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DETERMINED IN THE

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OF THE

PHILIPPINES

FROM

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MANILA
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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. RTJ-14-2367. January 13, 2014]
(formerly OCA I.P.I. No. 12-3879-RTJ)

SR. REMY ANGELA JUNIO, SPC and JOSEPHINE D. LORICA, *complainants, vs.* **JUDGE MARIVIC A. CACATIAN-BELTRAN, BRANCH 3, REGIONAL TRIAL COURT, TUGUEGARAO CITY, CAGAYAN,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; DELAY IN RESOLVING A MOTION; THE RECORDS ARE BEREFT OF ANY EVIDENCE SHOWING THAT THERE HAD BEEN UNDUE DELAY, ANY ATTENDANT BAD FAITH, ANY INTENT TO PREJUDICE A PARTY TO THE CASE, OR SOME ULTERIOR ENDS.— Section 15(1), Article VIII of the Constitution requires lower court judges to decide a case within the period of ninety (90) days. Rule 3.05, Canon 3 of the Code of Judicial Conduct likewise holds that judges should administer justice without delay and directs every judge to dispose of the courts' business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the ninety (90) day period is mandatory. This mandate applies even to motions or interlocutory matters or incidents pending before a magistrate. In the present case, the City Prosecutor's

joint motion to withdraw informations was deemed submitted for resolution on September 14, 2011. Judge Cacatian-Beltran, however, did not act on the motion within the prescribed three (3) month period (or up to December 13, 2011), and instead ruled on it only on January 6, 2012. In her defense, Judge Cacatian-Beltran explained that Junio and Lorica might have conducted a follow-up of the motions to dismiss at Branch 4 where the records of the criminal cases were retained, and that the staff of Branch 4 failed to inform her of any follow-up by Junio and Lorica and/or their counsel. We note, however, that Branch 4 is paired with Judge Cacatian-Beltran's Branch 3 per Circular No. 7-74, as amended by SC Circular No. 19-98. Since Criminal Case Nos. 14053-54 had been assigned to Judge Cacatian-Beltran, it was incumbent upon her to update herself on the developments in these consolidated cases; she should have kept her own record of cases and noted therein the status of each case to ensure prompt and effective action. To do this, Judge Cacatian-Beltran should have adopted a record management system and organized her docket – an approach that she appears not to have done. Sections 9 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision or order as a less serious charge, with the following administrative sanctions: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. However, the records are bereft of any evidence showing that there had been ***undue delay*** (as shown by the records), any attendant bad faith, any intent to prejudice a party to the case, or some other ulterior ends. The OCA, in fact, pointedly ruled that the inaction was not attended with malice: Judge Cacatian-Beltran resolved the joint motion to withdraw informations two (2) days after she learned of its existence on January 4, 2012. To our mind, these circumstances are sufficient to mitigate the liability of Judge Cacatian-Beltran and keep us from imposing a fine or suspension from office. Accordingly, we find sufficient and warranted the OCA's recommended penalty of admonition.

2. ID.; ID.; RESPONDENT JUDGE DID NOT ARBITRARILY DENY THE JOINT MOTION TO WITHDRAW INFORMATIONS; THE TRIAL COURT IS NOT BOUND TO ADOPT THE RESOLUTION OF THE SECRETARY OF

JUSTICE SINCE IT IS MANDATED TO INDEPENDENTLY EVALUATE AND ASSESS THE MERITS OF THE CASE.— The trial court is **not bound to adopt the resolution of the Secretary of Justice** since it is mandated to independently evaluate or assess the merits of the case; in the exercise of its discretion, it may agree or disagree with the recommendation of the Secretary of Justice. Reliance on the resolution of the Secretary of Justice alone would be an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case. We stress that once a criminal complaint or information is filed in court, any disposition of the case (whether it be a dismissal, an acquittal or a conviction of the accused) rests within the exclusive jurisdiction, competence, and discretion of the trial court; it is the best and sole judge of what to do with the case before it. In resolving a motion to dismiss a case or to withdraw the information filed by the public prosecutor (on his own initiative or pursuant to the directive of the Secretary of Justice), either for insufficiency of evidence in the possession of the prosecutor or for lack of probable cause, the trial court should not merely rely on the findings of the public prosecutor or of the Secretary of Justice that no crime had been committed or that the evidence in the possession of the public prosecutor is insufficient to support a judgment of conviction of the accused. To do so is to surrender a power constitutionally vested in the Judiciary to the Executive. In the present case, Judge Cacatian-Beltran does not appear to have arbitrarily denied the joint motion to withdraw informations. The records show that she evaluated and assessed the informations, the resolution of the City Prosecutor, the affidavit and reply-affidavit of the complainants, the counter-affidavit and rejoinder and the appeal memorandum of Junio and Lorica, and the supporting documents attached to them. In her January 6, 2012 order, Judge Cacatian-Beltran notably explained the basis for her denial. No proof whatsoever exists in all these, showing that bad faith, malice or any corrupt purpose attended the issuance of her order. It is also important to note in this regard that the issue of whether Judge Cacatian-Beltran correctly denied the joint motion to withdraw informations, despite the finding of Secretary De Lima of lack of probable cause, is judicial in nature: Junio and Lorica's remedy under the circumstances should have been made with the proper court for the appropriate judicial action, not with the OCA by means of an administrative complaint.

3. ID.; ID.; WHEN A COURT ACTS, WHETHER ITS ACTION IS CONSISTENT OR INCONSISTENT WITH A PROSECUTOR'S RECOMMENDATION, IT RULES ON THE PROSECUTOR'S ACTION AND DOES NOT THEREