noon of November 30, 2013. It goes without saying, then, that the term of office of those who were elected during the October 2010 *barangay* elections also expired by noon on November 30, 2013. In fine, with the election of a new *punong barangay* during the October 28, 2013 elections, the issue of who the rightful winner of the 2010 *barangay* elections has already been rendered moot and academic.

Notwithstanding the mootness of the case, We find the need to decide the petition on its merits, in view of the finding of the COMELEC *En Banc* that protestant Co should have been declared the winner for the post of *punong barangay* for the term 2010-2013. We find that the grave abuse of discretion committed by the COMELEC *En Banc*, specifically in ignoring the rules on evidence, merits consideration. Still in line with the Court's decision in *Malaluan*[22] to the effect that the Court can decide on the merits a moot protest if there is practical value in so doing, We find that the nullification of the COMELEC *En Banc*'s Resolution is in order, due to its gross contravention of established rules on evidence in election protest cases.

We shall discuss the issues jointly, related as they are to the finding of the COMELEC *En Banc* giving primacy to the results of the revision proceedings over the results of the canvassing as reflected in the election returns.

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[22] *Id*.

The doctrine in *Rosal v. COMELEC*[23] and considering the results of the revision *vis-à-vis* the results reflected in the official canvassing

In *Rosal*, this Court summarized the standards to be observed in an election contest predicated on the theory that the election returns do not accurately reflect the will of the voters due to alleged irregularities in the appreciation and counting of ballots. These guiding standards are:

(1) The ballots cannot be used to overturn the official count as reflected in the election returns unless it is first shown affirmatively that the ballots have been preserved with a care which precludes the opportunity of tampering and suspicion of change, abstraction or substitution;

(2) The burden of proving that the integrity of the ballots has been preserved in such a manner is on the protestant;

(3) Where a mode of preserving the ballots is enjoined by law, proof must be made of such substantial compliance with the requirements of that mode as would provide assurance that the ballots have been kept inviolate notwithstanding slight deviations from the precise mode of achieving that end;

(4) It is only when the protestant has shown substantial compliance with the provisions of law on the preservation of ballots that the burden of proving actual tampering or likelihood thereof shifts to the protestee; and

(5) Only if it appears to the satisfaction of the court of COMELEC that the integrity of the ballots has been preserved should it adopt the result as shown by the recount and not as reflected in the election returns.

In the same case, the Court referred to various provisions in the Omnibus Election Code providing for the safe-keeping and preservation of the ballots, more specifically Secs. 160, 217, 219, and 220 of the Code.

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[23] *Supra* note 7.

Rosal was promulgated precisely to honor the presumption of regularity in the performance of official functions. Following *Rosal*, it is presumed that the BET and Board of Canvassers had faithfully performed the solemn duty reposed unto them during the day of the elections. Thus, primacy is given to the official results of the canvassing, even in cases where there is a discrepancy between such results and the results of the revision proceedings. It is only when the protestant has successfully discharged the burden of proving that the re-counted ballots are the very same ones counted during the revision proceedings, will the court or the Commission, as the case may be, even consider the revision results.

Even then, the results of the revision will not automatically be given more weight over the official canvassing results or the election returns. What happens in the event of discrepancy between the revision results and the election returns is that the burden of proof shifts to the protestee to provide evidence of actual tampering of the ballots, or at least a likelihood of tampering. It is only when the court or the COMELEC is fully satisfied that the ballots have been well preserved, and that there had been no tampering of the ballots, that it will accord credibility to the results of the revision.

In *Varias v. COMELEC*, the Court said:

> The *Rosal* ruling, to be sure, does not involve issues merely related to the appreciation or calibration of evidence; its critical ruling is on the propriety of relying on the revision of ballot results instead of the election returns in the proclamation of a winning candidate. In deciding this issue, what it notably established was a critical guide in arriving at its conclusion – the need to determine whether the court or the COMELEC looked at the correct considerations in making its ruling.[24]

This Court had long stated that "[u]pholding the sovereignty of the people is what democracy is all about. When the sovereignty of the people expressed thru the ballot is at stake, it is not enough for this Court to make a statement but it should do everything

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[24] G.R. No. 189078, February 11, 2010, 612 SCRA 386, 407.

to have that sovereignty obeyed by all. Well done is always better than well said."[25] This is really what the *Rosal* doctrine is all about. The *Rosal* doctrine ensures that in election protest cases, the supreme mandate of the people is ultimately determined. In laying down the rules in appreciating the conflicting results of the canvassing and the results of a revision later made, the Court has no other intention but to determine the will of the electorate.

The *Rosal* doctrine is also supplemented by A.M. No. 07-4-15-SC,[26] establishing the following disputable presumptions:

SEC. 6. *Disputable presumptions*. — The following presumptions are considered as facts, unless contradicted and overcome by other evidence:

(a) On the election procedure:

(1) The election of candidates was held on the date and time set and in the polling place determined by the Commission on Elections;

(2) The Boards of Election Inspectors were duly constituted and organized;

(3) Political parties and candidates were duly represented by pollwatchers;

(4) Pollwatchers were able to perform their functions; and

(5) The Minutes of Voting and Counting contains all the incidents that transpired before the Board of Election Inspectors.

(b) On election paraphernalia:

(1) Ballots and election returns that bear the security markings and features prescribed by the Commission on Elections are genuine;

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[25] *Pangandaman v. COMELEC*, G.R. No. 134340, November 25, 1999, 319 SCRA 287.

[26] RULES OF PROCEDURE IN ELECTION CONTESTS BEFORE THE COURTS INVOLVING ELECTIVE MUNICIPAL AND BARANGAY OFFICIALS, took effect on May 15, 2007.

(2) The data and information supplied by the members of the Boards of Election Inspectors in the accountable forms are true and correct; and

(3) The allocation, packing and distribution of election documents or paraphernalia were properly and timely done.

(c) On appreciation of ballots:

(1) A ballot with appropriate security markings is valid;

(2) The ballot reflects the intent of the voter;

(3) The ballot is properly accomplished;

(4) A voter personally prepared one ballot, except in the case of assistors; and

(5) The exercise of one's right to vote was voluntary and free.

Private respondent Co has not proved that the integrity of the ballots has been preserved

Applying *Rosal*, viewed in conjunction with A.M. No. 07-4-15-SC, this Court rules that the COMELEC *En Banc* committed grave abuse of discretion in ruling that private respondent had successfully discharged the burden of proving that the ballots counted during the revision proceedings are the same ballots cast and counted during the day of the elections. That is the essence of the second paragraph in the *Rosal* doctrine.

It is well to note that the respondent Co did not present any testimonial evidence to prove that the election paraphernalia inside the protested ballot boxes had been preserved. He mainly relied on the report of the revision committee. There was no independent, direct or indirect, evidence to prove the preservation of the ballots and other election paraphernalia.

This leads Us to no other conclusion but that respondent Co failed to discharge his burden under the *Rosal* doctrine. With no independent evidence to speak of, respondent Co cannot simply rely on the report of the revision committee, and from there conclude that the report itself is proof of the preservation of the ballots. What he needs to provide is evidence independent

of the revision proceedings. Without any such evidence, the Court or the COMELEC, as the case may be, will be constrained to honor the presumption established in A.M. No. 07-4-15-SC, that the data and information supplied by the members of the Boards of Election Inspectors in the accountable forms are true and correct.

Respondent Co admits having, under the *Rosal* doctrine, the burden of proving the preservation of the ballots, and corollarily, that their integrity have not been compromised before the revision proceedings. He, however, argues that he had successfully discharged that burden. And how? *First*, he pointed out that from the moment the various BETs placed the counted official ballots inside the ballot boxes until they were transported for canvassing, and until they were transmitted to the Election Officer/ City Treasurer of Manila for storage and custody, no irregularities or ballot-box snatching were reported; neither was there any news or record of ballot box tampering in the protested precincts. *Second*, no untoward incident or irregularity which may taint or affect the integrity of the ballot boxes was ever reported when they were transported to the storage area of the trial court. *Third*, the storage place of the ballot boxes was at all times tightly secured, properly protected, and well safeguarded. *Fourth*, all the protested ballot boxes were properly locked and sealed. *Fifth*, the petitioner never questioned or raised any issue on the preservation of the integrity of the protested ballot boxes. And *Sixth*, the Technical Examination Report signed by the COMELEC representative confirmed the genuineness, authenticity, and integrity of all the ballots found during the revision.[27]

We hold, however, that the foregoing statements do not, by themselves, constitute sufficient evidence that the ballots have been preserved. Respondent Co cannot simply rely on the alleged absence of evidence of reports of untoward incidents, and from there immediately conclude that the ballots have been preserved. What he should have presented are concrete pieces of evidence,

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[27] Private Respondent Ronnie Co's Comment to the Petition, pp. 5-7, *Rollo*, pp. 143-145

independent of the revision proceedings that will tend to show that the ballots counted during the revision proceedings were the very same ones counted by the BETs during the elections, and the very same ones cast by the public. He cannot evade his duty by simply relying on the absence of reports of untoward incidents that happened to the ballot boxes. At best, this reliance on the condition of the ballot boxes themselves is speculative; at worst, it is self-serving. Without presenting to the court any evidence outside of the proceedings, respondent Co as protestant may simply claim that the ballot boxes themselves are the proof that they were properly preserved. This goes contrary to the doctrine in *Rosal*.

The respective custodians of the ballot boxes, from the time they were used in the elections until they were delivered to the court, were not, to stress, presented in court. They could have testified as to the security afforded the ballot boxes while in their custody. Moreover, no witness at all was presented by respondent Co during the proceedings in the trial court. The Court reminds respondent Co that the trial court's consideration of the case is confined to whatever evidence is presented before it. This is amply stated in Rule 13, Sec. 2 of A.M. No. 07-4-15-SC:

> Sec. 2. Offer of evidence. — The court shall consider no evidence that has not been formally offered. Offer of evidence shall be done orally on the last day of hearing allowed for each party after the presentation of the last witness. The opposing party shall be required to immediately interpose objections thereto. The court shall rule on the offer of evidence in open court. However, the court may, at its discretion, allow the party to make an offer of evidence in writing, which shall be submitted within three days. If the court rejects any evidence offered, the party may make a tender of excluded evidence.

Unfortunately for respondent Co, the witnesses whose affidavits he attached to his Protest were never presented during trial. While he again raised the tenor of these affidavits in his Comment filed before Us, those cannot be considered anymore due to his failure to present them before the trial court. Respondent cannot simplistically insist on the consideration of said affidavits, the

trial court not having been given the opportunity to observe their testimonies, and petitioner not having been accorded the opportunity to cross-examine them. The fact that respondent attached the affidavits in his Protest does not mean that the trial court is bound to consider them, precisely because they have not been formally offered before the court. The attachments to the Protest will not be considered unless formally offered.

The Court notes that respondent Co has offered no explanation whatsoever why he failed to present his witnesses. Nevertheless, he would have this Court consider as evidence their purported testimonies. This would be incongruously unfair to petitioner, who endeavored to prove his case by presenting evidence before the trial court.

Neither can respondent Co disclaim responsibility on the argument that the petitioner never raised as an issue the preservation of the ballot boxes. Inherent in all election protest cases is the duty of the protestant to provide evidence of such preservation. The failure of the protestee to raise that as an issue will not *ipso facto* mean that protestant need not present evidence to that effect.

Moreover, the Technical Examination Report, is not, without more, evidence of preservation. The Report merely states that the ballots are genuine. What the protestant should endeavor to prove, however, in presenting evidence of preservation, is not that the ballots themselves are genuine or official, but that they are the very same ones cast by the electorate. The Report cannot possibly determine that. While it may be that the ballots themselves are official ballots, there is still a dearth of evidence on whether or not they were the same official ballots cast by the public during the elections. The Report, therefore, cannot be considered as evidence of the preservation, as required by *Rosal*.

The fact of preservation is not, as respondent Co claims, "incontrovertible." In fact, there is total absence of evidence to that effect. The incontrovertible fact is that private respondent, during the proceedings before the trial court, did not present any independent evidence to prove his claim. Without any

independent evidence, the trial court, the COMELEC, as well as this Court, is constrained to affirm as a fact the disputable presumption that the ballots were properly counted during the counting and canvassing of votes.

In sum, We find that the COMELEC gravely abused its discretion in ruling that private respondent had discharged the burden of proving the integrity of the ballots. We rule, on the contrary, that there is utter lack of evidence to that effect.

Petitioner need not prove actual tampering of the ballots

Corollarily, the COMELEC *En Banc* had ruled that petitioner, as protestee, failed to adduce evidence that the ballots found inside the ballot boxes were compromised and tampered. This strikes us as baseless and a clear departure from the teachings of *Rosal*.

The duty of the protestee in an election contest to provide evidence of actual tampering or any likelihood arises only when the protestant has first successfully discharged the burden of proving that the ballots have been secured to prevent tampering or susceptibility of change, abstraction or substitution. Such need to present proof of tampering did not arise since protestant himself failed to provide evidence of the integrity of the ballots.

A candidate for a public elective position ought to familiarize himself with election laws, pertinent jurisprudence, and COMELEC resolutions, rules and regulations. Alternatively, he should have an experienced and knowledgeable election lawyer to guide him on the different aspects of elections. Sans competent legal advice and representation, a victory in the elections may turn out to be a crushing defeat for the candidate who actually got the nod of the electorate. Unfortunately for respondent Co, he committed several miscues that eventually led to his debacle in the instant election protest.

WHEREFORE, premises considered, this Petition for *Certiorari* is **GRANTED**. The Resolution dated December 7, 2012 of the COMELEC *En Banc* in EAC (BRGY-SK) No. 161-2011 is hereby **NULLIFIED** and **SET ASIDE**. The Resolution

of the COMELEC First Division dated August 23, 2011, affirming the Decision in Election Case No. 02480-EC of the MeTC, Branch 4 in Manila is hereby **REINSTATED**.

SO ORDERED.

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

Leonardo-de Castro, and *Peralta, JJ.,* on official leave.

SECOND DIVISION

[A.M. OCA I.P.I. No. 10-3492-RTJ. December 4, 2013]

NARCISO G. DULALIA, *complainant, vs.* **JUDGE AFABLE E. CAJIGAL, Regional Trial Court, Branch 96, Quezon City,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; JUDGES; GROSS IGNORANCE OF THE LAW; UNFAVORABLE RULINGS ARE NOT NECESSARILY ERRONEOUS; RESPONDENT JUDGE'S ORDER NOT SUBJECT TO ADMINISTRATIVE DISCIPLINARY ACTION IN CASE AT BAR.—** Well entrenched is the rule that a judge may not be administratively sanctioned for mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part. Complainant assails the propriety of the decision rendered by respondent judge. Complainant should be reminded that unfavorable rulings are not necessarily erroneous. Should he disagree with the court's ruling, there are judicial remedies available under the Rules of Court. As a matter of public policy, a judge cannot be

subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. Moreover, we have explained that administrative complaints against judges cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases have not yet been resolved with finality. In the instant case, complainant had in fact availed of the remedy of a motion for reconsideration prior to his filing of the administrative complaint.

2. **ID.; ID.; ID.; ID.; UNDUE DELAY IN RESOLVING THE MOTION FOR RECONSIDERATION; FACTORS CONSIDERED IN FINDING RESPONDENT JUDGE'S EXPLANATION, MERITORIOUS; CASE AT BAR.—** On the charge of undue delay in resolving the motion for reconsideration, we find merit in the explanation of respondent judge. The Court is aware of the complexity of estate proceedings and the numerous motions filed in those cases. In the absence of any evidence to show any improper motive or reason that could have compelled respondent judge to delay the resolution of the motion, the delay could only be attributed to inadvertence, especially considering the overlapping motions filed by complainant. It is significant to note the report of respondent judge that he has already resolved the other motions assailed by complainant. Be that as it may, respondent judge admitted that he may have inadvertently failed to categorically address the motion for reconsideration. Thus, the inescapable fact is that there was delay in the resolution of the pending incident. The rules and jurisprudence are clear on the matter of delay. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. The penalty to be imposed on the judge varies depending on the attending circumstances of the case. In deciding the penalty to be imposed, the Court takes into consideration, among others, the period of delay, damage suffered by the parties as a result of the delay; complexity of the case; number of years the judge

has been in the service; the health and age of the judge; and the caseload of the court presided over by the judge. In the instant case, we find it proper to mitigate the penalty to be imposed on respondent judge taking into consideration that this is his first infraction in his more than 15 years in the service; his age; the caseload of his court; and his candid admission of his infraction.

R E S O L U T I O N

PEREZ, *J*.:

For resolution is the administrative complaint filed by Narciso G. Dulalia (complainant) charging Judge Afable E. Cajigal (respondent judge), Regional Trial Court (RTC), Branch 96, Quezon City with gross ignorance of the law and gross inefficiency.

ANTECEDENT FACTS

The complaint stemmed from Special Proceedings (SP) No. Q-01-45101, entitled *In the Matter of the Joint Settlement of the Intestate Estate of Sps. Emilio Z. Dulalia and Leonarda G. Dulalia and for Issuance of Letters of Administration*; SP No. Q-01-45814, entitled *In the Matter of the Testate Estate of the Deceased Leonarda Garcia Dulalia*; and SP No. Q-02-46327, entitled *In the Matter of the Testate Estate of the Deceased Emilio Zuniga Dulalia*.

Complainant is one of the petitioners in the aforecited special proceeding cases pertaining to the joint settlement of the testate and intestate estates of his parents wherein he and his sister, Gilda Dulalia-Figueroa, vied for appointment as special and regular administrator.

Complainant claimed that since respondent judge's appointment as presiding judge of RTC, Branch 96, Quezon City, the latter has displayed gross inefficiency by failing to resolve within the prescribed period the following incidents:[1] (1) Manifestation

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

and Motion dated 18 July 2005; (2) Urgent *Ex-Parte* Motion to Resolve dated 29 May 2006; (3) Urgent Motion to Resolve Pending Incident (to appoint Narciso G. Dulalia as special administrator pending litigation) dated 25 April 2002; (4) Omnibus Motion dated 4 June 2007; (5) Comment/Opposition with Application for Appointment as Special Administrator dated 22 June 2007; (6) Reply to Comment/Opposition with Application for Appointment as Special Administrator dated 10 July 2007; (7) Urgent Motion to Resolve the Application of Narciso G. Dulalia as Special Administrator dated 3 April 2008; and (8) Urgent Motion for the Appointment of Narciso G. Dulalia as Interim Administrator dated 8 September 2009.

On 12 January 2010, respondent judge issued an Order[2] appointing Gilda Dulalia-Figueroa as special administratrix of the estate.

Aggrieved, complainant filed on 18 February 2010 a Motion for Reconsideration. The motion was set for hearing on 25 February 2010. Complainant averred that from the filing of the motion until the filing of the instant complaint, respondent judge has yet to resolve the motion.

Complainant alleged that respondent judge is liable for gross inefficiency for his failure to resolve the pending incident within the required period. According to complainant, respondent judge not only failed to resolve the subject motion on time, he likewise ignored the basic rules and jurisprudence in the appointment of special administrators in accordance with the Supreme Court's ruling in *Co v. Rosario*.[3] Thus, he maintained that respondent judge should also be held liable for gross ignorance of the law.

On 27 August 2010, respondent judge was required by the Office of the Court Administrator (OCA) to comment on the verified complaint.

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[2] *Id*. at 70.

[3] G.R. No. 160671, 30 April 2008, 553 SCRA 225.

In his comment,[4] respondent judge vehemently denied the allegations in the complaint. He averred that the complaint, which was filed by a disgruntled party who did not get a favorable action in his court, is purely personal and meant only to harass him. It has no basis in law and in fact, he claims.

Respondent judge maintained that he is not liable for gross ignorance of the law. He insisted that when he issues an order in a case, he sees to it that it is rendered within the mantle of the law and within the bounds of the rules. He alleged that he never incurred bad faith or abuse of authority in resolving legal issues filed before his sala.

He submitted that he is also not liable for gross inefficiency considering that the matter submitted before him cannot be resolved outright in view of the conflicting claims of the complainant and his siblings. The matter regarding the appointment of special administrator cannot be issued on a silver platter by the court without any hearing being conducted. He reiterated that the several motions filed by the complainant praying for his appointment as special administrator can be acted upon only after hearing the side of the other petitioners and after assessment of the fitness and qualifications of the applicants for appointment as regular administrator.

Respondent judge noted that on 12 January 2010, he issued an order appointing complainant's sister, Gilda Dulalia-Figueroa, as special administratrix in order to preserve the estate in the meantime until a regular administrator is appointed. In view of the order issued, complainant filed a motion for reconsideration.

Earlier or on 28 January 2008, complainant filed a petition for indirect contempt against his sister Gilda Dulalia-Figueroa, allegedly for the latter's violation of several orders of the court.

Respondent judge claimed that in the hearing of the petition for indirect contempt, he considered as incorporated the motion

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[4] *Id*. at 103-105.

for reconsideration filed by complainant. But since the hearing was focused mainly on the petition for indirect contempt, the motion for reconsideration was left unresolved. He alleged that such omission was neither deliberate nor done with malice. It was only due to inadvertence that the motion was not specifically resolved. He honestly believed that preferential attention should be given to the petition for indirect contempt before the court can focus itself on the estate proceeding, particularly the appointment of a regular administrator. Due to the supervening event, the estate proceeding remained untouched.

As regards the other motions assailed in the complaint, respondent judge reported that these were already resolved in view of the appointment of the special administratrix of the estate. Hence, there is no gross inefficiency to speak of.

REPORT AND RECOMMENDATION OF THE OFFICE OF THE COURT ADMINISTRATOR

In its Report[5] dated 18 March 2013, the OCA concluded that the charge of gross ignorance of the law should be given scant consideration considering that as complainant himself has admitted, the propriety of respondent judge's decision was already raised in the motion for reconsideration. The OCA, however, found respondent judge liable for undue delay in resolving the motion for reconsideration filed by complainant and recommended that he be fined in the amount of Ten Thousand Pesos (₱10,000.00).

OUR RULING

First, we find the charges of ignorance of the law bereft of merit. It is clear that the respondent judge's order was issued in the proper exercise of his judicial functions, and as such, is not subject to administrative disciplinary action; especially considering that the complainant failed to establish bad faith on the part of respondent judge. Well entrenched is the rule that a judge may not be administratively sanctioned for mere

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[5] *Id*. at 118-120.

errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part.[6]

Complainant assails the propriety of the decision rendered by respondent judge. Complainant should be reminded that unfavorable rulings are not necessarily erroneous. Should he disagree with the court's ruling, there are judicial remedies available under the Rules of Court. As a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in good faith. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[7]

Moreover, we have explained that administrative complaints against judges cannot be pursued simultaneously with the judicial remedies accorded to parties aggrieved by the erroneous orders or judgments of the former. Administrative remedies are neither alternative to judicial review nor do they cumulate thereto, where such review is still available to the aggrieved parties and the cases have not yet been resolved with finality.[8] In the instant case, complainant had in fact availed of the remedy of a motion for reconsideration prior to his filing of the administrative complaint.

On the charge of undue delay in resolving the motion for reconsideration, we find merit in the explanation of respondent judge. The Court is aware of the complexity of estate proceedings and the numerous motions filed in those cases. In the absence of any evidence to show any improper motive or reason that could have compelled respondent judge to delay the resolution of the motion, the delay could only be attributed to inadvertence,

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[6] *Ceniza-Layese v. Asis*, A.M. No. RTJ-07-2034, 15 October 2008, 569 SCRA 51, 54-55.

[7] *Crisologo v. Daray*, A.M. No. RTJ-07-2036, 20 August 2008, 562 SCRA 382, 389.

[8] *Rodriguez v. Judge Gatdula*, 442 Phil. 307, 312 (2002).

especially considering the overlapping motions filed by complainant. It is significant to note the report of respondent judge that he has already resolved the other motions assailed by complainant.

Be that as it may, respondent judge admitted that he may have inadvertently failed to categorically address the motion for reconsideration. Thus, the inescapable fact is that there was delay in the resolution of the pending incident.

The rules and jurisprudence are clear on the matter of delay. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate.[9] The penalty to be imposed on the judge varies depending on the attending circumstances of the case. In deciding the penalty to be imposed, the Court takes into consideration, among others, the period of delay, damage suffered by the parties as a result of the delay; complexity of the case; number of years the judge has been in the service; the health and age of the judge; and the caseload of the court presided over by the judge.

In the instant case, we find it proper to mitigate the penalty to be imposed on respondent judge taking into consideration that this is his first infraction in his more than 15 years in the service; his age; the caseload of his court; and his candid admission of his infraction.

WHEREFORE, in light of the foregoing, the complaint of gross ignorance of the law against Judge Afable E. Cajigal, Regional Trial Court, Branch 96, Quezon City is **DISMISSED** for lack of merit. For his delay in resolving the pending motions in his court, Judge Cajigal is **ADMONISHED** to be more circumspect in the exercise of his judicial functions. He is warned

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[9] *OCA v. Santos*, A.M. No. MTJ-11-1787, 11 October 2012, 684 SCRA 1, 9; *Re: Cases Submitted for Decision before Hon. Meliton G. Emuslan, Former Judge, Regional Trial Court, Branch 47, Urdaneta City, Pangasinan,* A.M. No. RTJ-10-2226, 22 March 2010, 616 SCRA 280, 283; *Report on the Judicial Audit Conducted in the RTC, Branch 22, Kabacan, North Cotabato*, 468 Phil. 338, 345 (2004).

that a commission of the same or similar offense in the future shall merit a more severe sanction from the Court. Judge Cajigal is reminded to be mindful of the reglementary periods for disposing pending incidents in his court to avoid delay in the dispensation of justice.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 177921. December 4, 2013]

METRO CONCAST STEEL CORPORATION, SPOUSES JOSE S. DYCHIAO AND TIU OH YAN, SPOUSES GUILLERMO AND MERCEDES DYCHIAO, AND SPOUSES VICENTE AND FILOMENA DYCHIAO, *petitioners, vs.* **ALLIED BANK CORPORATION**, *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; ABSENT ANY SHOWING THAT THE TERMS AND CONDITIONS OF THE LOAN TRANSACTIONS HAVE BEEN, IN ANY WAY, MODIFIED OR NOVATED BY THE TERMS AND CONDITIONS IN THE MEMORANDUM OF AGREEMENT, SAID CONTRACTS SHOULD BE TREATED SEPARATELY AND DISTINCTLY FROM EACH OTHER, SUCH THAT THE EXISTENCE, PERFORMANCE OR BREACH OF ONE WOULD NOT DEPEND ON THE EXISTENCE, PERFORMANCE OR BREACH OF THE OTHER.— Article 1231 of the Civil Code states that obligations

are extinguished either by payment or performance, the loss of the thing due, the condonation or remission of the debt, the confusion or merger of the rights of creditor and debtor, compensation or novation. In the present case, petitioners essentially argue that their loan obligations to Allied Bank had already been extinguished due to Peakstar's failure to perform its own obligations to Metro Concast pursuant to the MoA. Petitioners classify Peakstar's default as a form of *force majeure* in the sense that they have, beyond their control, lost the funds they expected to have received from the Peakstar (due to the MoA) which they would, in turn, use to pay their own loan obligations to Allied Bank. They further state that Allied Bank was equally bound by Metro Concast's MoA with Peakstar since its agent, Atty. Saw, actively represented it during the negotiations and execution of the said agreement. Petitioners' arguments are untenable. At the outset, the Court must dispel the notion that the MoA would have any relevance to the performance of petitioners' obligations to Allied Bank. The MoA is a sale of assets contract, while petitioners' obligations to Allied Bank arose from various loan transactions. Absent any showing that the terms and conditions of the latter transactions have been, in any way, modified or novated by the terms and conditions in the MoA, said contracts should be treated separately and distinctly from each other, such that the existence, performance or breach of one would not depend on the existence, performance or breach of the other. In the foregoing respect, the issue on whether or not Allied Bank expressed its conformity to the assets sale transaction between Metro Concast and Peakstar (as evidenced by the MoA) is actually irrelevant to the issues related to petitioners' loan obligations to the bank. Besides, as the CA pointed out, the fact of Allied Bank's representation has not been proven in this case and hence, cannot be deemed as a sustainable defense to exculpate petitioners from their loan obligations to Allied Bank.

2. **ID.; ID.; ID.; ID.; *FORCE MAJEURE*; PEAKSTAR OIL CORPORATION'S BREACH OF ITS OBLIGATIONS TO PETITIONERS ARISING FROM THE MEMORANDUM OF AGREEMENT CANNOT BE CLASSIFIED AS A FORTUITOUS EVENT UNDER JURISPRUDENTIAL FORMULATION.—** Anent petitioners' reliance on *force*

majeure, suffice it to state that Peakstar's breach of its obligations to Metro Concast arising from the MoA cannot be classified as a fortuitous event under jurisprudential formulation. As discussed in *Sicam v. Jorge*: Fortuitous events by definition are extraordinary events not foreseeable or avoidable. It is therefore, not enough that the event should not have been foreseen or anticipated, as is commonly believed but **it must be one impossible to foresee or to avoid**. The mere difficulty to foresee the happening is not impossibility to foresee the same. To constitute a fortuitous event, the following elements must concur: (a) the cause of the unforeseen and unexpected occurrence or of the failure of the debtor to comply with obligations must **be independent of human wil**l; (b) it must be impossible to foresee the event that constitutes the *caso fortuito* or, if it can be foreseen, it must be impossible to avoid; (c) **the occurrence must be such as to render it impossible for the debtor to fulfill obligations in a normal manner**; and, (d) the obligor must be free from any participation in the aggravation of the injury or loss. While it may be argued that Peakstar's breach of the MoA was unforeseen by petitioners, the same is clearly not "impossible" to foresee or even an event which is "independent of human will." Neither has it been shown that said occurrence rendered it impossible for petitioners to pay their loan obligations to Allied Bank and thus, negates the former's *force majeure* theory altogether. In any case, as earlier stated, the performance or breach of the MoA bears no relation to the performance or breach of the subject loan transactions, they being separate and distinct sources of obligation. The fact of the matter is that petitioners' loan obligations to Allied Bank remain subsisting for the basic reason that the former has not been able to prove that the same had already been paid or, in any way, extinguished. In this regard, petitioners' liability, as adjudged by the CA, must perforce stand. Considering, however, that Allied Bank's extra-judicial demand on petitioners appears to have been made only on December 10, 1998, the computation of the applicable interests and penalty charges should be reckoned only from such date.

APPEARANCES OF COUNSEL

Roberto F. Del Castillo for petitioners.
Ocampo Guevarra Llamas & Associates for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 12, 2007 and the Resolution[3] dated May 10, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 86896 which reversed and set aside the Decision[4] dated January 17, 2006 of the Regional Trial Court of Makati City, Branch 57 (RTC) in Civil Case No. 00-1563, thereby ordering petitioners Metro Concast Steel Corporation (Metro Concast), Spouses Jose S. Dychiao and Tiu Oh Yan, Spouses Guillermo and Mercedes Dychiao, and Spouses Vicente and Filomena Dychiao (individual petitioners) to solidarily pay respondent Allied Bank Corporation (Allied Bank) the aggregate amount of ₱51,064,094.28, with applicable interests and penalty charges.

The Facts

On various dates and for different amounts, Metro Concast, a corporation duly organized and existing under and by virtue of Philippine laws and engaged in the business of manufacturing steel,[5] through its officers, herein individual petitioners, obtained several loans from Allied Bank. These loan transactions were

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[1] *Rollo*, pp. 8-29.

[2] *Id*. at 133-142. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Mariano C. Del Castillo (now Supreme Court Associate Justice) and Lucenito N. Tagle, concurring.

[3] *Id*. at 155.

[4] *Id*. at 70-74. Penned by Judge Reinato G. Quilala.

[5] Records, Complaint, p. 1; See also Amended Answer dated November 11, 2004, pp. 386-392.

covered by a promissory note and separate letters of credit/ trust receipts, the details of which are as follows:

Date	Document	Amount
December 13, 1996	Promissory Note No. 96-21301[6]	₱ 2,000,000.00
November 7, 1995	Trust Receipt No. 96-202365[7]	₱ 608,603.04
May 13, 1996	Trust Receipt No. 96-960522[8]	₱ 3,753,777.40
May 24, 1996	Trust Receipt No. 96-960524[9]	₱ 4,602,648.08
March 21, 1997	Trust Receipt No. 97-204724[10]	₱ 7,289,757.79
June 7, 1996	Trust Receipt No. 96-203280[11]	₱17,340,360.73
July 26, 1995	Trust Receipt No. 95-201943[12]	₱ 670,709.24
August 31, 1995	Trust Receipt No. 95-202053[13]	₱ 13,797.41
November 16, 1995	Trust Receipt No. 96-202439[14]	₱13,015,109.87

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

[7] Letter of Credit (LC) No. MDO1376390 in the amount of US$23,140.80 in favor of Tianjin Metals and Minerals Import and Export Corporation for the shipment of 77.136 metric tons of fire bricks; *id.* at 30-34.

[8] LC No. MDO2103583 in the amount of ₱5,005,036.53 in favor of National Steel Corporation for the purchase of 575.490 metric tons of prime quality billets; *id.* at 35-39.

[9] LC No. MDO2103613 in the amount of ₱6,136,864.11 in favor of National Steel Corporation for the purchase and importation of 705.630 metric tons of prime quality billets; *id.* at 40-45.

[10] LC No. MDO1410105 in the amount of US$272,000.00 in favor of United Energy International Ltd. for the purchase of 1,000 metric tons of wire rods; *id.* at 46-50.

[11] LC No. MDO1391194 in the amount of US$690,000.00 in favor of Vanomet AG for the purchase and shipment of 2,500 metric tons of prime newly produced hot rolled steel wire rods; *id.* at 51-55.

[12] LC No. MDO1369733 in the amount of US$27,270.00 in favor of Tianjin Machinery Import and Export Corporation for the purchase of 18 metric tons of artificial graphite electrodes HP; *id.* at 56-60.

[13] LC No. MDO1371720 in the amount of US$12,210.00 in favor of Redland Minerals Burnt Product Sales for the purchase of 66 metric tons deadburned dolomite in Dolofrit 180 quality; *id.* at 10-11 and 61-64.

[14] LC No. MDO1377205 in the amount of US$465,000.00 in favor of Balli Trading Ltd. for the purchase and shipment of 1,500 metric tons of prime newly produced wire rods; *id.* at 65-69.

July 3, 1996	Trust Receipt No. 96-203552[15]	₱	401,608.89
June 20, 1995	Trust Receipt No. 95-201710[16]	₱	750,089.25
December 13, 1995	Trust Receipt No. 96-379089[17]	₱	92,919.00
December 13, 1995	Trust Receipt No. 96/202581[18]	₱	224,713.58

The interest rate under Promissory Note No. 96-21301 was pegged at 15.25% per annum (p.a.), with penalty charge of 3% per month in case of default; while the twelve (12) trust receipts uniformly provided for an interest rate of 14% p.a. and 1% penalty charge. By way of security, the individual petitioners executed several Continuing Guaranty/Comprehensive Surety Agreements[19] in favor of Allied Bank.

Petitioners failed to settle their obligations under the aforementioned promissory note and trust receipts, hence, Allied Bank, through counsel, sent them demand letters,[20] all dated December 10, 1998, seeking payment of the total amount of ₱51,064,093.62, but to no avail. Thus, Allied Bank was prompted to file a complaint for collection of sum of money[21] (subject complaint) against petitioners before the RTC, docketed as Civil Case No. 00-1563.

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[15] LC No. MDO1393154 in the amount of US$15,270.30 in favor of China Shougang International Trade and Engineering Corporation for the purchase of 12 pieces of finishing roll and 6 pieces intermediate roll; *id.* at 12-13 and 70-73.

[16] LC No. MDO1367587 in the amount of US$29,175.00 in favor of Hitachi Metals Singapore Pte., Ltd. for the purchase of 5 pieces of roughing rolls for 2nd stand; *id.* at 74-76A.

[17] LC No. MDO1379089 in the amount of US$11,700.00 in favor of RAMI Ceramic Industries (1991) Ltd. for the purchase and shipment of 500 pieces of RAMI top refractories for continuous casting machine; *id.* at 77-80.

[18] LC No. MDO1379089 in the amount of US$11,700.00 in favour of RAMI Ceramic Industries for the purchase of 364 pieces of RAMI top refractories for continuous casting machine flogate type; *id.* at 81-84.

[19] *Id.* at 85-89.

[20] *Id.* at 422-431.

[21] *Id.* at 1-27.

In their second[22] Amended Answer,[23] petitioners admitted their indebtedness to Allied Bank but denied liability for the interests and penalties charged, claiming to have paid the total sum of ₱65,073,055.73 by way of interest charges for the period covering 1992 to 1997.[24] They also alleged that the economic reverses suffered by the Philippine economy in 1998 as well as the devaluation of the peso against the US dollar contributed greatly to the downfall of the steel industry, directly affecting the business of Metro Concast and eventually leading to its cessation. Hence, in order to settle their debts with Allied Bank, petitioners offered the sale of Metro Concast's remaining assets, consisting of machineries and equipment, to Allied Bank, which the latter, however, refused. Instead, Allied Bank advised them to sell the equipment and apply the proceeds of the sale to their outstanding obligations. Accordingly, petitioners offered the equipment for sale, but since there were no takers, the equipment was reduced into ferro scrap or scrap metal over the years.

In 2002, Peakstar Oil Corporation (Peakstar), represented by one Crisanta Camiling (Camiling), expressed interest in buying the scrap metal. During the negotiations with Peakstar, petitioners claimed that Atty. Peter Saw (Atty. Saw), a member of Allied Bank's legal department, acted as the latter's agent. Eventually, with the **alleged** conformity of Allied Bank, through Atty. Saw, a Memorandum of Agreement[25] dated November 8, 2002 (MoA) was drawn between Metro Concast, represented by petitioner Jose Dychiao, and Peakstar, through Camiling, under which Peakstar obligated itself to purchase the scrap metal for a total consideration of ₱34,000,000.00, payable as follows: (*a*) ₱4,000,000.00 by way of earnest money – ₱2,000,000.00 to be paid in cash and the other ₱2,000,000.00 to be paid in two (2) post-dated checks of ₱1,000,000.00 each;[26] and (*b*) the

[22] Admitted per Order dated December 28, 2004; *id.* at 406.

[23] *Id.* at 386-392.

[24] *Id.* at 387.

[25] *Id.* at 393-394.

[26] Item No. 2 of MoA; *id.* at 393.

balance of ₱30,000,000.00 to be paid in ten (10) monthly installments of ₱3,000,000.00, secured by bank guarantees from Bankwise, Inc. (Bankwise) in the form of separate post-dated checks.[27]

Unfortunately, Peakstar reneged on all its obligations under the MoA. In this regard, petitioners asseverated that: (*a*) their failure to pay their outstanding loan obligations to Allied Bank must be considered as *force majeure*; and (*b*) since Allied Bank was the party that accepted the terms and conditions of payment proposed by Peakstar, petitioners must therefore be deemed to have settled their obligations to Allied Bank. To bolster their defense, petitioner Jose Dychiao (Jose Dychiao) testified[28] during trial that it was Atty. Saw himself who drafted the MoA and subsequently received[29] the ₱2,000,000.00 cash and the two (2) Bankwise post-dated checks worth ₱1,000,000.00 each from Camiling. However, Atty. Saw turned over only the two (2) checks and ₱1,500,000.00 in cash to the wife of Jose Dychiao.[30]

Claiming that the subject complaint was falsely and maliciously filed, petitioners prayed for the award of moral damages in the amount of ₱20,000,000.00 in favor of Metro Concast and at least ₱25,000,000.00 for each individual petitioner, ₱25,000,000.00 as exemplary damages, ₱1,000,000.00 as attorney's fees, ₱500,000.00 for other litigation expenses, including costs of suit.

The RTC Ruling

After trial on the merits, the RTC, in a Decision[31] dated January 17, 2006, dismissed the subject complaint, holding that the "causes of action sued upon had been paid or otherwise extinguished." It ruled that since Allied Bank was duly represented by its agent,

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[27] Item No. 3 of MoA; *id.*

[28] Records, TSN, June 23, 2005, pp. 629, 632-633.

[29] *Id*. at 639; See also Exh. "10", p. 455.

[30] *Id*. at 633-634.

[31] *Id*. at 70-74.

Atty. Saw, in all the negotiations and transactions with Peakstar — considering that Atty. Saw (*a*) drafted the MoA, (*b*) accepted the bank guarantee issued by Bankwise, and (*c*) was apprised of developments regarding the sale and disposition of the scrap metal — then it stands to reason that the MoA between Metro Concast and Peakstar was binding upon said bank.

The CA Ruling

Allied Bank appealed to the CA which, in a Decision[32] dated February 12, 2007, reversed and set aside the ruling of the RTC, ratiocinating that there was "no legal basis in fact and in law to declare that when Bankwise reneged its guarantee under the [MoA], herein [petitioners] should be deemed to be discharged from their obligations lawfully incurred in favor of [Allied Bank]."[33] The CA examined the MoA executed between Metro Concast, as seller of the ferro scrap, and Peakstar, as the buyer thereof, and found that the same did not indicate that Allied Bank intervened or was a party thereto. It also pointed out the fact that the post-dated checks pursuant to the MoA were issued in favor of Jose Dychiao.

Likewise, the CA found no sufficient evidence on record showing that Atty. Saw was duly and legally authorized to act for and on behalf of Allied Bank, opining that the RTC was "indulging in hypothesis and speculation"[34] when it made a contrary pronouncement. While Atty. Saw received the earnest money from Peakstar, the receipt was signed by him on behalf of Jose Dychiao.[35] It also added that "[i]n the final analysis, the aforesaid checks and receipts were signed by [Atty.] Saw either as representative of [petitioners] or as partner of the latter's legal counsel, and not in anyway as representative of [Allied Bank]."[36]

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[32] *Id.* at 133-142.

[33] *Rollo*, p. 138.

[34] *Id.*

[35] Records, p. 455.

[36] *Rollo*, p. 138.

Consequently, the CA granted the appeal and directed petitioners to solidarily pay Allied Bank their corresponding obligations under the aforementioned promissory note and trust receipts, plus interests, penalty charges and attorney's fees.

Petitioners sought reconsideration[37] which was, however, denied in a Resolution[38] dated May 10, 2007. Hence, this petition.

The Issue Before the Court

At the core of the present controversy is the sole issue of whether or not the loan obligations incurred by the petitioners under the subject promissory note and various trust receipts have already been extinguished.

The Court's Ruling

Article 1231 of the Civil Code states that obligations are extinguished either by payment or performance, the loss of the thing due, the condonation or remission of the debt, the confusion or merger of the rights of creditor and debtor, compensation or novation.

In the present case, petitioners essentially argue that their loan obligations to Allied Bank had already been extinguished due to Peakstar's failure to perform its own obligations to Metro Concast pursuant to the MoA. Petitioners classify Peakstar's default as a form of *force majeure* in the sense that they have, beyond their control, lost the funds they expected to have received from the Peakstar (due to the MoA) which they would, in turn, use to pay their own loan obligations to Allied Bank. They further state that Allied Bank was equally bound by Metro Concast's MoA with Peakstar since its agent, Atty. Saw, actively represented it during the negotiations and execution of the said agreement.

Petitioners' arguments are untenable.

At the outset, the Court must dispel the notion that the MoA would have any relevance to the performance of petitioners'

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[37] *Id.* at 144-153.

[38] *Id.* at 155.

obligations to Allied Bank. The MoA is a sale of assets contract, while petitioners' obligations to Allied Bank arose from various loan transactions. Absent any showing that the terms and conditions of the latter transactions have been, in any way, modified or novated by the terms and conditions in the MoA, said contracts should be treated separately and distinctly from each other, such that the existence, performance or breach of one would not depend on the existence, performance or breach of the other. In the foregoing respect, the issue on whether or not Allied Bank expressed its conformity to the assets sale transaction between Metro Concast and Peakstar (as evidenced by the MoA) is actually irrelevant to the issues related to petitioners' loan obligations to the bank. Besides, as the CA pointed out, the fact of Allied Bank's representation has not been proven in this case and hence, cannot be deemed as a sustainable defense to exculpate petitioners from their loan obligations to Allied Bank.

Now, anent petitioners' reliance on *force majeure*, suffice it to state that Peakstar's breach of its obligations to Metro Concast arising from the MoA cannot be classified as a fortuitous event under jurisprudential formulation. As discussed in *Sicam v. Jorge*:[39]

> Fortuitous events by definition are extraordinary events not foreseeable or avoidable. It is therefore, not enough that the event should not have been foreseen or anticipated, as is commonly believed but **it must be one impossible to foresee or to avoid**. The mere difficulty to foresee the happening is not impossibility to foresee the same.
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> To constitute a fortuitous event, the following elements must concur: (a) the cause of the unforeseen and unexpected occurrence or of the failure of the debtor to comply with obligations must **be independent of human wil**l; (b) it must be impossible to foresee the event that constitutes the *caso fortuito* or, if it can be foreseen, it must be impossible to avoid; (c) **the occurrence must be such as to render it impossible for the debtor to fulfill obligations in a normal manner**; and, (d) the obligor must be free from any

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[39] 556 Phil. 278 (2007).

participation in the aggravation of the injury or loss.[40] (Emphases supplied)

While it may be argued that Peakstar's breach of the MoA was unforeseen by petitioners, the same is clearly not "impossible" to foresee or even an event which is "independent of human will." Neither has it been shown that said occurrence rendered it impossible for petitioners to pay their loan obligations to Allied Bank and thus, negates the former's *force majeure* theory altogether. In any case, as earlier stated, the performance or breach of the MoA bears no relation to the performance or breach of the subject loan transactions, they being separate and distinct sources of obligation. The fact of the matter is that petitioners' loan obligations to Allied Bank remain subsisting for the basic reason that the former has not been able to prove that the same had already been paid[41] or, in any way, extinguished. In this regard, petitioners' liability, as adjudged by the CA, must perforce stand. Considering, however, that Allied Bank's extra-judicial demand on petitioners appears to have been made only on December 10, 1998, the computation of the applicable interests and penalty charges should be reckoned only from such date.

WHEREFORE, the petition is **DENIED**. The Decision dated February 12, 2007 and Resolution dated May 10, 2007 of the

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[40] *Id.* at 291.

[41] It is well to note that the party who alleges the affirmative defense of payment has the burden of proving it. As held in the case of *Bank of the Phil. Islands v. Sps. Royeca* (581 Phil. 188, 195 [2008]):

As a general rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.

When the existence of a debt is fully established by the evidence contained in the record, the burden of proving that it has been extinguished by payment devolves upon the debtor who offers such a defense to the claim of the creditor. Where the debtor introduces some evidence of payment, the burden of going forward with the evidence — as distinct from the general burden of proof — shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.

Court of Appeals in CA-G.R. CV No. 86896 are hereby **AFFIRMED** with **MODIFICATION** reckoning the applicable interests and penalty charges from the date of the extrajudicial demand or on December 10, 1998. The rest of the appellate court's disposition stand.

SO ORDERED.

Carpio (Chairperson), Velasco Jr.,* *Brion,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179691. December 4, 2013]

PHILIPPINE BANK OF COMMUNICATIONS, *petitioner, vs.* **MARY ANN O. YEUNG,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION (MR); DELAY OF 7 DAYS DUE TO THE WITHDRAWAL OF PETITIONER'S COUNSEL DURING THE REGLEMENTARY PERIOD OF FILING AN MR IS EXCUSABLE IN LIGHT OF THE MERITS OF THE CASE.—** The general rule is that the failure of the petitioner to *timely* file an MR within the 15-day reglementary period fixed by law renders the decision or resolution final and executory. The same rule applies in appeals. The filing and the perfection of an appeal in the manner and within the period prescribed by law are not only mandatory but also jurisdictional, and the failure to perfect an appeal has the effect of rendering the judgment final and executory. Consistent with this principle is the rule that no motion for extension of time to file an MR

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* Designated Additional Member per Raffle dated November 20, 2013.

shall be allowed. The filing of a motion for extension of time does not, by itself, interrupt the period fixed by law for the perfection of an appeal. A movant, upon filing of a motion, has no right to assume that it would be granted and should verify its status with the court; otherwise, he runs the risk of losing his right to appeal in the event the court subsequently denies his motion and the period of appeal had expired. **This rule however, is not absolute**. In exceptional and meritorious cases, the Court has applied a liberal approach and relaxed the rigid rules of technical procedure. In *Republic v. Court of Appeals*, we allowed the perfection of the appeal of the Republic, despite the delay of six days, in order to prevent a gross miscarriage of justice. In that case, the Court considered the fact that the Republic stands to lose hundreds of hectares of land *already* titled in its name. In *Ramos v. Bagasao*, we permitted the delay of four days in the filing of a notice of appeal because the appellant's counsel of record was already dead at the time the trial court's decision was served. x x x In the present case, we find the delay of 7 days, due to the withdrawal of the petitioner's counsel *during the reglementary period of filing an MR*, excusable in light of the merits of the case. Records show that the petitioner immediately engaged the services of a new lawyer to replace its former counsel and petitioned the CA to extend the period of filing an MR due to lack of material time to review the case. There is no showing that the withdrawal of its counsel was a contrived reason or an orchestrated act to delay the proceedings; the failure to file an MR within the reglementary period of 15 days was also not entirely the petitioner's fault, as it was not in control of its former counsel's acts. Moreover, after a review of the contentions and the submissions of the parties, we agree that suspension of the technical rules of procedure is warranted in this case in view of the CA's erroneous application of legal principles and the substantial merits of the case. If the petition would be dismissed on technical grounds and without due consideration of its merits, the registered owner of the property shall, in effect, be barred from taking possession, thus allowing the absurd and unfair situation where the owner cannot exercise its right of ownership. This, the Court should not allow. In order to prevent the resulting inequity that might arise from the outright denial of this recourse – that is, the virtual affirmance of the writ's denial to the detriment of the petitioner's right of ownership – we give due

course to this petition despite the late filing of the petitioner's MR before the CA.

2. **ID.; ID.; FORUM SHOPPING; COMMITTED BY A PARTY WHO, HAVING RECEIVED AN ADVERSE JUDGMENT IN ONE FORUM, SEEKS ANOTHER OPINION IN ANOTHER COURT, OTHER THAN BY APPEAL OR THE SPECIAL CIVIL ACTION FOR *CERTIORARI*.—** The petitioner's argument that the respondent is guilty of forum shopping by not disclosing the pendency of the case for nullity of foreclosure sale deserves scant consideration. Forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court, other than by appeal or the special civil action of *certiorari*. It is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on *the same or related causes* and/or to grant the same or substantially the same reliefs.

3. **ID.; ID.; NO FORUM SHOPPING IN CASE AT BAR; THERE IS NO IDENTITY IN THE ISSUES, CAUSES OF ACTION AND RELIEFS SOUGHT BETWEEN THE MOTION TO RECALL AND REVOKE THE WRIT OF POSSESSION AND THE CIVIL CASE FOR NULLITY OF THE FORECLOSURE SALE; THE TWO ACTIONS MAY PROCEED INDEPENDENTLY AND WITHOUT PREJUDICE TO THE OUTCOME OF EACH CASE.—** The test for determining whether a party has violated the rule against forum shopping is whether in the two (or more) cases, there is identity of parties, rights, causes of action, and reliefs sought, or whether the elements of *litis pendentia* are present. It is also material to determine whether a final judgment in one case, regardless of which party is successful, will amount to *res judicata* in the other. The motion for recall and to revoke the order for a writ of possession filed by the respondent before the trial court and the civil case for nullity of foreclosure sale are poles apart. This is also true with the petition for *certiorari* before the CA and the nullity case. Thus, even if the writ of possession is cancelled or revoked, as what happened in this case, the respondent will not be prevented from pursuing the nullity of the foreclosure sale, since the ruling of the court in the former does not amount to *res judicata* in the latter. Similarly, the filing of the petition for *certiorari* will not affect the pending

civil case for nullity because the two actions may proceed independently and without prejudice to the outcome of each case. Furthermore, there is no identity in the issues, causes of action and reliefs sought between the two cases. The issues in the two cases are totally different, as well as the reliefs prayed for by the respondent. In the motion, the respondent prays for the cancellation of the writ of possession, while in the civil case for nullity, the cancellation of the foreclosure sale itself. The same thing can be said of a petition for *certiorari* – where the respondent seeks to nullify the proceedings in the trial court on the ground of grave abuse of discretion – and the nullity of the foreclosure sale. We, therefore, rule that no forum shopping has been committed by the respondent.

4. **CIVIL LAW; CONTRACTS; MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE (ACT. NO. 3135); WRIT OF POSSESSION; ISSUANCE THEREOF IN FAVOR OF PETITIONER IS IN ORDER IN CASE AT BAR; RESPONDENT FAILED TO EXERCISE HER RIGHT OF REDEMPTION WITHIN ONE YEAR FROM THE TIME OF THE REGISTRATION OF THE SALE AND THE PROPERTY'S TITLE HAD ALREADY BEEN TRANSFERRED TO THE PETITIONER.—** We have consistently held that the purchaser can demand possession of the property even during the redemption period for as long as he files an *ex parte* motion under oath and post a bond in accordance with Section 7 of Act No. 3135, as amended. Upon filing of the motion and the approval of the bond, the law also directs the court in express terms to issue the order for a writ of possession. When the redemption period has expired and title over the property has been consolidated in the purchaser's name, a writ of possession can be demanded as a matter of right. The writ of possession shall be issued as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser. As explained in *Edralin v. Philippine Veterans Bank,* the duty of the trial court to grant a writ of possession in these instances is also ministerial, and the court may not exercise discretion or judgment. x x x It is not disputed that the respondent failed to exercise her right of redemption within one year from the time of the registration of the sale. There is also no question that the property's title had already been transferred to the petitioner. As the actual owner of the

property, it is not only necessary, but also just, to allow the petitioner to take possession of the property it owns. It is illogical if the person already owning the property will be barred from possessing it, in the absence of compelling and legitimate reasons to deny him possession. Thus, we feel that the issuance of a writ of possession is in order.

5. **ID.; ID.; ID.; ID.; ID.; THE CASE OF *SULIT V. COURT OF APPEALS* CANNOT BE APPLIED IN THE PRESENT CASE.—** The *sulit* ruling cannot be applied in the present case. A proper appreciation and analysis of *Sulit* show that it cannot be cited in the present case because the factual milieu obtaining therein are not analogous or similar to those involved in the case before us. As correctly noted by the petitioner, the one year redemption period in *Sulit* has not yet expired when the purchaser petitioned the trial court for the issuance of a writ of possession. In the present case, the redemption period has already expired and the title over the property had already been consolidated in the petitioner's name. In *Sulit*, the inequity the court perceived to justify the deferment of the issuance of a writ of possession was present because the mortgagor, who at that time still had the right to exercise his right of redemption, was prevented from doing so. No such inequity appears in this case inasmuch as the mortgagor no longer has a right of redemption. In *Sulit*, the policy of the law to aid the redemptioner can still be upheld. The policy is no longer relevant in the present case since the mortgagee herself, allowed the redemption period to lapse without exercising her right. We emphasize that for the *Sulit* exception to apply, the evil sought to be prevented must be present and the reason behind the exception should clearly exist. It should not be carelessly applied in cases where the reasons that justified it do not appear, more so where the factual milieu is different. As discussed above, the *Sulit* reasons and circumstances are not present here. The resulting injustice that we tried to avoid in *Sulit* does not exist. In the absence of any justification for the exception, the general rule should apply.

6. **ID.; ID.; ID.; ID.; ID.; IN THE ABSENCE OF ANY EVIDENCE SHOWING THAT THE MORTGAGE ALSO COVERS THE OTHER OBLIGATIONS OF THE MORTGAGOR, THE PROCEEDS FROM THE SALE SHOULD NOT BE APPLIED TO THEM; THE BALANCE**

OR EXCESS, AFTER DEDUCTING THE MORTGAGE DEBT OF ₱1,950,000.00 PLUS THE STIPULATED INTEREST AND THE EXPENSES OF THE FORECLOSURE SALE, MUST BE RETURNED TO RESPONDENT.— The petitioner contends that there was no excess or surplus that needs to be returned to the respondent because her other outstanding obligations and those of her attorney-in-fact were paid out of the proceeds. The relevant provision, Section 4 of Rule 68 of the Rules of Civil Procedure, mandates that: Section 4. Disposition of proceeds of sale. – The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority, to be ascertained by the court, or if there be no such encumbrancers or **there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it.** Thus, in the absence of any evidence showing that the mortgage also covers the other obligations of the mortgagor, the proceeds from the sale should not be applied to them. In the present case, while the petitioner claims that it was not obliged to pay any surplus because the balance from the proceeds was applied to the respondent's other obligations and to those of her attorney-in-fact, it failed, however, to show any supporting evidence showing that the mortgage extended to those obligations. The petitioner, as mortgagee/purchaser cannot just simply apply the proceeds of the sale in its favor and deduct from the balance the respondent's outstanding obligations not secured by the mortgage. Understood from this perspective, no reason exists to depart from the CA's ruling that the balance or excess, after deducting the mortgage debt of ₱1,950,000.00 plus the stipulated interest and the expenses of the foreclosure sale, must be returned to the respondent.

APPEARANCES OF COUNSEL

Romeo L. Ibarra for petitioner.
Rodolfo B. Ta-asan for respondent.

DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*,[1] filed by the Philippine Bank of Communications (*petitioner*), to assail the decision[2] dated August 9, 2006 and the resolution[3] dated August 2, 2007 of the Court of Appeals (*CA*) in CA-G.R. SP. No. 82725. The CA decision reversed and set aside the orders dated November 10, 2003,[4] January 20, 2004,[5] and February 23, 2004 of the Regional Trial Court (*RTC*), Davao City, Branch 16, in other Case No. 212-03 granting the issuance of a writ of possession.

The Factual Antecedents

In order to secure a loan of ₱1,650,000.00 Mary Ann O. Yeung (*respondent*), represented by her attorney-in-fact, Mrs. Le Tio Yeung, executed on December 12, 1994 a Real Estate Mortgage over a property located in Davao City in favor of the petitioner. The mortgaged property was covered by Transfer Certificate of Title (*TCT*) No. T-187433, registered in the respondent's name. On May 2, 1996, the parties agreed to increase the amount of the loan to ₱1,950,000.00 as evidenced by an Amended Real Estate Mortgage.

After the respondent defaulted in her obligation, the petitioner initiated a petition for extrajudicial foreclosure of the mortgage, pursuant to Act No. 3135, as amended.[6] The mortgaged property was consequently foreclosed and sold at public auction for the

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 31-51.

[2] Penned by Associate Justice Antonio L. Villamor, and concurred in by Associate Justices Romulo V. Borja and Ramon R. Garcia; *id.* 8-18.

[3] *Id*. at 24-25.

[4] *Id*. at 91-92; penned by Presiding Judge Emmanuel C. Carpio.

[5] *Id*. at 103-104.

[6] Act No. 3135 – An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

sum of ₱2,594,750.00 to the petitioner which emerged as the highest bidder.

A provisional certificate of sale was issued by the sheriff and the sale was registered with the Register of Deeds. When the respondent failed to redeem the mortgage within the one year redemption period, the petitioner consolidated its ownership over the property, resulting to the cancellation of TCT No. T-187433 and to the issuance of TCT No. T-362374 in its name.

On September 15, 2003, the petitioner filed with the RTC an *ex parte* petition for the issuance of a writ of possession, docketed as Other Case No. 212-03.

On November 10, 2003, the RTC granted the petition. The respondent thereafter filed a motion for recall and/or revocation alleging that the writ of possession should not have been issued by the RTC because the petitioner failed to remit the surplus from the proceeds of the sale. When the motion was denied, the respondent filed a motion for reconsideration (*MR*) which the RTC likewise denied. Hence, the respondent brought the matter to the CA on *certiorari*.

In its August 9, 2006 decision,[7] the CA granted the petition and ruled that the RTC gravely abused its discretion when it ordered the issuance of a writ of possession. It found that the ₱2,594,750.00 bid price far exceeded the ₱1,950,000.00 mortgage obligation. Relying on the Court's pronouncement in *Sulit v. Court of Appeals*,[8] the CA ruled that the petitioner's failure to remit the surplus from the proceeds of the foreclosure sale (equivalent to 33% of the mortgage debt) was a valid ground to defer the issuance of a writ of possession for reasons of equity. It reversed the RTC orders and ordered the petitioner to remit the excess from the proceeds of the foreclosure sale to the respondent.

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[7] *Supra* note 2.

[8] G.R. No. 119247, February 17, 1997, 268 SCRA 441, 452.

The petitioner received a copy of the August 9, 2006 CA decision on September 1, 2006.[9] Hence, it had up to September 16, 2006 to file an MR.

On September 13, 2006, the petitioner filed an urgent motion for extension of time to file an MR, citing lack of material time due to change of counsel as its ground. It contended that in light of its counsel's withdrawal from the case on September 11, 2006, or during the reglementary period of filing an MR, it had to engage the services of another lawyer who required an additional time to thoroughly study the case. On September 23, 2006, or seven days from the expiry of the reglementary period to file an MR, the petitioner, through its new counsel, filed an MR.[10]

On March 7, 2007, the CA denied the petitioner's motion for extension of time to file an MR. The petitioner filed an MR dated April 10, 2007,[11] which the CA similarly denied.[12] The petitioner thereafter filed a petition for review on *certiorari* before this Court to assail the August 9, 2006 decision[13] and the August 2, 2007 resolution[14] of the CA.

The Petition

The petitioner insists that the CA erred when it reversed the RTC's decision. It argues that the *Sulit* case on which the CA's decision was based, is not analogous to the present case. It submits that unlike *Sulit* (where the mortgagor still had an opportunity to redeem the property at the time of the filing of the petition for the issuance of a writ of possession), the respondent had failed to redeem the property within the one year redemption period, thus allowing the petitioner to consolidate its ownership over the property. It also insists that there was no excess or

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[9] *Rollo*, at 31.

[10] *Id.* at 32.

[11] *Id.* at 119-122.

[12] *Id.* at 24.

[13] *Supra* note 2.

[14] *Supra* note 3.

surplus from the proceeds of the foreclosure sale because the respondent's obligation covered the interests, the penalties, the attorney's fees and the foreclosure expenses.

In these lights, the petitioner maintains that the equitable circumstances found by the Court in *Sulit* do not obtain in the present case and the issuance of a writ of possession, being a ministerial duty of the courts, should be granted.

The petitioner lastly submits that the respondent is guilty of forum shopping because of her failure to disclose to the Court the pendency of a civil case for nullity of mortgage and foreclosure sale.

The Case for the Respondent

The respondent maintains that the August 9, 2006 CA decision assailed in this petition had been rendered final and executory by the petitioner's failure to seasonably file an MR within the reglementary period. She submits that having attained finality, the decision can no longer be modified or reviewed by this Court and the petition should thus be dismissed.

The Issues

The petitioner raises the following issues:

I. Whether circumstances exist in this case to warrant the liberal application of the rules on the reglementary period of filing appeals or MRs;

II. Whether the case of *Sulit* is applicable to this case;

III. Whether the petitioner is liable for any excess or surplus from the proceeds of the sale; and

IV. Whether the respondent is guilty of forum shopping.

Our Ruling

We find the petition impressed with merit.

a. Procedural Question Raised

At the outset, we note that the petitioner's MR of the CA decision was filed out of time. Nevertheless, in accordance with

the liberality that pervades the Rules of Court, and in the interest of justice under the peculiar circumstances of this case, we opt to take another look at the petitioner's reason for the late MR and thus consider the MR before the CA to be properly filed.

The general rule is that the failure of the petitioner to *timely* file an MR within the 15-day reglementary period fixed by law renders the decision or resolution final and executory.[15] The same rule applies in appeals. The filing and the perfection of an appeal in the manner and within the period prescribed by law are not only mandatory but also jurisdictional, and the failure to perfect an appeal has the effect of rendering the judgment final and executory.[16]

Consistent with this principle is the rule that no motion for extension of time to file an MR shall be allowed. The filing of a motion for extension of time does not, by itself, interrupt the period fixed by law for the perfection of an appeal. A movant, upon filing of a motion, has no right to assume that it would be granted and should verify its status with the court; otherwise, he runs the risk of losing his right to appeal in the event the court subsequently denies his motion and the period of appeal had expired.

This rule however, is not absolute. In exceptional and meritorious cases, the Court has applied a liberal approach and relaxed the rigid rules of technical procedure.

In *Republic v. Court of Appeals*,[17] we allowed the perfection of the appeal of the Republic, despite the delay of six days, in order to prevent a gross miscarriage of justice. In that case, the Court considered the fact that the Republic stands to lose hundreds of hectares of land *already* titled in its name.

In *Ramos v. Bagasao*,[18] we permitted the delay of four days in the filing of a notice of appeal because the appellant's counsel

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[15] *Hilario v. People*, 574 Phil. 348, 361 (2008).

[16] *Almeda v. CA*, 354 Phil. 600, 607 (1998).

[17] 379 Phil. 92, 94-102 (2000).

[18] No. 51552, February 28, 1980, 96 SCRA 395, 396-397.

of record was already dead at the time the trial court's decision was served.

In *Olacao v. National Labor Relations Commission*,[19] we also allowed the belated appeal of the appellant because of the injustice that would result if the appeal would be dismissed. We found that the subject matter in issue in that case had already been settled with finality in another case and the eventual dismissal of the appeal would have had the effect of ordering the appellant to make reparation to the appellee twice.

In *Siguenza v. Court of Appeals*,[20] we gave due course to the appeal and decided the case on the merits inasmuch as, on its face, it appeared to be impressed with merit.

Also in *Barnes v. Padilla*,[21] we allowed the liberal construction of the Rules of Court and suspended the rule that the filing of a motion for extension of time to file an MR does not toll the period of appeal, to serve substantial justice. We ruled that the suspension of the rules was not entirely attributable to the petitioner and the allowance of the petition would not in any way prejudice the respondents.

The reasons that the Court may consider in applying a liberal construction of the procedural rules were reiterated in *Sanchez v. Court* of Appeals,[22] to wit:

> Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review

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[19] G.R. No. 81390, August 29, 1989, 177 SCRA 38, 49.

[20] G.R. No. L-44050 July 16, 1985, 137 SCRA 570, 576-579.

[21] G.R. No. 160753, September 30, 2004, 439 SCRA 675.

[22] 452 Phil. 665, 674 (2003).

sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.

Moreover, the Court has the discretion to suspend its rules when the circumstances of the case warrant. In *Aguam v. Court of Appeals*,[23] we held:

The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case. x x x **Litigations must be decided on their merits and not on technicality.** x x x **It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.**

In the present case, we find the delay of 7 days, due to the withdrawal of the petitioner's counsel *during the reglementary period of filing an MR*, excusable in light of the merits of the case. Records show that the petitioner immediately engaged the services of a new lawyer to replace its former counsel and petitioned the CA to extend the period of filing an MR due to lack of material time to review the case. There is no showing that the withdrawal of its counsel was a contrived reason or an orchestrated act to delay the proceedings; the failure to file an MR within the reglementary period of 15 days was also not entirely the petitioner's fault, as it was not in control of its former counsel's acts.

Moreover, after a review of the contentions and the submissions of the parties, we agree that suspension of the technical rules of procedure is warranted in this case in view of the CA's erroneous application of legal principles and the substantial merits of the case. If the petition would be dismissed on technical

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[23] 388 Phil. 587, 593-594; emphases ours, citations omitted.

grounds and without due consideration of its merits, the registered owner of the property shall, in effect, be barred from taking possession, thus allowing the absurd and unfair situation where the owner cannot exercise its right of ownership. This, the Court should not allow. In order to prevent the resulting inequity that might arise from the outright denial of this recourse – that is, the virtual affirmance of the writ's denial to the detriment of the petitioner's right of ownership – we give due course to this petition despite the late filing of the petitioner's MR before the CA.

b. On the Issuance of a Writ of Possession

We have consistently held that the purchaser can demand possession of the property even during the redemption period for as long as he files an *ex parte* motion under oath and post a bond in accordance with Section 7 of Act No. 3135, as amended.[24] Upon filing of the motion and the approval of the bond, the law also directs the court in express terms to issue the order for a writ of possession.

When the redemption period has expired and title over the property has been consolidated in the purchaser's name, a writ of possession can be demanded as a matter of right. The writ of possession shall be issued as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser. As explained in *Edralin v. Philippine Veterans Bank,*[25] the duty of the trial court to grant a writ of possession in these instances is also ministerial, and the court may not exercise discretion or judgment:

Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership

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[24] *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, G.R. No. 176019, January 12, 2011, 639 SCRA 405, 415.

[25] G.R. No. 168523, March 9, 2011, 645 SCRA 75, 86.

in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.[26]

It is not disputed that the respondent failed to exercise her right of redemption within one year from the time of the registration of the sale. There is also no question that the property's title had already been transferred to the petitioner. As the actual owner of the property, it is not only necessary, but also just, to allow the petitioner to take possession of the property it owns. It is illogical if the person already owning the property will be barred from possessing it, in the absence of compelling and legitimate reasons to deny him possession.[27] Thus, we feel that the issuance of a writ of possession is in order.

c. On the Exemption under Sulit v. Court of Appeals

In setting aside the questioned RTC orders granting the petitioner a writ of possession, the CA relied on the Court's ruling in *Sulit v. Court of Appeals*[28] where we held that the failure of the mortgagee to return to the mortgagor the surplus proceeds of the foreclosure sale carves out an exception to the general rule that a writ of possession should issue as a matter of course.

To have a better grasp of the reasons for the Court's ruling in the said case, below is a brief summary and analysis of *Sulit*.

c.1 Summary of Sulit v. CA

The case stemmed from the extra-judicial foreclosure conducted by the notary public where Sulit (creditor-mortgagee) emerged

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[26] *Id*. at 85-86.

[27] *Id*. at 90.

[28] *Supra* note 8, at 452.

as the highest bidder for the amount of ₱7,000,000.00. It appears that Sulit failed to deliver the sale price's surplus equivalent to at least 40% of the mortgage debt to the notary public. Instead, he credited it to the satisfaction of the ₱4,000,000.00 debt. **During redemption period**, he petitioned for the issuance of a writ of possession which the trial court granted. From the order of the court, the debtor-mortgagor filed a petition for *certiorari* with the CA. The CA granted the writ of *certiorari* and directed Sulit to remit to the debtor the excess amount of his bid price.

When the case reached this Court, we considered Sulit's failure to deliver the surplus proceeds of the foreclosure sale an exception to the general rule that it is ministerial upon the court to issue a writ of possession even during the period of redemption upon the filing of a bond. We found that such failure was a sufficient justification for the non-issuance of the writ. We also ruled that equitable considerations demanded the deferment of the issuance of the writ as it would be highly unfair for the mortgagor, who as a redemptioner might choose to redeem the foreclosed property, to pay the equivalent amount of the bid clearly in excess of the total mortgage debt. We said:

> The general rule that mere inadequacy of price is not sufficient to set aside a foreclosure sale is based on the theory that the lesser the price the easier it will be for the owner to effect the redemption. The same thing cannot be said where the amount of the bid is in excess of the total mortgage debt. **The reason is that in case the mortgagor <u>decides to exercise his right of redemption</u>, Section 30 of Rule 39 provides that the redemption price should be equivalent to the amount of the purchase price, plus one [percent] monthly interest up to the time of the redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate.**
>
> Applying this provision to the present case would be highly iniquitous if the amount required for redemption is based on ₱7,000,000.00, because that would mean exacting payment at a price unjustifiably higher than the real amount of the mortgage obligation. We need not elucidate on the obvious. Simply put, such a construction will undeniably be prejudicial to the substantive rights of private

respondent and **it could even effectively prevent her from exercising the right of redemption**."[29]

The said ruling cannot be applied in the present case. A proper appreciation and analysis of *Sulit* show that it cannot be cited in the present case because the factual milieu obtaining therein are not analogous or similar to those involved in the case before us.

c.2 Comparative Analysis of Sulit and the Present Case

As correctly noted by the petitioner, the one year redemption period in *Sulit* has not yet expired when the purchaser petitioned the trial court for the issuance of a writ of possession. In the present case, the redemption period has already expired and the title over the property had already been consolidated in the petitioner's name. In *Sulit*, the inequity the court perceived to justify the deferment of the issuance of a writ of possession was present because the mortgagor, who at that time still had the right to exercise his right of redemption, was prevented from doing so. No such inequity appears in this case inasmuch as the mortgagor no longer has a right of redemption. In *Sulit*, the policy of the law to aid the redemptioner can still be upheld. The policy is no longer relevant in the present case since the mortgagee herself, allowed the redemption period to lapse without exercising her right.

We emphasize that for the *Sulit* exception to apply, the evil sought to be prevented must be present and the reason behind the exception should clearly exist. It should not be carelessly applied in cases where the reasons that justified it do not appear, more so where the factual milieu is different. As discussed above, the *Sulit* reasons and circumstances are not present here. The resulting injustice that we tried to avoid in *Sulit* does not exist. In the absence of any justification for the exception, the general rule should apply.

d. On the Issue of Surplus

The petitioner contends that there was no excess or surplus that needs to be returned to the respondent because her other

[29] *Id*. at 453-454; citations omitted.

outstanding obligations and those of her attorney-in-fact were paid out of the proceeds.

The relevant provision, Section 4 of Rule 68 of the Rules of Civil Procedure, mandates that:

> Section 4. Disposition of proceeds of sale. — The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid to junior encumbrancers in the order of their priority, to be ascertained by the court, or if there be no such encumbrancers or **there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it.** [emphases and underscores ours)

Thus, in the absence of any evidence showing that the mortgage also covers the other obligations of the mortgagor, the proceeds from the sale should not be applied to them.

In the present case, while the petitioner claims that it was not obliged to pay any surplus because the balance from the proceeds was applied to the respondent's other obligations and to those of her attorney-in-fact, it failed, however, to show any supporting evidence showing that the mortgage extended to those obligations. The petitioner, as mortgagee/purchaser cannot just simply apply the proceeds of the sale in its favor and deduct from the balance the respondent's outstanding obligations not secured by the mortgage. Understood from this perspective, no reason exists to depart from the CA's ruling that the balance or excess, after deducting the mortgage debt of ₱1,950,000.00 plus the stipulated interest and the expenses of the foreclosure sale, must be returned to the respondent.

e. On the Issue of Forum Shopping

The petitioner's argument that the respondent is guilty of forum shopping by not disclosing the pendency of the case for nullity of foreclosure sale deserves scant consideration. Forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court,

other than by appeal or the special civil action of *certiorari*. It is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on *the same or related causes* and/or to grant the same or substantially the same reliefs.[30]

The test for determining whether a party has violated the rule against forum shopping is whether in the two (or more) cases, there is identity of parties, rights, causes of action, and reliefs sought, or whether the elements of *litis pendentia* are present. It is also material to determine whether a final judgment in one case, regardless of which party is successful, will amount to *res judicata* in the other.[31]

The motion for recall and to revoke the order for a writ of possession filed by the respondent before the trial court and the civil case for nullity of foreclosure sale are poles apart. This is also true with the petition for *certiorari* before the CA and the nullity case. Thus, even if the writ of possession is cancelled or revoked, as what happened in this case, the respondent will not be prevented from pursuing the nullity of the foreclosure sale, since the ruling of the court in the former does not amount to *res judicata* in the latter. Similarly, the filing of the petition for *certiorari* will not affect the pending civil case for nullity because the two actions may proceed independently and without prejudice to the outcome of each case.

Furthermore, there is no identity in the issues, causes of action and reliefs sought between the two cases. The issues in the two cases are totally different, as well as the reliefs prayed for by the respondent. In the motion, the respondent prays for the cancellation of the writ of possession, while in the civil case for nullity, the cancellation of the foreclosure sale itself. The same thing can be said of a petition for *certiorari* – where the respondent seeks to nullify the proceedings in the trial court on the ground of grave abuse of discretion – and the nullity of the

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[30] *Young v. John Keng Seng*, 446 Phil. 823, 832 (2003).

[31] *Id*. at 833.

foreclosure sale. We, therefore, rule that no forum shopping has been committed by the respondent.

WHEREFORE, the petition is **GRANTED.** The August 9, 2006 decision and the August 2, 2007 resolution of the Court of Appeals in CA-G.R. SP. No. 82725 are **MODIFIED** by ordering the Regional Trial Court of Davao City, Branch 16, to issue the corresponding writ of possession. The Court of Appeals' order to the Philippine Bank of Communications to remit to Mary Ann O. Yeung the balance or excess of the proceeds of the foreclosure sale, after deducting the mortgage debt of ₱1,950,000.00 plus the stipulated interest and the expenses of the foreclosure sale, is hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 181986. December 4, 2013]

ELIZALDE S. CO, *petitioner, vs.* **LUDOLFO P. MUÑOZ, JR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTIONS; THE PRIVATE PARTY MAY APPEAL THE JUDGMENT OF ACQUITTAL INSOFAR AS HE SEEKS TO ENFORCE THE ACCUSED'S CIVIL LIABILITY.—** Muñoz claims that the last paragraph of Section 2, Rule 111 of the ROC applies only if the civil liability *ex delicto* is separately instituted or when the right to file it separately was properly reserved. In contrast, Co claims

that Muñoz' acquittal of the crime of libel did not extinguish the civil aspect of the case because Muñoz' utterance of the libelous remarks remains undisputed. We reject Muñoz' claim. The last paragraph of Section 2, Rule 111 of the ROC applies to civil actions to claim civil liability arising from the offense charged, regardless if the action is ***instituted with*** or ***filed separately*** from the criminal action. Undoubtedly, Section 2, Rule 111 of the ROC governs situations when the offended party opts to institute the civil action separately from the criminal action; hence, its title "*When separate civil action is suspended.*" Despite this wording, the last paragraph, by its terms, governs all claims for civil liability ***ex delicto***. This is based on Article 100 of the RPC which states that that "[e]very person criminally liable for a felony is also civilly liable." Each criminal act gives rise to two liabilities: one criminal and one civil. Reflecting this policy, our procedural rules provide for two modes by which civil liability *ex delicto* may be enforced: (1) through a civil action that is deemed impliedly instituted in the criminal action; (2) through a civil action that is filed separately, either before the criminal action or after, upon reservation of the right to file it separately in the criminal action. The offended party may also choose to waive the civil action. This dual mode of enforcing civil liability *ex delicto* does not affect its nature, as may be apparent from a reading of the second paragraph of Section 2, Rule 120 of the ROC, which states: Section 2. Contents of the judgment. – x x x In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, **the judgment shall determine if the act or omission from which the civil liability might arise did not exist.**

2. ID.; ID.; ID.; THE EXTINCTION OF THE PENAL ACTION DOES NOT NECESSARILY CARRY WITH IT EXTINCTION OF THE CIVIL ACTION IF THERE IS A FINDING IN THE FINAL JUDGMENT IN THE CRIMINAL ACTION THAT THE ACT OR OMISSION FROM WHICH THE LIABILITY MAY ARISE EXISTS.— If, as Muñoz suggests, the extinction of the penal action carries with it the extinction of the civil action that was *instituted with* the criminal action, then Section 2, Rule 120 of the ROC becomes an irrelevant provision. There would be no need for

the judgment of the acquittal to determine whether "*the act or omission from which the civil liability may arise did not exist.*" The Rules precisely require the judgment to declare if there remains a basis to hold the accused civilly liable despite acquittal so that the offended party may avail of the proper remedies to enforce his claim for civil liability *ex delicto.* In *Ching v. Nicdao and CA*, the Court ruled that an appeal is the proper remedy that a party – whether the accused or the offended party – may avail with respect to the judgment. x x x Moreover, an appeal is favored over the institution of a separate civil action because the latter would only add to our clogged dockets. To reiterate, the extinction of the penal action does not necessarily carry with it the extinction of the civil action, whether the latter is instituted with or separately from the criminal action. The offended party may still claim civil liability *ex delicto* if there is a finding in the final judgment in the criminal action that the act or omission from which the liability may arise exists. Jurisprudence has enumerated three instances when, notwithstanding the accused's acquittal, the offended party may still claim civil liability *ex delicto:* (a) if the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) if the court declared that the liability of the accused is only civil; and (c) if the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. We thus now proceed to determine if Co's claim falls under any of these three situations.

3. **ID.; ID.; ID.; RESPONDENT IS NOT CIVILLY LIABLE BECAUSE NO LIBEL WAS COMMITTED.—** In the present case, the CA declared that the libelous remarks are privileged. The legal conclusion was arrived at from the fact that Co is a public figure, the subject matter of the libelous remarks was of public interest, and the context of Muñoz' statements were fair comments. Consequently, malice is no longer presumed and the prosecution has the burden of proving that Muñoz acted with malice in fact. The CA found that the prosecution failed in this respect. Co assails the CA's ruling by raising arguments that essentially require a review of the CA's factual and legal findings. However, the Court cannot, through the present petition, review these findings without going against the requirements of Rule 45 with respect to factual matters, and without violating Muñoz' right against double jeopardy

given that the acquittal is essentially anchored on a question of fact. In light of the privileged nature of Muñoz' statements and the failure of the prosecution to prove malice in fact, there was no libel that was committed by Muñoz. Without the crime, no civil liability *ex delicto* may be claimed by Co that can be pursued in the present petition. There is no act from which civil liability may arise that exists.

4. **CRIMINAL LAW; LIBEL; PRIVILEGED COMMUNICATION DESTROYS THE PRESUMPTION OF MALICE OR *MALICE IN LAW* AND CONSEQUENTLY REQUIRES THE PROSECUTION TO PROVE THE EXISTENCE *OF MALICE IN FACT*.—** The CA has acquitted Muñoz of libel because his statement is a privileged communication. In libel, the existence of malice is essential as it is an element of the crime. The law presumes that every imputation is malicious; this is referred to as ***malice in law.*** The presumption relieves the prosecution of the burden of proving that the imputations were made with malice. This presumption is rebutted if the accused proved that the imputation is true and published with good intention and justifiable motive. There are few circumstances wherein *malice in law* is inapplicable. For instance, Article 354 of the RPC further states that malice is not presumed when: (1) a private communication made by any person to another in the performance of any legal, moral or social duty; and (2) a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions. Jurisprudence supplements the enumeration in Article 354 of the RPC. In *Borjal v. CA,* we held that in view of the constitutional right on the freedoms of speech and of the press, *fair commentaries on matters of public interest* are privileged. In *Guingguing v. CA*, we ruled that the remarks directed against a *public figure* are likewise privileged. In order to justify a conviction in libel involving privileged communication, the prosecution must establish that the libelous statements were made or published with actual malice or ***malice in fact*** – the knowledge that the statement is false or with reckless disregard as to whether or not it was true. In other words, our rulings in *Borjal* and

Guingguing show that privileged communication has the effect of destroying the presumption of malice or *malice in law* and consequently requiring the prosecution to prove the existence of *malice in fact.*

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioner.
Burkley & Aquino Law Office for respondent.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] seeking to set aside the decision[2] dated January 31, 2007 and resolution[3] dated March 3, 2008 of the Court of Appeals (*CA*) in CA-G.R. CR No. 29355. The CA rulings reversed and set aside the decision[4] dated February 24, 2004 of the Regional Trial Court (*RTC*) of Legaspi City, Branch 5, in Criminal Case Nos. 9704, 9705 and 9737, and acquitted respondent Ludolfo P. Muñoz, Jr. (*Muñoz*) of three counts of libel.

Factual Antecedents

The case springs from the statements made by the respondent against the petitioner, Elizalde S. Co (*Co*), in several interviews with radio stations in Legaspi City. Muñoz, a contractor, was charged and arrested for perjury. Suspecting that Co, a wealthy businessman, was behind the filing of the suit, Muñoz made the following statements:

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[1] Under Rule 45 of the Revised Rules of Court; *rollo,* pp. 50-93.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., and concurred in by Associate Justices Vicente S.E. Veloso and Marlene Gonzales-Sison; *id. at* 97-110.

[3] *Id*. at 46-48.

[4] Penned by Judge Pedro R. Soriano; *id.* at 435-446.

(a) Co influenced the Office of the City Prosecutor of Legaspi City to expedite the issuance of warrant of arrest against Muñoz in connection with the perjury case;

(b) Co manipulated the results of the government bidding involving the Masarawag-San Francisco dredging project, and;

(c) Co received ₱2,000,000.00 from Muñoz on the condition that Co will sub-contract the project to Muñoz, which condition Co did not comply with.[5]

Consequently, Co filed his complaint-affidavit which led to the filing of three criminal informations for libel before the RTC.[6] Notably, Co did not waive, institute or reserve his right to file a separate civil action arising from Muñoz's libelous remarks against him.[7]

In his defense,[8] Muñoz countered that he revealed the anomalous government bidding as a call of public duty. In fact, he filed cases against Co before the Ombudsman involving the anomalous dredging project. Although the Ombudsman dismissed the cases, Muñoz claimed that the dismissal did not disprove the truth of his statements. He further argued that Co is a public figure considering his participation in government projects and his prominence in the business circles. He also emphasized that the imputations dealt with matters of public interest and are, thus, privileged. **Applying the rules on privileged communication to libel suits, the prosecution has the burden of proving the existence of actual malice, which, Muñoz claimed, it failed to do.**

In its decision, the RTC found Muñoz **guilty** of three counts of libel. The RTC ruled that the prosecution established the elements of libel. In contrast, Muñoz failed to show that the

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[5] *Id*. at 101, 106, 244, 374.

[6] Criminal Case Nos. 9704, 9705 and 9737, which were consolidated in view of the identity of parties and issues; RTC decision; *id*. at 435-446.

[7] *Id*. at 561.

[8] *Id*. at 372-383.

imputations were true and published with good motives and for justifiable ends, as required in Article 361 of the Revised Penal Code (*RPC*).[9] In light of the Ombudsman's dismissal of Muñoz' charges against Co, the RTC also held that Muñoz' statements were baseless accusations which are not protected as privileged communication.[10]

In addition to imprisonment, Muñoz was ordered to pay ₱5,000,000.00 for each count of libel as moral damages, ₱1,200,000.00 for expenses paid for legal services, and ₱297,699.00 for litigation expense.[11] Muñoz appealed his conviction with the CA.

The CA Ruling

The CA held that the subject matter of the interviews was impressed with public interest and Muñoz' statements were protected as privileged communication under the first paragraph of Article 354 of the RPC.[12]

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[9] Article 361. *Proof of the truth.* — In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is **true**, and, moreover, that it was published with **good motives and for justifiable ends**, the defendants shall be acquitted.

Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties.

In such cases if the defendant proves the truth of the imputation made by him, he shall be acquitted. (Emphasis ours)

[10] *Rollo,* p. 444.

[11] *Id*. at 446.

[12] *Id*. at 108; Article 354. *Requirement for publicity.* — Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

1. **A private communication made by any person to another in the performance of any legal, moral or social duty**; and

2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions. (Emphasis ours)

It also declared that Co was a public figure based on the RTC's findings that he was a *"well-known, highly-regarded and recognized in business circles."*[13] As a public figure, Co is subject to criticisms on his acts that are imbued with public interest.[14] Hence, the CA **reversed** the RTC decision and **acquitted** Muñoz of the libel charges due to the prosecution's failure to establish the existence of actual malice.

The Petitioner's Arguments

In the present petition, Co acknowledges that he may no longer appeal the criminal aspect of the libel suits because that would violate Muñoz' right against double jeopardy. Hence, he claims damages only on the basis of **Section 2, Rule 111 of the Rules of Court (*ROC*),** which states that the extinction of the penal action does not carry with it the extinction of the civil action. He avers that this principle applies in general whether the civil action is instituted with or separately from the criminal action.[15] He also claims that the civil liability of an accused may be appealed in case of acquittal.[16]

Co further makes the following submissions:

First, the CA erred when it disregarded the presumption of malice under Article 354[17] of the RPC. To overcome this

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[13] See *rollo*, pp. 444-445, wherein the RTC stated: "Mr. Elizalde Co is a respected person in the community. He is well-known – a big-time businessman – his name a by-word in the business circles – with his construction company conferred with the highest Triple AAA category rating to engage in the construction business – with membership in several private and public associations. The church recognized his charitable work bestowing him with a recognition award as a distinguished alumnus. He carries the unsullied good reputation of his family untarnished by any scandal in the past. x x x "

[14] *Id.* at 108.

[15] *Id.* at 592.

[16] Citing *Bautista v. CA,* G.R. No. 46025, September 2, 1992, 213 SCRA 231; *id.* at 593.

[17] Article 354. *Requirement for publicity.* — **Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown**, x x x (Emphasis ours)

presumption, Muñoz should have presented evidence on good or justifiable motive for his statements.[18] On the contrary, the context of Muñoz's radio interviews reflects his evident motive to injure Co's reputation instead of a sincere call of public duty.[19]

Second, the CA erred in declaring Co as a public figure based on the RTC findings that he is known in his community. He claims this as a relatively limited community comprising of his business associates.[20]

The Respondent's Arguments

Muñoz argues that Co misunderstood **Section 2, Rule 111 of the ROC** because, as its title suggests, the provision presupposes the filing of a civil action *separately* from the criminal action. Thus, when there is no reservation of the right to separately institute the civil action arising from the offense, the extinction of the criminal action extinguishes the civil action. **Since Co did not reserve his right to separately institute a civil action arising from the offense, the dismissal of the criminal action bars him from filing the present petition to enforce the civil liability**.[21]

Muñoz further posits that Co is not entitled to recover damages because there is no wrongful act to speak of. Citing *De la Rosa, et al. v. Maristela*,[22] he argues that if there is no libel due to the privileged character of the communication and actual malice is not proved, there should be no award of moral damages.[23]

Lastly, Muñoz avers that Co is indirectly challenging the factual and legal issues which the CA has already settled in acquitting him. Muñoz explains that this Court may no longer

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[18] *Rollo,* pp. 654-656.

[19] *Id.* at 87.

[20] *Id.* at 80.

[21] *Id.* at 560-561, citing *People v. Pantig*, 97 Phil. 748 (1955).

[22] (CA) 50 O.G. 254.

[23] Pages 10-12, Memorandum for the Respondent.

overturn the CA's findings as the doctrine of double jeopardy has set in.[24]

The Issues

The parties' arguments, properly joined, present to us the following issues:

1. whether a private party may appeal the judgment of acquittal insofar as he seeks to enforce the accused's civil liability; and
2. whether the respondent is liable for damages arising from the libelous remarks despite his acquittal.

The Court's Ruling

We do not find the petition meritorious.

The private party may appeal the judgment of acquittal insofar as he seeks to enforce the accused's civil liability.

The parties have conflicting interpretations of the last paragraph of Section 2, Rule 111 of the ROC, which states:

> **The extinction of the penal action does not carry with it extinction of the civil action.** However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist. (Emphasis ours)

Muñoz claims that the last paragraph of Section 2, Rule 111 of the ROC applies only if the civil liability *ex delicto* is separately instituted or when the right to file it separately was properly reserved. In contrast, Co claims that Muñoz' acquittal of the crime of libel did not extinguish the civil aspect of the case because Muñoz' utterance of the libelous remarks remains undisputed.

We reject Muñoz' claim. The last paragraph of Section 2, Rule 111 of the ROC applies to civil actions to claim civil liability

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[24] Page 14, Memorandum for the Respondent.

arising from the offense charged, regardless if the action is ***instituted with*** or ***filed separately*** from the criminal action. Undoubtedly, Section 2, Rule 111 of the ROC governs situations when the offended party opts to institute the civil action separately from the criminal action; hence, its title "*When separate civil action is suspended.*" Despite this wording, the last paragraph, by its terms, governs all claims for civil liability ***ex delicto***. This is based on Article 100 of the RPC which states that that "[e]very person criminally liable for a felony is also civilly liable." Each criminal act gives rise to two liabilities: one criminal and one civil.

Reflecting this policy, our procedural rules provide for two modes by which civil liability *ex delicto* may be enforced: (1) through a civil action that is deemed impliedly instituted in the criminal action;[25] (2) through a civil action that is filed separately, either before the criminal action or after, upon reservation of the right to file it separately in the criminal action.[26] The offended party may also choose to waive the civil action.[27] This dual mode of enforcing civil liability *ex delicto* does not affect its nature, as may be apparent from a reading of the second paragraph of Section 2, Rule 120 of the ROC, which states:

> Section 2. Contents of the judgment. — x x x
>
> In case the judgment is of acquittal, it shall state whether the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, **the judgment shall determine if the act or omission from which the civil liability might arise did not exist.** (Emphasis ours)

If, as Muñoz suggests, the extinction of the penal action carries with it the extinction of the civil action that was *instituted with* the criminal action, then Section 2, Rule 120 of the ROC becomes an irrelevant provision. There would be no need for the judgment

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[25] Rules of Court, Rule 111, Section 1.

[26] *Id*.

[27] *Id*.

of the acquittal to determine whether "*the act or omission from which the civil liability may arise did not exist.*" The Rules precisely require the judgment to declare if there remains a basis to hold the accused civilly liable despite acquittal so that the offended party may avail of the proper remedies to enforce his claim for civil liability *ex delicto.*

In *Ching v. Nicdao and CA*,[28] the Court ruled that an appeal is the proper remedy that a party – whether the accused or the offended party – may avail with respect to the judgment:

> If the accused is acquitted on reasonable doubt but the court renders judgment on the civil aspect of the criminal case, the prosecution cannot appeal from the judgment of acquittal as it would place the accused in double jeopardy. **However, the aggrieved party, the offended party or the accused or both may appeal from the judgment on the civil aspect of the case within the period therefor.**
>
> **From the foregoing, petitioner Ching correctly argued that he, as the offended party, may appeal the civil aspect of the case notwithstanding respondent Nicdao's acquittal by the CA. The civil action was impliedly instituted with the criminal action since he did not reserve his right to institute it separately nor did he institute the civil action prior to the criminal action.** (Emphasis ours)

Moreover, an appeal is favored over the institution of a separate civil action because the latter would only add to our clogged dockets.[29]

To reiterate, the extinction of the penal action does not necessarily carry with it the extinction of the civil action, whether the latter is instituted with or separately from the criminal action. The offended party may still claim civil liability *ex delicto* if there is a finding in the final judgment in the criminal action that the act or omission from which the liability may arise exists. Jurisprudence has enumerated three instances when, notwithstanding the accused's acquittal, the offended party may

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[28] G.R. No. 141181, April 27, 2007, 522 SCRA 316, 353.

[29] *Padilla v. CA*, 214 Phil. 492 (1984).

still claim civil liability *ex delicto:* (a) if the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) if the court declared that the liability of the accused is only civil; and (c) if the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. We thus now proceed to determine if Co's claim falls under any of these three situations.

The respondent is not civilly liable because no libel was committed.

The CA has acquitted Muñoz of libel because his statement is a privileged communication. In libel, the existence of malice is essential as it is an element of the crime.[30] The law presumes that every imputation is malicious;[31] this is referred to as ***malice in law.*** The presumption relieves the prosecution of the burden of proving that the imputations were made with malice. This presumption is rebutted if the accused proved that the imputation is true and published with good intention and justifiable motive.[32]

There are few circumstances wherein *malice in law* is inapplicable. For instance, Article 354 of the RPC further states that malice is not presumed when:

(1) a private communication made by any person to another in the performance of any legal, moral or social duty;[33] and

(2) a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or

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[30] In *Daez v. Court of Appeals*, G.R. No. 47971, October 31, 1990, 191 SCRA 61, 67, this Court held that there is libel only if the following elements exist: (a) imputation of a discreditable act or condition to another; (b) publication of the imputation; (c) identity of the person defamed; and, (d) **existence of malice**.

[31] Article 354 of the RPC.

[32] First paragraph, Art. 354, Revised Penal Code.

[33] Art. 354(1), Revised Penal Code.

> of any other act performed by public officers in the exercise of their functions.[34]

Jurisprudence supplements the enumeration in Article 354 of the RPC. In *Borjal v. CA,*[35] we held that in view of the constitutional right on the freedoms of speech and of the press, *fair commentaries on matters of public interest* are privileged. In *Guingguing v. CA*,[36] we ruled that the remarks directed against a *public figure* are likewise privileged. In order to justify a conviction in libel involving privileged communication, the prosecution must establish that the libelous statements were made or published with actual malice or ***malice in fact*** – the knowledge that the statement is false or with reckless disregard as to whether or not it was true.[37] In other words, our rulings in *Borjal* and *Guingguing* show that privileged communication has the effect of destroying the presumption of malice or *malice in law* and consequently requiring the prosecution to prove the existence of *malice in fact.*

In the present case, the CA declared that the libelous remarks are privileged. The legal conclusion was arrived at from the fact that Co is a public figure, the subject matter of the libelous remarks was of public interest, and the context of Muñoz' statements were fair comments. Consequently, malice is no longer presumed and the prosecution has the burden of proving that Muñoz acted with malice in fact. The CA found that the prosecution failed in this respect.

Co assails the CA's ruling by raising arguments that essentially require a review of the CA's factual and legal findings. However, the Court cannot, through the present petition, review these findings without going against the requirements of Rule 45 with respect to factual matters, and without violating Muñoz' right

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[34] Art. 354(2), Revised Penal Code.

[35] 361 Phil. 1 (1999).

[36] 508 Phil. 193(2005).

[37] *Supra* note 35 and 36.

against double jeopardy given that the acquittal is essentially anchored on a question of fact.

In light of the privileged nature of Muñoz' statements and the failure of the prosecution to prove malice in fact, there was no libel that was committed by Muñoz. Without the crime, no civil liability *ex delicto* may be claimed by Co that can be pursued in the present petition. There is no act from which civil liability may arise that exists.

WHEREFORE, premises considered, we **DENY** the petition. The Decision of the Court of Appeals (*CA*) in CA-G.R. CR No. 29355 dated January 31, 2007 is **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182356. December 4, 2013]

DRA. LEILA A. DELA LLANA, *petitioner, vs.* **REBECCA BIONG, doing business under the name and style of Pongkay Trading,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; THE SUPREME COURT MAY REVIEW QUESTIONS OF FACT IN A PETITION FOR REVIEW ON *CERTIORARI* WHEN THE FINDINGS OF FACT BY THE LOWER COURTS ARE CONFLICTING.— The issue before us involves a question of fact and this Court is not a trier of facts. As a general rule,

the CA's findings of fact are final and conclusive and this Court will not review them on appeal. It is not the function of this Court to examine, review or evaluate the evidence in a petition for review on *certiorari* under Rule 45 of the Rules of Court. We can only review the presented evidence, by way of exception, when the conflict exists in findings of the RTC and the CA. We see this exceptional situation here and thus accordingly examine the relevant evidence presented before the trial court.

2. **ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; PREPONDERANCE OF EVIDENCE IN CIVIL CASES; PETITIONER FAILED TO ESTABLISH HER CASE BY PREPONDERANCE OF EVIDENCE.—** In civil cases, a party who alleges a fact has the burden of proving it. **He who alleges has the burden of proving his allegation by preponderance of evidence or greater weight of credible evidence.** *The reason for this rule is that bare allegations, unsubstantiated by evidence, are not equivalent to proof.* In short, mere allegations are not evidence. In the present case, the burden of proving the proximate causation between Joel's negligence and Dra. dela Llana's whiplash injury rests on Dra. dela Llana. She must establish by preponderance of evidence that Joel's negligence, in its natural and continuous sequence, unbroken by any efficient intervening cause, produced her whiplash injury, and without which her whiplash injury would not have occurred. Notably, Dra. dela Llana anchors her claim mainly on three pieces of evidence: **(1)** the pictures of her damaged car, **(2)** the medical certificate dated November 20, 2000, and **(3)** her testimonial evidence. However, none of these pieces of evidence show the causal relation between the vehicular accident and the whiplash injury. In other words, **Dra. dela Llana, during trial, did not adduce the *factum probans* or the evidentiary facts by which the *factum probandum* or the ultimate fact can be established**, as fully discussed below.

3. **ID.; ID.; ID.; ID.; CAUSATION OF PETITIONER'S WHIPLASH INJURY CANNOT BE INFERRED FROM THE PICTURES OF THE DAMAGED CAR.—** Dra. dela Llana contends that the pictures of the damaged car show that the massive impact of the collision caused her whiplash injury. We are not persuaded by this bare claim. Her insistence that these pictures show the causation grossly belies common logic. These pictures indeed demonstrate the impact of the collision.

However, it is a far-fetched assumption that the whiplash injury can also be inferred from these pictures.

4. **ID.; ID.; ID.; ID.; THE MEDICAL CERTIFICATE CANNOT BE CONSIDERED BECAUSE IT WAS NOT ADMITTED IN EVIDENCE.—** Furthermore, the medical certificate, marked as Exhibit "H" during trial, should not be considered in resolving this case for the reason that it was not admitted in evidence by the RTC in an order dated September 23, 2004. Thus, the CA erred in even considering this documentary evidence in its resolution of the case. It is a basic rule that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments. However, even if we consider the medical certificate in the disposition of this case, the medical certificate has no probative value for being hearsay. It is a basic rule that evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand. Hearsay evidence, whether objected to or not, cannot be given credence except in very unusual circumstance that is not found in the present case. Furthermore, admissibility of evidence should not be equated with weight of evidence. The admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the Rules of Court. x x x Evidently, it was Dr. Milla who had personal knowledge of the contents of the medical certificate. However, she was not presented to testify in court and was not even able to identify and affirm the contents of the medical certificate. Furthermore, Rebecca was deprived of the opportunity to cross-examine Dr. Milla on the accuracy and veracity of her findings.

5. **ID.; ID.; ID.; ID.; THE MEDICAL CERTIFICATE MERELY CHRONICLED PETITIONER'S MEDICAL HISTORY AND DID NOT EXPLAIN THE CHAIN OF CAUSATION IN FACT BETWEEN THE TRUCK DRIVER'S RECKLESS DRIVING AND PETITIONER'S WHIPLASH INJURY.—** We also point out in this respect that the medical certificate nonetheless did not explain the chain of causation in fact between Joel's reckless driving and Dra. dela Llana's whiplash injury.

It did not categorically state that the whiplash injury was a result of the vehicular accident. A perusal of the medical certificate shows that it only attested to her medical condition, *i.e.*, that she was suffering from whiplash injury. However, the medical certificate failed to substantially relate the vehicular accident to Dra. dela Llana's whiplash injury. Rather, the medical certificate only **chronicled** her medical history and physical examinations.

6. **ID.; ID.; ID.; ID.; WHILE PETITIONER IS A PHYSICIAN, HER MEDICAL OPINION ON THE NATURE, AND THE CAUSE AND EFFECTS OF WHIPLASH INJURY CANNOT BE GIVEN PROBATIVE VALUE BECAUSE SHE WAS NOT PRESENTED AS AN EXPERT WITNESS.—** Interestingly, the present case is peculiar in the sense that Dra. dela Llana, as the plaintiff in this quasi-delict case, was the **lone** physician-witness during trial. Significantly, she merely testified as an **ordinary witness** before the trial court. Dra. dela Llana essentially claimed in her testimony that Joel's reckless driving caused her whiplash injury. Despite the fact that Dra. dela Llana is a physician and even assuming that she is an expert in neurology, we cannot give weight to her opinion that Joel's reckless driving caused her whiplash injury without violating the rules on evidence. Under the Rules of Court, there is a substantial difference between an ordinary witness and an expert witness. The opinion of an ordinary witness may be received in evidence regarding: **(a)** the identity of a person about whom he has adequate knowledge; **(b)** a handwriting with which he has sufficient familiarity; and **(c)** the mental sanity of a person with whom he is sufficiently acquainted. Furthermore, the witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person. On the other hand, the opinion of an expert witness may be received in evidence on a matter requiring special knowledge, skill, experience or training which he shown to possess. However, courts do not immediately accord probative value to an admitted expert testimony, much less to an unobjected ordinary testimony respecting special knowledge. The reason is that the probative value of an expert testimony does not lie in a simple exposition of the expert's opinion. Rather, its weight lies in the assistance that the expert witness may afford the courts *by demonstrating the facts which serve as a basis for his opinion and the reasons on which the logic of his conclusions is founded.*

In the present case, Dra. dela Llana's medical opinion cannot be given probative value for the reason that she was not presented as an expert witness. As an ordinary witness, she was not competent to testify on the nature, and the cause and effects of whiplash injury. Furthermore, we emphasize that Dra. dela Llana, during trial, nonetheless did not provide a medical explanation on the nature as well as the cause and effects of whiplash injury in her testimony.

7. **ID.; ID.; ID.; ID.; THE SUPREME COURT CANNOT TAKE JUDICIAL NOTICE THAT VEHICULAR ACCIDENTS CAUSE WHIPLASH INJURIES; PETITIONER DID NOT PRESENT ANY TESTIMONIAL OR DOCUMENTARY EVIDENCE THAT DIRECTLY SHOWS THE CAUSAL RELATION BETWEEN THE VEHICULAR ACCIDENT AND HER INJURY.—** Indeed, a perusal of the pieces of evidence presented by the parties before the trial court shows that **Dra. dela Llana did not present any testimonial or documentary evidence that directly shows the causal relation between the vehicular accident and Dra. dela Llana's injury.** Her claim that Joel's negligence caused her whiplash injury was not established because of the deficiency of the presented evidence during trial. We point out in this respect that courts cannot take judicial notice that vehicular accidents cause whiplash injuries. This proposition is not public knowledge, or is capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. We have no expertise in the field of medicine. Justices and judges are only tasked to apply and interpret the law on the basis of the parties' pieces of evidence and their corresponding legal arguments. In sum, Dra. dela Llana miserably failed to establish her case by preponderance of evidence. While we commiserate with her, our solemn duty to independently and impartially assess the merits of the case binds us to rule against Dra. dela Llana's favor. Her claim, unsupported by preponderance of evidence, is merely a bare assertion and has no leg to stand on.

8. **CIVIL LAW; CIVIL CODE; QUASI-DELICT; THE ELEMENTS NECESSARY TO ESTABLISH A QUASI-DELICT MUST BE FIRST ESTABLISHED BY PREPONDERANCE OF EVIDENCE BEFORE WE DETERMINE RESPONDENT'S LIABILITY AS THE TRUCK DRIVER'S EMPLOYER.—** Article 2176 of the Civil

Code provides that "[w]hoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is a quasi-delict." Under this provision, the elements necessary to establish a quasi-delict case are: (1) damages to the plaintiff; (2) negligence, by act or omission, of the defendant or by some person for whose acts the defendant must respond, was guilty; and **(3) the connection of cause and effect between such negligence and the damages.** These elements show that the source of obligation in a quasi-delict case is the breach or omission of mutual duties that civilized society imposes upon its members, or which arise from non-contractual relations of certain members of society to others. **Based on these requisites, Dra. dela Llana must first establish by preponderance of evidence the three elements of quasi-delict before we determine Rebecca's liability as Joel's employer.** She should show the chain of causation between Joel's reckless driving and her whiplash injury. *Only after she has laid this foundation can the presumption — that Rebecca did not exercise the diligence of a good father of a family in the selection and supervision of Joel — arise.* Once negligence, the damages and the proximate causation are established, this Court can then proceed with the application and the interpretation of the fifth paragraph of Article 2180 of the Civil Code. Under Article 2176 of the Civil Code, in relation with the fifth paragraph of Article 2180, "an action predicated on an employee's act or omission may be instituted against the employer who is held liable for the negligent act or omission committed by his employee." The rationale for these graduated levels of analyses is that it is essentially the wrongful or negligent act or omission itself which creates the *vinculum juris* in extra-contractual obligations.

APPEARANCES OF COUNSEL

Henry LL. Yusingco, Jr. for petitioner.
Salvador B. Hababag for respondent.

DECISION

BRION, *J*.:

Every case essentially turns on two basic questions: questions of fact and questions of law. Questions of fact are for the parties and their counsels to respond to, based on what supporting facts the legal questions require; the court can only draw conclusion from the facts or evidence adduced. When the facts are lacking because of the deficiency of presented evidence, then the court can only draw one conclusion: that the case must fail for lack of evidentiary support.

The present case is one such case as Dra. Leila A. dela Llana's *(petitioner)* petition for review on *certiorari*[1] challenging the February 11, 2008 decision[2] and the March 31, 2008 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CV No. 89163.

The Factual Antecedents

On March 30, 2000, at around 11:00 p.m., Juan dela Llana was driving a 1997 Toyota Corolla car along North Avenue, Quezon City.[4] His sister, Dra. dela Llana, was seated at the front passenger seat while a certain Calimlim was at the backseat.[5] Juan stopped the car across the Veterans Memorial Hospital when the signal light turned red. A few seconds after the car halted, a dump truck containing gravel and sand suddenly rammed the car's rear end, violently pushing the car forward. Due to the impact, the car's rear end collapsed and its rear windshield was shattered. Glass splinters flew, puncturing Dra. dela Llana.

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[1] Dated May 20, 2008 and filed under Rule 45 of the Rules of Court; *rollo,* pp. 8-30.

[2] *Id*. at 39-55; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas.

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

[4] *Id*. at 40.

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

Apart from these minor wounds, Dra. dela Llana did not appear to have suffered from any other visible physical injuries.[6]

The traffic investigation report dated March 30, 2000 identified the truck driver as Joel Primero. It stated that Joel was recklessly imprudent in driving the truck.[7] Joel later revealed that his employer was respondent Rebecca Biong, doing business under the name and style of "Pongkay Trading" and was engaged in a gravel and sand business.[8]

In the first week of May 2000, Dra. dela Llana began to feel mild to moderate pain on the left side of her neck and shoulder. The pain became more intense as days passed by. Her injury became more severe. Her health deteriorated to the extent that she could no longer move her left arm. On June 9, 2000, she consulted with Dr. Rosalinda Milla, a rehabilitation medicine specialist, to examine her condition. Dr. Milla told her that she suffered from a whiplash injury, an injury caused by the compression of the nerve running to her left arm and hand. Dr. Milla required her to undergo physical therapy to alleviate her condition.

Dra. dela Llana's condition did not improve despite three months of extensive physical therapy.[9] She then consulted other doctors, namely, Drs. Willie Lopez, Leonor Cabral-Lim and Eric Flores, in search for a cure. Dr. Flores, a neuro-surgeon, finally suggested that she undergo a cervical spine surgery to release the compression of her nerve. On October 19, 2000, Dr. Flores operated on her spine and neck, between the C5 and the C6 vertebrae.[10] The operation released the impingement of the nerve, but incapacitated Dra. dela Llana from the practice of her profession since June 2000 despite the surgery.[11]

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[6] *Id.* at 43.

[7] RTC *rollo,* p. 117.

[8] *Rollo,* p. 43.

[9] *Id.* at 44-45.

[10] RTC *rollo,* pp. 121-122.

[11] *Rollo,* p. 45.

Dra. dela Llana, on October 16, 2000, demanded from Rebecca compensation for her injuries, but Rebecca refused to pay.[12] Thus, on May 8, 2001, Dra. dela Llana sued Rebecca for damages before the Regional Trial Court of Quezon City *(RTC)*. She alleged that she lost the mobility of her arm as a result of the vehicular accident and claimed ₱150,000.00 for her medical expenses (as of the filing of the complaint) and an average monthly income of ₱30,000.00 since June 2000. She further prayed for actual, moral, and exemplary damages as well as attorney's fees.[13]

In defense, Rebecca maintained that Dra. dela Llana had no cause of action against her as no reasonable relation existed between the vehicular accident and Dra. dela Llana's injury. She pointed out that Dra. dela Llana's illness became manifest one month and one week from the date of the vehicular accident. As a counterclaim, she demanded the payment of attorney's fees and costs of the suit.[14]

At the trial, Dra. dela Llana presented herself as an **ordinary witness**[15] and Joel as a hostile witness.[16] Dra. dela Llana reiterated that she lost the mobility of her arm because of the vehicular accident. To prove her claim, she identified and authenticated a **medical certificate dated November 20, 2000** issued by Dr. Milla. The medical certificate stated that Dra. dela Llana suffered from a whiplash injury. It also chronicled her clinical history and physical examinations.[17] Meanwhile, Joel testified that his truck hit the car because the truck's brakes got stuck.[18]

In defense, Rebecca testified that Dra. dela Llana was physically fit and strong when they met several days after the

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[12] RTC *rollo,* p. 139.

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

[14] *Id.* at 10-14.

[15] *Id.* at 254.

[16] *Id.* at 640.

[17] *Id.* at 121-123.

[18] *Rollo,* p. 47.

vehicular accident. She also asserted that she observed the diligence of a good father of a family in the selection and supervision of Joel. She pointed out that she required Joel to submit a certification of good moral character as well as barangay, police, and NBI clearances prior to his employment. She also stressed that she only hired Primero after he successfully passed the driving skills test conducted by Alberto Marcelo, a licensed driver-mechanic.[19]

Alberto also took the witness stand. He testified that he checked the truck in the morning of March 30, 2000. He affirmed that the truck was in good condition prior to the vehicular accident. He opined that the cause of the vehicular accident was a damaged compressor. According to him, the absence of air inside the tank damaged the compressor. [20]

RTC Ruling

The RTC ruled in favor of Dra. dela Llana and held that the proximate cause of Dra. dela Llana's whiplash injury to be Joel's reckless driving.[21] It found that a whiplash injury is an injury caused by the sudden jerking of the spine in the neck area. It pointed out that the massive damage the car suffered only meant that the truck was over-speeding. It maintained that Joel should have driven at a slower pace because road visibility diminishes at night. He should have blown his horn and warned the car that his brake was stuck and could have prevented the collision by swerving the truck off the road. It also concluded that Joel was probably sleeping when the collision occurred as Joel had been driving for fifteen hours on that fateful day.

The RTC further declared that Joel's negligence gave rise to the presumption that Rebecca did not exercise the diligence of a good father of a family in Joel's selection and supervision of Joel. Rebecca was vicariously liable because she was the employer and she personally chose him to drive the truck. On the day of

[19] *Id*. at 47-49.

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

[21] Dated April 19, 2007; *id.* at 36.

the collision, she ordered him to deliver gravel and sand to Muñoz Market, Quezon City. The Court concluded that the three elements necessary to establish Rebecca's liability were present: (1) that the employee was chosen by the employer, personally or through another; (2) that the services were to be rendered in accordance with orders which the employer had the authority to give at all times; and (3) that the illicit act of the employee was on the occasion or by reason of the functions entrusted to him.

The RTC thus awarded Dra. dela Llana the amounts of ₱570,000.00 as actual damages, ₱250,000.00 as moral damages, and the cost of the suit.[22]

CA Ruling

In a decision dated February 11, 2008, the CA reversed the RTC ruling. It held that Dra. dela Llana failed to establish a reasonable connection between the vehicular accident and her whiplash injury by preponderance of evidence. Citing *Nutrimix Feeds Corp. v. Court of Appeals*,[23] it declared that courts will not hesitate to rule in favor of the other party if there is no evidence or the evidence is too slight to warrant an inference establishing the fact in issue. It noted that the interval between the date of the collision and the date when Dra. dela Llana began to suffer the symptoms of her illness was lengthy. It concluded that this interval raised doubts on whether Joel's reckless driving and the resulting collision in fact caused Dra. dela Llana's injury.

It also declared that courts cannot take judicial notice that vehicular accidents cause whiplash injuries. It observed that Dra. dela Llana did not immediately visit a hospital to check if she sustained internal injuries after the accident. Moreover, her failure to present expert witnesses was fatal to her claim. It also gave no weight to the medical certificate. The medical certificate did not explain how and why the vehicular accident caused the injury.[24]

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[22] *Id.* at 31-37.

[23] 484 Phil. 330-349 (2004).

[24] *Supra* note 2.

The Petition

Dra. dela Llana points out in her petition before this Court that *Nutrimix* is inapplicable in the present case. She stresses that *Nutrimix* involved the application of Article 1561 and 1566 of the Civil Code, provisions governing hidden defects. Furthermore, there was absolutely no evidence in *Nutrimix* that showed that poisonous animal feeds were sold to the respondents in that case.

As opposed to the respondents in *Nutrimix,* Dra. dela Llana asserts that she has established by preponderance of evidence that Joel's negligent act was the proximate cause of her whiplash injury. ***First***, pictures of her damaged car show that the collision was strong. She posits that it can be reasonably inferred from these pictures that the massive impact resulted in her whiplash injury. ***Second***, Dr. Milla categorically stated in the medical certificate that Dra. dela Llana suffered from whiplash injury. ***Third***, her testimony that the vehicular accident caused the injury is credible because she was a surgeon.

Dra. dela Llana further asserts that the medical certificate has probative value. Citing several cases, she posits that an uncorroborated medical certificate is credible if uncontroverted.[25] She points out that expert opinion is unnecessary if the opinion merely relates to matters of common knowledge. She maintains that a judge is qualified as an expert to determine the causation between Joel's reckless driving and her whiplash injury. Trial judges are aware of the fact that whiplash injuries are common in vehicular collisions.

The Respondent's Position

In her *Comment*,[26] Rebecca points out that Dra. dela Llana raises a factual issue which is beyond the scope of a petition for review on *certiorari* under Rule 45 of the Rules of Court.

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[25] Citing *GSIS v. Ibarra*, 562 Phil. 924-938 (2009); *Ijares v. Court of Appeals,* 372 Phil. 9-21 (1999); and *Loot v. GSIS*, G.R. No. 86994, June 30, 1993, 224 SCRA 54-61.

[26] *Rollo,* pp. 102-109.

She maintains that the CA's findings of fact are final and conclusive. Moreover, she stresses that Dra. dela Llana's arguments are not substantial to merit this Court's consideration.

The Issue

The sole issue for our consideration in this case is whether Joel's reckless driving is the proximate cause of Dra. dela Llana's whiplash injury.

Our Ruling

We find the petition unmeritorious.

The Supreme Court may review questions of fact in a petition for review on certiorari when the findings of fact by the lower courts are conflicting

The issue before us involves a question of fact and this Court is not a trier of facts. As a general rule, the CA's findings of fact are final and conclusive and this Court will not review them on appeal. It is not the function of this Court to examine, review or evaluate the evidence in a petition for review on *certiorari* under Rule 45 of the Rules of Court. We can only review the presented evidence, by way of exception, when the conflict exists in findings of the RTC and the CA.[27] We see this exceptional situation here and thus accordingly examine the relevant evidence presented before the trial court.

Dra. dela Llana failed to establish her case by preponderance of evidence

Article 2176 of the Civil Code provides that "[w]hoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation

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[27] *Carvajal v. Luzon Development Bank and/or Ramirez,* G.R. No. 186169, August 1, 2012, 678 SCRA 132, 140-141.

between the parties, is a quasi-delict." Under this provision, the elements necessary to establish a quasi-delict case are: (1) damages to the plaintiff; (2) negligence, by act or omission, of the defendant or by some person for whose acts the defendant must respond, was guilty; and **(3) the connection of cause and effect between such negligence and the damages.**[28] These elements show that the source of obligation in a quasi-delict case is the breach or omission of mutual duties that civilized society imposes upon its members, or which arise from non-contractual relations of certain members of society to others.[29]

Based on these requisites, Dra. dela Llana must first establish <u>by preponderance of evidence</u> the three elements of quasi-delict before we determine Rebecca's liability as Joel's employer. She should show the chain of causation between Joel's reckless driving and her whiplash injury. *Only after she has laid this foundation can the presumption — that Rebecca did not exercise the diligence of a good father of a family in the selection and supervision of Joel — arise.*[30] Once negligence, the damages and the proximate causation are established, this Court can then proceed with the application and the interpretation of the fifth paragraph of Article 2180 of the Civil Code.[31] Under Article 2176 of the Civil Code, in relation with the fifth paragraph of Article 2180, "an action predicated on an employee's act or omission may be instituted against the employer who is held liable for the negligent act or omission committed by his employee."[32] The rationale for these graduated levels of analyses is that it is essentially the wrongful

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[28] *Vergara v. CA,* 238 Phil. 566, 568 (1987).

[29] *Cangco v. Manila Railroad Co.,* 38 Phil. 775 (1918).

[30] *Syki v. Begasa,* 460 Phil. 386 (2003).

[31] The fifth paragraph of Article 2180 of the Civil Code provides:

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

[32] *Filcar Transport Services v. Espinas,* G.R. No. 174156, June 20, 2012, 674 SCRA 118, 128.

or negligent act or omission itself which creates the *vinculum juris* in extra-contractual obligations.[33]

In civil cases, a party who alleges a fact has the burden of proving it. **He who alleges has the burden of proving his allegation by preponderance of evidence or greater weight of credible evidence.**[34] *The reason for this rule is that bare allegations, unsubstantiated by evidence, are not equivalent to proof.* In short, mere allegations are not evidence.[35]

In the present case, the burden of proving the proximate causation between Joel's negligence and Dra. dela Llana's whiplash injury rests on Dra. dela Llana. She must establish by preponderance of evidence that Joel's negligence, in its natural and continuous sequence, unbroken by any efficient intervening cause, produced her whiplash injury, and without which her whiplash injury would not have occurred. [36]

Notably, Dra. dela Llana anchors her claim mainly on three pieces of evidence: **(1)** the pictures of her damaged car, **(2)** the medical certificate dated November 20, 2000, and **(3)** her testimonial evidence. However, none of these pieces of evidence show the causal relation between the vehicular accident and the whiplash injury. In other words, **Dra. dela Llana, during trial, did not adduce the *factum probans* or the evidentiary facts by which the *factum probandum* or the ultimate fact can be established**, as fully discussed below.[37]

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[33] *Supra* note 29.

[34] *Eulogio v. Spouses Apeles,* G.R. No. 167884, January 20, 2009, 576 SCRA 562, 571-572, citing *Go v. Court of Appeals,* 403 Phil. 883, 890-891 (2001).

[35] *Real v. Belo,* 542 Phil. 111, 122 (2007), citing *Domingo v. Robles,* G.R. No. 153743, March 18, 2005, 453 SCRA 812, 818; and *Ongpauco v. CA,* G.R. No. 134039, December 21, 2004, 447 SCRA 395, 400.

[36] *Vda. de Bataclan v. Medina,* 102 Phil. 186 (1957).

[37] *Gomez v. Gomez-Samson,* 543 Phil. 468 (2007).

A. The pictures of the damaged car only demonstrate the impact of the collision

Dra. dela Llana contends that the pictures of the damaged car show that the massive impact of the collision caused her whiplash injury. We are not persuaded by this bare claim. Her insistence that these pictures show the causation grossly belies common logic. These pictures indeed demonstrate the impact of the collision. However, it is a far-fetched assumption that the whiplash injury can also be inferred from these pictures.

B. The medical certificate cannot be considered because it was not admitted in evidence

Furthermore, the medical certificate, marked as Exhibit "H" during trial, should not be considered in resolving this case for the reason that it was not admitted in evidence by the RTC in an order dated September 23, 2004.[38] Thus, the CA erred in even considering this documentary evidence in its resolution of the case. It is a basic rule that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments.

However, even if we consider the medical certificate in the disposition of this case, the medical certificate has no probative value for being hearsay. It is a basic rule that evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand.[39] Hearsay evidence, whether objected to or not, cannot be given credence[40]

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[38] RTC *rollo,* p. 145.

[39] RULES OF COURT, Rule 130, Section 36.

[40] *Benguet Exploration, Inc. v. CA,* 404 Phil. 287 (2001), citing *PNOC Shipping and Transport Corp. v. CA*, 358 Phil. 41, 60 (1998).

except in very unusual circumstance that is not found in the present case. Furthermore, admissibility of evidence should not be equated with weight of evidence. The admissibility of evidence depends on its relevance and competence, while the weight of evidence pertains to evidence already admitted and its tendency to convince and persuade. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the Rules of Court.[41]

During trial, Dra. dela Llana testified:

"Q:	Did your physician tell you, more or less, what was the reason why you were feeling that pain in your left arm?
A:	**Well, I got a certificate from her and in that certificate, she stated that my condition was due to a compression of the nerve, which supplied my left arm and my left hand.**
Court:	By the way, what is the name of this physician, Dra.?
Witness:	Her name is Dra. Rosalinda Milla. She is a Rehabilitation Medicine Specialist.
Atty. Yusingco:	**You mentioned that this Dra. Rosalinda Milla made or issued a medical certificate. What relation does this medical certificate, marked as Exhibit H have to do with that certificate, you said was made by Dra. Milla?**
Witness:	**This is the medical certificate that Dra. Milla made out for me.**
Atty. Yusingco:	**Your Honor, this has been marked as Exhibit H.**
Atty. Yusingco:	What other medical services were done on you, Dra. dela Llana, as a result of that feeling, that pain that you felt in your left arm?

[41] *Tating v. Marcela,* 548 Phil. 19, 28 (2007)

Witness:	Well, aside from the medications and physical therapy, a re-evaluation of my condition after three months indicated that I needed surgery.
Atty. Yusingco:	Did you undergo this surgery?
Witness:	So, on October 19, I underwent surgery on my neck, on my spine.
Atty. Yusingco:	And, what was the result of that surgical operation?
Witness:	Well, the operation was to relieve the compression on my nerve, which did not resolve by the extensive and prolonged physical therapy that I underwent for more than three months."[42] (emphasis ours)

Evidently, it was Dr. Milla who had personal knowledge of the contents of the medical certificate. However, she was not presented to testify in court and was not even able to identify and affirm the contents of the medical certificate. Furthermore, Rebecca was deprived of the opportunity to cross-examine Dr. Milla on the accuracy and veracity of her findings.

We also point out in this respect that the medical certificate nonetheless did not explain the chain of causation in fact between Joel's reckless driving and Dra. dela Llana's whiplash injury. It did not categorically state that the whiplash injury was a result of the vehicular accident. A perusal of the medical certificate shows that it only attested to her medical condition, *i.e.*, that she was suffering from whiplash injury. However, the medical certificate failed to substantially relate the vehicular accident to Dra. dela Llana's whiplash injury. Rather, the medical certificate only **chronicled** her medical history and physical examinations.

C. Dra. dela Llana's opinion that Joel's negligence caused her whiplash injury has no probative value

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[42] RTC *rollo,* pp. 277 -281.

Interestingly, the present case is peculiar in the sense that Dra. dela Llana, as the plaintiff in this quasi-delict case, was the **lone** physician-witness during trial. Significantly, she merely testified as an **ordinary witness** before the trial court. Dra. dela Llana essentially claimed in her testimony that Joel's reckless driving caused her whiplash injury.

Despite the fact that Dra. dela Llana is a physician and even assuming that she is an expert in neurology, we cannot give weight to her opinion that Joel's reckless driving caused her whiplash injury without violating the rules on evidence.

Under the Rules of Court, there is a substantial difference between an ordinary witness and an expert witness. The opinion of an ordinary witness may be received in evidence regarding: **(a)** the identity of a person about whom he has adequate knowledge; **(b)** a handwriting with which he has sufficient familiarity; and **(c)** the mental sanity of a person with whom he is sufficiently acquainted. Furthermore, the witness may also testify on his impressions of the emotion, behavior, condition or appearance of a person.[43] On the other hand, the opinion of an expert witness may be received in evidence on a matter requiring special knowledge, skill, experience or training which he shown to possess.[44]

However, courts do not immediately accord probative value to an admitted expert testimony, much less to an unobjected ordinary testimony respecting special knowledge. The reason is that the probative value of an expert testimony does not lie in a simple exposition of the expert's opinion. Rather, its weight lies in the assistance that the expert witness may afford the courts *by demonstrating the facts which serve as a basis for his opinion and the reasons on which the logic of his conclusions is founded.*[45]

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[43] RULES OF COURT, Rule 130, Section 50.

[44] RULES OF COURT, Rule 130, Section 49.

[45] *People of the Philippines v. Florendo,* 68 Phil. 619, 624 (1939), citing *United States v. Kosel,* 24 Phil. 594 (1913).

In the present case, Dra. dela Llana's medical opinion cannot be given probative value for the reason that she was not presented as an expert witness. As an ordinary witness, she was not competent to testify on the nature, and the cause and effects of whiplash injury. Furthermore, we emphasize that Dra. dela Llana, during trial, nonetheless did not provide a medical explanation on the nature as well as the cause and effects of whiplash injury in her testimony.

The Supreme Court cannot take judicial notice that vehicular accidents cause whiplash injuries

Indeed, a perusal of the pieces of evidence presented by the parties before the trial court shows that **Dra. dela Llana did not present any testimonial or documentary evidence that directly shows the causal relation between the vehicular accident and Dra. dela Llana's injury.** Her claim that Joel's negligence caused her whiplash injury was not established because of the deficiency of the presented evidence during trial. We point out in this respect that courts cannot take judicial notice that vehicular accidents cause whiplash injuries. This proposition is not public knowledge, or is capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.[46] We have no expertise in the field of medicine. Justices and judges are only tasked to apply and interpret the law on the basis of the parties' pieces of evidence and their corresponding legal arguments.

In sum, Dra. dela Llana miserably failed to establish her case by preponderance of evidence. While we commiserate with her, our solemn duty to independently and impartially assess the merits of the case binds us to rule against Dra. dela Llana's favor. Her claim, unsupported by preponderance of evidence, is merely a bare assertion and has no leg to stand on.

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[46] RULES OF COURT, Rule 129, Section 2.

WHEREFORE, premises considered, the assailed Decision dated February 11, 2008 and Resolution dated March 31, 2008 of the Court of Appeals are hereby **AFFIRMED** and the petition is hereby **DENIED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 187661. December 4, 2013]

MODESTO SANCHEZ, *petitioner, vs.* **ANDREW SANCHEZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; AN ALLEGATION OF PRESCRIPTION CAN EFFECTIVELY BE USED IN A MOTION TO DISMISS ONLY WHEN THE COMPLAINT ON ITS FACE SHOWS THAT INDEED THE ACTION HAS ALREADY PRESCRIBED; CASE AT BAR.—** It is apparent from the records that the RTC did not conduct a hearing to receive evidence proving that Andrew was guilty of prescription or laches. There was no full-blown trial. The case was simply dismissed on the basis of the pleadings submitted by the parties. We note that the RTC admitted the Amended Complaint and gave Andrew fifteen (15) days to comment on Modesto's Motion to Dismiss based on affirmative defenses and likewise gave Modesto the same period to file his rejoinder, after which, it considered the matter submitted for resolution. The Court has consistently held that the affirmative defense of prescription does not automatically warrant the dismissal of a complaint

under Rule 16 of the Rules of Civil Procedure. An allegation of prescription can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed. If the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss. Those issues must be resolved at the trial of the case on the merits wherein both parties will be given ample opportunity to prove their respective claims and defenses. Contrary to Modesto's contention, it is not apparent from the complaint that the action had already prescribed. Furthermore, it should be noted that it is the relief based on the facts alleged, and not the relief demanded, which is taken into consideration in determining the cause of action. Therefore, in terms of classifying the deed, whether it is valid, void or voidable, it is of no significance that the relief prayed for was Annulment of Deed of Absolute Sale. The issue of prescription hinges on the determination of whether the sale was valid, void or voidable. We agree with the Court of Appeals that the issue of prescription in this case is best ventilated in a full-blown proceeding before the trial court where both parties can substantiate their claims. The trial court is in the best position to ascertain the credibility of both parties.

2. **ID.; ID.; ID.; IT IS APPARENT THAT THE COMPLAINT ON ITS FACE DOES NOT READILY SHOW THAT THE ACTION HAS ALREADY PRESCRIBED; A SUMMARY OR OUTRIGHT DISMISSAL OF AN ACTION IS NOT PROPER WHERE THERE ARE FACTUAL MATTERS IN DISPUTE, WHICH REQUIRE PRESENTATION OF EVIDENCE; CASE AT BAR.—** Upon closer inspection of the complaint, it would seem that there are several possible scenarios that may have occurred given the limited set of facts. The statement "*transaction did not push through since defendant did not have the financial wherewithal to purchase the subject property*" creates confusion and allows for several different interpretations. On one side, it can be argued that said contract is void and consequently, the right to challenge such contract is imprescriptible. The ruling of this Court in *Montecillo v. Reynes* supports this argument: Where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration. Such ruling of the Court would mean

that when the deed of sale declares that the price has been paid, when in fact it has never been paid, that would be considered as a "badge of simulation" and would render the contract void and consequently, the right to challenge the same is imprescriptible. In the case at bar, by merely basing analysis on the pleadings submitted, in particular, the complaint, it would be an impossibility to deduce the truth as to whether the price stated in the deed was in fact paid. The only way to prove this is by going to trial. On the other hand, a different analysis of the statement *"transaction did not push through since defendant did not have the financial wherewithal to purchase the subject property"* may yield another interpretation. One can also deduce that what actually transpired was a simple non-payment of purchase price, which will not invalidate a contract and could only give rise to other legal remedies such as rescission or specific performance. In this scenario, the contract remains valid and therefore subject to prescription. It is also apparent from the pleadings that both parties denied each other's allegations. It is then but logical to review more evidence on disputed matters. On this score alone, it is apparent that the complaint on its face does not readily show that the action has already prescribed. We emphasize once more that a summary or outright dismissal of an action is not proper where there are factual matters in dispute, which require presentation and appreciation of evidence.

3. **CIVIL LAW; CIVIL CODE; PROPERTY; LACHES; ELEMENTS OF LACHES MUST BE PROVEN POSITIVELY; LACHES IS EVIDENTIARY IN NATURE, A FACT THAT CANNOT BE ESTABLISHED BY MERE ALLEGATIONS IN THE PLEADINGS AND CANNOT BE RESOLVED IN A MOTION TO DISMISS.—** Furthermore, well settled is the rule that the elements of laches must be proven positively. Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss. At this stage therefore, the dismissal of the complaint on the ground of laches is premature. Those issues must be resolved at the trial of the case on the merits, wherein both parties will be given ample opportunity to prove their respective claims and defenses.

APPEARANCES OF COUNSEL

Manuel T. Chan for petitioner.
Lacierda & Bermudez Law Offices for respondent.

D E C I S I O N

PEREZ, *J*.:

In this Petition for Review on *Certiorari,*[1] Modesto Sanchez (Modesto) substituted by Juanita Y. Sanchez, assails the 16 July 2008 Decision[2] of the Thirteenth Division of the Court of Appeals (CA) in CA-G.R. CV No. 88531 reversing the 28 December 2006 Order[3] of the Regional Trial Court (RTC) of Manila, Branch 39, which dismissed respondent Andrew Sanchez's (Andrew) complaint for *Annulment of Deed of Sale, Cancellation of New Title and Reconveyance of Title* on the grounds of prescription and laches.

The factual antecedents[4] were summarized by the CA as follows:

The instant controversy was brought to fore because of the Deed of Absolute Sale,[5] dated November 25, 1981, which expressly states that the parcel of land registered in the name of [Andrew] and covered by Transfer Certificate of Title (TCT) No. 143744[6] has been conveyed to his brother, [Modesto] through a sale. [Andrew] assailed the said document as sham and replete with falsehood and fraudulent misrepresentations.

While [Andrew] admitted that he sent the said pre-signed deed of sale to [Modesto] in response to the latter's offer to buy his

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[1] *Rollo*, pp. 8-27.

[2] *Id*. at 32-41.

[3] CA *rollo*, pp. 38-41.

[4] *Id*. at 84-86.

[5] Records, p. 45.

[6] *Id*. at 7.

abovementioned property, he however, alleged that the said transaction did not push through because [Modesto] did not have the financial means to purchase the property at that time. He also stated that he sent the said document undated and not notarized. He alleged that he tried to retrieve the said deed from [Modesto], but the latter failed to return it despite several reminders.

[Andrew] further alleged that he continued to allow [Modesto] to occupy his property since their ancestral home was built thereon. This alleged liberality of [Andrew] was later extended to [Modesto's] live-in partner, Juanita H. Yap (Yap), as evidenced by the Bequest of Usufruct,[7] which the former had executed.

In 2000, [Modesto], through Yap, allegedly offered again to buy the said property, but [Andrew] already refused to part with his lot.

[Andrew] later discovered that his certificate of title was missing. Thus, he filed an Affidavit of Loss[8] with the Registry of Deeds of Manila. Subsequently, he learned that a Petition for Reconstitution of TCT No. 143744 was filed by [Modesto] on the basis of the said deed of sale, which already appeared to have been notarized in 1981.

Thus, [Andrew] filed the case below to seek for the annulment of the said document. During the pendency of the case, [Andrew's] certificate of title was cancelled and a new one in the name of [Modesto] was issued. Hence, the amendment of his complaint to include Cancellation Of New Title And Reconveyance Of Title.

By way of affirmative and special defences, [Modesto] alleged lack of cause of action, prescription, and laches. He filed a motion to set his affirmative defences for a hearing. [Andrew] file an *Opposition To The Defendant's Affirmative Defenses* while [Modesto] filed his *Reply* thereto. Thereafter, the RTC issued the assailed order.

RTC Ruling

The RTC issued an order[9] dismissing the complaint on the grounds of prescription and laches. The RTC took note of the

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[7] *Id*. at 8.

[8] *Id*. at 12.

[9] CA *rollo*, pp. 38-41.

lapse of time between the date of the assailed document and the filing of the case and concluded that Andrew's action was time-barred because a person desiring to file an action based on a written contract has only 10 years to do so. Moreover, the RTC held that the failure of Andrew to offer any valid reason for the delay in asserting his right made him guilty of laches. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, the instant complaint filed by plaintiff is hereby **DISMISSED**. The counterclaims of the defendant are likewise **DISMISSED**.[10]

CA Decision

Aggrieved, Andrew elevated the case to the CA. The appeal was premised on the sole issue of whether or not the lower court erred in dismissing Andrew's complaint on the grounds of prescription and laches.

For the appellate court, there was a need to determine whether the subject deed of sale is void, voidable or valid; and such could be ascertained only if the parties are allowed to go on trial. The CA held that the trial court erred in dismissing the complaint of Andrew without the benefit of a trial. The dispositive portion of the appellate court's decision reads:

> **WHEREFORE**, premises considered, the instant appeal is **GRANTED**. The assailed order dated December 28, 2006 of the court *a quo* is **REVERSED** and **SET ASIDE.** The case is **REMANDED** to the Regional Trial Court of Manila, Branch 39 for trial and judgment on the merits. No pronouncement as to costs.[11]

Our Ruling

The petition is bereft of merit. We agree with the CA's ruling.

It is apparent from the records that the RTC did not conduct a hearing to receive evidence proving that Andrew was guilty of prescription or laches. There was no full-blown trial. The

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[10] *Id.* at 41.

[11] *Id.* at 92.

case was simply dismissed on the basis of the pleadings submitted by the parties. We note that the RTC admitted the Amended Complaint and gave Andrew fifteen (15) days to comment on Modesto's Motion to Dismiss based on affirmative defenses and likewise gave Modesto the same period to file his rejoinder, after which, it considered the matter submitted for resolution.[12]

The Court has consistently held that the affirmative defense of prescription does not automatically warrant the dismissal of a complaint under Rule 16 of the Rules of Civil Procedure. An allegation of prescription can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed. If the issue of prescription is one involving evidentiary matters requiring a full-blown trial on the merits, it cannot be determined in a motion to dismiss.[13] Those issues must be resolved at the trial of the case on the merits wherein both parties will be given ample opportunity to prove their respective claims and defenses.[14]

Contrary to Modesto's contention, it is not apparent from the complaint that the action had already prescribed. Furthermore, it should be noted that it is the relief based on the facts alleged, and not the relief demanded, which is taken into consideration in determining the cause of action. Therefore, in terms of classifying the deed, whether it is valid, void or voidable, it is of no significance that the relief prayed for was Annulment of Deed of Absolute Sale. The issue of prescription hinges on the determination of whether the sale was valid, void or voidable. We agree with the Court of Appeals that the issue of prescription in this case is best ventilated in a full-blown proceeding before the trial court where both parties can substantiate their claims.

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[12] *Id.* at 39.

[13] *Heirs of Tomas Dolleton v. Fil-Estate Management, Inc.*, G.R. No. 170750, 7 April 2009, 584 SCRA 409, 428-429.

[14] *National Irrigation Administration v. Court of Appeals*, 376 Phil. 362, 376 (1999).

The trial court is in the best position to ascertain the credibility of both parties.[15]

Upon closer inspection of the complaint,[16] it would seem that there are several possible scenarios that may have occurred given the limited set of facts. The statement *"transaction did not push through since defendant did not have the financial wherewithal to purchase the subject property*" creates confusion and allows for several different interpretations. On one side, it can be argued that said contract is void and consequently, the right to challenge such contract is imprescriptible. The ruling of this Court in *Montecillo v. Reynes*[17] supports this argument:

> Where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration.

Such ruling of the Court would mean that when the deed of sale declares that the price has been paid, when in fact it has never been paid, that would be considered as a "badge of simulation" and would render the contract void and consequently, the right to challenge the same is imprescriptible.[18] In the case at bar, by merely basing analysis on the pleadings submitted, in particular, the complaint, it would be an impossibility to deduce the truth as to whether the price stated in the deed was in fact paid. The only way to prove this is by going to trial.

On the other hand, a different analysis of the statement *"transaction did not push through since defendant did not have the financial wherewithal to purchase the subject property"* may yield another interpretation. One can also deduce that what actually transpired was a simple non-payment of

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[15] *Fil-Estate Golf and Development, Inc. v. Navarro*, 553 Phil. 48, 55-56 (2007).

[16] *Rollo*, pp. 53-57.

[17] 434 Phil. 456, 469 (2002); also *Peñalosa v. Santos*, 416 Phil. 12 (2001).

[18] Villanueva, *Law on Sales*, p. 105.

purchase price, which will not invalidate a contract and could only give rise to other legal remedies such as rescission or specific performance. In this scenario, the contract remains valid and therefore subject to prescription.

It is also apparent from the pleadings that both parties denied each other's allegations. It is then but logical to review more evidence on disputed matters. On this score alone, it is apparent that the complaint on its face does not readily show that the action has already prescribed. We emphasize once more that a summary or outright dismissal of an action is not proper where there are factual matters in dispute, which require presentation and appreciation of evidence.[19]

Furthermore, well settled is the rule that the elements of laches must be proven positively. Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss. At this stage therefore, the dismissal of the complaint on the ground of laches is premature. Those issues must be resolved at the trial of the case on the merits, wherein both parties will be given ample opportunity to prove their respective claims and defenses.[20]

WHEREFORE, in light of the foregoing, we resolve to **DENY** the instant petition. The 16 July 2008 Decision of the Court of Appeals is **AFFIRMED**. The case is **REMANDED** to the Regional Trial Court of Manila, Branch 39 for trial and judgment on the merits.

SO ORDERED.

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

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[19] *Heirs of Ingjug-Tiro v. Spouses Casals*, 415 Phil. 665, 674 (2001).

[20] *Heirs of Tomas Dolleton v. Fil-Estate Management, Inc., supra* note 13 at 430.

SECOND DIVISION

[G.R. No. 189145. December 4, 2013]

OPTIMUM DEVELOPMENT BANK, *petitioner, vs.* **SPOUSES BENIGNO V. JOVELLANOS and LOURDES R. JOVELLANOS,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; MATTERS THAT MUST BE ALLEGED IN A COMPLAINT FOR UNLAWFUL DETAINER; ONLY ISSUE TO BE RESOLVED IS PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY INVOLVED, INDEPENDENT OF ANY CLAIM OF OWNERSHIP BY ANY OF THE PARTIES INVOLVED.—** What is determinative of the nature of the action and the court with jurisdiction over it are the allegations in the complaint and the character of the relief sought, not the defenses set up in an answer. A complaint sufficiently alleges a cause of action for unlawful detainer if it recites that: *(a)* initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff; *(b)* eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; *(c)* thereafter, defendant remained in possession of the property and deprived plaintiff of the enjoyment thereof; and *(d)* within one year from the last demand on defendant to vacate the property, plaintiff instituted the complaint for ejectment. Corollarily, the only issue to be resolved in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties involved.

2. **ID.; ID.; ID.; METROPOLITAN TRIAL COURTS (MeTC) ARE CONDITIONALLY VESTED WITH AUTHORITY TO RESOLVE THE QUESTION OF OWNERSHIP RAISED AS AN INCIDENT IN AN EJECTMENT CASE WHERE THE DETERMINATION IS ESSENTIAL TO A COMPLETE ADJUDICATION OF THE ISSUE OF POSSESSION; THE RULING OF OWNERSHIP IS NOT CONCLUSIVE AND IS MERELY PROVISIONAL AND**

BINDING ONLY WITH RESPECT TO THE ISSUE OF POSSESSION.— Metropolitan Trial Courts are **conditionally vested** with authority to resolve the question of ownership raised **as an incident** in an ejectment case where the determination is **essential to a complete adjudication of the issue of possession**. Concomitant to the ejectment court's authority to look into the claim of ownership **for purposes of resolving the issue of possession** is its authority to interpret the contract or agreement upon which the claim is premised. Thus, in the case of *Oronce v. CA,* wherein the litigants' opposing claims for possession was hinged on whether their written agreement reflected the intention to enter into a sale or merely an equitable mortgage, the Court affirmed the propriety of the ejectment court's examination of the terms of the agreement in question by holding that, "because **metropolitan trial courts are authorized to look into the ownership of the property in controversy in ejectment cases,** it behooved MTC Branch 41 to examine the bases for petitioners' claim of ownership that entailed interpretation of the Deed of Sale with Assumption of Mortgage." Also, in *Union Bank of the Philippines v. Maunlad Homes, Inc. (Union Bank),* citing *Sps. Refugia v. CA,* the Court declared that MeTCs have authority to interpret contracts in unlawful detainer cases, *viz.*: **The authority granted to the MeTC to preliminarily resolve the issue of ownership to determine the issue of possession ultimately allows it to interpret and enforce the contract or agreement between the plaintiff and the defendant.** To deny the MeTC jurisdiction over a complaint merely because the issue of possession requires the interpretation of a contract will effectively rule out unlawful detainer as a remedy. As stated, in an action for unlawful detainer, the defendant's right to possess the property may be by virtue of a contract, express or implied; corollarily, the termination of the defendant's right to possess would be governed by the terms of the same contract. **Interpretation of the contract between the plaintiff and the defendant is inevitable because it is the contract that initially granted the defendant the right to possess the property; it is this same contract that the plaintiff subsequently claims was violated or extinguished, terminating the defendant's right to possess.** We ruled in *Sps. Refugia v. CA* that — **where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the**

document of title or any other contract on which the claim of possession is premised, the inferior court may likewise pass upon these issues. The MeTC's ruling on the rights of the parties based on its interpretation of their contract is, of course, not conclusive, **but is merely provisional and is binding only with respect to the issue of possession.**

3. **CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL; THE FULL PAYMENT OF THE PURCHASE PRICE IN A CONTRACT TO SELL IS A SUSPENSIVE CONDITION, THE NON-FULFILLMENT OF WHICH PREVENTS THE PROSPECTIVE SELLER'S OBLIGATION TO CONVEY TITLE FROM BECOMING EFFECTIVE.—** In the case at bar, the unlawful detainer suit filed by Optimum against Sps. Jovellanos for illegally withholding possession of the subject property is similarly premised upon the cancellation or termination of the Contract to Sell between them. Indeed, it was well within the jurisdiction of the MeTC to consider the terms of the parties' agreement in order to ultimately determine the factual bases of Optimum's possessory claims over the subject property. Proceeding accordingly, the MeTC held that Sps. Jovellanos's non-payment of the installments due had rendered the Contract to Sell without force and effect, thus depriving the latter of their right to possess the property subject of said contract. The foregoing disposition aptly squares with existing jurisprudence. As the Court similarly held in the *Union Bank* case, the seller's cancellation of the contract to sell necessarily extinguished the buyer's right of possession over the property that was the subject of the terminated agreement. Verily, in a contract to sell, the prospective seller binds himself to sell the property subject of the agreement exclusively to the prospective buyer upon fulfillment of the condition agreed upon which is the full payment of the purchase price but reserving to himself the ownership of the subject property despite delivery thereof to the prospective buyer. The **full payment of the purchase price** in a contract to sell is a **suspensive condition,** the non-fulfillment of which **prevents the prospective seller's obligation to convey title from becoming effective**, as in this case.

4. **ID.; ID.; ID.; REALTY INSTALLMENT BUYER PROTECTION ACT (R.A. 6552); THERE WAS A VALID AND EFFECTIVE CANCELLATION OF THE CONTRACT TO SELL IN**

ACCORDANCE WITH SECTION 4 OF R.A. 6552 AND SINCE RESPONDENTS HAS LOST THEIR RIGHT TO RETAIN POSSESSION OF THE SUBJECT PROPERTY AS A CONSEQUENCE OF SUCH CANCELLATION, THEIR REFUSAL TO VACATE MAKES OUT A CASE FOR UNLAWFUL DETAINER AS PROPERLY ADJUDGED BY THE MeTC. — It is significant to note that given that the Contract to Sell in this case is one which has for its object real property to be sold on an installment basis, the said contract is especially governed by — and thus, must be examined under the provisions of — RA 6552, or the "Realty Installment Buyer Protection Act", which provides for the rights of the buyer in case of his default in the payment of succeeding installments. Breaking down the provisions of the law, the Court, in the case of *Rillo v. CA,* explained the mechanics of cancellation under RA 6552 which are based mainly on the amount of installments already paid by the buyer under the subject contract. Pertinently, since Sps. Jovellanos failed to pay their stipulated monthly installments as found by the MeTC, the Court examines Optimum's compliance with Section 4 of RA 6552, as above-quoted and highlighted, which is the provision applicable to buyers who have paid less than two (2) years-worth of installments. Essentially, the said provision provides for three (3) requisites before the seller may actually cancel the subject contract: ***first,*** the seller shall give the buyer a **60-day grace period** to be reckoned from the date the installment became due; ***second,*** the seller must give the buyer a **notice of cancellation/demand for rescission by notarial act** if the buyer fails to pay the installments due at the expiration of the said grace period; and ***third,*** the seller may actually cancel the contract only **after thirty (30) days** from the buyer's receipt of the said notice of cancellation/demand for rescission by notarial act. In the present case, the 60-day grace period automatically operated in favor of the buyers, Sps. Jovellanos, and took effect from the time that the maturity dates of the installment payments lapsed. With the said grace period having expired bereft of any installment payment on the part of Sps. Jovellanos, Optimum then issued a notarized Notice of Delinquency and Cancellation of Contract on April 10, 2006. Finally, in proceeding with the actual cancellation of the contract to sell, Optimum gave Sps. Jovellanos an additional thirty (30) days within which to settle their arrears and reinstate the

contract, or sell or assign their rights to another. It was only after the expiration of the thirty day (30) period did Optimum treat the contract to sell as effectively cancelled — making as it did a final demand upon Sps. Jovellanos to vacate the subject property only on May 25, 2006. Thus, based on the foregoing, the Court finds that there was a valid and effective cancellation of the Contract to Sell in accordance with Section 4 of RA 6552 and since Sps. Jovellanos had already lost their right to retain possession of the subject property as a consequence of such cancellation, their refusal to vacate and turn over possession to Optimum makes out a valid case for unlawful detainer as properly adjudged by the MeTC.

APPEARANCES OF COUNSEL

Mendoza and Monzon Law Offices for petitioner.
Maricris A. Tagle-Montero for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 29, 2009 and Resolution[3] dated August 10, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 104487 which reversed the Decision[4] dated December 27, 2007 of the Regional Trial Court of Caloocan City, Branch 128 (RTC) in Civil Case No. C-21867 that, in turn, affirmed the Decision[5] dated June 8, 2007 of the Metropolitan Trial Court, Branch 53 of that same city (MeTC) in Civil Case No. 06-28830 ordering

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[1] *Rollo*, pp. 24-40.

[2] *Id.* at 171-177. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Celia C. Librea-Leagogo and Antonio L. Villamor, concurring.

[3] *Id.* at 205-206.

[4] *Id.* at 107-111. Penned by Presiding Judge Eleanor R. Kwong.

[5] *Id.* at 73-74. Penned by Judge Mariam G. Bien.

respondents-spouses Benigno and Lourdes Jovellanos (Sps. Jovellanos) to, *inter alia*, vacate the premises of the property subject of this case.

The Facts

On April 26, 2005, Sps. Jovellanos entered into a Contract to Sell[6] with Palmera Homes, Inc. (Palmera Homes) for the purchase of a residential house and lot situated in Block 3, Lot 14, Villa Alegria Subdivision, Caloocan City (subject property) for a total consideration of ₱1,015,000.00. Pursuant to the contract, Sps. Jovellanos took possession of the subject property upon a down payment of ₱91,500.00, undertaking to pay the remaining balance of the contract price in equal monthly installments of ₱13,107.00 for a period of 10 years starting June 12, 2005.[7]

On August 22, 2006, Palmera Homes assigned all its rights, title and interest in the Contract to Sell in favor of petitioner Optimum Development Bank (Optimum) through a Deed of Assignment of even date.[8]

On April 10, 2006, Optimum issued a Notice of Delinquency and Cancellation of Contract to Sell[9] for Sps. Jovellanos's failure to pay their monthly installments despite several written and verbal notices.[10] In a final Demand Letter dated May 25, 2006,[11] Optimum required Sps. Jovellanos to vacate and deliver possession of the subject property within seven (7) days which, however, remained unheeded. Hence, Optimum filed, on November 3, 2006, a complaint for unlawful detainer[12] before the MeTC, docketed as Civil Case No. 06-28830.

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

[7] *Id.* at 45, 108, and 172.

[8] *Id.* at 26 and 51-54.

[9] *Id.* at 55.

[10] *Id.* at 58.

[11] *Id.* at 56.

[12] *Id.* at 57-60. Dated October 11, 2006.

Despite having been served with summons, together with a copy of the complaint,[13] Sps. Jovellanos failed to file their answer within the prescribed reglementary period, thus prompting Optimum to move for the rendition of judgment.[14] Thereafter, Sps. Jovellanos filed their opposition with motion to admit answer, questioning the jurisdiction of the court, among others. Further, they filed a Motion to Reopen and Set the Case for Preliminary Conference, which the MeTC denied.

The MeTC Ruling

In a Decision[15] dated June 8, 2007, the MeTC ordered Sps. Jovellanos to vacate the subject property and pay Optimum reasonable compensation in the amount of ₱5,000.00 for its use and occupation until possession has been surrendered. It held that Sps. Jovellanos's possession of the said property was by virtue of a Contract to Sell which had already been cancelled for non-payment of the stipulated monthly installment payments. As such, their "rights of possession over the subject property necessarily terminated or expired and hence, their continued possession thereof constitute[d] unlawful detainer."[16]

Dissatisfied, Sps. Jovellanos appealed to the RTC, claiming that Optimum counsel made them believe that a compromise agreement was being prepared, thus their decision not to engage the services of counsel and their concomitant failure to file an answer.[17] They also assailed the jurisdiction of the MeTC, claiming that the case did not merely involve the issue of physical possession but rather, questions arising from their rights under a contract to sell which is a matter that is incapable of pecuniary estimation and, therefore, within the jurisdiction of the RTC.[18]

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[13] *Id.* at 62.

[14] *Id.* at 63-65.

[15] *Id.* at 73-74.

[16] *Id.* at 74.

[17] *Id.* at 80-81.

[18] *Id.* at 85-86.

The RTC Ruling

In a Decision[19] dated December 27, 2007, the RTC affirmed the MeTC's judgment, holding that the latter did not err in refusing to admit Sps. Jovellanos's belatedly filed answer considering the mandatory period for its filing. It also affirmed the MeTC's finding that the action does not involve the rights of the respective parties under the contract but merely the recovery of possession by Optimum of the subject property after the spouses' default.[20]

Aggrieved, Sps. Jovellanos moved for reconsideration which was, however, denied in a Resolution[21] dated June 27, 2008. Hence, the petition before the CA reiterating that the RTC erred in affirming the decision of the MeTC with respect to: (a) the non-admission of their answer to the complaint; and *(b)* the jurisdiction of the MeTC over the complaint for unlawful detainer.[22]

The CA Ruling

In an Amended Decision[23] dated May 29, 2009, the CA reversed and set aside the RTC's decision, ruling to dismiss the complaint for lack of jurisdiction. It found that the controversy does not only involve the issue of possession but also the validity of the cancellation of the Contract to Sell and the determination of the rights of the parties thereunder as well as the governing law, among others, Republic Act No. (RA) 6552.[24] Accordingly, it concluded that the subject matter is one which is incapable of pecuniary estimation and thus, within the jurisdiction of the RTC.[25]

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[19] *Id.* at 107-111.

[20] *Id.* at 111.

[21] *Id.* at 140-141.

[22] *Id.* at 142-157. See Memorandum for the Petitioners dated December 21, 2008.

[23] *Id.* at 171-177.

[24] *Id.* at 175. RA 6552 is entitled "AN ACT TO PROVIDE PROTECTION TO BUYER OF REAL ESTATE ON INSTALLMENT PAYMENTS."

[25] *Id.* at 176.

Undaunted, Optimum moved for reconsideration which was denied in a Resolution[26] dated August 10, 2009. Hence, the instant petition, submitting that the case is one for unlawful detainer, which falls within the exclusive original jurisdiction of the municipal trial courts, and not a case incapable of pecuniary estimation cognizable solely by the regional trial courts.

The Court's Ruling

The petition is meritorious.

What is determinative of the nature of the action and the court with jurisdiction over it are the allegations in the complaint and the character of the relief sought, not the defenses set up in an answer.[27] A complaint sufficiently alleges a cause of action for unlawful detainer if it recites that: *(a)* initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff; *(b)* eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; *(c)* thereafter, defendant remained in possession of the property and deprived plaintiff of the enjoyment thereof; and *(d)* within one year from the last demand on defendant to vacate the property, plaintiff instituted the complaint for ejectment.[28] Corollarily, the only issue to be resolved in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties involved.[29]

In its complaint, Optimum alleged that it was by virtue of the April 26, 2005 Contract to Sell that Sps. Jovellanos were allowed to take possession of the subject property. However, since the latter failed to pay the stipulated monthly installments, notwithstanding several written and verbal notices made upon

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[26] *Id.* at 205-206.

[27] *Fernando v. Spouses Lim,* 585 Phil. 141, 155 (2008).

[28] *Id.* at 155-156.

[29] *Manila Electric Company v. Heirs of Spouses Dionisio Deloy and Praxedes Martonito,* G.R. No. 192893, June 5, 2013.

them, it cancelled the said contract as per the Notice of Delinquency and Cancellation dated April 10, 2006. When Sps. Jovellanos refused to vacate the subject property despite repeated demands, Optimum instituted the present action for unlawful detainer on November 3, 2006, or within one year from the final demand made on May 25, 2006.

While the RTC upheld the MeTC's ruling in favor of Optimum, the CA, on the other hand, declared that the MeTC had no jurisdiction over the complaint for unlawful detainer, reasoning that the case involves a matter which is incapable of pecuniary estimation — *i.e.,* the validity of the cancellation of the Contract to Sell and the determination of the rights of the parties under the contract and law — and hence, within the jurisdiction of the RTC.

The Court disagrees.

Metropolitan Trial Courts are **conditionally vested** with authority to resolve the question of ownership raised **as an incident** in an ejectment case where the determination is **essential to a complete adjudication of the issue of possession.**[30] Concomitant to the ejectment court's authority to look into the claim of ownership **for purposes of resolving the issue of possession** is its authority to interpret the contract or agreement upon which the claim is premised. Thus, in the case of *Oronce*

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[30] Section 33 of Batas Pambansa Blg. 129, as amended by RA 7691, provides:

Sec. 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases. — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the questions of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession; x x x

x x x x x x x x x

v. CA,[31] wherein the litigants' opposing claims for possession was hinged on whether their written agreement reflected the intention to enter into a sale or merely an equitable mortgage, the Court affirmed the propriety of the ejectment court's examination of the terms of the agreement in question by holding that, "because **Metropolitan Trial Courts are authorized to look into the ownership of the property in controversy in ejectment cases**, it behooved MTC Branch 41 to examine the bases for petitioners' claim of ownership that entailed interpretation of the Deed of Sale with Assumption of Mortgage."[32] Also, in *Union Bank of the Philippines v. Maunlad Homes, Inc.*[33] (Union Bank), citing *Sps. Refugia v. CA,*[34] the Court declared that MeTCs have authority to interpret contracts in unlawful detainer cases, *viz.*:[35]

> **The authority granted to the MeTC to preliminarily resolve the issue of ownership to determine the issue of possession ultimately allows it to interpret and enforce the contract or agreement between the plaintiff and the defendant.** To deny the MeTC jurisdiction over a complaint merely because the issue of possession requires the interpretation of a contract will effectively rule out unlawful detainer as a remedy. As stated, in an action for unlawful detainer, the defendant's right to possess the property may be by virtue of a contract, express or implied; corollarily, the termination of the defendant's right to possess would be governed by the terms of the same contract. **Interpretation of the contract between the plaintiff and the defendant is inevitable because it is the contract that initially granted the defendant the right to possess the property; it is this same contract that the plaintiff subsequently claims was violated or extinguished, terminating the defendant's right to possess.** We ruled in *Sps. Refugia v. CA* that —

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[31] 358 Phil. 616 (1998).

[32] *Id.* at 636.

[33] G.R. No. 190071, August 15, 2012, 678 SCRA 539.

[34] 327 Phil. 982, 1006 (1996).

[35] *Union Bank of the Philippines v. Maunlad Homes, Inc., supra* note 33, at 547-548.

> **where the resolution of the issue of possession hinges on a determination of the validity and interpretation of the document of title or any other contract on which the claim of possession is premised, the inferior court may likewise pass upon these issues.**
>
> The MeTC's ruling on the rights of the parties based on its interpretation of their contract is, of course, not conclusive, **but is merely provisional and is binding only with respect to the issue of possession.** (Emphases supplied; citations omitted)

In the case at bar, the unlawful detainer suit filed by Optimum against Sps. Jovellanos for illegally withholding possession of the subject property is similarly premised upon the cancellation or termination of the Contract to Sell between them. Indeed, it was well within the jurisdiction of the MeTC to consider the terms of the parties' agreement in order to ultimately determine the factual bases of Optimum's possessory claims over the subject property. Proceeding accordingly, the MeTC held that Sps. Jovellanos's non-payment of the installments due had rendered the Contract to Sell without force and effect, thus depriving the latter of their right to possess the property subject of said contract.[36] The foregoing disposition aptly squares with existing jurisprudence. As the Court similarly held in the *Union Bank* case, the seller's cancellation of the contract to sell necessarily extinguished the buyer's right of possession over the property that was the subject of the terminated agreement.[37] Verily, in a contract to sell, the prospective seller binds himself to sell the property subject of the agreement exclusively to the prospective buyer upon fulfillment of the condition agreed upon which is the full payment of the purchase price but reserving to himself the ownership of the subject property despite delivery thereof to the prospective buyer.[38] The **full**

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[36] See *Pagtalunan v. Dela Cruz Vda. de Manzano,* 559 Phil. 658, 668 (2007).

[37] See *Union Bank of the Philippines v. Maunlad Homes, Inc., supra* note 33, at 548-549.

[38] See *Coronel v. CA,* 331 Phil. 294, 309 (1996).

payment of the purchase price in a contract to sell is a **suspensive condition,** the non-fulfillment of which **prevents the prospective seller's obligation to convey title from becoming effective,**[39] as in this case.

Further, it is significant to note that given that the Contract to Sell in this case is one which has for its object real property to be sold on an installment basis, the said contract is especially governed by — and thus, must be examined under the provisions of — RA 6552, or the "Realty Installment Buyer Protection Act", which provides for the rights of the buyer in case of his default in the payment of succeeding installments. Breaking down the provisions of the law, the Court, in the case of *Rillo v. CA,*[40] explained the mechanics of cancellation under RA 6552 which are based mainly on the amount of installments already paid by the buyer under the subject contract, to wit:[41]

Given the nature of the contract of the parties, the respondent court correctly applied Republic Act No. 6552. Known as the Maceda Law, R.A. No. 6552 recognizes in conditional sales of all kinds of real estate (industrial, commercial, residential) the right of the seller to cancel the contract upon non-payment of an installment by the buyer, which is simply an event that prevents the obligation of the vendor to convey title from acquiring binding force. It also provides the right of the buyer on installments in case he defaults in the payment of succeeding installments, *viz.*:

(1) *Where he has paid at least two years of installments,*

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: *Provided*, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

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[39] See *Montecalvo v. Heirs of Eugenia T. Primero*, G.R. No. 165168, July 9, 2010, 624 SCRA 575, 587.

[40] G.R. No. 125347, June 19, 1997, 274 SCRA 461.

[41] *Id.* at 467-468.

(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: *Provided*, That the actual cancellation of the contract shall take place after cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installments made.

(2) *Where he has paid less than two years in installments,*

Sec. 4. x x x the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act. (Emphasis and underscoring supplied)

Pertinently, since Sps. Jovellanos failed to pay their stipulated monthly installments as found by the MeTC, the Court examines Optimum's compliance with Section 4 of RA 6552, as above-quoted and highlighted, which is the provision applicable to buyers who have paid less than two (2) years-worth of installments. Essentially, the said provision provides for three (3) requisites before the seller may actually cancel the subject contract: ***first,*** the seller shall give the buyer **a 60-day grace period** to be reckoned from the date the installment became due; ***second,*** the seller must give the buyer a **notice of cancellation/demand for rescission by notarial act** if the buyer fails to pay the installments due at the expiration of the said grace period; and **third,** the seller may actually cancel the contract only after **thirty (30)** days from the buyer's receipt of the said notice of cancellation/demand for rescission by notarial act.

In the present case, the 60-day grace period automatically operated[42] in favor of the buyers, Sps. Jovellanos, and took effect from the time that the maturity dates of the installment payments lapsed. With the said grace period having expired bereft of any installment payment on the part of Sps. Jovellanos,[43] Optimum then issued a notarized Notice of Delinquency and Cancellation of Contract on April 10, 2006. Finally, in proceeding with the actual cancellation of the contract to sell, Optimum gave Sps. Jovellanos an additional thirty (30) days within which to settle their arrears and reinstate the contract, or sell or assign their rights to another.[44] It was

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[42] The automatic operation of the aforesaid grace period in favor of Sps. Jovellanos is in accord with *Bricktown Dev't. Corp. v. Amor Tierra Dev't. Corp.* (G.R. No. 112182, December 12, 1994, 239 SCRA 126, 131-132) wherein the Court held that:

> A grace period is a right, not an obligation, of the debtor. **When unconditionally conferred, such as in this case, the grace period is effective without further need of demand either calling for the payment of the obligation or for honoring the right.** The grace period must not be likened to an obligation, the non-payment of which, under Article 1169 of the Civil Code, would generally still require judicial or extrajudicial demand before "default" can be said to arise.
>
> Verily, in the case at bench, **the sixty-day grace period under the terms of the contracts to sell became *ipso facto* operative from the moment the due payments were not met at their stated maturities.** On this score, the provisions of Article 1169 of the Civil Code would find no relevance whatsoever. (Emphases supplied; citations omitted)

[43] Records disclose that Sps. Jovellanos had only paid the ₱91,500.00 down-payment and not the equal monthly installments due on the Contract to Sell for the remaining balance, the first of which started on June 12, 2005. (See Contract to Sell, *rollo*, p. 45; see CA Decision, *id.* at 172; see RTC Decision, *id.* at 108; see MeTC Decision, *id.* at 73-74.) Records also disclose that Sps. Jovellanos did not, in any of its pleadings attached thereto, claim that they have paid any monthly installment due on the Contract to Sell outside from the ₱91,500.00 down-payment. (See Defendants-Appellants' Appeal Memorandum dated August 1, 2007, *id.* at 77-78; Memorandum for Petitioners dated December 21, 2008, *id.* at 151-152.)

[44] Section 5 of RA 6552 states:

only after the expiration of the thirty day (30) period did Optimum treat the contract to sell as effectively cancelled — making as it did a final demand upon Sps. Jovellanos to vacate the subject property only on May 25, 2006.

Thus, based on the foregoing, the Court finds that there was a valid and effective cancellation of the Contract to Sell in accordance with Section 4 of RA 6552 and since Sps. Jovellanos had already lost their right to retain possession of the subject property as a consequence of such cancellation, their refusal to vacate and turn over possession to Optimum makes out a valid case for unlawful detainer as properly adjudged by the MeTC.

WHEREFORE, the petition is **GRANTED.** The Decision dated May 29, 2009 and Resolution dated August 10, 2009 of the Court of Appeals in CA-G.R. SP No. 104487 are **SET ASIDE.** The Decision dated June 8, 2007 of the Metropolitan Trial Court, Branch 53, Caloocan City in Civil Case No. 06-28830 is hereby **REINSTATED.**

SO ORDERED.

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

Sec. 5. Under Sections 3 and 4, the buyer shall have the right to sell his rights or assign the same to another person or to reinstate the contract by updating the account during the grace period and before actual cancellation of the contract. The deed of sale or assignment shall be done by notarial act.

THIRD DIVISION

[G.R. No. 192383. December 4, 2013]

ISABELO C. DELA CRUZ, *petitioner, vs.* **LUCILA C. DELA CRUZ,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PARTITION; THE COURT MUST FIRST DETERMINE THE EXISTENCE OF CO-OWNERSHIP.— In partition, the court must first determine the existence of co-ownership. The action will not lie if the plaintiff has no proprietary interest in the subject property. Indeed, the rules require him to set forth in his complaint the nature and extent of his title to the property. It would be premature to order partition until the question of ownership is first definitely resolved. At bottom, the question is: did Lucila's affidavit of waiver ceding to Isabelo half of the subject property conveys to him a right of ownership over that half? The CA agreed with the RTC that Lucila's affidavit of waiver did not vest any property right to Isabelo since the condition she set in that affidavit had not been fulfilled. This then gave Lucila the right in the meantime to rescind the waiver, something that she eventually did. But, contrary to the position that the CA and the RTC had taken, Lucila's waiver was absolute and contained no precondition. The pertinent portion of the affidavit of waiver reads: That to put everything in proper order, I hereby waive all my share, interest and participation in so far as it refer to the one half portion (120 SQ. M.) of the above-parcel of land, with and in favor of my brother ISABELO C. DELA CRUZ, of legal age, married, Filipino and residing at Las Pinas City, and the other half portion (120 SQ. M.) in favor of my niece, EMELINDA C. DELA CRUZ, also of legal age, single, Filipino and residing at Sto. Rosario Hagonoy, Bulacan; x x x Evidently, Lucila would not have used the terms "to put everything in proper order, I hereby waive . . ." if her intent was to set a precondition to her waiver covering the property, half to Isabelo and half to Emelinda. If that were her intention, she could have stated, "subject to the condition that everything is put in proper order, I hereby waive . . ." or something to

that effect. When she instead said, "That to put everything in proper order, I hereby waive my share, interest and participation" in the two halves of the subject property in favor of Isabelo and Emelinda, Lucila merely disclosed what motivated her in ceding the property to them. She wanted to put everything in proper order, thus she was driven to make the waiver in their favor. Lucila did not say, "to put everything in proper order, I promise to waive my right" to the property, which is a future undertaking, one that is demandable only when everything is put in proper order. But she instead said, "to put everything in proper order, I hereby waive" *etc*. The phrase "hereby waive" means that Lucila was, by executing the affidavit, already waiving her right to the property, irreversibly divesting herself of her existing right to the same. After he and his co-owner Emelinda accepted the donation, Isabelo became the owner of half of the subject property having the right to demand its partition.

APPEARANCES OF COUNSEL

Dante P. Mercado and *Eunice M. Sta. Maria* for petitioner.
Roxane Marie A. Jamela-Miranda for respondent.

D E C I S I O N

ABAD, *J*.:

This case deals with the right of a person to whom an immovable property has been unconditionally given to demand its partition.

The Facts and the Case

Petitioner Isabelo C. Dela Cruz (Isabelo) claimed that in 1975 he and his sisters, respondent Lucila C. Dela Cruz (Lucila) and Cornelia C. Dela Cruz (Cornelia), bought on installment a 240-square meter land in Las Piñas from Gatchalian Realty, Inc. Isabelo and Cornelia paid the down payment and religiously paid the monthly amortizations.[1] On the following year, Isabelo constructed a residential house on the subject lot.[2]

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[1] Records, pp. 2-3; 120.

[2] *Rollo*, p. 4.

Because of Lucila's plea for the siblings to help their cousin, Corazon L. Victoriano (Corazon), who was in financial distress, Isabelo agreed to have the lot they bought used as collateral for the loan that Corazon planned to secure from the Philippine Veterans Bank. To make this possible, Lucila paid the ₱8,000.00 that they still owed Gatchalian Realty, Inc. On January 18, 1979 the Register of Deeds issued Transfer Certificate of Title (TCT) S-80735 in Lucila's name[3] and this was mortgaged for Corazon's benefit.

But, since Corazon failed to pay her loan, the bank foreclosed on the property on March 1, 1989 for ₱286,000.00. Lucila redeemed it on March 27, 1992.[4]

On October 7, 2002 Lucila executed an affidavit of waiver[5] relinquishing all her share, interest, and participation to half of the lot to Isabelo and the other half to her niece, Emelinda C. Dela Cruz (Emelinda). On even date, Isabelo and Emelinda executed a *Kasunduan*[6] acknowledging their respective rights in the property.

Claiming ownership of half of the subject property by virtue of Lucila's affidavit of waiver, on August 22, 2005 Isabelo filed an action for partition before the Regional Trial Court (RTC) of Las Piñas City in SCA 05-0008, seeking the segregation of his portion of the land and the issuance of the corresponding title in his name.

But Lucila countered that the property, including the house built on it, belonged to her since she paid for the same out of her income as pawnshop general manager and from selling jewelry.[7] She claimed that her affidavit of waiver did not cede ownership of half of the property to Isabelo since the affidavit

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[3] Records, pp. 206-207.

[4] *Id*. at 206 (dorsal portion).

[5] *Rollo*, p. 50.

[6] Records, pp. 11-12.

[7] *Id*. at 234.

made clear that her waiver would take effect only if the problems that beset their family were resolved. Since this condition had not been met, she had every right to revoke that waiver as in fact she did so on September 24, 2004 in the *Kasulatan ng Pagpawalang Bisa ng* "*Affidavit Waiver.*"[8]

On February 7, 2008 the RTC rendered a Decision[9] denying Isabelo's complaint for lack of merit. It also ordered him to pay Lucila ₱50,000.00 as attorney's fees and to bear the costs of suit.[10] The RTC ruled that Lucila's ownership was evidenced by the tax declaration, the real property tax payment order, and the title to the land in her name. Isabelo's testimony on cross-examination conclusively also showed that Lucila owned the property.[11] Isabelo's contention that it was he and Cornelia who paid for the monthly amortization of the property cannot be believed since Cornelia herself testified that Lucila paid for all the amortizations on the land.[12]

Further, the RTC held that Lucila's affidavit of waiver did not confer title over the property on Isabelo considering that, absent an annotation on TCT S-80735, the waiver cannot ripen into an adverse claim. More importantly, Lucila already cancelled the waiver through the *Kasulatan* that she subsequently executed.[13] The RTC was also unconvinced that the house belonged to Isabelo. It noted that the receipts for the construction materials and survey plan that he presented did not prove ownership. Recovery of property, not partition was the proper remedy.

Isabelo appealed to the Court of Appeals (CA) in CA-G.R. CV 90797. On December 18, 2009 the latter court rendered a

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

[9] Records, pp. 240-249.

[10] *Id*. at 249.

[11] *Id*. at 247.

[12] *Id*. at 248.

[13] *Id*.

Decision[14] affirming the RTC ruling that Isabelo failed to established his right to half of the subject property as would entitle him to have the same partitioned. But the CA deleted the award of attorney's fees and costs for failure of Lucila to justify her claims and for the RTC's failure to state in its decision the rationale for the awards. Isabelo moved for reconsideration but the CA denied it.[15]

Issue Presented

The sole issue presented in this case is whether or not the CA erred in failing to rule that Lucila's cession of half of the property to Isabelo through waiver did not have the effect of making him part owner of the property with a right to demand partition.

Ruling of the Court

In partition, the court must first determine the existence of co-ownership. The action will not lie if the plaintiff has no proprietary interest in the subject property. Indeed, the rules[16] require him to set forth in his complaint the nature and extent of his title to the property. It would be premature to order partition until the question of ownership is first definitely resolved.[17]

At bottom, the question is: did Lucila's affidavit of waiver ceding to Isabelo half of the subject property conveys to him

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[14] Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Remedios A. Salazar-Fernando and Romeo F. Barza; *rollo*, pp. 24-34.

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

[16] Section 1, Rule 69 of the Rules of Civil Procedure provides:

Sec. 1. Complaint in an action for partition of real estate. — A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

[17] *Catapusan v. Court of Appeals*, 332 Phil. 586, 590 (1996); *Ocampo v. Ocampo*, 471 Phil. 519, 533-534 (2004).

a right of ownership over that half? The CA agreed with the RTC that Lucila's affidavit of waiver did not vest any property right to Isabelo since the condition she set in that affidavit had not been fulfilled. This then gave Lucila the right in the meantime to rescind the waiver, something that she eventually did.

But, contrary to the position that the CA and the RTC had taken, Lucila's waiver was absolute and contained no precondition. The pertinent portion of the affidavit of waiver reads:

> That to put everything in proper order, I hereby waive all my share, interest and participation in so far as it refer to the one half portion (120 SQ. M.) of the above-parcel of land, with and in favor of my brother ISABELO C. DELA CRUZ, of legal age, married, Filipino and residing at Las Pinas City, and the other half portion (120 SQ. M.) in favor of my niece, EMELINDA C. DELA CRUZ, also of legal age, single, Filipino and residing at Sto. Rosario Hagonoy, Bulacan;
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> x x x x x x x x x[18]

Evidently, Lucila would not have used the terms "to put everything in proper order, I hereby waive…" if her intent was to set a precondition to her waiver covering the property, half to Isabelo and half to Emelinda. If that were her intention, she could have stated, "subject to the condition that everything is put in proper order, I hereby waive..." or something to that effect.

When she instead said, "That to put everything in proper order, I hereby waive my share, interest and participation" in the two halves of the subject property in favor of Isabelo and Emelinda, Lucila merely disclosed what motivated her in ceding the property to them. She wanted to put everything in proper order, thus she was driven to make the waiver in their favor.

Lucila did not say, "to put everything in proper order, I promise to waive my right" to the property, which is a future undertaking,

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[18] *Supra* note 5.

one that is demandable only when everything is put in proper order. But she instead said, "to put everything in proper order, I hereby waive" *etc*. The phrase "hereby waive" means that Lucila was, by executing the affidavit, already waiving her right to the property, irreversibly divesting herself of her existing right to the same. After he and his co-owner Emelinda accepted the donation, Isabelo became the owner of half of the subject property having the right to demand its partition.

WHEREFORE, the Court:

1. **GRANTS** the petition;

2. **SETS ASIDE** the Decision dated December 18, 2009 and Resolution dated May 25, 2010 of the Court of Appeals in CA-G.R. CV 90797 as well as the Decision dated February 7, 2008 of the Regional Trial Court of Las Piñas in SCA 05-0008;

3. **ORDERS** the partition of the subject property between petitioner Isabelo C. Dela Cruz and Emelinda C. Dela Cruz;

4. **ORDERS** the remand of the records of SCA 05-0008 to the Regional Trial Court of Las Piñas; and

5. **DIRECTS** the latter court to proceed with the partition proceedings in the case in accordance with Section 2, Rule 69 of the Rules of Civil Procedure.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194169. December 4, 2013]

ROMEO R. ARAULLO, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, HON. MERCEDITAS N. GUTIERREZ, HON. GERARDO C. NOGRALES, HON. ROMEO L. GO, HON. PERLITA B. VELASCO, and HON. ARDEN S. ANNI,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GRAVE MISCONDUCT; RESPONDENT LABOR ARBITER'S ISSUANCE OF THE AUGUST 12, 2008 ORDER QUASHING THE WRIT AHEAD OF THE SCHEDULED AUGUST 20, 2008 HEARING IS NOT IMPROPER SINCE THE WRIT OF EXECUTION WAS PROCEDURALLY IRREGULAR.—** There is no doubt that Arbiter Anni's July 29, 2008 Writ of Execution was procedurally irregular, as it pre-empted the NLRC Rules which require that where further computation of the award in the decision is necessary during the course of the execution proceedings, no Writ of Execution shall be issued until after the computation has been approved by the Labor Arbiter in an order issued after the parties have been duly notified and heard on the matter. When the writ was issued, there was as yet no order approving the computation made by the NLRC Computation and Examination Unit, and there was a pending and unresolved Motion to Recompute filed by Club Filipino. A cursory examination of the motion reveals that it raised valid issues that required determination in order to arrive at a just resolution, so that none of the parties would be unjustly enriched. For example, it appears that petitioner owed Club Filipino a substantial amount of money which the latter sought to deduct from the judgment award by way of compensation; if this is true, then the necessary adjustment in the award may be made to allow Club Filipino to recover what petitioner owes it, to the extent allowable by law. Since the Writ of Execution was issued in contravention of the law, it is irregular and defective, and there was no need to further hear Club Filipino's motion

to quash the writ; Arbiter Anni's issuance of the August 12, 2008 Order quashing the writ ahead of the scheduled August 20, 2008 hearing is therefore not improper. "A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. x x x It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored." The Court cannot blame the respondents for not treating the Writ of Execution as an implicit approval of the NLRC Computation and Examination Unit's computation, or even as an implied denial of Club Filipino's Motion to Recompute, because the NLRC Rules precisely require that the computation must be approved by the Labor Arbiter in an order issued after the parties have been duly notified and heard. Besides, the pending motion to recompute was not touched upon in the Writ of Execution. Finally, given petitioner's threats of exacting criminal and administrative liability if he did not have his way, respondents chose to act with extreme caution and took an academic and literal approach in construing and applying the NLRC Rules.

2. **ID.; ID.; ID.; ID.; RESPONDENT LABOR ARBITER'S ACTIONS DID NOT UNDULY FAVOR CLUB FILIPINO NOR LIKEWISE FAVORED HIS FRATERNITY BROTHERS IN CLUB FILIPINO.—** Nor may it be said that in quashing the Writ of Execution or in inhibiting himself from the labor case, Arbiter Anni unduly favored Club Filipino. Quite the contrary, Arbiter Anni risked being dragged to court on a gross ignorance charge by issuing the Writ of Execution in disregard of the NLRC Rules; if he did not quash the writ, he would likewise have been perceived as favoring petitioner. Moreover, it could also be said that if Arbiter Anni favored his fraternity brothers in Club Filipino, he would not have issued the Writ of Execution in the first place; and he would have stayed on with the case, instead of inhibiting himself therefrom.

3. **ID.; ID.; ID.; ID.; RESPONDENT COMMISSIONERS ACTED PROPERLY PURSUANT TO THE NLRC RULES, AND AVERTED FURTHER MISTAKE AND DAMAGE BY AFFIRMING THE QUASHING OF AN OTHERWISE IMPROVIDENT WRIT; THE COURT FAILS TO DISCERN ANY INDICATION OF MALICE, BAD FAITH, MISCONDUCT**

OR EVEN NEGLIGENCE IN RESPONDENTS' ACTIONS.— On the part of the respondent Commissioners, the Court detects no irregularity in their actions either. While petitioner accuses them of gross misconduct for improperly affirming, through their October 29, 2008 Resolution, Arbiter Anni's order quashing the Writ of Execution, the Court believes otherwise; they acted pursuant to the NLRC Rules, and averted further mistake and damage by affirming the quashing of an otherwise improvident writ. The Court fails to discern any indication of malice, bad faith, misconduct, or even negligence in the respondents' actions. Nor are there signs of partiality or attempts to favor a party to the case. All their actions were aboveboard. Even Arbiter Anni's subsequent inhibition from the case is far from questionable; like Arbiter Panganiban, he may have been rendered uneasy by petitioner's threats of criminal and administrative sanction if he failed to expedite the proceedings.

4. **ID.; ID.; ID.; ID.; RESPONDENT LABOR ARBITER'S ACTION DOES NOT BETRAY MALICE, BAD FAITH, MISCONDUCT AND EVEN NEGLIGENCE; AFTER REALIZING THAT HIS ACTION QUASHING THE WRIT WOULD BE SCRUTINIZED OR MISINTERPRETED, GIVEN HIS FRATERNITY TIES WITH THE PRESIDENT AND COUNSEL OF CLUB FILIPINO, HE TOOK IT UPON HIMSELF TO REVEAL SUCH RELATIONSHIP, AND THEN RECUSE HIMSELF TO AVOID A POSSIBLE ADMINISTRATIVE CASE.—** Under the 2005 NLRC Rules, a Labor Arbiter may voluntarily inhibit himself from the resolution of a case and shall so state in writing the legal justifications therefor. Arbiter Anni was not precluded from voluntarily inhibiting himself from the case; indeed, his inhibition was warranted under the circumstances and given his fraternity ties with the President of Club Filipino and its counsel of record. What may have been placed in question is the timing of his inhibition; one may wonder why he had to do so just days after he quashed his own Writ of Execution. Petitioner – given his leaning – understandably interprets this as an attempt to prolong the execution proceedings. An objective analysis of the situation, however, engenders the view that inhibition was a well-considered decision on Arbiter Anni's part, who realizing that he committed a procedural misstep by his impetuous issuance of the Writ of Execution which set

him up for a possible administrative case grounded on gross ignorance or otherwise, quashed his own writ. At the same time, he realized that his action of quashing the writ would be scrutinized or misinterpreted, given his fraternity ties with the Club Filipino President and counsel; thus, he took it upon himself to reveal such relationship, and then recuse himself from the case in order to avoid a possible administrative case. In short, the events reveal that Arbiter Anni acted with his interest solely in mind; he had no intentions of favoring any party to the case. His actions do not betray malice, bad faith, misconduct, or even negligence.

5. **ID.; ID.; ID.; ID.; A PUBLIC OFFICER WHO ACTS PURSUANT TO THE DICTATE OF THE LAW AND WITHIN THE LIMITS OF ALLOWABLE DISCRETION CAN HARDLY BE CONSIDERED GUILTY OF MISCONDUCT.—** "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. x x x [And when] the elements of corruption, clear intent to violate the law or flagrant disregard of established rule [are] manifest," the public officer shall be liable for grave misconduct. Evidently, a public officer who acts pursuant to the dictates of law and within the limits of allowable discretion can hardly be considered guilty of misconduct. Finding no irregularity in the acts of respondents, the Ombudsman did not commit grave abuse of discretion in exonerating them from the administrative charge of grave misconduct. As a matter of fact, its disposition is correct in every respect. Thus, the Court's policy of non-interference with the Ombudsman's exercise of sound discretion and judgment stands.

6. **ID.; ID.; ID.; ID.; FACT THAT THE ASSAILED DECISION IS UNDATED IS NOT *PER SE* CONSIDERED IRREGULAR AND A HIGHLY UNUSUAL CIRCUMSTANCE UNLESS THE DATE IS MATERIAL OR CONSTITUTED THE VERY SUBJECT MATTER OF THE INQUIRY; THE APPARENT FAILURE OF PETITIONER'S COUNSEL TO BE SERVED WITH A COPY OF THE ASSAILED DECISION DID NOT PREJUDICE HIS RIGHTS AS IT DID NOT PREVENT HIM FROM TIMELY FILING HIS PETITION.—** x x x Petitioner ascribes wrongdoing because the assailed decision of the Ombudsman is undated, and allegedly his counsel was not furnished with a copy thereof. In the past,

this Court did not pay much attention to the fact that the assailed decisions or orders brought before it were undated; indeed, in many of those cases, the Court even sustained these undated dispositions. Unless the date itself was material or constituted the very subject matter of the inquiry, the Court made short shrift of the defect. On the other hand, it appears that the apparent failure of petitioner's counsel to be served with a copy of the assailed decision did not prejudice petitioner's rights; it did not prevent him from timely filing this Petition. And if there were any procedural infirmities attendant or leading to petitioner's filing of the instant Petition, they seem to have been ignored or overlooked for petitioner's own benefit.

7. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS FROM DECISIONS OF THE OFFICE OF OMBUDSMAN IN ADMINISTRATIVE DISCIPLINARY CASES SHOULD BE TAKEN TO THE COURT OF APPEALS UNDER THE PROVISIONS OF RULE 43 AND NOT DIRECTLY TO THE COURT *VIA* A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.—** We note that from the assailed undated Decision of the Ombudsman in OMB-C-A-09-0437-H, petitioner went directly to this Court *via* this Petition for *Certiorari*. This is not allowed. It is settled jurisprudence that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure."

APPEARANCES OF COUNSEL

Ramon M. Maronilla for petitioner.
Osoteo Law Office for Atty. A.S. Anni.

D E C I S I O N

DEL CASTILLO, *J.*:

A public officer who acts pursuant to the dictates of law and within the limits of allowable discretion can hardly be considered guilty of misconduct.

This Petition for *Certiorari*[1] seeks to set aside the undated Decision[2] of the Office of the Ombudsman (Ombudsman) in Case No. OMB-C-A-09-0437-H, entitled "*Romeo R. Araullo, Complainant, versus Gerardo C. Nograles, Romeo L. Go, Perlita B. Velasco, and Arden S. Anni, Respondents*."

Factual Antecedents

Relative to National Labor Relations Commission (NLRC), National Capital Region (NCR) NLRC NCR Case No. 00-01-00581-2001 (the labor case) entitled "*Romeo R. Araullo, Complainant, versus Club Filipino, Inc., Respondent*," which is a case for illegal dismissal with a prayer for the recovery of salaries, benefits, and damages filed by herein petitioner Romeo R. Araullo against his former employer Club Filipino, Inc. (Club Filipino) with the Quezon City NCR Office of the NLRC, judgment[3] was rendered by the Court of Appeals (CA), to wit:

WHEREFORE, the instant petition is GRANTED. The Decisions of the NLRC and the Labor Arbiter are vacated and set aside. Petitioner Araullo's dismissal is hereby declared illegal. Accordingly, the respondent Club Filipino is hereby ordered to reinstate Araullo to his former position without loss of seniority rights and to pay petitioner full [backwages], inclusive of allowances, including 13th month pay, as well as other monetary benefits, computed from the time his compensation was withheld from him to the time of his reinstatement. Should reinstatement be no longer possible the respondent Club Filipino should instead pay Araullo separation pay equivalent to one month a day [sic] for every year of service, with

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[1] *Rollo*, pp. 3-42.

[2] Ombudsman *rollo*, pp. 445-457; per Graft Investigation and Prosecution Officer I Romualdo V. Francisco, reviewed by PIAB-C OIC-Director Aleu A. Amante, recommended for approval by PAMO Acting Assistant Ombudsman Mary Susan S. Guillermo, and approved by Ombudsman Ma. Merceditas N. Gutierrez.

[3] *Rollo*, pp. 136-145; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Remedios Salazar-Fernando and Monina Arevalo-Zenarosa.

the fraction of at least six (6) months be [sic] considered as one whole year.

SO ORDERED.[4]

The above CA judgment became final and executory after it was affirmed by this Court via a Decision[5] dated November 29, 2006 in G.R. No. 167723. Thus, the labor case was remanded to the NLRC for computation of petitioner's actual entitlements.

The Labor Arbiter handling the case, Fedriel Panganiban (Arbiter Panganiban) directed the NLRC Computation and Examination Unit to compute the liabilities of Club Filipino, after which the said office submitted a written computation[6] granting petitioner the following:

Backwages		₱1,494,000.00
13th Month Pay		124,500.00
Sick Leave/Vacation Leave		143,652.25
Separation Pay		576,000.00
	Total	₱2,338,152.25[7]

On December 13, 2007, Arbiter Panganiban issued an Order[8] voluntarily inhibiting himself from handling the labor case "to obviate any suspicion of partiality." The Order reads in part:

It was explained to the parties that after the submission of the comment, an order will be issued by this Arbitration Branch, however, even before the expiration of the ten[-]day period in which the

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[4] *Id*. at 144.

[5] *Id*. at 146-154; penned by Associate Justice Conchita Carpio Morales and concurred in by Associate Justices Leonardo A. Quisumbing, Antonio T. Carpio, Dante O. Tinga, and Presbitero J. Velasco, Jr.

[6] "Computation of Monetary Award as per Decision of the Court of Appeals dated February 28, 2005 affirmed by the Supreme Court dated November 29, 2006."

[7] Ombudsman *rollo*, p. 95.

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

respondent is to submit the comment, complainant's counsel bombarded this office with constant follow-ups insisting for the issuance of the writ of execution. Complainant's counsel even hinted that he will be filing a case before the Ombudsman if the writ of execution will not be issued.[9]

Club Filipino appealed Arbiter Panganiban's Order of inhibition with the NLRC. Meanwhile, the labor case was raffled to herein respondent Labor Arbiter Arden S. Anni (Arbiter Anni) on January 4, 2008.

On January 8, 2008, petitioner filed a 4th *Ex-Parte* Manifestation With Very Urgent Prayer For Issuance Of Writ Of Execution.[10] On January 21, 2008, Club Filipino filed a Motion to Recompute dated January 10, 2008.[11]

On January 31, 2008, Arbiter Anni issued an Order[12] holding in abeyance any action on petitioner's motion for execution and other related motions until Club Filipino's appeal with the NLRC relative to Arbiter Panganiban's inhibition is resolved.

In a May 15, 2008 Decision[13] which became final and executory, the NLRC dismissed Club Filipino's appeal relative to Arbiter Panganiban's voluntary inhibition, and ordered that the records of the labor case be immediately forwarded to the branch of origin for continuation of the execution proceedings.

On July 29, 2008, Arbiter Anni issued a Writ of Execution[14] ordering the collection of the ₱2,338,152.25 award as computed by the NLRC Computation and Examination Unit, as well as execution fees in the amount of ₱23,380.00.

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[9] *Id*.

[10] *Id*. at 193-205.

[11] *Id*. at 214-227.

[12] *Id*. at 207-208.

[13] *Id*. at 228-231; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

[14] *Id*. at 232-237.

Club Filipino moved to quash the Writ of Execution,[15] claiming that Arbiter Anni improvidently issued the writ without resolving the pending incidents and issues and in violation of the NLRC rules of procedure – in that it was issued without the required order approving the computation and without giving notice of such approval to the parties.[16] The motion to quash was set for hearing on August 20, 2008.

Even before Club Filipino's motion to quash could be heard on its scheduled hearing date, Arbiter Anni in an August 12, 2008 Order[17] quashed the Writ of Execution, enjoined the sheriff from conducting further execution, and lifted all notices of garnishment issued to the banks. Then, on August 14, 2008, he issued another Order voluntarily inhibiting himself from further proceedings in the labor case, on the ground that his "sense of impartiality may be questioned by any of the parties because of (his) rapport with Atty. Roberto 'Obet' De Leon, President of Club Filipino, and respondent's counsel, Atty. Ernesto P. Tabao x x x, who are both (his) fraternity brothers in San Beda College of Law."[18]

On August 22, 2008, petitioner filed with the NLRC a Very Urgent Petition to Set Aside the Order of Labor Arbiter Arden S. Anni dated 12 August 2008[19] claiming that the assailed Order defied the NLRC's directive to continue with the execution of the case; that execution of the judgment is ministerial, and the quashing of the writ constitutes an evasion of a positive duty; that Arbiter Anni's inhibition was calculated to favor Club

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[15] *Id*. at 241-253.

[16] 2005 NLRC REVISED RULES OF PROCEDURE, Rule XI, Section 4.

Computation During Execution. — Where further computation of the award in the decision, resolution or order is necessary during the course of the execution proceedings, no writ of execution shall be issued until after the computation has been approved by the Labor Arbiter in an order issued after the parties have been duly notified and heard on the matter.

[17] *Rollo*, pp. 254-255.

[18] *Id*. at 256-257.

[19] *Id*. at 258-268.

Filipino and his fraternity brothers; that Club Filipino's motion to quash was a mere scrap of paper because petitioner's counsel was not furnished with a copy thereof; and that the Writ of Execution has been duly implemented and completely satisfied. However, the Petition was denied for lack of merit in an October 29, 2008 Resolution[20] issued by the First Division of the NLRC, composed of the herein respondent Commissioners – Presiding Commissioner Gerardo C. Nograles and Commissioners Romeo L. Go, and Perlita B. Velasco. The following was decreed:

WHEREFORE, the petition to set aside the quashal order dated August 12, 2008 is hereby DENIED for lack of merit and the Motion for the Issuance of Preliminary Injunction and/or Temporary Restraining Order is DISMISSED for being MOOT and academic. Let the entire records be immediately forwarded to the Arbitration Branch of origin for the purpose aforementioned.

SO ORDERED.[21]

In the above-quoted October 29, 2008 Resolution, the respondent Commissioners noted that in Arbiter Panganiban's December 13, 2007 Order,[22] he committed that after the parties shall have submitted their comments to the NLRC Computation and Examination Unit's written computation, he will issue the corresponding order, either approving or disapproving the computation; however, the matter was overtaken by his voluntary inhibition from the case. And when Arbiter Anni took over, he improvidently issued the Writ of Execution without first approving or disapproving the NLRC Computation and Examination Unit's computation or resolving Club Filipino's subsequent January 10, 2008 Motion to Recompute, thus circumventing Rule XI, Section 4 of the 2005 NLRC Revised Rules of Procedure[23] (NLRC Rules). The logical step, then, was to first resolve the pending issues and incidents in accordance

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[20] *Id*. at 283-289.

[21] *Id*. at 288.

[22] *Id*. at 181-182.

[23] *Supra* note 16.

with the NLRC Rules; a remand of the case to the Labor Arbiter was thus in order.

Petitioner moved to reconsider, but in a March 18, 2009 Resolution,[24] the respondent Commissioners resolved to deny his motion for reconsideration.

Ruling of the Ombudsman

On July 28, 2009, petitioner filed a Complaint[25] before the Ombudsman against the respondent Commissioners and Arbiter Anni, for violation of Section 3(e)[26] of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act, and Article 206 of the Revised Penal Code.[27] The criminal aspect was docketed as OMB-C-C-09-0410-H; it was later dismissed by the Ombudsman via an undated Resolution.[28] On the other hand, the administrative case – docketed as OMB-C-A-09-0437-H – was based on a charge of grave misconduct.

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[24] *Rollo*, pp. 301-304.

[25] Ombudsman *rollo*, pp. 1-34.

[26] Section 3. *Corrupt practices of public officers*. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

[27] Art. 206. *Unjust interlocutory order*. – Any judge who shall knowingly render an unjust interlocutory order or decree shall suffer the penalty of *arresto mayor* in its minimum period and suspension; but if he shall have acted by reason of inexcusable negligence or ignorance and the interlocutory order or decree be manifestly unjust, the penalty shall be suspension.

[28] *Rollo*, pp. 617-618.

Petitioner charged that Arbiter Anni entertained Club Filipino's motion to quash despite the fact that only he – and not his counsel – was furnished with a copy thereof; that he hastily resolved to quash the Writ of Execution and lift the notices of garnishment even before the scheduled date of hearing of Club Filipino's motion to quash; and that after quashing the Writ of Execution, he voluntarily inhibited himself from further proceeding with the labor case to "wash his hands" of the improper quashal of the Writ of Execution. Petitioner accused Arbiter Anni of conspiring with his fraternity brothers in Club Filipino to delay the execution of the decision in the labor case, thus giving unwarranted benefits and advantage to them. On the other hand, petitioner accused the respondent Commissioners of gross misconduct for improperly affirming and "legitimizing", through their October 29, 2008 Resolution, Arbiter Anni's order quashing the Writ of Execution.

In their Counter-Affidavit,[29] the respondent Commissioners set up the defense that they acted lawfully and regularly in the performance of their functions relative to petitioner's labor case – specifically the quashing of the Writ of Execution, which was issued improvidently by Arbiter Anni; that if they allowed the execution to proceed, Club Filipino's right to due process would have been violated, and this would have opened the door to further appeals or proceedings. They added that they did not act with partiality, malice or with deliberate intent to cause damage to petitioner, nor is there evidence to show that they acted in such manner; on the contrary, they acted with caution, prudence, good faith, and with due regard for the rules of procedure of the NLRC. They maintained that the presumption of regularity should apply to them, and they should be afforded a wide latitude of discretion, as government officers possessing the knowledge, expertise, and experience in labor matters. They note particularly petitioner's repeated threats to file an administrative case if the labor case is not decided in his favor, from Arbiter Panganiban's December 13, 2007 Order which revealed petitioner's counsel's threat to file an administrative

[29] *Id.* at 306-316.

case if the Writ of Execution is not granted, to the insinuation that if petitioner's Very Urgent Petition to Set Aside the Order of Labor Arbiter Arden S. Anni dated 12 August 2008 is denied, a complaint with the Ombudsman would be instituted.

For his part, Arbiter Anni in his Counter-Affidavit[30] avowed that there is no plot or conspiracy to delay the execution of the final judgment in the labor case; that he was not influenced by his fraternity brothers in Club Filipino; that he was compelled to quash the Writ of Execution on account of pending incidents that had to be resolved first, in conformity with Rule XI, Section 4 of the NLRC Rules; that when the writ was quashed, garnishment had not been effected; that he scheduled the hearing on the motion to quash on August 20, 2008 only because the motion could not be accommodated in his official calendar – thus, in issuing his August 12, 2008 Order quashing the Writ of Execution, he did not violate petitioner's right to due process; that it was necessary to quash the Writ of Execution as it did not conform to Rule XI, Section 4 of the NLRC Rules; that in inhibiting himself from the case, he had no intention to delay the execution of the judgment therein; and that petitioner should not be allowed to obtain execution and satisfaction of the judgment at the expense and in violation of the rights of Club Filipino.

In a Consolidated Reply-Affidavit,[31] petitioner reiterated that he should have been heard on the motion to quash before the Writ of Execution was withdrawn; that Arbiter Anni's August 12, 2008 Order quashing the writ was patently void as the motion to quash was still scheduled to be heard on August 20, 2008; that in issuing the Writ of Execution on July 29, 2008 ordering the collection of the amount of ₱2,338,152.25, Arbiter Anni is deemed to have approved the said computation of the NLRC Computation and Examination Unit; that because the Writ of Execution was validly issued and the order quashing it is void, the respondent Commissioners are guilty of misconduct in sustaining the said order, and caused undue injury to the petitioner

[30] *Id.* at 317-337.

[31] *Id.* at 338-362.

as a result of the delay in the execution and unwarranted benefits given by the respondents to Club Filipino; and that Arbiter Anni is guilty of evident partiality, causing undue injury to petitioner and delay in the labor case, as well as giving unwarranted benefits and advantage to his fraternity brothers in Club Filipino.

Meanwhile, it appears that the labor case was assigned to Arbiter Fe S. Cellan (Arbiter Cellan), who proceeded with the execution. In a September 14, 2009 Order, Arbiter Cellan corrected the computed award, thus:

> WHEREFORE, in view of the foregoing, the Motion to Recompute is denied. However, the computation of the backwages and separation pay should be corrected and should be limited until 03 October 2007 and the outstanding account of complainant in the amount of ₱186,545.81 should be deducted therefrom.
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> SO ORDERED.[32]

It likewise appears that a recomputation was made, and the award due to petitioner was reduced to ₱2,117,002.35; that in an October 8, 2009 Order, Arbiter Cellan approved the new computation and ordered the issuance of a Writ of Execution; and that on December 10, 2010, petitioner received in full the amount of the judgment award.[33]

Meanwhile, in OMB-C-A-09-0437-H, the assailed undated Decision was issued, decreeing as follows:

> WHEREFORE, the charge of Grave Misconduct against the respondents is hereby dismissed.
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> SO ORDERED.[34]

The Ombudsman held that the quashing of the Writ of Execution was done to correct an error in the proceedings in the labor case; there were pending motions and incidents that remained unresolved – yet the Writ of Execution was issued

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[32] *Id*. at 618.

[33] *Id*. at 375, 618-619.

[34] *Id*. at 54.

nonetheless. In quashing the writ, the Ombudsman believed that Arbiter Anni was motivated by the desire to rectify any violation of the NLRC Rules and prevent further contravention thereof, and not by ill motive to delay the case or favor Club Filipino. The Ombudsman further assumed that it was necessary for Arbiter Anni to have corrected himself before inhibiting from the labor case.

The Ombudsman added that "the writ of execution would have been nullified regardless of the motion to quash filed by Club Filipino because there was a need to rectify a lapse in the labor proceedings,"[35] and that this was "precisely the reason why the respondent Commissioners sustained the ruling"[36] of Arbiter Anni. Finally, the Ombudsman held that in the absence of a clear and manifest intent to violate the law, or a flagrant disregard of established rule, there could be no grave misconduct on the respondents' part. On the contrary, what respondents did was to "correct an error to avoid any transgression of the rules of procedure."[37]

Issue

With the dismissal of his charges, petitioner commenced the instant Petition, which raises the sole issue of whether there is substantial evidence to hold respondents liable for grave misconduct.

Petitioner's Arguments

Essentially, petitioner in his Petition and Consolidated Reply[38] reiterates his arguments in his original charge: that Arbiter Anni entertained Club Filipino's motion to quash despite the fact that only he – and not his counsel – was furnished with a copy thereof; that Arbiter Anni hastily resolved to quash the Writ of Execution and lift the notices of garnishment even before the

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[35] *Id.* at 53.

[36] *Id.*

[37] *Id.*

[38] *Id.* at 556-589.

motion to quash could be heard; that Arbiter Anni conspired with his fraternity brothers in Club Filipino to delay the execution of the decision in the labor case, thus giving unwarranted benefits and advantage to Club Filipino and causing undue injury to petitioner; and that the respondent Commissioners improperly affirmed, through their October 29, 2008 Resolution, Arbiter Anni's order quashing the Writ of Execution.

Petitioner concludes that in view of the foregoing, the Ombudsman committed patent error and grave abuse of discretion in exonerating the respondents from the charge of grave misconduct. He likewise takes exception to the fact that the assailed decision is undated – insinuating that it is an irregular and highly unusual circumstance, and notes that his counsel of record was not furnished with a copy of the assailed Decision.

Petitioner thus prays that the Court set aside the assailed Decision of the Ombudsman and declare respondents guilty of grave misconduct.

Respondents' Arguments

In their Comment[39] praying for the dismissal of the Petition, respondent Commissioners argue that no grave abuse of discretion exists to warrant a reversal of the Ombudsman's ruling; that in the absence of evidence that it acted in a capricious, whimsical and arbitrary manner, its findings are entitled to respect; that the elements of grave misconduct are not present in their case; that they acted lawfully, regularly, and with prudence and caution, in the performance of their functions; that in issuing the October 29, 2008 Resolution, they merely rectified Arbiter Anni's mistake in issuing the Writ of Execution without observing the proper procedure under the NLRC Rules.

In his Comment,[40] Arbiter Anni maintains his innocence, insisting that he acted in good faith and under a sense of duty to rectify his mistake in improvidently issuing the Writ of

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[39] *Id.* at 367-379.

[40] *Id.* at 437-473.

Execution. He claims that he did not commit grave misconduct, nor did he act with a clear intent to violate the law or flagrantly disregard the NLRC Rules; that he favored no one; that in inhibiting from the case, he acted prudently; that in sustaining his actions, the Ombudsman did not commit grave abuse of discretion, but was merely acting in accordance with the facts, the law and evidence on record.

The Ombudsman, on the other hand, insists in its Comment[41] that there is no substantial evidence to hold respondents liable for grave misconduct; and in the absence of such evidence, the instant Petition must necessarily fail as the requisite grave abuse of discretion is lacking.

Our Ruling

The Petition is dismissed.

During execution proceedings, errors may be committed such that the rights of a party may be prejudiced, in which case corrective measures are called for. These may involve instances where —

1) the [W]rit of [E]xecution varies the judgment;

2) there has been a change in the situation of the parties making execution inequitable or unjust;

3) execution is sought to be enforced against property exempt from execution;

4) it appears that the controversy has never been subject to the judgment of the court;

5) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or

6) x x x the [W]rit of [E]xecution [was] improvidently issued, or x x x is defective in substance, or [was] issued against the wrong party, or x x x the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority.[42]

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[41] *Id.* at 516-544.

[42] *Banaga v. Judge Majaducon*, 526 Phil. 641, 649-650 (2006).

In such event, one of the corrective measures that may be taken is the quashing of the Writ of Execution.[43]

There is no doubt that Arbiter Anni's July 29, 2008 Writ of Execution was procedurally irregular, as it pre-empted the NLRC Rules which require that where further computation of the award in the decision is necessary during the course of the execution proceedings, no Writ of Execution shall be issued until after the computation has been approved by the Labor Arbiter in an order issued after the parties have been duly notified and heard on the matter. When the writ was issued, there was as yet no order approving the computation made by the NLRC Computation and Examination Unit, and there was a pending and unresolved Motion to Recompute filed by Club Filipino. A cursory examination of the motion reveals that it raised valid issues that required determination in order to arrive at a just resolution, so that none of the parties would be unjustly enriched. For example, it appears that petitioner owed Club Filipino a substantial amount of money which the latter sought to deduct from the judgment award by way of compensation; if this is true, then the necessary adjustment in the award may be made to allow Club Filipino to recover what petitioner owes it, to the extent allowable by law.

Since the Writ of Execution was issued in contravention of the law, it is irregular and defective, and there was no need to further hear Club Filipino's motion to quash the writ; Arbiter Anni's issuance of the August 12, 2008 Order quashing the writ ahead of the scheduled August 20, 2008 hearing is therefore not improper. "A void judgment or order has no legal and binding effect, force or efficacy for any purpose. In contemplation of law, it is non-existent. x x x It is not even necessary to take any steps to vacate or avoid a void judgment or final order; it may simply be ignored."[44]

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[43] *Ibatan v. Melicor*, G.R. No. L-39125, August 20, 1990, 188 SCRA 598, 605.

[44] *Land Bank of the Philippines v. Orilla*, G.R. No. 194168, February 13, 2013, 690 SCRA 610, 618-619.

The Court cannot blame the respondents for not treating the Writ of Execution as an implicit approval of the NLRC Computation and Examination Unit's computation, or even as an implied denial of Club Filipino's Motion to Recompute, because the NLRC Rules precisely require that the computation must be approved by the Labor Arbiter in an order issued after the parties have been duly notified and heard. Besides, the pending motion to recompute was not touched upon in the Writ of Execution. Finally, given petitioner's threats of exacting criminal and administrative liability if he did not have his way, respondents chose to act with extreme caution and took an academic and literal approach in construing and applying the NLRC Rules.

Nor may it be said that in quashing the Writ of Execution or in inhibiting himself from the labor case, Arbiter Anni unduly favored Club Filipino. Quite the contrary, Arbiter Anni risked being dragged to court on a gross ignorance charge by issuing the Writ of Execution in disregard of the NLRC Rules; if he did not quash the writ, he would likewise have been perceived as favoring petitioner. Moreover, it could also be said that if Arbiter Anni favored his fraternity brothers in Club Filipino, he would not have issued the Writ of Execution in the first place; and he would have stayed on with the case, instead of inhibiting himself therefrom.

On the part of the respondent Commissioners, the Court detects no irregularity in their actions either. While petitioner accuses them of gross misconduct for improperly affirming, through their October 29, 2008 Resolution, Arbiter Anni's order quashing the Writ of Execution, the Court believes otherwise; they acted pursuant to the NLRC Rules, and averted further mistake and damage by affirming the quashing of an otherwise improvident writ.

The Court fails to discern any indication of malice, bad faith, misconduct, or even negligence in the respondents' actions. Nor are there signs of partiality or attempts to favor a party to the case. All their actions were aboveboard. Even Arbiter Anni's subsequent inhibition from the case is far from questionable;

like Arbiter Panganiban, he may have been rendered uneasy by petitioner's threats of criminal and administrative sanction if he failed to expedite the proceedings.

Under the 2005 NLRC Rules, a Labor Arbiter may voluntarily inhibit himself from the resolution of a case and shall so state in writing the legal justifications therefor. Arbiter Anni was not precluded from voluntarily inhibiting himself from the case; indeed, his inhibition was warranted under the circumstances and given his fraternity ties with the President of Club Filipino and its counsel of record. What may have been placed in question is the timing of his inhibition; one may wonder why he had to do so just days after he quashed his own Writ of Execution. Petitioner – given his leaning – understandably interprets this as an attempt to prolong the execution proceedings. An objective analysis of the situation, however, engenders the view that inhibition was a well-considered decision on Arbiter Anni's part, who realizing that he committed a procedural misstep by his impetuous issuance of the Writ of Execution which set him up for a possible administrative case grounded on gross ignorance or otherwise, quashed his own writ. At the same time, he realized that his action of quashing the writ would be scrutinized or misinterpreted, given his fraternity ties with the Club Filipino President and counsel; thus, he took it upon himself to reveal such relationship, and then recuse himself from the case in order to avoid a possible administrative case. In short, the events reveal that Arbiter Anni acted with his interest solely in mind; he had no intentions of favoring any party to the case. His actions do not betray malice, bad faith, misconduct, or even negligence.

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. x x x [And when] the elements of corruption, clear intent to violate the law or flagrant disregard of established rule [are] manifest,"[45] the public officer shall be liable for grave misconduct. Evidently, a public officer who acts

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[45] *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

pursuant to the dictates of law and within the limits of allowable discretion can hardly be considered guilty of misconduct.

Finding no irregularity in the acts of respondents, the Ombudsman did not commit grave abuse of discretion in exonerating them from the administrative charge of grave misconduct. As a matter of fact, its disposition is correct in every respect. Thus, the Court's policy of non-interference with the Ombudsman's exercise of sound discretion and judgment stands.

Next, petitioner ascribes wrongdoing because the assailed decision of the Ombudsman is undated, and allegedly his counsel was not furnished with a copy thereof. In the past, this Court did not pay much attention to the fact that the assailed decisions or orders brought before it were undated;[46] indeed, in many of those cases, the Court even sustained these undated dispositions. Unless the date itself was material or constituted the very subject matter of the inquiry, the Court made short shrift of the defect. On the other hand, it appears that the apparent failure of petitioner's counsel to be served with a copy of the assailed decision did not prejudice petitioner's rights; it did not prevent him from timely filing this Petition. And if there were any procedural infirmities attendant or leading to petitioner's filing of the instant Petition, they seem to have been ignored or overlooked for petitioner's own benefit.

Finally, we note that from the assailed undated Decision of the Ombudsman in OMB-C-A-09-0437-H, petitioner went directly to this Court *via* this Petition for *Certiorari*. This is not allowed. It is settled jurisprudence that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions

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[46] Among others, *Gonzales III v. Office of the President of the Philippines*, G.R. Nos. 196231 & 196232, September 4, 2012, 679 SCRA 614; *Aberdeen Court, Inc. v. Agustin, Jr.*, 495 Phil. 706 (2005); *M.A. Santander Construction, Inc. v. Villanueva*, 484 Phil. 500 (2004); *Padilla v. Hon. Sto. Tomas*, 312 Phil. 1095 (1995); *Lozano v. Yorac*, G.R. Nos. 94521 & 94626, October 28, 1991, 203 SCRA 256; *Peñaflor v. National Labor Relations Commission*, 205 Phil. 44 (1983); *Samala v. Saulog Transit, Inc.*, 159 Phil. 822 (1975).

of Rule 43, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure."[47]

WHEREFORE, the Petition is **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 203186. December 04, 2013]

XAVIER C. RAMOS, *petitioner, vs.* **BPI FAMILY SAVINGS BANK INC. and/or ALFONSO L. SALCEDO, JR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO JUSTIFY THE GRANT OF THE EXTRAORDINARY REMEDY OF *CERTIORARI*, THE PETITIONER MUST SATISFACTORILY SHOW THAT THE COURT OR QUASI-JUDICIAL AUTHORITY GRAVELY ABUSED THE DISCRETION CONFERRED UPON THEM.—** To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon them. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," the discretionary authority must be

[47] *Contes v. Office of the Ombudsman*, G.R. Nos. 187896-97, June 10, 2013.

exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.

2. **ID.; ID.; ID.; IN LABOR DISPUTES, THE NATIONAL LABOR RELATIONS COMMISSION'S (NLRC) FINDINGS ARE SAID TO BE TAINTED WITH GRAVE ABUSE OF DISCRETION WHEN ITS CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.—** In labor disputes, the NLRC's findings are said to be tainted with grave abuse of discretion when its conclusions are not supported by substantial evidence. As held in the case of *Mercado v. AMA Computer College-Parañaque City, Inc.*, citing *Protacio v. Laya Mananghaya & Co.*: The CA only examines the factual findings of the NLRC **to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction**. In the recent case of *Protacio v. Laya Mananghaya & Co.*, we emphasized that: As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. **However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence**. **The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence**. The requirement that the NLRC's findings should be supported by substantial evidence is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that "[i]n cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

3. **ID.; ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC IN FINDING THAT THE DEDUCTION MADE FROM PETITIONER'S RETIREMENT**

BENEFITS WAS IMPROPER; CASE AT BAR.— Applying the foregoing considerations, the Court finds the CA to have erred in attributing grave abuse of discretion on the part of the NLRC in finding that the deduction made from Ramos's retirement benefits was improper. Two (2) reasons impel the foregoing conclusion: ***First***, as correctly observed by the NLRC, BPI Family was not able to substantially prove its imputation of negligence against Ramos. Well-settled is the rule that the burden of proof rests upon the party who asserts the affirmative of an issue. In this case, BPI Family failed to establish that the duty to confirm and validate information in credit applications and determine credit worthiness of prospective loan applicants rests with the Dealer Network Marketing Department, which is the department under the supervision of Ramos. Quite the contrary, records show that these responsibilities lie with the bank's Credit Services Department, namely its Credit Evaluation Section and Loans Review and Documentation Section, of which Ramos was not part of. ***Second***, as similarly observed by the NLRC, Ramos merely followed standing company practice when he issued the PO and ATD without prior approval from the bank's Credit Services Department. x x x Based on the foregoing, it is readily apparent that Ramos's action of issuing the PO and ATD ahead of the approval of the credit committee was actually conformant to regular company practice which BPI Family itself sanctioned. As such, Ramos cannot be said to have been negligent in his duties. To this end, it is well to note that in loan transactions, banks are mandated to ensure that their clients wholly comply with all the documentary requirements in relation to the approval and release of loan applications. As BPI Family "uncharacteristically relaxed supervision over its divisions," yielding as it did to the demands of industry competition, it is but reasonable that it solely bears the loss of its own shortcomings. All told, absent any showing that the NLRC's decision was tainted with capriciousness or any semblance of whimsicality, the Court is wont to grant the present petition and accordingly reverse the CA decision.

APPEARANCES OF COUNSEL

Faina E. Pilar-Chuanico for petitioner.
Benedicto Verzosa and *Burkley Law Offices* for respondents.

RESOLUTION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated November 12, 2010 and Resolution[3] dated August 6, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 104161 which modified the Decision[4] dated March 31, 2008 and Resolution[5] dated May 30, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR 00-09- 07510-06 finding petitioner Xavier C. Ramos (Ramos) concurrently negligent with respondent BPI Family Savings Bank, Inc. (BPI Family) and thus ordering the equitable reduction of his retirement benefits from ₱546,000.00 to ₱200,000.00.

The Facts

Ramos was employed by BPI Family in 1995 and eventually became its Vice-President for Dealer Network Marketing/ Auto Loans Division,[6] the duties and responsibilities of which were to: (*a*) receive applications for auto loans from auto dealers and salesmen;[7] (*b*) analyze market demands[8] and formulate marketing strategies; and (*c*) enhance dealer and manufacturer relations.[9]

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[1] *Rollo,* pp. 13-50.

[2] *Id.* at 52-65. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Michael P. Elbinias, concurring.

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

[4] *Id.* at 119-135. Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring.

[5] *Id.* at 64.

[6] *Id.* at 53.

[7] *Id.* at 31.

[8] *Id.*

[9] *Id.* at 17.

During his tenure, a client named Trezita[10] B. Acosta (Acosta) entered into and obtained several auto and real estate loans from BPI Family which were duly approved and promptly paid.[11] On December 15, 2004, Acosta purportedly secured another auto loan from BPI Family in the amount of ₱3,097,392.00 for the purchase of a Toyota Prado vehicle (subject loan) which had remained unpaid. As it turned out, Acosta did not authorize nor personally apply for the subject loan, rendering the transaction fraudulent.[12]

After investigation, BPI Family discovered that: (*a*) a person misrepresented herself as Acosta and succeeded in obtaining the delivery of a Toyota Prado from the Toyota-Pasong Tamo Branch, pursuant to the Purchase Order (PO) and Authority to Deliver (ATD) issued by Ramos; (*b*) Ramos released these documents without the prior approval of BPI Family's credit committee; and (*c*) Ramos was grossly remiss in his duties since his subordinates did not follow the bank's safety protocols, particularly those regarding the establishment of the loan applicant's identity, and that the promissory note was not even signed by the applicant in the presence of any of the marketing officers.[13]

As a consequence, BPI Family lost ₱2,294,080.00, which amount was divided between Ramos and his three (3) other subordinates, with Ramos shouldering the proportionate amount of ₱546,000.00.[14] The foregoing amount was subsequently deducted from Ramos's benefits which accrued upon his retirement on May 1, 2006.[15] In relation thereto, he executed a Release, Waiver and Quitclaim[16] dated June 21, 2006, agreeing

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[10] "Terezita" in some parts of the records.

[11] *Rollo*, p. 54.

[12] *Id*.

[13] *Id*. at 55.

[14] *Id*. at 121-123.

[15] *Id*. at 56.

[16] *Id*. at 101.

to release the bank from any claim or liability with respect to, *inter alia*, his separation pay or retirement benefits.[17]

Claiming that the deductions made by BPI Family were illegal, Ramos filed a complaint for underpayment of retirement benefits and non- payment of overtime and holiday pay and premium pay against BPI Family and/or its President at that time, Alfonso L. Salcedo, Jr., before the Regional Arbitration Branch of the NLRC,[18] docketed as NLRC NCR 00-09-07510-06.

The LA Ruling

In a Decision[19] dated June 27, 2007, the Labor Arbiter (LA) dismissed Ramos's complaint, ruling that the deduction made on his retirement benefits was "legal and even reasonable"[20] since Ramos was negligent in running his department. In particular, the LA found that Ramos failed to ensure that his subordinates complied with the bank's Know Your Customer (KYC) safety protocols, and that he issued the PO and ATD without the prior approval of the credit committee.[21] The LA further noted that the quitclaim executed by Ramos must be given the force and effect of law, effectively barring any future claim by him against BPI Family.[22]

The NLRC Ruling

On appeal, the NLRC reversed the LA in a Decision[23] dated March 31, 2008, holding that the deduction complained of was "illegal and unreasonable"[24] in that: (*a*) the alleged negligence committed by Ramos was not substantially proven as he was

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[17] *Id*. at 56.

[18] *Id*. at 53.

[19] *Id*. at 103-118. Penned by Labor Arbiter Aliman D. Mangandog.

[20] *Id*. at 115.

[21] *Id*. at 117.

[22] *Id*. at 116.

[23] *Id*. at 119-135.

[24] *Id*. at 134.

not expected to personally examine all loan documents that pass through his hands or to require the client to personally appear before him because he has subordinates to do those details for him;[25] (*b*) the issuance of the PO and ATD prior to the loan's approval is not an irregular procedure, but an ordinary occurrence in BPI Family;[26] and (*c*) the deduction does not fall under the exceptions prescribed under Article 113[27] of the Labor Code on allowable deductions.[28] Further, it found Ramos's consequent signing of the quitclaim to be without effect.[29] Accordingly, it ordered BPI Family to return/refund to Ramos the amount of ₱546,000.00, with additional payment of 10% thereof as attorney's fees.[30]

BPI Family moved for reconsideration which was, however, denied by the NLRC on May 30, 2008;[31] hence, it filed a petition for *certiorari* before the CA. Pending resolution thereof, Ramos submitted a manifestation that he had caused the execution of the NLRC decision and the sum amounting to ₱600,000.00 was released in satisfaction of his claim.[32]

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[25] *Id*. at 129-130.

[26] *Id*. at 131.

[26] *Id*. at 131.

[27] Article 113. Wage Deduction. No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except: In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance; For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

[28] *Rollo*, p. 132.

[29] *Id*. at 133.

[30] *Id*. at 134.

[31] *Id*. at 57 & 64.

[32] *Id*. at 136-139.

The CA Ruling

In a Decision[33] dated November 12, 2010, the CA affirmed the finding of negligence on the part of Ramos, holding that Ramos was remiss in his duty as head of Dealer Network Marketing/Auto Loans Division in failing to determine the true identity of the person who availed of the auto loan under the name "Trezita Acosta".[34] It observed that Ramos should have forwarded the documents for approval to the Loan's Review Section and/or the Credit Evaluation Section of the bank and should not have authorized the release of the car loan without clearance from the credit committee.[35] However, it also attributed negligence on the part of BPI Family since it sanctioned the practice of issuing the PO and ATD prior to the approval of the credit committee.[36] Such relaxed supervision over its divisions contributed to a large extent to its defraudation.[37] Thus, finding BPI Family's negligence to be concurrent with Ramos, the CA found it improper to deduct the entire ₱546,000.00 from Ramos's retirement benefits and, instead, equitably reduced the same to the amount of ₱200,000.00.[38]

Ramos moved for reconsideration which was, however, denied in a Resolution[39] dated August 6, 2012. Hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in attributing grave abuse of discretion on the part of the NLRC when it found the deduction made from Ramos's retirement benefits to be illegal and unreasonable.

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[33] *Id*. at 52-65.

[34] *Id*. at 58.

[35] *Id*. at 60.

[36] *Id*. at 61.

[37] *Id*. at 62.

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

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

The Court's Ruling

The petition is meritorious.

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon them. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction.[40] To be considered "grave," the discretionary authority must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[41]

In labor disputes, the NLRC's findings are said to be tainted with grave abuse of discretion when its conclusions are not supported by substantial evidence. As held in the case of *Mercado v. AMA Computer College-Parañaque City, Inc.*,[42] citing *Protacio v. Laya Mananghaya & Co.*:[43]

> The CA only examines the factual findings of the NLRC **to determine whether or not the conclusions are supported by substantial evidence whose absence points to grave abuse of discretion amounting to lack or excess of jurisdiction**. In the recent case of *Protacio v. Laya Mananghaya & Co.*, we emphasized that:
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> > As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision**. However, as an exception, the appellate court may examine and measure**

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[40] See *Global Business Holdings, Inc. v. Surecomp Software, B.V.*, G.R. No. 173463, October 13, 2010, 633 SCRA 95, 102.

[41] *Balois v. CA*, G.R. No. 182130 & 182132, June 19, 2013.

[42] G.R. No. 183572, April 13, 2010, 618 SCRA 218.

[43] G.R. No. 168654, March 25, 2009, 582 SCRA 417.

the factual findings of the NLRC if the same are not supported by substantial evidence. The Court has not hesitated to affirm the appellate court's reversals of the decisions of labor tribunals if they are not supported by substantial evidence.[44] (Emphases supplied; citations omitted)

The requirement that the NLRC's findings should be supported by substantial evidence is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that "[i]n cases filed before administrative or quasi- judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

Applying the foregoing considerations, the Court finds the CA to have erred in attributing grave abuse of discretion on the part of the NLRC in finding that the deduction made from Ramos's retirement benefits was improper. Two (2) reasons impel the foregoing conclusion:

First, as correctly observed by the NLRC, BPI Family was not able to substantially prove its imputation of negligence against Ramos. Well-settled is the rule that the burden of proof rests upon the party who asserts the affirmative of an issue.[45] In this case, BPI Family failed to establish that the duty to confirm and validate information in credit applications and determine credit worthiness of prospective loan applicants rests with the Dealer Network Marketing Department, which is the department under the supervision of Ramos. Quite the contrary, records show that these responsibilities lie with the bank's Credit Services Department, namely its Credit Evaluation Section and Loans Review and Documentation Section,[46] of which Ramos was not part of.

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[44] *Mercado v. AMA Computer College-Parañaque City, Inc.*, *supra* note 42, at 232.

[45] *National Union of Workers in Hotels, Restaurants and Allied Industries-Manila Pavilion Hotel Chapter v. NLRC*, G.R. No. 179402, September 30, 2008, 567 SCRA 291, 305.

[46] *Rollo*, pp. 31-32.

Second, as similarly observed by the NLRC, Ramos merely followed standing company practice when he issued the PO and ATD without prior approval from the bank's Credit Services Department. In fact, as the CA itself notes, BPI Family adopted the practice of processing loans with extraordinary haste in order to overcome arduous competition with other banks and lending institutions, despite compromising procedural safeguards, *viz.*:[47]

> In a separate audit report (herein appended as Annex "**E**"), it was noted that marketing officers regularly issue or release purchase orders and authorities to deliver to car dealers (in case of dealer generated auto loan wherein a loan originates from the automobile dealer who submits the financing transactions, down payment and mortgage fee by the debtor-car purchaser to the bank) before the approval of the documents. **The report further noted that the practice has been adopted due in part to the stiff competition with other banks and lending institutions. Resultantly, in 2005 alone, approximately 111 car loan applications were released ahead of the approval of the credit evaluation section.**
>
> Such findings of the auditing division have not been rebutted or countered as erroneous. **In fact, in all 111 instances, the bank did not attempt to rectify the flaw by calling the respondent's attention to the manner by which he disregarded important bank procedure or protocol in accommodating car loan applications.** It would seem unthinkable that respondent bank has had no knowledge thereof when its credit evaluation committee could have easily relayed the variations to the management for expedient solution. Any conscientious, well-meaning banking institution (such as respondent bank, We imagine) would have raised the red flag the moment the violation is first discovered. However, in the case before Us, respondent bank did not sound alarm until the discovery of the first defraudation. **Without doubt, its uncharacteristically relaxed supervision over its divisions contributed to a large extent to the unfortunate attainment of fraud.** x x x (Emphases supplied)

Based on the foregoing, it is readily apparent that Ramos's action of issuing the PO and ATD ahead of the approval of the

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[47] *Id.* at 62.

credit committee was actually conformant to regular company practice which BPI Family itself sanctioned. As such, Ramos cannot be said to have been negligent in his duties. To this end, it is well to note that in loan transactions, banks are mandated to ensure that their clients wholly comply with all the documentary requirements in relation to the approval and release of loan applications.[48] As BPI Family "uncharacteristically relaxed supervision over its divisions," yielding as it did to the demands of industry competition, it is but reasonable that it solely bears the loss of its own shortcomings.

All told, absent any showing that the NLRC's decision was tainted with capriciousness or any semblance of whimsicality, the Court is wont to grant the present petition and accordingly reverse the CA decision.

WHEREFORE, the petition is **GRANTED.** The Decision dated November 12, 2010 and Resolution dated August 6, 2012 of the Court of Appeals in CA-G.R. SP No. 104161 are **REVERSED** and **SET ASIDE.** The National Labor Relations Commission's Decision dated March 31, 2008 and Resolution dated May 30, 2008 in NLRC NCR 00-0 -07510-06 are hereby **REINSTATED.**

SO ORDERED.

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

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[48] *Far East Bank and Trust Company v. Tentmakers Group, Inc.,* G.R. No. 171050, July 4, 2012, 675 SCRA 546.

THIRD DIVISION

[G.R. No. 204076. December 4, 2013]

JEBSENS MARITIME, INC., ESTANISLAO SANTIAGO, and/or HAPAG-LLOYD AKTIENGESELL SCHAFT, *petitioners, vs.* **ELENO A. BABOL,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC); OCCUPATIONAL DISEASES; PRINCIPLE OF WORK RELATION; IT IS UNDISPUTED THAT THE *NASOPHARYNGEAL CARCINOMA* (NPC) AFFLICTED RESPONDENT WHILE ON BOARD PETITIONER'S VESSEL AND AS A NON-OCCUPATIONAL DISEASE, IT HAS THE DISPUTABLE PRESUMPTION OF BEING WORK RELATED; UNLESS CONTRARY EVIDENCE IS PRESENTED BY THE EMPLOYERS, THE WORK-RELATEDNESS OF THE DISEASE MUST BE SUSTAINED.—** The 2000 POEA-SEC contract governs the claims for disability benefits by respondent as he was employed by the petitioners in September of 2006. Pursuant to the said contract, the injury or illness must be work-related and must have existed during the term of the seafarer's employment in order for compensability to arise. Work-relation must, therefore, be established. As a general rule, the principle of work-relation requires that the disease in question must be one of those listed as an occupational disease under Sec. 32-A of the POEA-SEC. Nevertheless, should it be not classified as occupational in nature, Section 20 (B) paragraph 4 of the POEA-SEC provides that such diseases are disputably presumed as work-related. In this case, it is undisputed that NPC afflicted respondent while on board the petitioners' vessel. As a non-occupational disease, it has the disputable presumption of being work-related. This presumption obviously works in the seafarer's favor. Hence, unless contrary evidence is presented by the employers, the work-relatedness of the disease must be sustained.

2. **ID.; ID.; ID.; ID.; PRESUMPTION OF WORK-RELATEDNESS STAYS; PETITIONERS, AS EMPLOYERS, FAILED TO DISPROVE THE PRESUMPTION OF *NASOPHARYNGEAL CARCINOMA'S* WORK RELATEDNESS; AS THE DOCTOR OPINED ONLY A PROBABILITY, THERE WAS NO CERTAINTY THAT RESPONDENT SEAFARER'S CONDITION WAS NOT WORK RELATED.—** In this wise, the petitioners, as employers, failed to disprove the presumption of NPC's work-relatedness. They primarily relied on the medical report issued by Dr. Co Peña. The report, however, failed to make a categorical statement confirming the total absence of work relation. x x x Black's Law Dictionary defines **likely** as "probable" and **likelihood** as "probability." The use of the word **likely** indicates a hesitant and an uncertain tone in the stated medical opinion and does not foreclose the possibility that respondent's NPC could be work-related. In other words, as the doctor opined only a probability, there was no certainty that his condition was not work related. There being no certainty, the Court will lean in favor of the seafarer consistent with the mandate of POEA-SEC to secure the best terms and conditions of employment for Filipino workers. Hence, the presumption of NPC's work-relatedness stays.

3. **ID.; ID.; ID.; ID.; PRINCIPLE OF WORK-AGGRAVATION; NOT ESTABLISHED BY RESPONDENT SEAFARER; PROOF OF THE CAUSAL RELATIONSHIP BETWEEN THE ILLNESS AND THE WORK CONDITIONS MUST BE REASONABLE, ANCHORED ON CREDIBLE INFORMATION AND CONVINCING PROPOSITION OTHER THAN THE CLAIMANT'S MERE ALLEGATIONS.—** Assuming for the sake of argument that the presumption of work-relation was refuted by petitioners, compensability may still be established on the basis of the theory of work aggravation if, by substantial evidence, it can be demonstrated that the working conditions aggravated or at least contributed in the advancement of respondent's cancer. As held in *Rosario v. Denklav Marine*, "the burden is on the beneficiaries to show a reasonable connection between the causative circumstances in the employment of the deceased employee and his death or permanent total disability." To determine if indeed respondent sufficiently established the link between his cancer and the working conditions on board MV Glasgow Express, understanding

the disease is of utmost importance. Respondent's cancer is by far, the most common malignant tumor of the nasopharynx. Risk factors for this cancer, as derived from the position paper filed by the petitioners and consistent with many medical literatures on the matter, include (1) salt-cured foods; (2) preserved meats, (3) Epstein-Barr virus, and (4) family history. In every detail, it is clear that the dietary factor plays a vital role in increasing the risk of acquiring the disease. For medical purposes, salt-cured fish and preserved meat can, thus, be considered as high risk food that can contribute in the growth of this type of cancer. Respondent is of the theory that such high risk dietary factor persisted on board the vessel, thus, increasing the probability that the disease was aggravated by his working conditions. x x x The above assertions of respondent do not constitute as substantial evidence that a reasonable mind might accept as adequate to support the conclusion that there is a causal relationship between his illness and the working conditions on board the petitioners' vessel. Although the Court has recognized as sufficient that work conditions are proven to have contributed even to a small degree, such must, however, be reasonable, and anchored on credible information. The claimant must, therefore, prove a convincing proposition other than by his mere allegations. This he failed to do. The Court refuses to take judicial notice of said assertions on the basis of an allegation of mere common knowledge. This is in light of the changing global landscape affecting international maritime labor practices. The Court notes the acceptance, albeit steadily, of the minimum standards governing food and catering on board ocean-going vessels as provided in the 2006 Maritime Labor Convention of which the Philippines and MV Glasgow's flag country Germany have signed. x x x Although not yet fully implemented, this International Labor Organization *(ILO)* Convention merely underscores that food on board an ocean-going vessel may not necessarily be limited as alleged by respondent. In this respect, the petitioners submitted documents showing that fresh and varied provisions were provided on board. Respondent, on the other hand, countered that even if there were such provisions, salt-cured fish and diet such as *bagoong dilis, bagoong alamang,* anchovies, *etc.* were still included as victuals. The Court treats both submissions as equal in their respects and, thus, cannot be the sole determinant of whether respondent is entitled to his claims.

4. ID.; ID.; ID.; ID.; STATE OF PERMANENT TOTAL DISABILITY; CONSIDERING THAT RESPONDENT HAS SUFFERED FOR MORE THAN THE MAXIMUM PERIOD OF 240 DAYS IN LIGHT OF THE UNCOMPLETED PROCESS OF EVALUATION, AND THE FACT THAT HE HAS NEVER BEEN CERTIFIED TO WORK AGAIN OR OTHERWISE, THE COURT AFFIRMS HIS ENTITLEMENT TO THE PERMANENT TOTAL DISABILITY AWARDED HIM BY THE COURT OF APPEALS, THE NLRC AND THE LABOR ARBITER.— Based on the foregoing, both parties failed to discharge their respective burdens to prove the non-work-relatedness of the disease for the petitioners *(theory of work-relation)* and the substantiation of claims for respondent *(theory of work-aggravation)*. With this, the Court is confronted with the question as to whom it should rule in favor then. In *ECC v. Sanico, GSIS v. CA,* and *Bejerano v. ECC*, the Court held that disability should be understood not more on its medical significance, but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness. Evidence of this condition can be found in a certification of fitness/unfitness to work issued by the company-designated physician. In this case, records reveal that the medical report issued by the company-designated oncologist was bereft of any certification that respondent remained fit to work as a seafarer despite his cancer. This is important since the certification is the document that contains the assessment of his disability which can be questioned in case of disagreement as provided for under Section 20 (B) (3).of the POEA-SEC. In the absence of any certification, the law presumes that the employee remains in a state of temporary disability. Should no certification be issued within the 240 day maximum period, as in this case, the pertinent disability becomes permanent in nature. Considering that respondent has suffered for more than the maximum period of 240 days in light of the uncompleted process of evaluation, and the fact that he has never been certified to work again or otherwise, the Court affirms his entitlement to the permanent total disability benefits awarded him by the CA, the NLRC and the LA. In the same way that the seafarer has the duty to faithfully comply

with and observe the terms and conditions of the POEA-SEC, including the provisions governing the procedure for claiming disability benefit, the employer also has the duty to provide proof that the procedures were also complied with, including the issuance of the fit/unfit to work certification. Failure to do so will necessarily cast doubt on the true nature of the seafarer's condition. When such doubts exist, the scales of justice must tilt in his favor.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Napoleon A. Concepcion for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the May 15, 2012 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. SP No.114966 and its October 8, 2012 Resolution,[2] which affirmed the October 27, 2009 Decision[3] of the National Labor Relations Commission *(NLRC)* and the May 7, 2008 Decision[4] of the Labor Arbiter *(LA)*, granting permanent and total disability benefits to Eleno A. Babol *(respondent)*.

The Facts

On September 21, 2006, respondent was rehired by Hapag Lloyd Aktiengesell Schaft *(Hapag Lloyd)* through its local manning agent, Jebsens Maritime, Incorporated *(Jebsens)* as a

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[1] *Rollo,* pp. 29-33. Penned by Associate Justice Manuel M. Barrios, with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Apolinario D. Bruselas, Jr., concurring.

[2] *Id.* at 37-38.

[3] *Id.* at 205-211.

[4] *Id.* at 141-149. Penned by Labor Arbiter Napoleon M. Menese.

reefer fitter for a term of six months. Before joining his vessel of assignment, respondent was subjected to the rigid mandatory Pre-Employment Medical Examination *(PEME)* and was cleared as fit for sea duty. On October 23, 2006, he boarded MV Glasgow Express (formerly named as Maersk Dayton), an ocean-going vessel flying the German flag.

Sometime in February 2007, respondent noticed the swelling of his neck. On March 8, 2007, he was sent to Health Watch Clinics in Fremantle, West Australia, to undergo medical evaluation. With the discovery of a large recurrent left neck mass, a recommendation was issued for his repatriation.

On March 14, 2007, respondent arrived in the Philippines. He was then placed at the Metropolitan Medical Center for treatment and management under the care of Dr. Robert D. Lim, the company-designated physician. There, a biopsy of two soft tissue fragments taken from his swelling neck indicated *Metastatic Undifferentiated Carcinoma*. On April 11, 2007, respondent was diagnosed with *Nasopharyngeal Carcinoma (NPC)*.

The doctors then recommended that respondent undergo six (6) cycles of chemotherapy and thirty nine (39) sessions of radiotherapy for palliative management with a total cost of ₱828,500.00. This recommendation was acted upon by the petitioners who, in good faith, shouldered all the expenses.

On May 18, 2007, the petitioners requested from the company-designated physicians the determination of whether respondent's condition could be considered as work-related or not. Responding to the request, Dr. Christopher Co Peña *(Dr. Co Peña)*, the company-designated oncologist, made a report addressed to Dr. Robert Lim, stating respondent's cancer as "likely not work-related." The report also indicated the risk factors that could have contributed to respondent's condition, as follows:

(1) Diet – salt cured fish;

(2) Viral agents – Epstein Barr Virus (EBV); and

(3) Genetic susceptibility – H2 locus antigens, Singapore Antigen BW46 and B17 Antigen.

Despite having received an expensive company-sponsored treatment, respondent still demanded the payment of disability benefits from the petitioners. His demands being unheeded, respondent filed a claim before the LA, docketed as NLRC NCR OFW Case No. (M) 01-00452-08, for the payment of permanent disability benefits, sickness allowance and medical reimbursement.

The petitioners opposed the work-relation argument of respondent in light of a contrary finding made by the company-designated oncologist that NPC was caused by genetic factors; and that full and expensive medical assistance had been generously extended, on top of the medical attention provided to respondent.

The Labor Arbiter's Decision

On May 7, 2008, the LA rendered a decision awarding respondent the sum of US$60,000.00 as total disability benefits, plus 10% thereof as attorney's fees. It ruled that there existed a causal relationship between respondent's cancer and his diet on board the vessel; and that the petitioners failed to overcome the presumption of the work-relatedness of respondent's disease. The LA disposed as follows:

> **WHEREFORE,** all foregoing premises considered, judgment is hereby rendered finding complainant **ELENO A. BABOL** to have suffered work-related illness resulting to [sic] his total permanent disability and thus ordering respondents **ABOITIZ JEBSENS MARITIME, INC., HAPAG-LLOYD AKTIENGESELL SCHAFT** and **ESTANISLAO SANTIAGO** to jointly and severally pay him the amount of US$60,000.00 plus Ten Percent (10%) thereof as Attorney's Fees or in the total amount of US$66,000.00 or its Philippine Peso equivalent at the time of actual payment.
>
> All other claims are dismissed for lack of merit.
>
> **SO ORDERED**.[5]

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[5] *Id.* at 149.

The NLRC Ruling

On appeal, the NLRC, in its October 27, 2009 Decision, affirmed the LA ruling but deleted the award for attorney's fees. It held that the petitioners failed to substantially disprove the disputable presumption of work-relation under the Philippine Overseas Employment Administration Standard Employment Contract *(POEA-SEC).* It further noted that respondent, being a seafarer, had no choice but to eat the food prepared by the kitchen staff and correlatively his diet was limited to salt-cured foods such as salted fish, dried meat, salted egg, frozen meat, and other preserved goods, all of which allegedly increased the risk of contracting NPC. The dispositive portion of its decision reads:

> **WHEREFORE**, the Decision of the Labor Arbiter is AFFIRMED with MODIFICATION in that the award of attorney's fees is DELETED.
>
> **SO ORDERED.**[6]

Both parties moved for reconsideration. On March 26, 2010, the NLRC issued a resolution[7] denying it.

Via a petition for *certiorari* under Rule 65 of the Rules of Court filed before the CA, the petitioners argued that the NLRC committed grave abuse of discretion in ruling for respondent.

The CA's Decision

On May 15, 2012, the CA dismissed the petition. Echoing the findings of the NLRC and the LA, it held that the nature and circumstances of respondent's work caused his illness or at least aggravated any pre-existing condition he might have, hence compensable.[8] It gave weight to the findings of the NLRC and the LA that the risk factors as relayed by the company-designated physician were attendant in respondent's case, such

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[6] *Id.* at 210.

[7] *Id.* at 286.

[8] *Id.* at 34.

as: (1) his diet while on board which was high in salt-cured fish and preserved foods; (2) and his exposure to toxic materials, smoke, and diesel fumes while working for the petitioners in various capacities for almost two decades. Having found a link between respondent's working conditions and the disease, it concluded that the claims deserved merit in accordance with this Court's ruling in *Magsaysay Maritime Corporation v. National Labor Relations Commission*[9] where it was recognized as sufficient, in order to successfully claim the benefits under the contract, that the work has been proven as contributory, even in a small degree, to the development of a worker's disease.

Unfazed with the adverse ruling, the petitioners moved for reconsideration. In its resolution, dated October 8, 2012, the CA denied the said motion for reconsideration.

Hence, this petition.

ISSUES

A. Whether or not the Court of Appeals gravely erred in ruling that respondent's condition, Nasopharyngeal Cancer, is work-related.

B. Whether or not the Court of Appeals gravely erred in considering respondent's supposed prior employments with petitioners as relevant in determining entitlement to disability benefits.

C. Whether or not the Court of Appeals gravely erred in ruling that petitioners failed to present substantial evidence that respondent's condition is not work-related.[10]

According to the petitioners, the CA blindly adopted NLRC's conclusion that the risk factors could be attributed, even in a lesser degree, to respondent's working conditions on board the petitioners' vessel; and that the said risks, especially the alleged

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[9] G.R. No. 186180, March 22, 2010, 616 SCRA 362.

[10] *Id*. at 11.

dietary cause involving salt-cured fish, were not sufficiently proven by respondent, being the party tasked with the burden of proof. To bolster their case, the petitioners reiterate their submission of evidence showing that the dietary factors could not have been true as varied and fresh provisions were available for the seafarer's consumption.

Moreover, they claim that the CA erred in adopting the concept of work-aggravation because the POEA-SEC does not recognize it; and that respondent's prior employment history with the petitioners should not have been considered since only the period specified in the contract could be used as basis for compensability claims under the POEA-SEC.

In sum, the petitioners are of the position that no connection whatsoever between respondent's work and the cancer was sufficiently established.

Respondent's Position

In his Comment,[11] respondent submits that the CA was correct in awarding him permanent disability benefits considering that this conclusion was substantially supported by facts and evidence on record; that the "likely not work-related" assessment by Dr. Co Peña did not preclude the finding that the cancer was attributable to work because it merely presupposed probability and not certainty; that the dietary risk factor for the development of his cancer was sufficiently established since it was common knowledge that seamen were not at liberty to prepare their own food to suit specific health needs; and that his diet was proven as limited only to or at least involved existing salt-cured supplies. By these submissions, respondent avers that a reasonable connection has been ascertained to prove his entitlement to the claims prayed for.

The Court's Ruling

The well-entrenched rule in this jurisdiction is that only questions of law may be entertained by this Court in a petition

[11] *Id.* at 452.

for review on *certiorari* under Rule 45. This rule, however, is not absolute and admits certain exceptions, such as when the petitioner persuasively alleges that there is insufficient or insubstantial evidence on record to support the factual findings of the tribunal or *court a quo*,[12] as Section 5, Rule 133 of the Rules of Court states in express terms that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established only if supported by substantial evidence.[13]

Here, the petitioners question the conlusion that the disease subject of this petition is a work-related illness or at least aggravated by the working conditions onboard the vessel. They argue that respondent failed to present substantial evidence in support of his claims for compensability.

The Court is not persuaded.

The Principle of Work-relation

The 2000 POEA-SEC contract governs the claims for disability benefits by respondent as he was employed by the petitioners in September of 2006.

Pursuant to the said contract, the injury or illness must be work-related and must have existed during the term of the seafarer's employment in order for compensability to arise.[14] Work-relation must, therefore, be established.

As a general rule, the principle of work-relation requires that the disease in question must be one of those listed as an occupational disease under Sec. 32-A of the POEA-SEC. Nevertheless, should it be not classified as occupational in

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[12] *Cootauco v. MMS Phil. Maritime Services, Inc.,* G.R. No. 184722, March 15, 2010, 615 SCRA 529, 541-542.

[13] *Cabuyoc v. Inter-Orient Navigation Shipmanagement, Inc.,* 537 Phil. 897, 911-912 (2006).

[14] *Magsaysay Maritime Services and Princess Cruise Lines, Ltd. v. Earlwin Meinrad Antero F. Laurer*, G.R. No. 195518, March 20, 2013, 694 SCRA 225, citing *Jebsens Maritime Inc. v. Undag* G.R. No. 191491, December 14, 2011, 662 SCRA 670, 677.

nature, Section 20 (B) paragraph 4 of the POEA-SEC[15] provides that such diseases are disputably presumed as work-related.

In this case, it is undisputed that NPC afflicted respondent while on board the petitioners' vessel. As a non-occupational disease, it has the disputable presumption of being work-related. This presumption obviously works in the seafarer's favor.[16] Hence, unless contrary evidence is presented by the employers, the work-relatedness of the disease must be sustained.[17]

In this wise, the petitioners, as employers, failed to disprove the presumption of NPC's work-relatedness. They primarily relied on the medical report issued by Dr. Co Peña. The report, however, failed to make a categorical statement confirming the total absence of work relation. Thus:

> Dear Dr. Lim,
>
> This is with regards [sic] to Mr. Eleno Babol, 45 y/o male, diagnosed case of Nasopharyngeal Carcinoma; S/P Incisional Biopsy of Left Neck Mass on April 2, 2007. Risk factors include:
>
> Diet – salt cured fish
>
> Viral agents – Epstein Barr Virus (EBV)
>
> Genetic Susceptibility – H2 locus antigens, Singapore Antigen BW46 and B17 Antigen
>
> **His condition is likely not work-related.**
>
> (Underscoring supplied)

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[15] Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related.

[16] *Jessie V. David v. OSG Shipmanagement Manila, Inc. and/or Michaelmar Shipping Services,* G.R. No. 197205, September 26, 2012, 682 SCRA 103, 112.

[17] *Fil-Star Maritime Corporation v. Rosete*, G.R. No. 192686, November 23, 2011, 661 SCRA 247, 255.

Black's Law Dictionary defines **likely** as "probable"[18] and **likelihood** as "probability."[19] The use of the word **likely** indicates a hesitant and an uncertain tone in the stated medical opinion and does not foreclose the possibility that respondent's NPC could be work-related. In other words, as the doctor opined only a probability, there was no certainty that his condition was not work related.

There being no certainty, the Court will lean in favor of the seafarer consistent with the mandate of POEA-SEC to secure the best terms and conditions of employment for Filipino workers.[20] Hence, the presumption of NPC's work-relatedness stays.

The Principle of Work-aggravation

Assuming for the sake of argument that the presumption of work-relation was refuted by petitioners, compensability may still be established on the basis of the theory of work aggravation if, by substantial evidence,[21] it can be demonstrated that the working conditions aggravated or at least contributed in the advancement of respondent's cancer.[22] As held in *Rosario v. Denklav Marine*,[23] "the burden is on the beneficiaries to show a reasonable connection between the causative circumstances in the employment of the deceased employee and his death or permanent total disability."

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[18] Fifth Edition, p. 534.

[19] *Id*.

[20] EO 247, Sec. 3(i).

[21] As held in *Reyes v. Employees' Compensation Commission, et al.*, G.R. No. 93003, March 3, 1992, 206 SCRA 726, 732; citing *Magistrado v. Employees' Compensation Commission, et al.*, G.R. No. 62641, 30, June 30, 1989, 174 SCRA 605, substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

[22] *Government Service Insurance System v. Emmanuel P. Cuntapay,* 576 Phil. 482, 492 (2008).

[23] Resolution, G.R. No. 166906, March 16, 2005.

To determine if indeed respondent sufficiently established the link between his cancer and the working conditions on board MV Glasgow Express, understanding the disease is of utmost importance.

Respondent's cancer is by far, the most common malignant tumor of the nasopharynx.[24] Risk factors for this cancer, as derived from the position paper filed by the petitioners and consistent with many medical literatures[25] on the matter, include (1) salt-cured foods; (2) preserved meats, (3) Epstein-Barr virus, and (4) family history.[26] In every detail, it is clear that the dietary factor plays a vital role in increasing the risk of acquiring the disease. For medical purposes, salt-cured fish and preserved meat can, thus, be considered as high risk food that can contribute in the growth of this type of cancer.

Respondent is of the theory that such high risk dietary factor persisted on board the vessel, thus, increasing the probability that the disease was aggravated by his working conditions:

> . . . On the food he took while on board, Complainant is exposed to the risk of contracting his illness. The Supreme Court has taken judicial notice of the fact that seamen are required to stay on board their vessel by the very nature of their duties. It is also of common knowledge that while on board, seamen have no choice but to eat the food prepared by the kitchen staff of the vessel. They are also not at liberty to prepare/cook their own food to suit their health needs. Their day-to-day "diet" therefore depends on the kind of food served on the vessel for the consumption of the entire crew. Thus, the long voyage on the high seas, the vessel's menu is limited to salt- cured foods (such as salted fish, dried fish, anchovies, dried meat, salted eggs, *etc*.), frozen meat, processed meat, canned goods, and other preserved foods, thus the diet is mostly salt-cured foods, hence, the increased risk of contracting nasopharyngeal cancer.

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[24] http://www.cancer.org/acs/groups/cid/documents/webcontent/003124-pdf.pdf.

[25] http://www.webmd.com/cancer/nasopharyngeal-cancer; and http://www.macmillan.org.uk/Cancerinformation/Cancertypes/Headneck/Typesofheadneckcancers/Nasopharynx.aspx.

[26] *Rollo,* pp. 146-147.

Complainant had no other alternative or option but to eat whatever is served at the mess hall, and considering further that his "diet" or sustenance while on board the vessel had presumably contributed to, if not caused by, his present health condition, there is good reason to conclude that his ailment or affliction is work related or, otherwise stated, reasonably connected/aggravated by his work.[27]

The above assertions of respondent do not constitute as substantial evidence that a reasonable mind might accept as adequate to support the conclusion that there is a causal relationship between his illness and the working conditions on board the petitioners' vessel. Although the Court has recognized as sufficient that work conditions are proven to have contributed even to a small degree,[28] such must, however, be reasonable, and anchored on credible information.[29] The claimant must, therefore, prove a convincing proposition other than by his mere allegations.[30] This he failed to do.

The Court refuses to take judicial notice of said assertions on the basis of an allegation of mere common knowledge. This is in light of the changing global landscape affecting international maritime labor practices. The Court notes the acceptance, albeit steadily, of the minimum standards governing food and catering on board ocean-going vessels as provided in the 2006 Maritime Labor Convention of which the Philippines[31] and MV Glasgow's flag country Germany[32] have signed, to wit:

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[27] *Id*. at 146.

[28] *Government Service Insurance System v. Jean E. Raoet*, G.R. No. 157038 December 23, 2009, 609 SCRA 32, 47.

[29] *Government Service Insurance System v. Emmanuel P. Cuntapay,* G.R. No. 168862, April 30, 2008, 553 SCRA 520.

[30] *Riño v. Employees' Compensation Commission, et al.*, 387 Phil. 612, 620 (2000); citing *Kirit, Sr. v. Government Service Insurance System, et al.*, G.R. No. 48580, July 6, 1990, 187 SCRA 224.

[31] Based on the ILO Website, the MLC 2006 has entered into force in the Philippines.http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:80001:0

[32] Based on the ILO Website, the MLC 2006 will enter into force in Germany on August 14, 2016. http://www.ilo.org/dyn/normlex/en/f?p=NORMLEX PUB:80001:0

(a) food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage, **shall be suitable in respect of quantity, nutritional value, quality and variety**;

(b) the organization and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions; and

(c) catering staff shall be properly trained or instructed for their positions.[33]

Although not yet fully implemented, this International Labor Organization *(ILO)* Convention merely underscores that food on board an ocean-going vessel may not necessarily be limited as alleged by respondent. In this respect, the petitioners submitted documents[34] showing that fresh and varied provisions were provided on board. Respondent, on the other hand, countered that even if there were such provisions, salt-cured fish and diet such as *bagoong dilis, bagoong alamang,* anchovies, *etc*.[35] were still included as victuals. The Court treats both submissions as equal in their respects and, thus, cannot be the sole determinant of whether respondent is entitled to his claims.

The State of Permanent Total Disability

Based on the foregoing, both parties failed to discharge their respective burdens to prove the non-work-relatedness of the disease for the petitioners *(theory of work-relation)* and the substantiation of claims for respondent *(theory of work-aggravation)*. With this, the Court is confronted with the question as to whom it should rule in favor then.

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[33] **Standard A3.2, Regulation 3.1, Title 3 of the 2006 Maritime Labor Convention.http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:91:0::::P91_SECTION:MLC_A3**

[34] *Rollo,* pp. 233-281.

[35] *Id.* at 469.

In *ECC v. Sanico,*[36] *GSIS v. CA,*[37] and *Bejerano v. ECC*,[38] the Court held that disability should be understood not more on its medical significance, but on the loss of earning capacity. Permanent total disability means disablement of an employee to earn wages in the same kind of work or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do. It does not mean absolute helplessness. Evidence of this condition can be found in a certification of fitness/unfitness to work issued by the company-designated physician.

In this case, records reveal that the medical report issued by the company-designated oncologist was bereft of any certification that respondent remained fit to work as a seafarer despite his cancer. This is important since the certification is the document that contains the assessment of his disability which can be questioned in case of disagreement as provided for under Section 20 (B) (3).of the POEA-SEC.[39]

In the absence of any certification, the law presumes that the employee remains in a state of temporary disability. Should no certification be issued within the 240 day maximum period,[40]

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[36] 378 Phil. 900 (1999).

[37] 349 Phil. 357 (1998).

[38] G.R. No. 84777, January 30, 1992, 205 SCRA 598.

[39] If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

[40] Rule X, Section 2 of the Rules and Regulations Implementing Book IV of the Labor Code provides:

SEC. 2. Period of entitlement. – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or **sickness** still requires medical attendance beyond 120 days **but not to exceed 240 days from onset of disability** in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

as in this case, the pertinent disability becomes permanent in nature.

Considering that respondent has suffered for more than the maximum period of 240 days in light of the uncompleted process of evaluation, and the fact that he has never been certified to work again or otherwise, the Court affirms his entitlement to the permanent total disability benefits awarded him by the CA, the NLRC and the LA.

In the same way that the seafarer has the duty to faithfully comply with and observe the terms and conditions of the POEA-SEC, including the provisions governing the procedure for claiming disability benefit,[41] the employer also has the duty to provide proof that the procedures were also complied with, including the issuance of the fit/unfit to work certification. Failure to do so will necessarily cast doubt on the true nature of the seafarer's condition.

When such doubts exist, the scales of justice must tilt in his favor.

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

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

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[41] *Pacific Ocean Manning Inc. and Celtic Pacific Ship Management Co., Ltd. v. Benjamin D. Penales*, G.R. No. 162809, September 5, 2012, 680 SCRA 95.

SECOND DIVISION

[G.R. No. 173154. December 9, 2013]

SANGWOO PHILIPPINES, INC. and/or SANG IK JANG, JISSO JANG, WISSO JANG, and NORBERTO TADEO, *petitioners, vs.* **SANGWOO PHILIPPINES, INC. EMPLOYEES UNION – OLALIA, represented by PORFERIA SALIBONGCOGON,**[1] *respondents.*

[G.R. No. 173229. December 9, 2013]

SANGWOO PHILIPPINES, INC. EMPLOYEES UNION – OLALIA, represented by PORFERIA SALIBONGCOGON, *petitioners, vs.* **SANGWOO PHILIPPINES INC. and/or SANG IK JANG, JISSO JANG, WISSO JANG, and NORBERTO TADEO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CLOSURE OF BUSINESS; THE EMPLOYER IS GENERALLY REQUIRED TO GIVE SEPARATION BENEFITS TO ITS EMPLOYEES UNLESS THE CLOSURE IS DUE TO SERIOUS BUSINESS LOSSES.—** Closure of business is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business, as an authorized cause for termination of employment, aims to prevent further financial drain upon an employer who cannot pay anymore his employees since business has already stopped. In such a case, the employer is generally required to give separation benefits to its employees, unless the closure is due to serious business losses. As explained in the case of *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC* (*Galaxie*): The Constitution, while affording full

[1] "Forfiria Salimbongcogon" in some parts of the records.

protection to labor, nonetheless, recognizes "the right of enterprises to reasonable returns on investments, and to expansion and growth." In line with this protection afforded to business by the fundamental law, Article [297] of the Labor Code clearly makes a policy distinction. It is only in instances of "retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses" that employees whose employment has been terminated as a result are entitled to separation pay. In other words, **Article [297] of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to serious losses. To require an employer to be generous when it is no longer in a position to do so, in our view, would be unduly oppressive, unjust, and unfair to the employer. Ours is a system of laws, and the law in protecting the rights of the working man, authorizes neither the oppression nor the self-destruction of the employer**.

2. **ID.; ID.; ID.; ID.; PETITIONER-EMPLOYER IN CASE AT BAR IS NOT OBLIGED TO GIVE SEPARATION BENEFITS TO THE MINORITY EMPLOYEES PURSUANT TO ARTICLE 297 OF THE LABOR CODE AS INTERPRETED IN THE CASE OF *GALAXIE STEEL WORKERS UNION (GSWU-NAFLU-KMU) v. NLRC*.—** In this case, the LA, NLRC, and the CA all consistently found that SPI indeed suffered from serious business losses which resulted in its permanent shutdown and accordingly, held the company's closure to be valid. It is a rule that absent any showing that the findings of fact of the labor tribunals and the appellate court are not supported by evidence on record or the judgment is based on a misapprehension of facts, the Court shall not examine anew the evidence submitted by the parties. Perforce, without any cogent reason to deviate from the findings on the validity of SPI's closure, the Court thus holds that SPI is not obliged to give separation benefits to the minority employees pursuant to Article 297 of the Labor Code as interpreted in the case of *Galaxie*. As such, SPI should not be directed to give financial assistance amounting to ₱15,000.00 to each of the minority employees based on the Formal Offer of Settlement. If at all, such formal offer should be deemed only as a calculated move on SPI's part to further minimize the expenses that it will be bound to incur should litigation drag on, and not as an indication

that it was still financially sustainable. However, since SPEU chose not to accept, said offer did not ripen into an enforceable obligation on the part of SPI from which financial assistance could have been realized by the minority employees.

3. **ID.; ID.; ID.; ID.; BEFORE ANY EMPLOYEE IS TERMINATED DUE TO CLOSURE OF BUSINESS IT MUST GIVE ONE (1) MONTH PRIOR WRITTEN NOTICE TO THE EMPLOYEE AND TO THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE); THE NOTICE OF DISMISSAL MUST BE INDIVIDUALLY ADDRESSED AND SUPPLIED TO EACH WORKER.—** Article 297 of the Labor Code provides that before any employee is terminated due to closure of business, it must give a one (1) month prior written notice to the employee and to the DOLE. In this relation, case law instructs that it is the personal right of the employee to be personally informed of his proposed dismissal as well as the reasons therefor; and such requirement of notice is not a mere technicality or formality which the employer may dispense with. Since the purpose of previous notice is to, among others, give the employee some time to prepare for the eventual loss of his job, the employer has the positive duty to inform each and every employee of their impending termination of employment. To this end, jurisprudence states that an employer's act of posting notices to this effect in conspicuous areas in the workplace is not enough. Verily, for something as significant as the involuntary loss of one's employment, nothing less than an individually-addressed notice of dismissal supplied to each worker is proper. As enunciated in the case of *Galaxie*: Finally, with regard to the notice requirement, the Labor Arbiter found, and it was upheld by the NLRC and the Court of Appeals, that the written notice of closure or cessation of Galaxie's business operations was posted on the company bulletin board one month prior to its effectivity. **The mere posting on the company bulletin board does not, however, meet the requirement under Article [297] of "serving a written notice on the workers."** The purpose of the written notice is to inform the employees of the specific date of termination or closure of business operations, and must be served upon them at least one month before the date of effectivity to give them sufficient time to make the necessary arrangement. **In order to meet the foregoing purpose, service of the written notice must**

be made individually upon each and every employee of the company.

4. **ID.; ID.; ID.; ID.; PETITIONER-EMPLOYER FAILED TO COMPLY WITH THE NOTICE REQUIREMENT WHEN IT MERELY POSTED VARIOUS COPIES OF ITS NOTICE OF CLOSURE IN CONSPICUOUS PLACES WITHIN THE BUSINESS PREMISES; IT IS LIABLE TO PAY THE EMPLOYEES NOMINAL DAMAGES FOR THE OMISSION.—** Keeping with these principles, the Court finds that the LA, NLRC, and CA erred in ruling that SPI complied with the notice requirement when it merely posted various copies of its notice of closure in conspicuous places within the business premises. As earlier explained, SPI was required to serve written notices of termination to its employees, which it, however, failed to do. It is well to stress that while SPI had a valid ground to terminate its employees, *i.e.*, closure of business, its failure to comply with the proper procedure for termination renders it liable to pay the employee nominal damages for such omission. Based on existing jurisprudence,an employer which has a valid cause for dismissing its employee but conducts the dismissal with procedural infirmity is liable to pay the employee nominal damages in the amount of ₱30,000.00 if the ground for dismissal is a just cause, or the amount of ₱50,000.00 if the ground for dismissal is an authorized cause. However, case law exhorts that in instances where the payment of such damages becomes impossible, unjust, or too burdensome, modification becomes necessary in order to harmonize the disposition with the prevailing circumstances. Thus, in the case of *Industrial Timber Corporation v. Ababon* (*Industrial Timber*), the Court reduced the amount of nominal damages awarded to employees from ₱50,000.00 to ₱10,000.00 since the authorized cause of termination was the employer's closure or cessation of business which was done in good faith and due to circumstances beyond the employer's control.

5. **ID.; ID.; ID.; ID.; AMOUNT OF NOMINAL DAMAGES REDUCED CONSIDERING THAT THE PETITIONER-EMPLOYER CLOSED DOWN ITS OPERATIONS DUE TO SERIOUS BUSINESS LOSSES AND THE SAID CLOSURE APPEARS TO HAVE BEEN DONE IN GOOD FAITH.—** In this case, considering that SPI closed down its operations due to serious business losses and that said closure

appears to have been done in good faith, the Court – similar to the case of *Industrial Timber* – deems it just to reduce the amount of nominal damages to be awarded to each of the minority employees from ₱50,000.00 to ₱10,000.00. To be clear, the foregoing award should only obtain in favor of the minority employees and not for those employees who already received sums equivalent to separation pay and executed quitclaims "releasing [SPI] now and in the future any claims and obligation which may arise as results of [their] employment with the company." For these latter employees who have already voluntarily accepted their dismissal, their executed quitclaims practically erased the consequences of infirmities on the notice of dismissal, at least as to them.

APPEARANCES OF COUNSEL

Luis & Yangco Law Offices for Sangwoo Philippines, Inc.
Banzuela & Associates for respondent Union.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions for review on *certiorari*[2] assailing the Decision[3] dated January 12, 2006 and Resolution[4] dated June 14, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 88965 that set aside the Resolutions[5] dated January 26, 2005 and March 31, 2005 of the National Labor Relations Commission (NLRC), deleted the award of separation

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[2] *Rollo* (G.R. No. 173154), pp. 29-43; *rollo* (G.R. No. 173229), pp. 53-84.

[3] *Rollo* (G.R. No. 173154), pp. 8-22. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Mariflor Punzalan Castillo, concurring.

[4] *Id.* at 23-24.

[5] *Rollo* (G.R. No. 173229), pp. 113-122 and 124-125, respectively. Signed by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

pay, and ordered the payment of financial assistance of ₱15,000.00 each to its employees.

The Facts

On July 25, 2003, during the collective bargaining agreement (CBA) negotiations between Sangwoo Philippines, Inc. Employees Union-Olalia (SPEU) and Sangwoo Philippines, Inc. (SPI), the latter filed with the Department of Labor and Employment (DOLE) a letter-notice[6] of temporary suspension of operations for one (1) month, beginning September 15, 2003, due to lack of orders from its buyers.[7] SPEU was furnished a copy of the said letter. Negotiations on the CBA, however, continued and on September 10, 2003, the parties signed a handwritten Memorandum of Agreement, which, among others, specified the employees' wages and benefits for the next two (2) years, and that in the event of a temporary shutdown, all machineries and raw materials would not be taken out of the SPI premises.[8]

On September 15, 2003, SPI temporarily ceased operations. Thereafter, it successively filed two (2) letters[9] with the DOLE, copy furnished SPEU, for the extension of the temporary shutdown until March 15, 2004.[10] Meanwhile, on October 28, 2003, SPEU filed a complaint for unfair labor practice, illegal closure, illegal dismissal, damages and attorney's fees before the Regional Arbitration Branch IV of the NLRC.[11] Subsequently, or on February 12, 2004, SPI posted, in conspicuous places within the company premises, notices of its permanent closure and cessation of business operations, effective March 16, 2004, due to serious economic losses and financial reverses.[12] The DOLE

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[6] *Id*. at 138.

[7] *Id*. at 35.

[8] *Id*. at 135-137.

[9] *Id*. at 154 and 154-A

[10] *Id*. at 10.

[11] *Id*. at 9.

[12] *Id*. at 75-76.

was furnished a copy of said notice on February 13, 2004, together with a separate letter notifying it of the company's permanent closure.[13] SPEU was also furnished with a copy of the notice of permanent closure. Forthwith, SPI offered separation benefits of one-half (½) month pay for every year of service to each of its employees. 234 employees of SPI accepted the offer, received the said sums and executed quitclaims.[14] Those who refused the offer, *i.e.*, the minority employees, were nevertheless given until March 25, 2004 to accept their checks and correspondingly, execute quitclaims. However, the minority employees did not claim the said checks.

The LA Ruling

In a Decision[15] dated June 4, 2004, the Labor Arbiter (LA) ruled in favor of SPI. The LA found that SPI was indeed suffering from serious business losses – as evidenced by financial statements which were never contested by SPEU – and, as such, validly discontinued its operations.[16] Consequently, the LA held that SPI was not guilty of unfair labor practice, and similarly observed that it duly complied with the requirement of furnishing notices of closure to its employees and the DOLE. Lastly, the LA ruled that since SPI's closure of business was due to serious business losses, it was not mandated by law to grant separation benefits to the minority employees.

Aggrieved, SPEU filed an Appeal Memorandum[17] before the NLRC.

The NLRC Ruling

In a Resolution[18] dated January 26, 2005, the NLRC sustained the ruling of the LA, albeit with modification. While it upheld

[13] *Rollo* (G.R. No. 173154), pp. 75-76.

[14] *CA rollo*, pp. 104-227.

[15] *Rollo* (G.R. No. 173229), pp. 155-159. Penned by Labor Arbiter Enrico Angelo C. Portillo.

[16] *Id.* at 158.

[17] *Id.* at 160-199.

[18] *Id.* at 113-122.

SPI's closure due to serious business losses, it ruled that the members of SPEU are entitled to payment of separation pay equivalent to one-half (½) month pay for every year of service. In this relation, the NLRC opined that since SPI already gave separation benefits to 234 of its employees, the minority employees should not be denied of the same.

Dissatisfied, SPI filed a petition for *certiorari*[19] before the CA, praying for, *inter alia*, the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction against the execution of the aforesaid NLRC resolution.

The CA Proceedings

In a Resolution[20] dated April 12, 2005, the CA issued a TRO, which enjoined the enforcement of the NLRC resolution. Thereafter, in a Resolution[21] dated June 3, 2005, the CA issued a writ of preliminary injunction against the same.

Meanwhile, pursuant to the CA's Resolution[22] dated May 19, 2005 which suggested that the parties explore talks of a possible compromise agreement, SPI sent a Formal Offer of Settlement[23] dated May 24, 2005 to SPEU, offering the amount of ₱15,000.00 as financial assistance to each of the minority employees. On May 26, 2005, SPI sent a Reiteration of Formal Offer of Settlement to SPEU, reasserting its previous offer of financial assistance. However, settlement talks broke down as SPEU did not accept SPI's offer.

In a decision[24] dated January 12, 2006, the CA held that the minority employees were not entitled to separation pay considering that the company's closure was due to serious business losses. It pronounced that requiring an employer to be generous when

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[19] *CA rollo*, pp. 2-24.

[20] *Id*. at 424-427.

[21] *Id*. at 441-444.

[22] *Id*. at 432-433.

[23] *Id*. at 438.

[24] *Rollo* (G.R. No. 173154), pp. 8-22.

it was no longer in a position to be so would be oppressive and unjust. Nevertheless, the CA still ordered SPI to pay the minority employees ₱15,000.00 each, representing the amount of financial assistance as contained in the Formal Offer of Settlement.

Both parties filed motions for reconsideration which were, however, denied in a Resolution[25] dated June 14, 2006. Hence, these petitions.

The Issues Before the Court

The issues for the Court's resolution are as follows: (*a*) whether or not the minority employees are entitled to separation pay; and (*b*) whether or not SPI complied with the notice requirement of Article 297 (formerly Article 283)[26] of the Labor Code.

The Court's Ruling

Both petitions are partly meritorious.

A. Non-entitlement to Separation Benefits.

Closure of business is the reversal of fortune of the employer whereby there is a complete cessation of business operations and/or an actual locking-up of the doors of establishment, usually due to financial losses. Closure of business, as an authorized cause for termination of employment,[27] aims to prevent further

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[25] *Id*. at 23-24.

[26] As amended and renumbered by Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES."

[27] Article 297 (formerly Article 283) of the Labor Code, as amended, provides:

Article 297. *Closure of Establishment and Reduction of Personnel*. — **The employer may also terminate the employment of any employee due to** the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the **closing or cessation of operation of the establishment or undertaking** unless the closing is for the purpose of circumventing the provisions of this Title, **by serving a written notice on the worker**

financial drain upon an employer who cannot pay anymore his employees since business has already stopped.[28] In such a case, the employer is generally required to give separation benefits to its employees, unless the closure is due to serious business losses.[29] As explained in the case of *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC*[30] (*Galaxie*):

The Constitution, while affording full protection to labor, nonetheless, recognizes "the right of enterprises to reasonable returns on investments, and to expansion and growth." In line with this protection afforded to business by the fundamental law, Article [297] of the Labor Code clearly makes a policy distinction. It is only in instances of "retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses" that employees whose employment has been terminated as a result are entitled to separation pay. In other words, **Article [297] of the Labor Code does not obligate an employer to pay separation benefits when the closure is due to serious losses. To require an employer to be generous when it is no longer in a position to do so, in our view, would be unduly oppressive, unjust, and unfair to the employer. Ours is a system of laws, and the law in protecting the rights of the working man, authorizes neither the oppression nor the self-destruction of the employer**. (Emphasis and underscoring supplied)

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and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x In case of retrenchment to prevent losses and **in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher**. A fraction of at least six (6) months shall be considered as one (1) whole year. (Emphases and underscoring supplied)

[28] *J.A.T. General Services v. NLRC*, G.R. No. 148340, January 26, 2004, 421 SCRA 78, 86.

[29] *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC*, G.R. No. 165757, October 17, 2006, 504 SCRA 692, 700-701, citing *North Davao Mining Corporation v. NLRC*, G.R. No. 112546, March 13, 1996, 254 SCRA 721, 729-730.

[30] *Id.* at 701, citing *Cama v. Joni's Food Services, Inc.*, G.R. No. 153021, March 10, 2004, 425 SCRA 259, 269.

In this case, the LA, NLRC, and the CA all consistently found that SPI indeed suffered from serious business losses which resulted in its permanent shutdown and accordingly, held the company's closure to be valid. It is a rule that absent any showing that the findings of fact of the labor tribunals and the appellate court are not supported by evidence on record or the judgment is based on a misapprehension of facts, the Court shall not examine anew the evidence submitted by the parties.[31] Perforce, without any cogent reason to deviate from the findings on the validity of SPI's closure, the Court thus holds that SPI is not obliged to give separation benefits to the minority employees pursuant to Article 297 of the Labor Code as interpreted in the case of *Galaxie*. As such, SPI should not be directed to give financial assistance amounting to ₱15,000.00 to each of the minority employees based on the Formal Offer of Settlement. If at all, such formal offer should be deemed only as a calculated move on SPI's part to further minimize the expenses that it will be bound to incur should litigation drag on, and not as an indication that it was still financially sustainable. However, since SPEU chose not to accept, said offer did not ripen into an enforceable obligation on the part of SPI from which financial assistance could have been realized by the minority employees.

B. Insufficient Notice of Closure.

Article 297 of the Labor Code provides that before any employee is terminated due to closure of business, it must give a one (1) month prior written notice to the employee and to the DOLE. In this relation, case law instructs that it is the personal right of the employee to be personally informed of his proposed dismissal as well as the reasons therefor; and such requirement of notice is not a mere technicality or formality which the employer may dispense with.[32] Since the purpose of previous notice is to, among others, give the employee some time to prepare for the

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[31] *Ignacio v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 144400, September 19, 2001, 365 SCRA 418, 423.

[32] *Shoppers Gain Supermart v. NLRC*, G.R. No. 110731, July 26, 1996, 259 SCRA 411, 423.

eventual loss of his job,[33] the employer has the positive duty to inform each and every employee of their impending termination of employment. To this end, jurisprudence states that an employer's act of posting notices to this effect in conspicuous areas in the workplace is not enough. Verily, for something as significant as the involuntary loss of one's employment, nothing less than an individually-addressed notice of dismissal supplied to each worker is proper. As enunciated in the case of *Galaxie*:[34]

> Finally, with regard to the notice requirement, the Labor Arbiter found, and it was upheld by the NLRC and the Court of Appeals, that the written notice of closure or cessation of Galaxie's business operations was posted on the company bulletin board one month prior to its effectivity. **The mere posting on the company bulletin board does not, however, meet the requirement under Article [297] of "serving a written notice on the workers."** The purpose of the written notice is to inform the employees of the specific date of termination or closure of business operations, and must be served upon them at least one month before the date of effectivity to give them sufficient time to make the necessary arrangement. **In order to meet the foregoing purpose, service of the written notice must be made individually upon each and every employee of the company**. (Emphasis and underscoring supplied; citations omitted)

Keeping with these principles, the Court finds that the LA, NLRC, and CA erred in ruling that SPI complied with the notice requirement when it merely posted various copies of its notice of closure in conspicuous places within the business premises. As earlier explained, SPI was required to serve written notices of termination to its employees, which it, however, failed to do. It is well to stress that while SPI had a valid ground to terminate its employees, *i.e.*, closure of business, its failure to comply with the proper procedure for termination renders it liable to pay the employee nominal damages for such omission. Based on existing jurisprudence, an employer which has a valid

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[33] *Angeles, et al. v. Polytex Design, Inc.*, G.R. No. 157673, October 15, 2007, 536 SCRA 159, 167, citing *San Miguel Corporation v. Aballa*, G.R. No. 149011, June 28, 2005, 461 SCRA 392, 430.

[34] *Galaxie Steel Workers Union (GSWU-NAFLU-KMU) v. NLRC*, *supra* note 28, at 701-702.

cause for dismissing its employee but conducts the dismissal with procedural infirmity is liable to pay the employee nominal damages in the amount of ₱30,000.00 if the ground for dismissal is a just cause, or the amount of ₱50,000.00 if the ground for dismissal is an authorized cause.[35] However, case law exhorts that in instances where the payment of such damages becomes impossible, unjust, or too burdensome, modification becomes necessary in order to harmonize the disposition with the prevailing circumstances.[36] Thus, in the case of *Industrial Timber Corporation v. Ababon*[37] (*Industrial Timber*), the Court reduced the amount of nominal damages awarded to employees from ₱50,000.00 to ₱10,000.00 since the authorized cause of termination was the employer's closure or cessation of business which was done in good faith and due to circumstances beyond the employer's control, *viz.*:[38]

In the determination of the amount of nominal damages which is addressed to the sound discretion of the court, several factors are taken into account: (1) the authorized cause invoked, whether it was a retrenchment or a closure or cessation of operation of the establishment due to serious business losses or financial reverses or otherwise; (2) the number of employees to be awarded; (3) the capacity of the employers to satisfy the awards, taken into account their prevailing financial status as borne by the records; (4) the employer's grant of other termination benefits in favor of the employees; and (5) whether there was a *bona fide* attempt to comply with the notice requirements as opposed to giving no notice at all.

In the case at bar, there was a valid authorized cause considering the closure or cessation of ITC's business which was done in good faith and due to circumstances beyond ITC's control. Moreover, ITC had ceased to generate any income since its closure on August 17, 1990. Several months prior to the closure, ITC experienced diminished income due to high production costs, erratic supply of

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[35] See *Abbott Laboratories, Philippines v. Alcaraz*, G.R. No. 192571, July 23, 2013.

[36] *Industrial Timber Corporation v. Ababon*, 520 Phil. 522, 527 (2006).

[37] *Id*.

[38] *Id*. at 527-528.

raw materials, depressed prices, and poor market conditions for its wood products. It appears that ITC had given its employees all benefits in accord with the CBA upon their termination.

Thus, considering the circumstances obtaining in the case at bar, we deem it wise and just to reduce the amount of nominal damages to be awarded for each employee to ₱10,000.00 each instead of ₱50,000.00 each. (Emphasis and underscoring supplied)

In this case, considering that SPI closed down its operations due to serious business losses and that said closure appears to have been done in good faith, the Court – similar to the case of *Industrial Timber* – deems it just to reduce the amount of nominal damages to be awarded to each of the minority employees from ₱50,000.00 to ₱10,000.00. To be clear, the foregoing award should only obtain in favor of the minority employees and not for those employees who already received sums equivalent to separation pay and executed quitclaims "releasing [SPI] now and in the future any claims and obligation which may arise as results of [their] employment with the company."[39] For these latter employees who have already voluntarily accepted their dismissal, their executed quitclaims practically erased the consequences of infirmities on the notice of dismissal,[40] at least as to them.

WHEREFORE, the petitions are **PARTLY GRANTED.** The Decision dated January 12, 2006 and Resolution dated June 14, 2006 of the Court of Appeals in CA-G.R. SP No. 88965 are hereby **AFFIRMED** with **MODIFICATION** deleting the award of financial assistance in the amount of ₱15,000.00 to each of the minority employees. Instead, Sangwoo Philippines, Inc. is **ORDERED** to pay nominal damages in the amount of ₱10,000.00 to each of the minority employees.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Leonen,*[*] *JJ.,* concur.

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[39] *CA rollo*, pp. 104-227.

[40] *Talam v. NLRC*, G.R. No. 175040, April 6, 2010, 617 SCRA 408, 426.

[*] Designated Acting Member per Special Order No. 1627.

SECOND DIVISION

[G.R. No. 173590. December 9, 2013]

PHILIPPINE POSTAL CORPORATION, *petitioner, vs.* **COURT OF APPEALS and CRISANTO G. DE GUZMAN,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; CONCEPT.—** The thrust of the rule on exhaustion of administrative remedies is that the courts must allow the administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. It is presumed that an administrative agency, if afforded an opportunity to pass upon a matter, will decide the same correctly, or correct any previous error committed in its forum. Furthermore, reasons of law, comity and convenience prevent the courts from entertaining cases proper for determination by administrative agencies. Hence, premature resort to the courts necessarily becomes fatal to the cause of action of the petitioner.

2. **ID.; ID.; ID.; RESPONDENT FAILED TO ADHERE TO THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.—** Under Section 21(d) of RA 7354, the removal by the Postmaster General of PPC officials and employees below the rank of Assistant Postmaster General may be appealed to the Board of the PPC. x x x This remedy of appeal to the Board is reiterated in Section 2(a), Rule II of the Disciplinary Rules and Procedures of the PPC, which provides further that the decision of the Board is, in turn, appealable to the CSC. x x x It is well-established that the CSC has jurisdiction over all employees of government branches, subdivisions, instrumentalities, and agencies, including government-owned or controlled corporations with original charters, and, as such, is the sole arbiter of controversies relating to the civil service. The PPC, created under RA 7354, is a government-owned and controlled corporation with an original charter. **Thus, being an employee of the PPC, De Guzman should have, after**

availing of the remedy of appeal before the PPC Board, sought further recourse before the CSC. Records, however, disclose that while De Guzman filed on June 10, 2005 a notice of appeal to the PPC Board and subsequently appealed the latter's ruling to the CSC on July 26, 2006, these were all after he challenged the PPC Resolution dated November 23, 2004 (wherein he was adjudged guilty of the charges against him and consequently dismissed from the service) in a petition for *certiorari* and *mandamus* before the CA (docketed as CA -G.R. SP No. 88891). That the subject of De Guzman's appeal to the Board was not the Resolution dated November 23, 2004 but the Resolution dated May 10, 2005 denying the motion for reconsideration of the first-mentioned resolution is of no moment. In *Alma Jose v. Javellana,* the Court ruled that an appeal from an order denying a motion for reconsideration of a final order or judgment is effectively an appeal from the final order or judgment itself. Thus, finding no cogent explanation on De Guzman's end or any justifiable reason for his premature resort to a petition for *certiorari* and *mandamus* before the CA , the Court holds that he failed to adhere to the rule on exhaustion of administrative remedies which should have warranted the dismissal of said petition.

3. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; RESPONDENT IS GUILTY OF FORUM SHOPPING BY PURSUING TWO (2) SEPARATE REMEDIES, A PETITION FOR *CERTIORARI* AND AN APPEAL, WHICH HAVE BEEN HELD TO BE MUTUALLY EXCLUSIVE, AND NOT ALTERNATIVE OR CUMULATIVE REMEDIES.—** Aside from violating the rule on exhaustion of administrative remedies, De Guzman was also guilty of forum-shopping by pursuing two (2) separate remedies – petition for *certiorari* and appeal – that have long been held to be mutually exclusive, and not alternative or cumulative remedies. **Evidently, the ultimate relief sought by said remedies which De Guzman filed only within a few months from each other is one and the same – the setting aside of the resolution dismissing him from the service**. As illumined in the case of *Sps. Zosa v. Judge Estrella*, wherein several precedents have been cited on the subject matter. x x x Similar thereto, the very evil that the prohibition on forum-shopping was seeking to prevent – conflicting decisions rendered by two (2) different tribunals –

resulted from De Guzman's abuse of the processes. Since De Guzman's appeal before the PPC Board was denied in its Resolutions dated May 25, 2006 and June 29, 2006, De Guzman sought the review of said resolutions before the CSC where he raised yet again the defense of *res judicata*. Nonetheless, the CSC, in its Resolution No. 080815 dated May 6, 2008, affirmed De Guzman's dismissal, affirming "the Resolutions of the PPC Board of Directors dismissing De Guzman from the service for Dishonesty, Gross Violation of Regulations, and Conduct Grossly Prejudicial to the Best Interest of the Service." De Guzman's motion for reconsideration of the aforesaid Resolution was similarly denied by the CSC in its Resolution No. 090077 dated January 14, 2009. On the other hand, the petition for *certiorari*, which contained De Guzman's prayer for the reversal of Resolutions dated November 23, 2004 and January 6, 2005 dismissing him from the service, was granted by the CA much earlier on April 4, 2006. It should be pointed out that De Guzman was bound by his certification with the CA that if he "should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency," he "undertake[s] to report that fact within five (5) days therefrom to [the] Honorable Court." Nothing, however, appears on record that De Guzman had informed the CA of his subsequent filing of a notice of appeal before the PPC from the Resolution dated May 10, 2005. By failing to do so, De Guzman committed a violation of his certification against forum-shopping with the CA , which has been held to be a ground for dismissal of an action distinct from forum-shopping itself.

4. **ID.; ID.; ID.; WHILE RESPONDENT DID INFORM THE CIVIL SERVICE COMMISSION (CSC) THAT HE PREVIOUSLY FILED A PETITION FOR *CERTIORARI* WITH THE COURT OF APPEALS (CA), HE FAILED TO DISCLOSE THE FACT THAT THE CA HAD ALREADY RENDERED A DECISION THEREON RESOLVING THE ISSUE OF *RES JUDICATA*, WHICH IS THE VERY SAME ISSUE BEFORE THE CSC.—** Moreover, De Guzman's contention that the filing of the notice of appeal from the said Resolution was only "taken as a matter of precaution" cannot extricate him from the effects of forum-shopping. He was fully aware when he filed CA-G.R. SP No. 88891 that PG Rama had forwarded the records of the case to the PPC Board for purposes

of appeal. Yet, he decided to bypass the administrative machinery. And this was not the first time he did so. In his Comment to the instant petition, De Guzman claimed that in response to the Memorandum dated August 17, 1999 issued by Dir. Lalanto implementing his dismissal from service, he not only filed a motion for reconsideration but he likewise challenged the actions of the PPC before the Regional Trial Court of Manila through a petition for *mandamus* docketed as Case No. 99-95442. Even when CA-G.R. SP No. 88891 was decided in De Guzman's favor on April 4, 2006, and PPC's motion for reconsideration was denied on July 19, 2006, De Guzman nonetheless filed on July 26, 2006 an appeal before the CSC from the denial by the PPC Board of his Notice of Appeal dated June 7, 2005 as pointed out in CSC Resolution No. 090077. While De Guzman did inform the CSC that he previously filed a petition for *certiorari* with the CA, he **failed to disclose the fact that the CA had already rendered a decision thereon resolving the issue of *res judicata*, which was the very same issue before the CSC**.

5. **ID.; ID.; JUDGMENTS; *RES JUDICATA*; THE PHILIPPINE POSTAL CORPORATION DID NOT GRAVELY ABUSE ITS DISCRETION WHEN IT REVIVED THE CASE AGAINST RESPONDENT DESPITE THE PREVIOUS DISMISSAL THEREOF SINCE THE SAID DISMISSAL WAS NOT A JUDGMENT ON THE MERITS.—** In order that *res judicata* may bar the institution of a subsequent action, the following requisites must concur: (*a*) the former judgment must be final; (*b*) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (*c*) **it must be a judgment on the merits**; and (*d*) there must be between the first and the second actions (i) identity of parties, (ii) identity of subject matter, and (iii) identity of cause of action. A judgment may be considered as one rendered on the merits when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections; or when the judgment is rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point. **In this case, there was no "judgment on the merits" in contemplation of the above-stated definition**. The dismissal of the complaint against De Guzman in the Memorandum dated May 15, 1990 of Asec.

Jardiniano was **a result of a fact-finding investigation only for purposes of determining whether a *prima facie* case exists and a formal charge for administrative offenses should be filed.** This being the case, no rights and liabilities of the parties were determined therein with finality. In fact, the CA, conceding that the ISLES was "a mere fact-finding body," pointed out that the Memorandum dated February 26, 1990 issued by Dir. Reyes recommending the dismissal of the complaint against De Guzman "did not make any adjudication regarding the rights of the parties." Hence, for the reasons above-discussed, the Court holds that PPC did not gravely abuse its discretion when it revived the case against De Guzman despite the previous dismissal thereof by Asec. Jardiniano. Since said dismissal was not a judgment on the merits, the doctrine of *res judicata* does not apply.

6. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RESPONDENT'S PETITION FOR *CERTIORARI* IS EQUALLY DISMISSIBLE SINCE ONE OF THE REQUIREMENTS FOR THE AVAILMENT THEREOF IS PRECISELY THAT THERE SHOULD BE NO APPEAL; RESPONDENT'S CONTENTION THAT AN APPEAL WOULD NOT BE A SPEEDY AND ADEQUATE REMEDY SIMILARLY DESERVES NO MERIT.—** Verily, unscrupulous party litigants who, taking advantage of a variety of competent tribunals, repeatedly try their luck in several different *fora* until a favorable result is reached cannot be allowed to profit from their wrongdoing. The Court emphasizes strict adherence to the rules against forum-shopping, and this case is no exception. Based on the foregoing, the CA should have then dismissed the petition for *certiorari* filed by De Guzman not only for being violative of the rule on exhaustion of administrative remedies but also due to forum-shopping. In addition, it may not be amiss to state that De Guzman's petition for *certiorari* was equally dismissible **since one of the requirements for the availment thereof is precisely that there should be no appeal**. It is well-settled that the remedy to obtain reversal or modification of the judgment on the merits is to appeal. This is true even if the error, or one of the errors, ascribed to the tribunal rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law

set out in the decision. In fact, under Section 30, Rule III (C) of the Disciplinary Rules and Procedures of the PPC, among the grounds for appeal to the PPC Board from an order or decision of dismissal are: *(a)* grave abuse of discretion on the part of the Postmaster General; and *(b)* errors in the finding of facts or conclusions of law which, if not corrected, would cause grave and irreparable damage or injury to the appellant. Clearly, therefore, with the remedy of appeal to the PPC Board and thereafter to the CSC available to De Guzman, *certiorari* to the CA should not have been permitted. In this relation, it bears noting that PPC has sufficiently addressed De Guzman's argument that an appeal would not be a speedy and adequate remedy considering that the resolution dismissing him from service was to be "implemented immediately." To elucidate, on February 24, 2005, before De Guzman filed the petition for *certiorari* dated March 12, 2005, the PPC Board had passed Board Resolution No. 2005-14 adopting a "Corporate Policy that henceforth the decision of the Postmaster General in administrative cases when the penalty is removal or dismissal, the same **shall not be final and executory** pending appeal to the Office of the Board of Directors." Shortly thereafter, or on March 8, 2005, PG Rama issued Philpost Administrative Order No. 05-05 pursuant to the aforementioned Board Resolution. x x x PPC further claimed that instead of reporting for work while his motion for reconsideration and, subsequently, his appeal were pending, "[De Guzman] voluntarily elected to absent himself." Much later, however, De Guzman "finally reported back [to] work and thereby received his salary and benefits in full for the covered period." De Guzman failed to sufficiently rebut these claims, except to say that he was never given any copy of the aforementioned board resolution and administrative order. Therefore, considering that his dismissal was not to be executed by PPC immediately (if he had appealed the same), De Guzman's contention that an appeal would not be a speedy and adequate remedy similarly deserves no merit.

APPEARANCES OF COUNSEL

Joselito B. Gonzales for petitioner.
Urbano Palamos and Perdigon for respondent.

DECISION

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 4, 2006 and Resolution[3] dated July 19, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 88891 which reversed and set aside the Resolutions dated November 23, 2004[4] and January 6, 2005[5] of petitioner Philippine Postal Corporation (PPC), through its then Postmaster General and Chief Executive Officer (CEO) Dario C. Rama (PG Rama), finding that the latter gravely abused its discretion when it revived the administrative charges against respondent Crisanto G. De Guzman (De Guzman) despite their previous dismissal.

The Facts

Sometime in 1988, De Guzman, then a Postal Inspector at the Postal Services Office,[6] was investigated by Regional Postal Inspector Atty. Raul Q. Buensalida (Atty. Buensalida) in view of an anonymous complaint charging him of dishonesty and conduct grossly prejudicial to the best interest of the service.[7] As a result thereof, Atty. Buensalida recommended[8] that De Guzman be formally charged with twelve (12) counts of the same offenses and eventually be relieved from his post to protect the employees and witnesses from harassment.

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[1] *Rollo*, pp. 14-43.

[2] *Id.* at 44-56. Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring.

[3] *Id.* at 57-59.

[4] *Id.* at 85-101. Penned by Postmaster General and Dario C. Rama.

[5] No copy on record.

[6] Formerly the Bureau of Posts.

[7] *Rollo*, p. 45.

[8] *Id.* at 68. Investigation Report dated August 3, 1988; *id.* at 61-69.

Since the Postal Services Office was then a line-agency of the Department of Transportation and Communication (DOTC), Atty. Buensalida's investigation report was forwarded to the said department's Investigation Security and Law Enforcement Staff (ISLES) for further evaluation and approval. Contrary to the findings of Atty. Buensalida, however, the ISLES, through a Memorandum[9] dated February 26, 1990 prepared by Director Antonio V. Reyes (Dir. Reyes), recommended that De Guzman be exonerated from the charges against him due to lack of merit. The said recommendation was later approved by DOTC Assistant Secretary Tagumpay R. Jardiniano (Asec. Jardiniano) in a Memorandum[10] dated May 15, 1990.

On February 6, 1992, Republic Act No. (RA) 7354,[11] otherwise known as the "Postal Service Act of 1992," was passed. Pursuant to this law, the Postal Services Office under the DOTC was abolished, and all its powers, duties, and rights were transferred to the PPC.[12] Likewise, officials and employees of the Postal Services Office were absorbed by the PPC.[13]

Subsequently, or on July 16, 1993, De Guzman, who had by then become Chief Postal Service Officer, was formally charged[14]

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[9] *Id.* at 70-71.

[10] *Id.* at 72.

[11] "AN ACT CREATING THE PHILIPPINE POSTAL CORPORATION, DEFINING ITS POWERS, FUNCTIONS AND RESPONSIBILITIES, PROVIDING FOR REGULATION OF THE INDUSTRY AND FOR OTHER PURPOSES CONNECTED THEREWITH."

[12] Section 29 of RA 7354 provides:

> Sec. 29. Abolition of the Postal Services Office. — The Postal Services Office under the Department of Transportation and Communications, is hereby abolished. All powers and duties, rights and choses of actions, vested by law or exercised by the Postal Services Office and its predecessor Bureau of Posts, are hereby transferred to the Corporation.

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[13] *Id.*

[14] *Rollo*, pp. 73-74. Docketed as PPC ADM. CASE No. 94-4803.

by the PPC, through Postmaster General Eduardo P. Pilapil (PG Pilapil), for the same acts of "dishonesty, gross violation of regulations, and conduct grossly prejudicial to the best interest of the service, and the Anti-graft law, committed as follows":

Investigation disclosed that while you were designated as Acting District Postal Inspector with assignment at South Cotabato District, Postal Region XI, Davao City, you personally made unauthorized deductions and/or cuttings from the ten (10%) percent salary differential for the months of January-March, 1988, when you paid each of the employees of the post office at Surallah, South Cotabato, on the last week of April 1988, and you intentionally failed to give to Postmaster Juanito D. Dimaup, of the said post office his differential amounting to ₱453.91, Philippine currency; that you demanded and required Letter Carrier Benjamin Salero, of the aforestated post office to give fifty (₱50.00) pesos out of the aforesaid differential; that you personally demanded, take away and encashed the salary differential check No. 008695317 in the total amount of ₱1,585.67, Philippine currency, of Postmaster Benjamin C. Charlon, of the post office at Lake Cebu, South Cotabato, for your own personal gain and benefit to the damage and prejudice of the said postmaster; that you personally demanded, required and received from Postmaster Peniculita B. Ledesma, of the post office of Sto. Niño, South Cotabato, the amount of ₱300.00, ₱200.00 and ₱100.00 for hazard pay, COLA differential and contribution to the affair "Araw ng Kartero and Christmas Party," respectively; that you personally demanded and required Letter Carrier Feliciano Bayubay, of the post office at General Santos City to give money in the amount of ₱1,000.00, Philippine Currency, as a condition precedent for his employment in this Corporation, and you again demanded and personally received from the said letter carrier the amount of ₱300.00 Philippine currency, as gift to the employees of the Civil Service Commission, Davao City to facilitate the release of Bayubay's appointment; that you demanded and forced Postmaster Felipe Collamar, Jr., of the post office at Maitum, South Cotabato to contribute and/or produce one (1) whole Bariles fish for shesami (sic), and you also required and received from the aforesaid postmaster the amount of ₱500.00 Philippine currency; that you demanded and required Postmaster Diosdado B. Delfin to give imported wine and/or ₱700.00, Philippine currency, for gift to the outgoing Regional Director Escalada; and that you failed to liquidate and return the substantial amount of excess contributions on April, 1987, June, 1987 and December, 1987,

for Postal Convention at MSU, arrival of Postmaster General Banayo and Araw ng Kartero and Christmas Party, respectively, for your own personal gain and benefit to the damage and prejudice of all the employees assigned at the aforementioned district.

In a Decision[15] dated **August 15, 1994**, De Guzman was found guilty as charged and was dismissed from the service. Pertinently, its dispositive reads that "[i]n the interest of the service, it is directed that this decision be implemented immediately."[16]

It appears, however, that the afore-stated decision was not implemented until five (5) years later when Regional Director Mama S. Lalanto (Dir. Lalanto) issued a Memorandum[17] dated August 17, 1999 for this purpose. De Guzman lost no time in filing a motion for reconsideration,[18] claiming that: (*a*) the decision sought to be implemented was recalled on August 29, 1994 by PG Pilapil himself; and (*b*) since the decision had been dormant for more than five (5) years, it may not be revived without filing another formal charge.

The motion was, however, denied in a Resolution[19] dated **May 14, 2003**, pointing out that De Guzman failed to produce a copy of the alleged recall order even if he had been directed to do so.

Undaunted, De Guzman filed a second motion for reconsideration, which was resolved[20] on June 2, 2003 in his favor in that: (*a*) the Resolution dated May 14, 2003 denying De Guzman's first motion for Reconsideration was recalled; and (*b*) a formal hearing of the case was ordered to be conducted as soon as possible.

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[15] *Id.* at 75-77. Penned by Postmaster General Eduardo P. Pilapil.

[16] *Id.* at 77.

[17] As stated in De Guzman's Letter dated August 18, 1999 to Postmaster General Nicasio P. Rodriguez; *id.* at 78-79.

[18] *Id.*

[19] *Id.* at 80-82. Penned by Postmaster General and CEO Diomedio P. Villanueva.

[20] *Id.* at 83-84.

After due hearing, the PPC, through PG Rama, issued a Resolution[21] dated **November 23, 2004**, finding De Guzman guilty of the charges against him and consequently dismissing him from the service. It was emphasized therein that when De Guzman was formally charged on July 16, 1993, the complainant was the PPC, which had its own charter and was no longer under the DOTC. Thus, the ISLES Memorandum dated February 26, 1990 prepared by Dir. Reyes which endorsed the exoneration of De Guzman and the dismissal of the complaints against him was merely recommendatory. As such, the filing of the formal charge on July 16, 1993 was an obvious rejection of said recommendation.[22]

De Guzman's motion for reconsideration was denied initially in a Resolution[23] dated **January 6, 2005**, but the motion was, at the same time, considered as an appeal to the PPC Board of Directors (Board).[24] The Board, however, required PG Rama to rule on the motion. Thus, in a Resolution[25] dated **May 10, 2005**, PG Rama pointed out that, being the third motion for reconsideration filed by De Guzman, the same was in gross violation of the rules of procedure recognized by the PPC, as well as of the Civil Service Commission (CSC), which both allowed only one (1) such motion to be entertained.[26] It was further held that *res judicata* was unavailing as the decision exonerating De Guzman was "only a ruling after a fact-finding investigation." Hence, the same could not be considered as a dismissal on the merits but rather, a dismissal made by an investigative body which was not clothed with judicial or quasi-judicial power.[27]

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[21] *Id.* at 85-101.

[22] *Id.* at 94-95.

[23] No copy on record.

[24] *Rollo*, p. 22.

[25] *Id.* at 102-108.

[26] Quoting the CSC Resolution No. 94-0521, the Disciplinary Rules and Procedures of the PPC, and the CSC M.C. No. 19, Series of 1999; *id.* at 103.

[27] *Id.* at 104-105.

Meanwhile, before the issuance of the Resolution dated May 10, 2005, De Guzman elevated his case on March 12, 2005[28] to the CA *via* a special civil action for *certiorari* and *mandamus*,[29] docketed as CA-G.R. SP No. 88891, imputing grave abuse of discretion amounting to lack or excess of jurisdiction in that: (*a*) the case against him was a mere rehash of the previous complaint already dismissed by the DOTC, and therefore, a clear violation of the rule on *res judicata*; (*b*) the assailed PPC Resolutions did not consider the evidences submitted by De Guzman; (*c*) the uncorroborated, unsubstantiated and contradictory statements contained in the affidavits presented became the bases of the assailed Resolutions; (*d*) the Resolution dated November 23, 2004 affirmed a non-existent decision; (*e*) Atty. Buensalida was not a credible witness and his testimony bore no probative value; and (f) the motion for reconsideration filed by De Guzman of the Resolution dated November 23, 2004 is not the third motion for reconsideration filed by him.

On **June 10, 2005**, De Guzman appealed[30] the Resolution dated May 10, 2005 before the PPC Board, which resolution was allegedly received by De Guzman on May 26, 2005. Almost a year later, the Board issued a Resolution[31] dated **May 25, 2006**, denying the appeal and affirming with finality the Decision dated **August 15, 1994** and the Resolution dated **May 14, 2003**. The motion for reconsideration subsequently filed by De Guzman was likewise denied in a Resolution[32] dated **June 29, 2006**.

On April 4, 2006, the CA rendered a Decision[33] in CA-G.R. SP No. 88891, reversing the PPC Resolutions dated **November 23, 2004** and **January 6, 2005**, respectively. It held that the

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[28] *Id.* at 23.

[29] *Id.* at 109-138.

[30] *Id.* at 139-141.

[31] *Id.* at 142-144.

[32] *Id.* at 145-146.

[33] *Id.* at 44-56.

revival of the case against De Guzman constituted grave abuse of discretion considering the clear and unequivocal content of the Memorandum dated **May 15, 1990** duly signed by Asec. Jardiniano that the complaint against De Guzman was already dismissed.

Aggrieved, PPC moved for reconsideration which was, however, denied in a Resolution[34] dated July 19, 2006, hence, the instant petition.

Meanwhile, on July 26, 2006, De Guzman filed an appeal of the PPC Board's Resolutions dated **May 25, 2006** and **June 29, 2006** with the CSC[35] which was, however, dismissed in Resolution No. 080815[36] dated May 6, 2008. The CSC equally denied De Guzman's motion for reconsideration therefrom in Resolution No. 090077[37] dated January 14, 2009.

The Issues Before the Court

The essential issues for the Court's resolution are whether: (*a*) De Guzman unjustifiably failed to exhaust the administrative remedies available to him; (*b*) De Guzman engaged in forum-shopping; and (*c*) the investigation conducted by the DOTC, through the ISLES, bars the filing of the subsequent charges by PPC.

The Court's Ruling

The petition is meritorious.

A. Exhaustion of administrative remedies.

The thrust of the rule on exhaustion of administrative remedies is that the courts must allow the administrative agencies to carry out their functions and discharge their responsibilities within

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[34] *Id.* at 57-59.

[35] *Id.* at 337-338.

[36] *Id.* at 326-332.

[37] *Id.* at 333-340.

the specialized areas of their respective competence. It is presumed that an administrative agency, if afforded an opportunity to pass upon a matter, will decide the same correctly, or correct any previous error committed in its forum. Furthermore, reasons of law, comity and convenience prevent the courts from entertaining cases proper for determination by administrative agencies. Hence, premature resort to the courts necessarily becomes fatal to the cause of action of the petitioner.[38]

PPC claims that De Guzman failed to subscribe to the rule on exhaustion of administrative remedies since he opted to file a premature *certiorari* case before the CA instead of filing an appeal with the PPC Board, or of an appeal to the CSC, which are adequate remedies under the law.[39]

The Court agrees with PPC's submission.

Under Section 21 (d) of RA 7354, the removal by the Postmaster General of PPC officials and employees below the rank of Assistant Postmaster General may be appealed to the Board of the PPC, *viz.*:

Sec. 21. Powers and Functions of the Postmaster General. — As the Chief Executive Officer, the Postmaster General shall have the following powers and functions:

x x x x x x x x x

(d) to appoint, promote, assign, reassign, transfer and remove personnel below the ranks of Assistant Postmaster General: Provided, That in the case of removal of officials and employees, the same may be appealed to the Board;

x x x x x x x x x

This remedy of appeal to the Board is reiterated in Section 2 (a), Rule II of the Disciplinary Rules and Procedures of the PPC, which provides further that the decision of the Board is, in turn, appealable to the CSC, *viz.*:

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[38] *Gonzales v. CA,* 409 Phil. 684, 690-691 (2001).

[39] *Rollo*, p. 27.

Section 2. DISCIPLINARY JURISDICTION. — (a) The Board of Directors shall decide upon appeal the decision of the Postmaster General removing officials and employees from the service. (R.A. 7354, Sec. 21 (d)). The decision of the Board of Directors is appealable to the Civil Service Commission.

It is well-established that the CSC has jurisdiction over all employees of government branches, subdivisions, instrumentalities, and agencies, including government-owned or controlled corporations with original charters, and, as such, is the sole arbiter of controversies relating to the civil service.[40] The PPC, created under RA 7354, is a government-owned and controlled corporation with an original charter. **Thus, being an employee of the PPC, De Guzman should have, after availing of the remedy of appeal before the PPC Board, sought further recourse before the CSC.**

Records, however, disclose that while De Guzman filed on June 10, 2005 a notice of appeal[41] to the PPC Board and subsequently appealed the latter's ruling to the CSC on July 26, 2006, these were all after he challenged the PPC Resolution dated November 23, 2004 (wherein he was adjudged guilty of the charges against him and consequently dismissed from the service) in a petition for *certiorari* and *mandamus* before the CA (docketed as CA-G.R. SP No. 88891). That the subject of De Guzman's appeal to the Board was not the Resolution dated November 23, 2004 but the Resolution dated May 10, 2005 denying the motion for reconsideration of the first-mentioned resolution is of no moment. In *Alma Jose v. Javellana*,[42] the Court ruled that an appeal from an order denying a motion for reconsideration of a final order or judgment is effectively an appeal from the final order or judgment itself.[43] Thus, finding no cogent explanation on De Guzman's end or any justifiable

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[40] *Olanda v. Bugayong,* 491 Phil. 626, 632 (2003), citing *Corsiga v. Defensor,* 439 Phil. 875, 883 (2002).

[41] *Rollo*, pp. 139-141.

[42] G.R. No. 158239, January 25, 2012, 664 SCRA 11.

[43] *Id.* at 20.

reason for his premature resort to a petition for *certiorari* and *mandamus* before the CA, the Court holds that he failed to adhere to the rule on exhaustion of administrative remedies which should have warranted the dismissal of said petition.

B. Forum-shopping.

PPC further submits that De Guzman violated the rule on forum-shopping since he still appealed the order of his dismissal before the PPC Board, notwithstanding the pendency of his petition for *certiorari* before the CA identically contesting the same.[44]

The Court also concurs with PPC on this point.

Aside from violating the rule on exhaustion of administrative remedies, De Guzman was also guilty of forum-shopping by pursuing two (2) separate remedies — petition for *certiorari* and appeal — that have long been held to be mutually exclusive, and not alternative or cumulative remedies.[45] **Evidently, the ultimate relief sought by said remedies which De Guzman filed only within a few months from each other**[46] **is one and the same — the setting aside of the resolution dismissing him from the service.** As illumined in the case of *Sps. Zosa v. Judge Estrella*,[47] wherein several precedents have been cited on the subject matter:[48]

> The petitions are denied. The present controversy is on all fours with *Young v. Sy*, in which we ruled that the successive filing of a notice of appeal and a petition for *certiorari* both to assail the trial court's dismissal order for non-suit constitutes forum shopping. Thus,

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[44] *Rollo*, p. 38.

[45] See *Young v. Sy,* 534 Phil. 246, 266 (2006).

[46] De Guzman filed the petition for *certiorari* before the CA on March 12, 2005, while he filed the appeal before the PPC Board on June 10, 2005.

[47] 593 Phil. 71 (2008).

[48] *Id.* at 77-79, citing *Young v. Sy, supra* note 45, at 264-267; *Guaranteed Hotels, Inc. v. Baltao,* 489 Phil. 702, 709 (2005); and *Candido v. Camacho,* 424 Phil. 291 (2002).

Forum shopping consists of filing multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment.

There is forum shopping where there exist: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment *rendered in the pending case, regardless of which party is successful would amount to res judicata*.

Ineluctably, the petitioner, by filing an ordinary appeal and a petition for *certiorari* with the CA, engaged in forum shopping. When the petitioner commenced the appeal, only four months had elapsed prior to her filing with the CA the Petition for *Certiorari* under Rule 65 and which eventually came up to this Court by way of the instant Petition (re: Non-Suit). The elements of *litis pendentia* are present between the two suits. As the CA, through its Thirteenth Division, correctly noted, both suits are founded on exactly the same facts and refer to the same subject matter — the RTC Orders which dismissed Civil Case No. SP-5703 (2000) for failure to prosecute. In both cases, the petitioner is seeking the reversal of the RTC orders. The parties, the rights asserted, the issues professed, and the reliefs prayed for, are all the same. It is evident that the judgment of one forum may amount to *res judicata* in the other.

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The remedies of appeal and *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative. This is a firm judicial policy. The petitioner cannot hedge her case by wagering two or more appeals, and, in the event that the ordinary appeal lags significantly behind the others, she cannot *post facto* validate this circumstance as a demonstration that the ordinary appeal had not been speedy or adequate enough, in order to justify the recourse to Rule 65. This practice, if adopted, would sanction the filing of multiple suits in multiple *fora*, where each one, as the petitioner couches it, becomes a "precautionary measure" for the rest, thereby increasing the chances of a favorable decision. This is the very evil that the

proscription on forum shopping seeks to put right. In *Guaranteed Hotels, Inc. v. Baltao*, the Court stated that **the grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions**. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different *fora* until a favorable result is reached. To avoid the resultant confusion, the Court adheres strictly to the rules against forum shopping, and any violation of these rules results in the dismissal of the case.

Thus, the CA correctly dismissed the petition for *certiorari* and the petition for review (G.R. No. 157745) filed with this Court must be denied for lack of merit.

We also made the same ruling in *Candido v. Camacho,* when the respondent therein **assailed identical court orders through both an appeal and a petition for an extraordinary writ.**

Here, petitioners questioned the June 26, 2000 Order, the August 21, 2000 Clarificatory Order, and the November 23, 2000 Omnibus Order of the RTC via ordinary appeal (CA-G.R. CV No. 69892) and through a petition for *certiorari* (CA-G.R. SP No. 62915) in different divisions of the same court. The actions were filed with a month's interval from each one. Certainly, petitioners *were seeking to obtain the same relief in two different divisions with the end in view of endorsing whichever proceeding would yield favorable consequences. Thus, following settled jurisprudence, both the appeal and the certiorari petitions should be dismissed*. (Emphases supplied; citations omitted)

Similar thereto, the very evil that the prohibition on forum-shopping was seeking to prevent — conflicting decisions rendered by two (2) different tribunals — resulted from De Guzman's abuse of the processes. Since De Guzman's appeal before the PPC Board was denied in its Resolutions[49] dated May 25, 2006 and June 29, 2006, De Guzman sought the review of said resolutions before the CSC where he raised yet again the defense of *res judicata*. Nonetheless, the CSC, in its Resolution No. 080815[50]

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[49] *Rollo*, pp. 142-144 and 145-146, respectively.

[50] *Id.* at 326-332.

dated May 6, 2008, affirmed De Guzman's dismissal, affirming "the Resolutions of the PPC Board of Directors dismissing De Guzman from the service for Dishonesty, Gross Violation of Regulations, and Conduct Grossly Prejudicial to the Best Interest of the Service."[51]

De Guzman's motion for reconsideration of the aforesaid Resolution was similarly denied by the CSC in its Resolution No. 090077[52] dated January 14, 2009. On the other hand, the petition for *certiorari*, which contained De Guzman's prayer for the reversal of Resolutions dated November 23, 2004 and January 6, 2005 dismissing him from the service, was granted by the CA much earlier on April 4, 2006.

It should be pointed out that De Guzman was bound by his certification[53] with the CA that if he "should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency," he "undertake[s] to report that fact within five (5) days therefrom to [the] Honorable Court."[54] Nothing,

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[51] *Id.* at 332.

[52] *Id.* at 333-340.

[53] *Id.* at 137.

[54] A certification against forum shopping is a requirement provided under Section 5, Rule 7 of the Rules of Court which reads as follows:

Sec. 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise

however, appears on record that De Guzman had informed the CA of his subsequent filing of a notice of appeal before the PPC from the Resolution dated May 10, 2005. By failing to do so, De Guzman committed a violation of his certification against forum-shopping with the CA, which has been held to be a ground for dismissal of an action distinct from forum-shopping itself.[55]

Moreover, De Guzman's contention[56] that the filing of the notice of appeal from the said Resolution was only "taken as a matter of precaution"[57] cannot extricate him from the effects of forum-shopping. He was fully aware when he filed CA-G.R. SP No. 88891 that PG Rama had forwarded the records of the case to the PPC Board for purposes of appeal.[58] Yet, he decided to bypass the administrative machinery. And this was not the first time he did so. In his Comment to the instant petition, De Guzman claimed[59] that in response to the Memorandum[60] dated August 17, 1999 issued by Dir. Lalanto implementing his dismissal from service, he not only filed a motion for reconsideration but he likewise challenged the actions of the PPC before the Regional Trial Court of Manila through a petition for *mandamus* docketed as Case No. 99-95442.

Even when CA-G.R. SP No. 88891 was decided in De Guzman's favor on April 4, 2006, and PPC's motion for reconsideration

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provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[55] See Section 5, Rule 7 of the Rules of Court, *id.*; see also *Collantes v. CA,* 546 Phil. 391, 402-403 (2007).

[56] *Rollo*, p. 192.

[57] *Id.*

[58] *Id.* at 117.

[59] *Id.* at 170-171.

[60] As stated in De Guzman's Letter dated August 18, 1999 to Postmaster General Nicasio P. Rodriguez; *id.* at 78-79.

was denied on July 19, 2006, De Guzman nonetheless filed on July 26, 2006 an appeal before the CSC from the denial by the PPC Board of his Notice of Appeal dated June 7, 2005 as pointed out in CSC Resolution No. 090077.[61] While De Guzman did inform the CSC that he previously filed a petition for *certiorari* with the CA, he **failed to disclose the fact that the CA had already rendered a decision thereon resolving the issue of *res judicata*,**[62] **which was the very same issue before the CSC.**

Verily, unscrupulous party litigants who, taking advantage of a variety of competent tribunals, repeatedly try their luck in several different *fora* until a favorable result is reached[63] cannot be allowed to profit from their wrongdoing. The Court emphasizes strict adherence to the rules against forum-shopping, and this case is no exception. Based on the foregoing, the CA should have then dismissed the petition for *certiorari* filed by De Guzman not only for being violative of the rule on exhaustion of administrative remedies but also due to forum-shopping.

In addition, it may not be amiss to state that De Guzman's petition for *certiorari* was equally dismissible **since one of the requirements for the availment thereof is precisely that there should be no appeal.** It is well-settled that the remedy to obtain reversal or modification of the judgment on the merits is to appeal. This is true even if the error, or one of the errors, ascribed to the tribunal rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision.[64] In fact, under Section 30, Rule III (C) of the Disciplinary Rules and Procedures of the PPC, among the grounds for appeal to the PPC Board from an order or decision

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[61] *Id.* at 337.

[62] *Id.* at 338.

[63] *Sps. Zosa v. Judge Estrella, supra* note 47, at 79, citing *Young v. Sy, supra* note 45, at 266-267, further citing *Guaranteed Hotels, Inc. v. Baltao*, 489 Phil. 702, 709 (2005).

[64] *Manacop v. Equitable PCI Bank,* G.R. Nos. 162814-17, August 25, 2005, 468 SCRA 256, 271.

of dismissal are: (*a*) grave abuse of discretion on the part of the Postmaster General; and (*b*) errors in the finding of facts or conclusions of law which, if not corrected, would cause grave and irreparable damage or injury to the appellant. Clearly, therefore, with the remedy of appeal to the PPC Board and thereafter to the CSC available to De Guzman, *certiorari* to the CA should not have been permitted.

In this relation, it bears noting that PPC has sufficiently addressed De Guzman's argument that an appeal would not be a speedy and adequate remedy considering that the resolution dismissing him from service was to be "implemented immediately."[65]

To elucidate, on February 24, 2005, before De Guzman filed the petition for *certiorari* dated March 12, 2005, the PPC Board had passed Board Resolution[66] No. 2005-14 adopting a "Corporate Policy that henceforth the decision of the Postmaster General in administrative cases when the penalty is removal or dismissal, the same **shall not be final and executory** pending appeal to the Office of the Board of Directors." Shortly thereafter, or on March 8, 2005, PG Rama issued Philpost Administrative Order[67] No. 05-05 pursuant to the aforementioned Board Resolution, the pertinent portions of which are quoted hereunder:

1. Decisions of the Postmaster General in administrative cases where the penalty imposed is removal/dismissal from the service shall not be final and executory pending appeal to the Office of the PPC Board of Directors. x x x

2. Decisions of the Postmaster General in administrative cases where the penalty imposed is removal/dismissal from the service shall be executory pending appeal to the Civil Service Commission;

3. Respondents who have pending appealed administrative cases to the PPC Board of Directors are entitled to report back to office

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[65] *Rollo*, p. 101. See dispositive portion of Resolution dated November 23, 2004.

[66] *Id.* at 147-149.

[67] *Id.* at 151.

and receive their respective salary and benefits beginning at the time they reported back to work. No back wages shall be allowed by virtue of the PPC Board Resolution No. 2005-14;

4. Following the Civil Service Rules and Regulations, back wages can only be recovered in case the respondent is exonerated of the administrative charges on appeal; and

5. PPC Board Resolution No. 2005-14 took effect on 24 February 2005. x x x

PPC further claimed that instead of reporting for work while his motion for reconsideration and, subsequently, his appeal were pending, "[De Guzman] voluntarily elected to absent himself." Much later, however, De Guzman "finally reported back [to] work and thereby received his salary and benefits in full for the covered period."[68] De Guzman failed to sufficiently rebut these claims, except to say that he was never given any copy of the aforementioned board resolution and administrative order.[69] Therefore, considering that his dismissal was not to be executed by PPC immediately (if he had appealed the same), De Guzman's contention that an appeal would not be a speedy and adequate remedy similarly deserves no merit.

C. *Res judicata*.

De Guzman likewise failed to convince the Court of the applicability of the doctrine of *res judicata* for having been charged of the same set of acts for which he had been exculpated by the ISLES of the DOTC whose recommendation for the dismissal of the complaint against De Guzman was subsequently approved by then DOTC Asec. Jardiniano.

The Court agrees with PPC's argument that there was **no formal charge** filed by the DOTC against De Guzman and, as such, the dismissal of the complaint against him by Asec. Jardiniano, upon the recommendation of the ISLES, did not amount to a dismissal on the merits that would bar the filing of another case.

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[68] *Id.* at 30.

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

While the CA correctly pointed out that it was the DOTC, through its Department Head, that had disciplinary jurisdiction over employees of the then Bureau of Posts, including De Guzman, it however proceeded upon the presumption that De Guzman had been formally charged. But he was not.

Pertinent is Section 16 of the Uniform Rules on Administrative Cases in the Civil Service which reads as follows:

> Section 16. Formal Charge. — **After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of.** The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice. (Emphasis supplied)

The requisite finding of a *prima facie* case before the disciplining authority shall formally charge the person complained of is reiterated in Section 9, Rule III (B) of the Disciplinary Rules and Procedures of the PPC, to wit:

> Section 9. FORMAL CHARGE. — **When the Postmaster General finds the existence of a *prima facie* case, the respondent shall be formally charged.** He shall be furnished copies of the complaint, sworn statements and other documents submitted by the complainant, unless he had already received the same during the preliminary investigation. The respondent shall be given at least seventy-two (72) hours from receipt of said formal charge to submit his answer under oath, together with the affidavits of his witnesses and other evidences, and a statement indicating whether or not he elects a formal investigation. He shall also be informed of his right to the assistance of a counsel of his choice. If the respondent already submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence. (Emphasis supplied)

The investigation conducted by the ISLES, which "provides, performs, and coordinates security, intelligence, **fact-finding, and investigatory functions** for the Secretary, the Department, and Department-wide official undertakings,"[70] was intended precisely for the purpose of determining whether or not a *prima facie* case against De Guzman existed. Due to insufficiency of evidence, however, no formal charge was filed against De Guzman and the complaint against him was dismissed by Asst. Secretary Jardiniano.

In order that *res judicata* may bar the institution of a subsequent action, the following requisites must concur: (*a*) the former judgment must be final; (*b*) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (*c*) **it must be a judgment on the merits**; and (*d*) there must be between the first and the second actions (i) identity of parties, (ii) identity of subject matter, and (iii) identity of cause of action.[71]

A judgment may be considered as one rendered on the merits when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections; or when the judgment is rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point.[72]

In this case, there was no "judgment on the merits" in contemplation of the above-stated definition. The dismissal of the complaint against De Guzman in the Memorandum[73] dated May 15, 1990 of Asec. Jardiniano was **a result of a fact-finding investigation only for purposes of determining whether a *prima facie* case exists and a formal charge for administrative offenses should be filed.** This being the case, no rights and

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[70] <http://www.dotc.gov.ph/index.php?option=com_k2&view=item&id=118:dotc-proper> (visited November 6, 2013).

[71] See *Encinas v. Agustin, Jr.,* G.R. No. 187317, April 11, 2013, 696 SCRA 240, 260.

[72] *Id.*

[73] *Rollo*, p. 72.

liabilities of the parties were determined therein with finality. In fact, the CA, conceding that the ISLES was "a mere fact-finding body," pointed out that the Memorandum[74] dated February 26, 1990 issued by Dir. Reyes recommending the dismissal of the complaint against De Guzman "did not make any adjudication regarding the rights of the parties."[75]

Hence, for the reasons above-discussed, the Court holds that PPC did not gravely abuse its discretion when it revived the case against De Guzman despite the previous dismissal thereof by Asec. Jardiniano. Since said dismissal was not a judgment on the merits, the doctrine of *res judicata* does not apply.

In fine, due to the errors of the CA as herein detailed, the Court hereby grants the present petition and accordingly reverses and sets aside the former's dispositions. The Resolutions dated November 23, 2004 and January 6, 2005 of the PPC ordering De Guzman's dismissal from the service are thus reinstated.

WHEREFORE, the petition is **GRANTED.** The Decision dated April 4, 2006 and the Resolution dated July 19, 2006 of the Court of Appeals in CA-G.R. SP No. 88891 are **REVERSED** and **SET ASIDE,** and the Resolutions dated November 23, 2004 and January 6, 2005 of petitioner Philippine Postal Corporation are hereby **REINSTATED.**

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Leonen,*[*] *JJ.,* concur.

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[74] *Id.* at 70-71.

[75] See CA Decision dated April 4, 2006; *id.* at 53.

[*] Designated Acting Member per Special Order No. 1627.

SECOND DIVISION

[G.R. No. 192105. December 9, 2013]

ANTONIO LOCSIN II, *petitioner vs.* **MEKENI FOOD CORPORATION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; HUMAN RELATIONS; UNJUST ENRICHMENT; IT WAS PATENT ERROR FOR THE APPELLATE COURT TO ASSUME THAT, EVEN IN THE ABSENCE OF EXPRESS STIPULATION, PETITIONER'S PAYMENTS ON THE CAR PLAN MAY BE CONSIDERED AS RENTALS WHICH NEED NOT BE RETURNED.—** From the evidence on record, it is seen that the Mekeni car plan offered to petitioner was subject to no other term or condition than that Mekeni shall cover one-half of its value, and petitioner shall in turn pay the other half through deductions from his monthly salary. Mekeni has not shown, by documentary evidence or otherwise, that there are other terms and conditions governing its car plan agreement with petitioner. There is no evidence to suggest that if petitioner failed to completely cover one-half of the cost of the vehicle, then all the deductions from his salary going to the cost of the vehicle will be treated as rentals for his use thereof while working with Mekeni, and shall not be refunded. Indeed, there is no such stipulation or arrangement between them. Thus, the CA's reliance on *Elisco Tool* is without basis, and its conclusions arrived at in the questioned decision are manifestly mistaken. To repeat what was said in *Elisco Tool – First*. Petitioner does not deny that private respondent Rolando Lantan acquired the vehicle in question under a car plan for executives of the Elizalde group of companies. Under a typical car plan, the company advances the purchase price of a car to be paid back by the employee through monthly deductions from his salary. The company retains ownership of the motor vehicle until it shall have been fully paid for. However, retention of registration of the car in the company's name is only a form of a lien on the vehicle in the event that the employee would abscond before he has fully paid for it. **There are also stipulations in car plan agreements to the effect that should the employment of the employee**

concerned be terminated before all installments are fully paid, the vehicle will be taken by the employer and all installments paid shall be considered rentals per agreement. It was made clear in the above pronouncement that installments made on the car plan may be treated as rentals only when there is an express stipulation in the car plan agreement to such effect. It was therefore patent error for the appellate court to assume that, even in the absence of express stipulation, petitioner's payments on the car plan may be considered as rentals which need not be returned.

2. **ID.; ID.; ID.; IT IS CLEAR THAT WHILE PETITIONER WAS PAYING FOR THE HALF OF THE VEHICLE'S VALUE, RESPONDENT CORPORATION WAS REAPING THE FULL BENEFITS FROM THE USE THEREOF; THE SERVICE VEHICLE WAS AN ABSOLUTE NECESSITY IN RESPONDENT CORPORATION'S BUSINESS OPERATIONS WHICH BENEFITED IT TO THE FULLEST EXTENT.—** Indeed, the Court cannot allow that payments made on the car plan should be forfeited by Mekeni and treated simply as rentals for petitioner's use of the company service vehicle. Nor may they be retained by it as purported loan payments, as it would have this Court believe. In the first place, there is precisely no stipulation to such effect in their agreement. Secondly, it may not be said that the car plan arrangement between the parties was a benefit that the petitioner enjoyed; on the contrary, it was an absolute necessity in Mekeni's business operations, which benefited it to the fullest extent: without the service vehicle, petitioner would have been unable to rapidly cover the vast sales territory assigned to him, and sales or marketing of Mekeni's products could not have been booked or made fast enough to move Mekeni's inventory. Poor sales, inability to market Mekeni's products, a high rate of product spoilage resulting from stagnant inventory, and poor monitoring of the sales territory are the necessary consequences of lack of mobility. Without a service vehicle, petitioner would have been placed at the mercy of inefficient and unreliable public transportation; his official schedule would have been dependent on the arrival and departure times of buses or jeeps, not to mention the availability of seats in them. Clearly, without a service vehicle, Mekeni's business could only prosper at a snail's pace, if not completely paralyzed. Its cost of doing

business would be higher as well. The Court expressed just such a view in the past. Thus – In the case at bar, the **disallowance of the subject car plan** benefits **would hamper the officials in the performance of their functions** to promote and develop trade **which requires mobility in the performance of official business**. Indeed, **the car plan benefits are supportive of the implementation of the objectives and mission of the agency** relative to the nature of its operation **and responsive to the exigencies of the service**. Any benefit or privilege enjoyed by petitioner from using the service vehicle was merely incidental and insignificant, because for the most part the vehicle was under Mekeni's control and supervision. Free and complete disposal is given to the petitioner only after the vehicle's cost is covered or paid in full. Until then, the vehicle remains at the beck and call of Mekeni. Given the vast territory petitioner had to cover to be able to perform his work effectively and generate business for his employer, the service vehicle was an absolute necessity, or else Mekeni's business would suffer adversely. Thus, it is clear that while petitioner was paying for half of the vehicle's value, Mekeni was reaping the full benefits from the use thereof.

3. **ID.; ID.; ID.; IT IS UNFAIR TO DENY PETITIONER A REFUND OF ALL HIS CONTRIBUTIONS TO THE CAR PLAN; RESPONDENT CORPORATION MAY NOT ENRICH ITSELF BY CHARGING PETITIONER FOR THE USE OF ITS VEHICLE WHICH IS OTHERWISE ABSOLUTELY NECESSARY TO THE FULL AND EFFECTIVE PROMOTION OF ITS BUSINESS.—** In light of the foregoing, it is unfair to deny petitioner a refund of all his contributions to the car plan. Under Article 22 of the Civil Code, "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." Article 2142 of the same Code likewise clarifies that there are certain lawful, voluntary and unilateral acts which give rise to the juridical relation of quasi-contract, to the end that no one shall be unjustly enriched or benefited at the expense of another. In the absence of specific terms and conditions governing the car plan arrangement between the petitioner and Mekeni, a quasi-contractual relation was created between them. Consequently, Mekeni may not enrich itself by charging petitioner for the

use of its vehicle which is otherwise absolutely necessary to the full and effective promotion of its business. It may not, under the claim that petitioner's payments constitute rents for the use of the company vehicle, refuse to refund what petitioner had paid, for the reasons that the car plan did not carry such a condition; the subject vehicle is an old car that is substantially, if not fully, depreciated; the car plan arrangement benefited Mekeni for the most part; and any personal benefit obtained by petitioner from using the vehicle was merely incidental.

4. **ID.; ID.; ID.; JUST AS RESPONDENT CORPORATION IS UNJUSTLY ENRICHED BY FAILING TO REFUND PETITIONER'S PAYMENTS, SO SHOULD PETITIONER NOT BE AWARDED THE VALUE OF RESPONDENT CORPORATION'S COUNTERPART CONTRIBUTION TO THE CAR PLAN, AS THIS WOULD UNJUSTLY ENRICH HIM AT THE CORPORATION'S EXPENSE.—** Conversely, petitioner cannot recover the monetary value of Mekeni's counterpart contribution to the cost of the vehicle; that is not property or money that belongs to him, nor was it intended to be given to him in lieu of the car plan. In other words, Mekeni's share of the vehicle's cost was not part of petitioner's compensation package. To start with, the vehicle is an asset that belonged to Mekeni. Just as Mekeni is unjustly enriched by failing to refund petitioner's payments, so should petitioner not be awarded the value of Mekeni's counterpart contribution to the car plan, as this would unjustly enrich him at Mekeni's expense. There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another. The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates for petitioner.
Cesar B. Tuozo for respondent.

DECISION

DEL CASTILLO, *J*.:

In the absence of specific terms and conditions governing a car plan agreement between the employer and employee, the former may not retain the installment payments made by the latter on the car plan and treat them as rents for the use of the service vehicle, in the event that the employee ceases his employment and is unable to complete the installment payments on the vehicle. The underlying reason is that the service vehicle was precisely used in the former's business; any personal benefit obtained by the employee from its use is merely incidental.

This Petition for Review on *Certiorari*[1] assails the January 27, 2010 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 109550, as well as its April 23, 2010 Resolution[3] denying petitioner's Motion for Partial Reconsideration.[4]

Factual Antecedents

In February 2004, respondent Mekeni Food Corporation (Mekeni) – a Philippine company engaged in food manufacturing and meat processing – offered petitioner Antonio Locsin II the position of Regional Sales Manager to oversee Mekeni's National Capital Region Supermarket/Food Service and South Luzon operations. In addition to a compensation and benefit package, Mekeni offered petitioner a car plan, under which one-half of the cost of the vehicle is to be paid by the company and the other half to be deducted from petitioner's salary. Mekeni's offer was contained in an Offer Sheet[5] which was presented to petitioner.

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[1] *Rollo*, pp. 10-27.

[2] CA *rollo*, pp. 210-218; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Jose C. Reyes, Jr. and Amy C. Lazaro-Javier.

[3] *Id*. at 250-251.

[4] *Id*. at 226-232.

[5] *Rollo*, p. 39.

Petitioner began his stint as Mekeni Regional Sales Manager on March 17, 2004. To be able to effectively cover his appointed sales territory, Mekeni furnished petitioner with a used Honda Civic car valued at ₱280,000.00, which used to be the service vehicle of petitioner's immediate supervisor. Petitioner paid for his 50% share through salary deductions of ₱5,000.00 each month.

Subsequently, Locsin resigned effective February 25, 2006. By then, a total of ₱112,500.00 had been deducted from his monthly salary and applied as part of the employee's share in the car plan. Mekeni supposedly put in an equivalent amount as its share under the car plan. In his resignation letter, petitioner made an offer to purchase his service vehicle by paying the outstanding balance thereon. The parties negotiated, but could not agree on the terms of the proposed purchase. Petitioner thus returned the vehicle to Mekeni on May 2, 2006.

Petitioner made personal and written follow-ups regarding his unpaid salaries, commissions, benefits, and offer to purchase his service vehicle. Mekeni replied that the company car plan benefit applied only to employees who have been with the company for five years; for this reason, the balance that petitioner should pay on his service vehicle stood at ₱116,380.00 if he opts to purchase the same.

On May 3, 2007, petitioner filed against Mekeni and/or its President, Prudencio S. Garcia, a Complaint[6] for the recovery of monetary claims consisting of unpaid salaries, commissions, sick/vacation leave benefits, and recovery of monthly salary deductions which were earmarked for his cost-sharing in the car plan. The case was docketed in the National Labor Relations Commission (NLRC), National Capital Region (NCR), Quezon City as NLRC NCR CASE NO. 00-05-04139-07.

On October 30, 2007, Labor Arbiter Cresencio G. Ramos rendered a Decision,[7] decreeing as follows:

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[6] Records, p. 2.

[7] *Id.* at 96-105.

WHEREFORE, in the light of the foregoing premises, judgment is hereby rendered directing respondents to turn-over to complainant x x x the subject vehicle upon the said complainant's payment to them of the sum of ₱100,435.84.

SO ORDERED.[8]

Ruling of the National Labor Relations Commission

On appeal,[9] the Labor Arbiter's Decision was reversed in a February 27, 2009 Decision[10] of the NLRC, thus:

WHEREFORE, premises considered, the appeal is hereby Granted. The assailed Decision dated October 30, 2007 is hereby REVERSED and SET ASIDE and a new one entered ordering respondent-appellee Mekeni Food Corporation to pay complainant-appellee the following:

1. Unpaid Salary in the amount of ₱12,511.45;

2. Unpaid sick leave/vacation leave pay in the amount of ₱14,789.15;

3. Unpaid commission in the amount of ₱9,780.00; and

4. Reimbursement of complainant's payment under the car plan agreement in the amount of ₱112,500.00; and

5. The equivalent share of the company as part of the complainant's benefit under the car plan 50/50 sharing amounting to ₱112,500.00.

Respondent-Appellee Mekeni Food Corporation is hereby authorized to deduct the sum of ₱4,736.50 representing complainant-appellant's cash advance from his total monetary award.

All other claims are dismissed for lack of merit.

SO ORDERED.[11]

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[8] *Id*. at 105.

[9] Docketed as NLRC LAC No. 01-000047-08.

[10] Records, pp. 184-191; penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-de Castro.

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

The NLRC held that petitioner's amortization payments on his service vehicle amounting to ₱112,500.00 should be reimbursed; if not, unjust enrichment would result, as the vehicle remained in the possession and ownership of Mekeni. In addition, the employer's share in the monthly car plan payments should likewise be awarded to petitioner because it forms part of the latter's benefits under the car plan. It held further that Mekeni's claim that the company car plan benefit applied only to employees who have been with the company for five years has not been substantiated by its evidence, in which case the car plan agreement should be construed in petitioner's favor.

Mekeni moved to reconsider, but in an April 30, 2009 Resolution,[12] the NLRC sustained its original findings.

Ruling of the Court of Appeals

Mekeni filed a Petition for *Certiorari*[13] with the CA assailing the NLRC's February 27, 2009 Decision, saying that the NLRC committed grave abuse of discretion in holding it liable to petitioner as it had no jurisdiction to resolve petitioner's claims, which are civil in nature.

On January 27, 2010, the CA issued the assailed Decision, decreeing as follows:

> *WHEREFORE*, the petition for *certiorari* is *GRANTED*. The *Decision* of the National Labor Relations Commission dated 27 February 2009, in NLRC NCR Case No. 00-05-04139-07, and its *Resolution* dated 30 April 2009 denying reconsideration thereof, are *MODIFIED* in that the reimbursement of Locsin's payment under the car plan in the amount of ₱112,500.00, and the payment to him of Mekeni's 50% share in the amount of ₱112,500.00 are *DELETED*. The rest of the decision is *AFFIRMED*.
>
> SO ORDERED.[14]

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[12] *Id*. at 209-211.

[13] CA *rollo*, pp. 3-28.

[14] *Id*. at 217.

In arriving at the above conclusion, the CA held that the NLRC possessed jurisdiction over petitioner's claims, including the amounts he paid under the car plan, since his Complaint against Mekeni is one for the payment of salaries and employee benefits. With regard to the car plan arrangement, the CA applied the ruling in *Elisco Tool Manufacturing Corporation v. Court of Appeals*,[15] where it was held that —

First. Petitioner does not deny that private respondent Rolando Lantan acquired the vehicle in question under a car plan for executives of the Elizalde group of companies. Under a typical car plan, the company advances the purchase price of a car to be paid back by the employee through monthly deductions from his salary. The company retains ownership of the motor vehicle until it shall have been fully paid for. However, retention of registration of the car in the company's name is only a form of a lien on the vehicle in the event that the employee would abscond before he has fully paid for it. There are also stipulations in car plan agreements to the effect that should the employment of the employee concerned be terminated before all installments are fully paid, the vehicle will be taken by the employer and all installments paid shall be considered rentals per agreement.[16]

In the absence of evidence as to the stipulations of the car plan arrangement between Mekeni and petitioner, the CA treated petitioner's monthly contributions in the total amount of ₱112,500.00 as rentals for the use of his service vehicle for the duration of his employment with Mekeni. The appellate court applied Articles 1484-1486 of the Civil Code,[17] and added that

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[15] 367 Phil. 242 (1999).

[16] *Id.* at 252.

[17] Art. 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

(1) Exact fulfillment of the obligation, should the vendee fail to pay;

(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void.

the installments paid by petitioner should not be returned to him inasmuch as the amounts are not unconscionable. It made the following pronouncement:

> Having used the car in question for the duration of his employment, it is but fair that all of Locsin's payments be considered as rentals therefor which may be forfeited by Mekeni. Therefore, Mekeni has no obligation to return these payments to Locsin. Conversely, Mekeni has no right to demand the payment of the balance of the purchase price from Locsin since the latter has already surrendered possession of the vehicle.[18]

Moreover, the CA held that petitioner cannot recover Mekeni's corresponding share in the purchase price of the service vehicle, as this would constitute unjust enrichment on the part of petitioner at Mekeni's expense.

The CA affirmed the NLRC judgment in all other respects. Petitioner filed his Motion for Partial Reconsideration,[19] but the CA denied the same in its April 23, 2010 Resolution.

Thus, petitioner filed the instant Petition; Mekeni, on the other hand, took no further action.

Issue

Petitioner raises the following solitary issue:

WITH ALL DUE RESPECT, THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING THE CAR PLAN PRIVILEGE AS PART OF THE COMPENSATION PACKAGE OFFERED TO PETITIONER AT THE INCEPTION OF HIS

Art. 1485. The preceding article shall be applied to contracts purporting to be leases of personal property with option to buy, when the lessor has deprived the lessee of the possession or enjoyment of the thing.

Art. 1486. In the cases referred to in the two preceding articles, a stipulation that the installments or rents paid shall not be returned to the vendee or lessee shall be valid insofar as the same may not be unconscionable under the circumstances.

[18] CA *rollo*, p. 216.

[19] *Id.* at 226-232.

EMPLOYMENT AND INSTEAD LIKENED IT TO A CAR LOAN ON INSTALLMENT, IN SPITE OF THE ABSENCE OF EVIDENCE ON RECORD.[20]

Petitioner's Arguments

In his Petition and Reply,[21] petitioner mainly argues that the CA erred in treating his monthly contributions to the car plan, totaling ₱112,500.00, as rentals for the use of his service vehicle during his employment; the car plan which he availed of was a benefit and it formed part of the package of economic benefits granted to him when he was hired as Regional Sales Manager. Petitioner submits that this is shown by the Offer Sheet which was shown to him and which became the basis for his decision to accept the offer and work for Mekeni.

Petitioner adds that the absence of documentary or other evidence showing the terms and conditions of the Mekeni company car plan cannot justify a reliance on Mekeni's self-serving claims that the full terms thereof applied only to employees who have been with the company for at least five years; in the absence of evidence, doubts should be resolved in his favor pursuant to the policy of the law that affords protection to labor, as well as the principle that all doubts should be construed to its benefit.

Finally, petitioner submits that the ruling in the *Elisco Tool* case cannot apply to his case because the car plan subject of the said case involved a car loan, which his car plan benefit was not; it was part of his compensation package, and the vehicle was an important component of his work which required constant and uninterrupted mobility. Petitioner claims that the car plan was in fact more beneficial to Mekeni than to him; besides, he did not choose to avail of it, as it was simply imposed upon him. He concludes that it is only just that his payments should be refunded and returned to him.

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[20] *Rollo*, p. 19.

[21] *Id.* at 197-203.

Petitioner thus prays for the reversal of the assailed CA Decision and Resolution, and that the Court reinstate the NLRC's February 27, 2009 Decision.

Respondent's Arguments

In its Comment,[22] Mekeni argues that the Petition does not raise questions of law, but merely of fact, which thus requires the Court to review anew issues already passed upon by the CA – an unauthorized exercise given that the Supreme Court is not a trier of facts, nor is it its function to analyze or weigh the evidence of the parties all over again.[23] It adds that the issue regarding the car plan and the conclusions of the CA drawn from the evidence on record are questions of fact.

Mekeni asserts further that the service vehicle was merely a loan which had to be paid through the monthly salary deductions. If it is not allowed to recover on the loan, this would constitute unjust enrichment on the part of petitioner.

Our Ruling

The Petition is partially granted.

To begin with, the Court notes that Mekeni did not file a similar petition questioning the CA Decision; thus, it is deemed to have accepted what was decreed. The only issue that must be resolved in this Petition, then, is whether petitioner is entitled to a refund of all the amounts applied to the cost of the service vehicle under the car plan.

When the conclusions of the CA are grounded entirely on speculation, surmises and conjectures, or when the inferences made by it are manifestly mistaken or absurd, its findings are subject to review by this Court.[24]

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[22] *Id*. at 185-195.

[23] Citing *Nicolas v. Court of Appeals*, 238 Phil. 622 (1987).

[24] *Vda. de Dayao v. Heirs of Gavino Robles*, G.R. No. 174830, July 31, 2009, 594 SCRA 620, 627.

From the evidence on record, it is seen that the Mekeni car plan offered to petitioner was subject to no other term or condition than that Mekeni shall cover one-half of its value, and petitioner shall in turn pay the other half through deductions from his monthly salary. Mekeni has not shown, by documentary evidence or otherwise, that there are other terms and conditions governing its car plan agreement with petitioner. There is no evidence to suggest that if petitioner failed to completely cover one-half of the cost of the vehicle, then all the deductions from his salary going to the cost of the vehicle will be treated as rentals for his use thereof while working with Mekeni, and shall not be refunded. Indeed, there is no such stipulation or arrangement between them. Thus, the CA's reliance on *Elisco Tool* is without basis, and its conclusions arrived at in the questioned decision are manifestly mistaken. To repeat what was said in *Elisco Tool* —

> *First*. Petitioner does not deny that private respondent Rolando Lantan acquired the vehicle in question under a car plan for executives of the Elizalde group of companies. Under a typical car plan, the company advances the purchase price of a car to be paid back by the employee through monthly deductions from his salary. The company retains ownership of the motor vehicle until it shall have been fully paid for. However, retention of registration of the car in the company's name is only a form of a lien on the vehicle in the event that the employee would abscond before he has fully paid for it. **There are also stipulations in car plan agreements to the effect that should the employment of the employee concerned be terminated before all installments are fully paid, the vehicle will be taken by the employer and all installments paid shall be considered rentals <u>per agreement</u>**.[25] (Emphasis supplied)

It was made clear in the above pronouncement that installments made on the car plan may be treated as rentals only when there is an express stipulation in the car plan agreement to such effect. It was therefore patent error for the appellate court to assume that, even in the absence of express stipulation, petitioner's

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[25] *Elisco Tool Manufacturing Corporation v. Court of Appeals*, *supra* note 15 at 252.

payments on the car plan may be considered as rentals which need not be returned.

Indeed, the Court cannot allow that payments made on the car plan should be forfeited by Mekeni and treated simply as rentals for petitioner's use of the company service vehicle. Nor may they be retained by it as purported loan payments, as it would have this Court believe. In the first place, there is precisely no stipulation to such effect in their agreement. Secondly, it may not be said that the car plan arrangement between the parties was a benefit that the petitioner enjoyed; on the contrary, it was an absolute necessity in Mekeni's business operations, which benefited it to the fullest extent: without the service vehicle, petitioner would have been unable to rapidly cover the vast sales territory assigned to him, and sales or marketing of Mekeni's products could not have been booked or made fast enough to move Mekeni's inventory. Poor sales, inability to market Mekeni's products, a high rate of product spoilage resulting from stagnant inventory, and poor monitoring of the sales territory are the necessary consequences of lack of mobility. Without a service vehicle, petitioner would have been placed at the mercy of inefficient and unreliable public transportation; his official schedule would have been dependent on the arrival and departure times of buses or jeeps, not to mention the availability of seats in them. Clearly, without a service vehicle, Mekeni's business could only prosper at a snail's pace, if not completely paralyzed. Its cost of doing business would be higher as well. The Court expressed just such a view in the past. Thus —

> In the case at bar, the **disallowance of the subject car plan** benefits **would hamper the officials in the performance of their functions** to promote and develop trade **which requires mobility in the performance of official business**. Indeed, **the car plan benefits are supportive of the implementation of the objectives and mission of the agency** relative to the nature of its operation **and responsive to the exigencies of the service**.[26] (Emphasis supplied)

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[26] *Philippine International Trading Corporation v. Commission on Audit*, 368 Phil. 478, 491 (1999).

Any benefit or privilege enjoyed by petitioner from using the service vehicle was merely incidental and insignificant, because for the most part the vehicle was under Mekeni's control and supervision. Free and complete disposal is given to the petitioner only after the vehicle's cost is covered or paid in full. Until then, the vehicle remains at the beck and call of Mekeni. Given the vast territory petitioner had to cover to be able to perform his work effectively and generate business for his employer, the service vehicle was an absolute necessity, or else Mekeni's business would suffer adversely. Thus, it is clear that while petitioner was paying for half of the vehicle's value, Mekeni was reaping the full benefits from the use thereof.

In light of the foregoing, it is unfair to deny petitioner a refund of all his contributions to the car plan. Under Article 22 of the Civil Code, "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." Article 2142[27] of the same Code likewise clarifies that there are certain lawful, voluntary and unilateral acts which give rise to the juridical relation of quasi-contract, to the end that no one shall be unjustly enriched or benefited at the expense of another. In the absence of specific terms and conditions governing the car plan arrangement between the petitioner and Mekeni, a quasi-contractual relation was created between them. Consequently, Mekeni may not enrich itself by charging petitioner for the use of its vehicle which is otherwise absolutely necessary to the full and effective promotion of its business. It may not, under the claim that petitioner's payments constitute rents for the use of the company vehicle, refuse to refund what petitioner had paid, for the reasons that the car plan did not carry such a condition; the subject vehicle is an old car that is substantially, if not fully, depreciated; the car plan arrangement benefited Mekeni for the most part; and any personal benefit obtained by petitioner from using the vehicle was merely incidental.

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[27] Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another.

Conversely, petitioner cannot recover the monetary value of Mekeni's counterpart contribution to the cost of the vehicle; that is not property or money that belongs to him, nor was it intended to be given to him in lieu of the car plan. In other words, Mekeni's share of the vehicle's cost was not part of petitioner's compensation package. To start with, the vehicle is an asset that belonged to Mekeni. Just as Mekeni is unjustly enriched by failing to refund petitioner's payments, so should petitioner not be awarded the value of Mekeni's counterpart contribution to the car plan, as this would unjustly enrich him at Mekeni's expense.

There is unjust enrichment "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at the expense of another.

The main objective of the principle against unjust enrichment is to prevent one from enriching himself at the expense of another without just cause or consideration. x x x[28]

WHEREFORE, the Petition is **GRANTED IN PART**. The assailed January 27, 2010 Decision and April 23, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 109550 are **MODIFIED**, in that respondent Mekeni Food Corporation is hereby ordered to **REFUND** petitioner Antonio Locsin II's payments under the car plan agreement in the total amount of ₱112,500.00.

Thus, except for the counterpart or equivalent share of Mekeni Food Corporation in the car plan agreement amounting to ₱112,500.00, which is **DELETED,** the February 27, 2009 Decision of the National Labor Relations Commission is affirmed in all respects.

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[28] *Flores v. Lindo, Jr.*, G.R. No. 183984, April 13, 2011, 648 SCRA 772, 782-783.

SO ORDERED.

Carpio (Chairperson), Brion, Perlas-Bernabe, and *Leonen,*[*] *JJ.,* concur.

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[*] Per Special Order No. 1627 dated December 6, 2013.

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(Sps. Sia *vs*. Bank of the Phil. Islands, G.R. No. 181873, Nov. 27, 2013) p. 183

Award of — Must indicate classification and legal bases of the award. (Sps. Saraza *vs*. Francisco, G.R. No. 198718, Nov. 27, 2013) p. 346

Civil liability in case of rape — Awarded to the victim of simple rape without need of proof other than the fact of rape. (People *vs*. Garcia, G.R. No. 206095, Nov. 25, 2013) p. 60

Exemplary damages — Imposed to serve as a deterrent against or as a negative incentive to curb socially deleterious actions. (Sps. Bautista *vs*. Sps. Jalandoni, G.R. No. 171464, Nov. 27, 2013) p. 144

(People *vs*. Garcia, G.R. No. 206095, Nov. 25, 2013) p. 60

Moral damages — Awarded to the victim of simple rape without need of proof other than the fact of rape. (People *vs*. Garcia, G.R. No. 206095, Nov. 25, 2013) p. 60

— Meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused. (Sps. Bautista *vs*. Sps. Jalandoni, G.R. No. 171464, Nov. 27, 2013) p. 144

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over the positive and categorical testimony of the witness. (Sps. Saraza *vs*. Francisco, G.R. No. 198718, Nov. 27, 2013) p. 346

(People *vs*. Gani, G.R. No. 198318, Nov. 27, 2013) p. 331

— Cannot prevail over the positive identification of the witness. (People *vs*. Maglente, G.R. No. 201445, Nov. 27, 2013) p. 388

— Cannot prevail over the presentation of the *corpus delicti*. (People *vs*. Gani, G.R. No. 198318, Nov. 27, 2013) p. 331

— Not appreciated when merely corroborated by a relative. (People *vs*. Castillo, G.R. No. 190180, Nov. 27, 2013) p. 223

DOCUMENTS

Registry return of registered mail — Prima facie proof of the facts indicated therein. (Gatchalian Realty, Inc. *vs*. Angeles, G.R. No. 202358, Nov. 27, 2013) p. 407

DONATIONS

Classification of — A pure/simple donation is the truest form of donation as it is based on pure gratuity. (Calanasan *vs*. Sps. Dolorito, G.R. No. 171937, Nov. 25, 2013) p. 1

— Conditional/modal donation is a consideration for future services; it occurs where the donor imposes certain conditions, limitation or charges upon the donee, whose value is inferior to the donation given. *(Id.)*

— Remuneratory/compensatory type has for its purpose the rewarding of the donee for past services, which services do not amount to a demandable debt. *(Id.)*

Onerous donation — Imposes upon the donee a reciprocal obligation that is made for a valuable consideration whose cost is equal to or more than the thing donated. (Calanasan *vs*. Sps. Dolorito, G.R. No. 171937, Nov. 25, 2013) p. 1

— Partakes of the nature of an ordinary contract and governed by the rules on contract. *(Id.)*

Revocation of — In ingratitude as a ground, the ungrateful acts should be committed by the donee against the donor. (Calanasan *vs*. Sps. Dolorito, G.R. No. 171937, Nov. 25, 2013) p. 1

EJECTMENT

Case of — Under the Revised Rules on Summary Procedure, ejectment cases merely require the submission by the parties of affidavits and position papers; the Rule directs courts to conduct a hearing only when necessary to clarify factual matters. (Enesio *vs*. Tulop, G.R. No. 183923, Nov. 27, 2013) p. 204

ELECTION CONTESTS

Revision of ballots — Standard to be observed in an election contest predicated on the theory that the election returns do not accurately reflect the will of the voters due to alleged irregularities in the appreciation and counting of ballots, cited. (Regio *vs*. COMELEC, G.R. No. 204828, Dec. 03, 2013) p. 664

— The duty of the protestee in an election contest is to provide evidence of actual tampering or any likelihood arises only when the protestant has first successfully discharged the burden of proving that the ballots have been secured to prevent tampering or susceptibility of change, abstraction or substitution. *(Id.)*

— The results of the revision will not automatically be given more weight over the official canvassing of results or the election returns. *(Id.)*

EMINENT DOMAIN

Just compensation — Defined to be the just and complete equivalent of the loss which the owner of the thing expropriated has to suffer by reason of the expropriation. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Leonen, J., concurring and dissenting opinion*) p. 538

EMPLOYEES

Fixed term employment — Determined not by the activity that the employee is called upon to perform but the day certain agreed upon by the parties for the commencement and

termination of the employment relationship. (GMA Network, Inc. *vs*. Pabriga, G.R. No. 176419, Nov. 27, 2013) p. 161

Project employees — In order to safeguard the rights of workers against the arbitrary use of the word project to prevent employees from attaining the status of regular employees, employers claiming that their workers are project employees should not only prove that the duration and scope of the employment was specified at the time they were engaged, but also that there was indeed a project. (GMA Network, Inc. *vs*. Pabriga, G.R. No. 176419, Nov. 27, 2013) p. 161

EMPLOYMENT, TERMINATION OF

Bona fide suspension of business operation — If it does not exceed six months, it is not a valid cause for termination. (SKM Art Craft Corp. *vs*. Bauca, G.R. No. 171282, Nov. 27, 2013) p. 128

Cessation or closure of establishment as a ground — Before an employee is terminated, the employer must give a one (1) month prior written notice to the employee and to the Department of Labor and Employment. (Sangwoo Phils., Inc. *vs*. Sangwoo Phils., Inc. Employees Union – Olalia, G.R. No. 173154, Dec. 09, 2013) p. 846

— Employer failed to comply with the notice requirement when he merely posted various copies of notice of closure in conspicuous places within the business premises hence he is liable to pay the employees nominal damages for the omission. *(Id.)*

— The law does not obligate the employer for the payment of separation pay if there is closure of business due to serious losses. *(Id.)*

Due process requirement — Provides for: (1) a written notice specifying the ground or grounds for termination; (2) a hearing or conference to give the employee concerned the opportunity to respond to the charge; and (3) a written notice of termination. (Baguio Central University *vs*. Gallente, G.R. No. 188267, Dec. 02, 2013) p. 494

Loss of trust and confidence as a ground — As long as the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded on his position, the dismissal on this ground is valid. (Baguio Central University *vs*. Gallente, G.R. No. 188267, Dec. 02, 2013) p. 494

— For the application of loss of confidence, the guidelines are: (1) loss of confidence should not be simulated; (2) it should not be used as a subterfuge for causes which are improper, illegal or unjustified; (3) it may not be arbitrarily asserted in the face of an overwhelming evidence to the contrary; and (4) it must be genuine, not a mere afterthought to justify an earlier action taken in bad faith. *(Id.)*

— Guidelines to be observed are: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. *(Id.)*

Valid dismissal — The *onus* of proving that an employee was not dismissed or, if dismissed, his dismissal was not illegal rests on the employer. (GMA Network, Inc. *vs*. Pabriga, G.R. No. 176419, Nov. 27, 2013) p. 161

EVIDENCE

Preponderance of evidence — The party making an allegation in a civil case has the burden of proving it by preponderance of evidence. (Dra. Dela Llana *vs*. Biong, G.R. No. 182356, Dec. 04, 2013) p. 743

EVIDENT PREMEDITATION

As an aggravating circumstance — It is indispensable that the fact of planning the crime be established. (People *vs*. Maglente, G.R. No. 201445, Nov. 27, 2013) p. 388

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — The thrust of the rule is that the courts must allow the administrative agencies to carry out their functions

and discharge their responsibilities within the specialized areas of their respective competence. (Phil. Postal Corp. *vs*. CA, G.R. No. 173590, Dec. 09, 2013) p. 860

EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE (R.A. NO. 3135)

Application — A pending suit questioning the validity thereof does not warrant the suspension of the issuance of a writ of possession. (Sps. Sia *vs*. Bank of the Phil. Islands, G.R. No. 181873, Nov. 27, 2013) p. 183

— Certain requisites must be established before a creditor can proceed to an extrajudicial foreclosure, namely: (1) there must have been the failure to pay the loan obtained from the mortgagee-creditor; (2) the loan obligation must be secured by a real estate mortgage; and (3) the mortgagee-creditor has the right to foreclose the real estate mortgage either judicially or extra judicially. *(Id.)*

Foreclosure sale — The buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. (Sps. Sia *vs*. Bank of the Phil. Islands, G.R. No. 181873, Nov. 27, 2013) p. 183

Writ of possession — In the absence of any evidence showing that the mortgage also covers the other obligations of the mortgagor, the proceeds from the sale should not be applied to them, the balance or excess, after deducting the mortgage debt plus the stipulated interest and the expenses of the foreclosure sale must be returned to the mortgagor. (Phil. Bank of Communications *vs*. Yeung, G.R. No. 179691, Dec. 04, 2013) p. 710

— May be issued if the mortgagee failed to exercise his right of redemption within one (1) year from the time of the registration of the sale and the property's title had already been transferred to the buyer. *(Id.)*

FORUM SHOPPING

Certification against forum shopping — When all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them substantially complies with the certification requirement. (SKM Art Craft Corp. *vs*. Bauca, G.R. No. 171282, Nov. 27, 2013) p. 128

Concept — Committed when a party pursued two (2) separate remedies, a petition for *certiorari* and an appeal, which have been held to be mutually exclusive and not alternative or cumulative remedies. (Phil. Postal Corp. *vs*. CA, G.R. No. 173590, Dec. 09, 2013) p. 860

— Forum shopping takes place when a litigant files multiple suits involving the same parties, either simultaneously or successively to secure a favorable judgment. (Phil. Bank of Communications *vs*. Yeung, G.R. No. 179691, Dec. 04, 2013) p. 710

FRAME-UP

Defense of — Cannot prevail over positive testimonies of witnesses with evidence of *corpus delicti*. (People *vs*. Gani, G.R. No. 198318, Nov. 27, 2013) p. 331

HOMICIDE

Commission of — Penalty imposable for the crime is *reclusion temporal*. (People *vs*. Cañaveras, G.R. No. 193839, Nov. 27, 2013) p. 259

INTEGRATED BAR OF THE PHILIPPINES (IBP)

Resolutions of IBP Board of Governors — Only recommendatory and always subject to the Supreme Court's review. (Sps. Williams *vs*. Atty. Enriquez, A.C. No. 7329, Nov. 27, 2013) p. 102

INTERESTS

Legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgment — Will be

six percent (6%) per annum effective July 01, 2013. (Sps. Andal *vs*. Phil. National Bank, G.R. No. 194201, Nov. 27, 2013) p. 273

JUDGES

Gross ignorance of the law — Unfavorable rulings are not necessarily erroneous. (Dulalia *vs*. Judge Cajigal, A.M. OCAI.P.I. No. 10-3492-RTJ, Dec. 04, 2013) p. 690

Undue delay in rendering a decision or order — In deciding the penalty to be imposed, the court takes into consideration, among others, the period of delay, damage suffered by the parties as a result of the delay; complexity of the case; number of years the judge has been in the service; the health and age of the judge; and the case load of the court presided over by the judge. (Dulalia *vs*. Judge Cajigal, A.M. OCAI.P.I. No. 10-3492-RTJ, Dec. 04, 2013) p. 690

JUDGMENTS

Void judgment — Has no legal and binding effect, force or efficacy for any purpose. (Araullo *vs*. Office of the Ombudsman, G.R. No. 194169, Dec. 04, 2013) p. 795

JUDICIAL CLEMENCY

Request for — Guidelines for resolving request for judicial clemency, to wit: (1) there must be proof of remorse and reformation; (2) sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation; (3) the age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself; (4) there must be a showing of promise, as well as potential for public service; and (5) there must be other relevant factors and circumstances that may justify clemency. (Sultan Ali *vs*. Judge Ali-Pacalna, A.M. No.MTJ-03-1505, Nov. 27, 2013) p. 112

JUDICIAL REVIEW

Actual case or controversy — Exists when there is a conflict of legal rights or an assertion of opposite legal claims susceptible of judicial resolution. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013) p. 538

Power of judicial review — Limited to actual cases or controversies. (Bankers Association of the Phils. *vs*. COMELEC, G.R. No. 206794, Nov. 26, 2013) p. 92

— When the constitutionality of a law is put in issue, judicial review may be availed of only if the following requisites concur: (1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the question of constitutionality; (3) recourse to judicial review is made at the earliest opportunity; and (4) the question of constitutionality is the *lis mota* of the case. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013) p. 538

JURISDICTION

Primary jurisdiction — If a case is such that its determination requires the expertise, specialized training and knowledge of the proper administrative bodies, relief must first be obtained in an administrative proceeding before a remedy is supplied by the courts even if the matter may well be within their proper jurisdiction; exceptions. (Province of Aklan *vs*. Jody King Construction and Dev't. Corp., G.R. Nos. 197592 & 202623, Nov. 27, 2013) p. 315

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — Elements of the crime are: (1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the latter of his liberty; (3) the act of detention or kidnapping is illegal; and (4) in the commission of the offense, any of the following circumstances are present: (a) the kidnapping or detention lasts for more than three (3) days; or (b) it is committed

by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer. (People *vs*. Niegas, G.R. No. 194582, Nov. 27, 2013) p. 301

— Civil liabilities of accused are: (1) moral damages; (2) exemplary damages; and (3) civil indemnity to the victim. *(Id.)*

KIDNAPPING FOR RANSOM

Imposable penalty — Applying R.A. No. 9346, death penalty is reduced to *reclusion perpetua* without eligibility for parole. (People *vs*. Niegas, G.R. No. 194582, Nov. 27, 2013) p. 301

LABOR

Labor contracts — Being imbued with public interest, they are placed on a higher place than ordinary contracts and are subject to the police power of the state. (GMA Network, Inc. *vs*. Pabriga, G.R. No. 176419, Nov. 27, 2013) p. 161

— Labor contracts with former employer cannot be enforced against absorbing employer. (Maynilad Water Supervisors Assn. *vs*. Maynilad Water Services, Inc., G.R. No. 198935, Nov. 27, 2013) p. 360

LABOR STANDARDS

Night shift differential — Employment records necessary for the computation thereof should be produced by the employer. (GMA Network, Inc. *vs*. Pabriga, G.R. No. 176419, Nov. 27, 2013) p. 161

LACHES

Doctrine of — Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss. (Sanchez *vs*. Sanchez, G.R. No. 187661, Dec. 04, 2013) p. 763

LAND REGISTRATION ACT (ACT NO. 496)

Certificate of title — The law protects and prefers the lawful holder of registered title over the transferee of a vendor bereft of any transmissible rights. (Sps. Bautista *vs*. Sps. Jalandoni, G.R. No. 171464, Nov. 27, 2013) p. 144

LEGAL FEES

Sheriff's expenses — A.M. No. 04-2-04-SC clearly requires that the sheriff executing a writ shall provide an estimate of the expenses to be incurred, and such estimated amount must be approved by the court and upon approval, the interested party shall then deposit the amount with the clerk of court and *ex officio* sheriff; the expenses shall be disbursed to the assigned deputy sheriff to execute the writ, subject to liquidation upon the return of the writ; any amount unspent shall be returned to the interested party. (Olivan *vs*. Rubio, A.M. No. P-12-3063, Nov. 26, 2013) p. 77

LIBEL

Privileged communication — Destroys the presumption of malice or malice in law and consequently requires the prosecution to prove the existence of malice in fact. (Co *vs*. Muñoz, Jr., G.R. No. 181986, Dec. 04, 2013) p. 729

LOANS

Interest rates — Rate of interest subsequently declared illegal does not stop payment of interest. (Sps. Andal *vs*. Phil. National Bank, G.R. No. 194201, Nov. 27, 2013) p. 273

MOOT AND ACADEMIC CASES

Case of — While the Court has recognized exceptions in applying the moot and academic principle, these exceptions relate only to situations where: (1) there is a grave violation of the Constitution; (2) the situation is of exceptional character and paramount public interest is involved; (3) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the

public; and (4) the case is capable of repetition yet evading review. (Bankers Association of the Phils. *vs*. COMELEC, G.R. No. 206794, Nov. 26, 2013) p. 92

MOTION FOR RECONSIDERATION

Period to file — General rule is that the failure to timely file the motion within the 15-day reglementary period fixed by law renders the decision or resolution final and executory; exception. (Phil. Bank of Communications *vs*. Yeung, G.R. No. 179691, Dec. 04, 2013) p. 710

MOTION TO DISMISS

Prescription of action as a ground — An allegation of prescription can effectively be used in a motion to dismiss only when the complaint on its face shows that indeed the action has already prescribed. (Sanchez *vs*. Sanchez, G.R. No. 187661, Dec. 04, 2013) p. 763

MURDER

Commission of — Imposable penalty is *reclusion perpetua* to death. (People *vs*. Maglente, G.R. No. 201445, Nov. 27, 2013) p. 388

Frustrated murder — Punishable by *reclusion temporal*. (People *vs*. Maglente, G.R. No. 201445, Nov. 27, 2013)

NATIONAL LABOR RELATIONS COMMISSION

Appeal bonds — Rule on appeal bond may be relaxed when there is substantial compliance and explanation therefor. (Maynilad Water Supervisors Assn. *vs*. Maynilad Water Services, Inc., G.R. No. 198935, Nov. 27, 2013) p. 360

OBLIGATIONS

Obligations with penal clause — Court shall equitably reduce the penalty when debtor has partly complied with the principal obligation. (Saverio *vs*. Puyat, G.R. No. 186433, Nov. 27, 2013) p. 211

OBLIGATIONS, EXTINGUISHMENT OF

Fortuitous events — Defined as extraordinary events not foreseeable or anticipated, as is commonly believed but it must be one impossible to foresee or to avoid. (Metro Concast Steel Corp. *vs*. Allied Bank Corp., G.R. No. 177921, Dec. 04, 2013) p. 698

— To constitute a fortuitous event, the following elements must concur: (1) the cause of the unforeseen and unexpected occurrence or the failure of the debtor to comply with the obligation must be independent of human will; (2) it must be impossible to foresee the event that constitutes the c*aso fortuito* or, if it can be foreseen, it must be impossible to avoid; (3) the occurrence must be such as to render it impossible for the debtor to fulfill obligations in a normal manner; and (4) the obligor must be free from any participation in the aggravation of the injury or loss. *(Id.)*

Novation — Absent any showing that the terms and conditions of the loan transactions have been, in any way, modified or novated by the terms and conditions in the memorandum of agreement, said contracts should be treated separately and distinctly from each other, such that the existence, performance or breach of one would not depend on the existence, performance or breach of the other. (Metro Concast Steel Corp. *vs*. Allied Bank Corp., G.R. No. 177921, Dec. 04, 2013) p. 698

OMBUDSMAN, OFFICE OF

Decision of — In case of administrative disciplinary cases, decision should be taken to the Court of Appeals under Rule 43. (Araullo *vs*. Office of the Ombudsman, G.R. No. 194169, Dec. 04, 2013) p. 795

PARTIES TO CIVIL ACTIONS

Indispensable parties — Failure to implead indispensable parties is a curable error. (Pacaña-Contreras *vs*. Rovila Water Supply, Inc., G.R. No. 168979, Dec. 02, 2013) p. 460

Real party-in-interest and indispensable parties, distinguished — A real party-in-interest is the party who stands to be benefited or injured by the judgment of the suit, or the party entitled to the avails of the suit, while an indispensable party is a party in interest without whom no final determination can be had of an action. (Pacaña-Contreras *vs.* Rovila Water Supply, Inc., G.R. No. 168979, Dec. 02, 2013) p. 460

PARTITION

Action for — The settlement of the issue of ownership is the first stage in an action for partition. (Dela Cruz *vs.* Dela Cruz, G.R. No. 192383, Dec. 04, 2013) p. 788

PLEADINGS

Defenses and objections — The failure to invoke the ground of failure to state a cause of action in a motion to dismiss or in the answer would result in its waiver; except: (1) the court has no jurisdiction over the subject matter; (2) *litis pendencia*; (3) *res judicata*; and (4) prescription. (Pacaña-Contreras *vs.* Rovila Water Supply, Inc., G.R. No. 168979, Dec. 02, 2013) p. 460

Verification — Substantially complied with when the signatories share a common interest and cause of action in the case. (SKM Art Craft Corp. *vs.* Bauca, G.R. No. 171282, Nov. 27, 2013) p. 128

POEA STANDARD EMPLOYMENT CONTRACT

Death and disability benefits — Seafarer must establish that the injury or illness is work-related and that it occurred during the term of the contract. (Jebsens Maritime, Inc. *vs.* Babol, G.R. No. 204076, Dec. 04, 2013) p. 828

Occupational diseases — Presumption of work-relatedness stays when employer failed to disprove said presumption. (Jebsens Maritime, Inc. *vs.* Babol, G.R. No. 204076, Dec. 04, 2013) p. 828

— Proof of the causal relationship between the illness and the work conditions must be reasonable, anchored on credible information and convincing proposition other than the claimant's mere allegations. *(Id.)*

PRESCRIPTION OF ACTIONS

Action for reconveyance based on implied or constructive trust — Prescribes in ten (10) years reckoned from the date of issuance of the Certificate of Title; exception. (Paraguya *vs*. Sps. Crucillo, G.R. No. 200265, Dec. 02, 2013) p. 513

PROPERTY

Builder in good faith — One who builds with the belief that the land he is building on is his, or that by some title one has the right to build thereon, and is ignorant of any defect or flaw in his title. (Mirallosa *vs*. Carmel Dev't., Inc., G.R. No. 194538, Nov. 27, 2013) p. 286

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Decree of registration — Period to contest the decree of registration is one (1) year from the date of entry of such decree. (Paraguya *vs*. Sps. Crucillo, G.R. No. 200265, Dec. 02, 2013) p. 513

PROSECUTION OF CIVIL ACTIONS

Application — The extinction of the penal action does not necessarily carry with it the extinction of the civil action if there is a finding in the final judgment in the criminal action that the act or omission from which the liability may arise exists. (Co *vs*. Muñoz, Jr., G.R. No. 181986, Dec. 04, 2013) p. 729

— The private party may appeal the judgment of acquittal insofar as he seeks to enforce the accused's civil liability. *(Id.)*

PUBLIC OFFICERS AND EMPLOYEES

Dishonesty — Defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected

with the performance of one's duty. (Olivan *vs*. Rubio, A.M. No. P-12-3063, Nov. 26, 2013) p. 77

Grave misconduct — Punishable by dismissal even for the first offense. (Olivan *vs*. Rubio, A.M. No. P-12-3063, Nov. 26, 2013) p. 77

Misconduct — A public officer who acts pursuant to the dictate of the law and within the limits of allowable discretion can hardly be considered guilty of misconduct. (Araullo *vs*. Office of the Ombudsman, G.R. No. 194169, Dec. 04, 2013) p. 795

QUALIFYING CIRCUMSTANCES

Taking advantage of superior strength — Superiority in number does not necessarily amount to qualifying circumstance of taking advantage of superior strength. (People *vs*. Cañaveras, G.R. No. 193839, Nov. 27, 2013) p. 259

QUASI-DELICT

Case of — The elements necessary to establish a *quasi-delict* must be first established by preponderance of evidence before determining the liability of the driver's employer. (Dr. Dela Llana *vs*. Biong, G.R. No. 182356, Dec. 04, 2013) p. 743

RAPE

Commission of — Elements of rape are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force and intimidation, or when the victim is deprived of reason or otherwise unconscious or when the victim is 12 years of age. (People *vs*. Manicat, G.R. No. 205413, Dec. 02, 2013) p. 522

(People *vs*. Hilarion, G.R No. 201105, Nov. 25, 2013) p. 52

(People *vs*. Guillen, G.R. No. 191756, Nov. 25, 2013) p. 28

— Force, threat or intimidation need not be irresistible, but just enough to bring about the desired result. (People *vs*. Linsie, G.R. No. 199494, Nov. 27, 2013) p. 374

(People *vs*. Hilarion, G.R No. 201105, Nov. 25, 2013) p. 52

— Hymenal laceration, whether fresh or healed, is not an element of the crime of rape. (People *vs*. Guillen, G.R. No. 191756, Nov. 25, 2013) p. 28

— Imposable penalty in case it is committed with the use of a deadly weapon shall be *reclusion temporal* to death. (People *vs*. Linsie, G.R. No. 199494, Nov. 27, 2013) p. 374

— Not negated by the victim's failure to shout or offer tenuous resistance. (People *vs*. Velasco, G.R. No. 190318, Nov. 27, 2013) p. 243

(People *vs*. Guillen, G.R. No. 191756, Nov. 25, 2013) p. 28

— Punishable by *reclusion perpetua*. (People *vs*. Manicat, G.R. No. 205413, Dec. 02, 2013) p. 522

— Rape can be committed even in places where people congregate. (People *vs*. Guillen, G.R. No. 191756, Nov. 25, 2013) p. 28

— There is sufficient basis to conclude that carnal knowledge has taken place when the testimony of a rape victim is consistent with the medical findings. (People *vs*. Hilarion, G.R. No. 201105, Nov. 25, 2013) p. 52

Prosecution of rape cases — Credible testimony of rape victim may be the basis of conviction. (People *vs*. Velasco, G.R. No. 190318, Nov. 27, 2013) p. 243

— Guidelines in reviewing rape conviction are: (1) that an accusation of rape can be made with facility; it is difficult for the complainant to prove but more difficult for the accused, though innocent, to disprove; (2) that in view of the intrinsic nature of the crime of rape as involving two persons, the rapist and the victim, the testimony of the complainant must be scrutinized with extreme caution; and (3) that the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. (People *vs*. Linsie, G.R. No. 199494, Nov. 27, 2013) p. 374

— Medical evidence in a rape case is not indispensable. (People *vs*. Velasco, G.R. No. 190318, Nov. 27, 2013) p. 243

— Where rape is sufficiently established, minor inconsistencies are irrelevant. (People *vs*. Linsie, G.R. No. 199494, Nov. 27, 2013) p. 374

Qualified rape — Physical resistance need not be established in a rape case when threats and intimidation are employed and the victim submits herself to the embrace of her rapist because of fear. (People *vs*. Linsie, G.R. No. 199494, Nov. 27, 2013) p. 374

Rape by sexual assault — Elements of the crime are: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by any of the following means: (a) by inserting his penis into another person's mouth or anal orifice; or (b) by inserting any instrument or object into the genital or anal orifice of another person; (3) that the act of sexual assault is accomplished under the following circumstances: (a) by using force or intimidation; (b) when the woman is deprived of reason or otherwise unconscious; or (c) by means of fraudulent machination or grave abuse of authority; or (4) when the woman is under 12 years of age or demented. (People *vs*. Garcia, G.R. No. 206095, Nov. 25, 2013) p. 60

— Imposable penalty in case it is committed with the use of a deadly weapon shall *be prision mayor* to *reclusion temporal*, or a duration of six (6) years and one (1) day to twenty (20) years. *(Id.)*

Statutory rape — Victim's age is an essential element which must be proved with equal certainty and clarity as the crime itself. (People *vs*. Hilarion, G.R No. 201105, Nov. 25, 2013) p. 52

REALTY INSTALLMENT BUYER ACT (R.A. NO. 6552)

Cancellation of contract to sell — If there is a valid and effective cancellation of the contract to sell, the buyer had lost their right of possession of the subject property

as a consequence of such cancellation, their refusal to vacate makes out a case for unlawful detainer. (Optinum Dev't. Bank *vs*. Sps. Jovellanos, G.R. No. 189145, Dec. 04, 2013) p. 772

— Requires a notarized notice of cancellation and refund of the cash surrender value. (Gatchalian Realty, Inc. *vs*. Angeles, G.R. No. 202358, Nov. 27, 2013) p. 407

Conditional sale — Rights of a buyer who has paid at least two years of instalments but defaults in the payment of succeeding instalments, are: (1) to pay, without additional interest, the unpaid instalments due within the total grace period earned by him which is hereby fixed at the rate of one month grace period for every one year of instalment payments made: provided, that this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any; (2) if the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made, and, after five years of instalments, an additional five percent every year but not to exceed ninety percent of the total payments made: provided, that the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer. (Gatchalian Realty, Inc. *vs*. Angeles, G.R. No. 202358, Nov. 27, 2013) p. 407

RES JUDICATA

Doctrine of — Requisites are: (1) that the former judgment is final; (2) that it has been rendered by a court of competent jurisdiction; (3) that it is a judgment on the merits; and (4) that, between the first and the second actions, there is identity of parties, subject matter, and cause of action. (Phil. Postal Corp. *vs*. CA, G.R. No. 173590, Dec. 09, 2013) p. 860

(Digital Telecommunications Phils., Inc. *vs*. Cantos, G.R. No. 180200, Nov. 25, 2013) p. 10

RIGHTS OF THE ACCUSED

Right to remain silent — Accused's silence while under custodial investigation should not be deemed as an implied admission of guilt. (People *vs*. Guillen, G.R. No. 191756, Nov. 25, 2013) p. 28

RULES OF PROCEDURE

Construction — Rules must be used to achieve speedy and efficient administration of justice and not to derail it. (SKM Art Craft Corp. *vs*. Bauca, G.R. No. 171282, Nov. 27, 2013) p. 128

SALES

Buyer in good faith and for value — To prove good faith, the following conditions must be present: (1) the seller is the registered owner of the land; (2) the owner is in possession thereof; and (3) at the time of the sale, the buyer was not aware of any claim or interest of some other person in the property, or of any defect or restriction in the title of the seller or in his capacity to convey title to the property. (Sps. Bautista *vs*. Sps. Jalandoni, G.R. No. 171464, Nov. 27, 2013) p. 144

Contract to sell — As distinguished from conditional contract of sale, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him, while in conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer. (Optinum Dev't. Bank *vs*. Sps. Jovellanos, G.R. No. 189145, Dec. 04, 2013) p. 772

Sale through an agent — Articles 1874 and 1878 par. 5 of the Civil Code explicitly require a written authority when the sale of a piece of land is through an agent, whether the

sale is gratuitously or for a valuable consideration; absent said authority, the sale is null and void. (Sps. Bautista *vs*. Sps. Jalandoni, G.R. No. 171464, Nov. 27, 2013) p. 144

SENIOR CITIZENS ACT (R.A. NO. 7432) AS AMENDED BY SENIOR CITIZENS ACT OF 2003 (R.A. NO. 9257)

Application — Does not intend to prevent any evil or destroy anything obnoxious, but remains a valid exercise of police power. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Bersamin, J., concurring opinion*) p. 538

— The law is no more than a regulation of the right to profit of certain taxpayers in order to benefit a significant sector of society thus a valid exercise of police power of the State. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Velasco, Jr., J., concurring opinion*) p. 538

Senior citizen discount and tax deduction scheme — An exercise of police power of the State. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013) p. 538

— An exercise of power of eminent domain and not that of the police power of the State. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Carpio, J., dissenting opinion*) p. 538

— Intended to improve the welfare of senior citizens who, at their age, are less likely to be gainfully employed, more prone to illness and other disabilities, and thus, in need of subsidy in purchasing basic commodities. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013) p. 538

— May be claimed by private establishments as tax deduction that is oppressive and confiscatory. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Carpio, J., dissenting opinion*) p. 538

— Not intended as compensation but a recognition that no income was realized by the taxpayer. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Velasco, Jr., J., concurring opinion*) p. 538

— The amount of mandatory discount is money that belongs to the private establishment, for sure; money or cash is private property because it is something of value that is subject to private ownership. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Carpio, J., dissenting opinion*) p. 538

— The imposition of the senior citizen discount is an exercise of police power while the determination that it will be a tax deduction is an exercise of the power to tax. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Leonen, J., concurring and dissenting opinion*) p. 538

SHERIFFS

Conduct of — High standards are expected of sheriffs who play an important role in the administration of justice. (Olivan *vs*. Rubio, A.M. No. P-12-3063, Nov. 26, 2013) p. 77

SPANISH MORTGAGE SYSTEM OF REGISTRATION AND OF THE USE OF SPANISH TITLES AS EVIDENCE IN LAND REGISTRATION PROCEEDINGS, DISCONTINUANCE OF (P.D. NO. 892)

Spanish Titles — Can no longer be used as evidence of ownership starting August 16, 1976. (Paraguya *vs*. Sps. Crucillo, G.R. No. 200265, Dec. 02, 2013) p. 513

STATE, INHERENT POWERS OF

Eminent domain — Power to take or appropriate private property for public use. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013) p. 538

(Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Bersamin, J., concurring opinion*) p. 538

— Profit is not only the intangible property but also inchoate right which is not the private property referred to in the Constitution that can be taken and would require the payment of just compensation. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Leonen, J., concurring and dissenting opinion*) p. 538

— The ability to increase prices by the private establishments cannot legally validate a violation of the eminent domain clause. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Carpio, J., dissenting opinion*) p. 538

— The Constitution requires that private property shall not be taken without due process of law and the payment of just compensation. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013) p. 538

(Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Bersamin, J., concurring opinion*) p. 538

Police power — Power to regulate or to restrain the use of liberty and property for public welfare. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013) p. 538

— Taking under the exercise of police power does not require any compensation because the property taken is either destroyed or placed outside the commerce of man. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Carpio, J., dissenting opinion*) p. 538

— To be valid, it must have a lawful subject or objective and a lawful method of accomplishing the goal. (Manila Memorial

Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013) p. 538

Power to tax — The scope of the legislative power to tax necessarily includes not only the power to determine the rate of tax but the method of collection as well. (Manila Memorial Park, Inc. *vs*. Sec. of Dep't. of Social Welfare and Dev't., G.R. No. 175356, Dec. 03, 2013; *Leonen, J., concurring and dissenting opinion*) p. 538

STATUTORY CONSTRUCTION

Law declared unconstitutional — Produces no effect whatsoever and confers no right to any person. (Mirallosa *vs*. Carmel Dev't., Inc., G.R. No. 194538, Nov. 27, 2013) p. 286

SUPREME COURT

Disciplinary authority over members of the Bar — The only issue within the ambit of the authority is whether a lawyer is fit to remain a member of the bar. (Sps. Williams *vs*. Atty. Enriquez, A.C. No. 7329, Nov. 27, 2013) p. 102

SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS, ACT PROVIDING FOR (R.A. NO. 9164)

Application — With the election of a new Punong Barangay during the October 28, 2013 election, the issue of who the rightful winner of the 2010 Barangay election has already been rendered moot and academic. (Regio *vs*. COMELEC, G.R. No. 204828, Dec. 03, 2013) p. 664

TAXES

Tax exemptions — Must be clear and unequivocal. (Digital Telecommunications Phils., Inc. *vs*. Cantos, G.R. No. 180200, Nov. 25, 2013) p. 10

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. (Enesio *vs*. Tulop, G.R. No. 183923, Nov. 27, 2013) p. 204

TREACHERY

As a qualifying circumstance — Present when the offender commits any of the crimes against person, employing means, methods, or forms in the execution, without risk to himself arising from the defense which the offended party might make. (People *vs*. Maglente, G.R. No. 201445, Nov. 27, 2013) p. 388

As an aggravating circumstance — The two elements that must be proved are: (1) the employment of means of execution which would ensure the safety of the offender from the defensive and retaliatory acts of the victim, giving the victim no opportunity to defend himself; and (2) the means, method and manner of execution were deliberately and consciously adopted by the offender. (People *vs*. Cañaveras, G.R. No. 193839, Nov. 27, 2013) p. 259

UNJUST ENRICHMENT

Concept — There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principle of justice, equity and good conscience. (Locsin II *vs*. Mekeni Food Corp., G.R. No. 192105, Dec. 09, 2013) p. 886

UNLAWFUL DETAINER

Action for — A complaint sufficiently alleges a cause of action for unlawful detainer if it recites that: (1) initially, the possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the latter's right of possession; (3) thereafter, defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the

last demand on defendant to vacate the property, plaintiff instituted the complaint for ejectment. (Optinum Dev't. Bank *vs*. Sps. Jovellanos, G.R. No. 189145, Dec. 04, 2013) p. 772

— Metropolitan Trial Courts are conditionally vested with authority to resolve the question of ownership raised as an incident in an ejectment case where the determination is essential to a complete adjudication of the issue of possession. *(Id.)*

— One (1) year prescriptive period should be counted from the date of plaintiff's last demand on defendant to vacate the real property, because only upon the lapse of that period does the possession become unlawful. (Mirallosa *vs*. Carmel Dev't., Inc., G.R. No. 194538, Nov. 27, 2013) p. 286

WITNESSES

Credibility of — Findings of trial court are not disturbed on appeal, especially when they are affirmed by the Court of Appeals; exceptions. (People *vs*. Loks, G.R. No. 203433, Nov. 27, 2013) p. 430

(People *vs*. Maglente, G.R. No. 201445, Nov. 27, 2013) p. 388

(People *vs*. Castillo, G.R. No. 190180, Nov. 27, 2013) p. 223

(People *vs*. Garcia, G.R. No. 206095, Nov. 25, 2013) p. 60

— Stands in the absence of improper motive to falsely testify against the accused. *(Id.)*

Ordinary witness' opinion — May be received in evidence regarding: (1) the identity of a person about whom he has adequate knowledge; (2) a handwriting with which he has sufficient familiarity; and (3) the mental sanity of a person with whom he is sufficiently acquainted. (Dr. Dela Llana *vs*. Biong, G.R. No. 182356, Dec. 04, 2013) p. 743

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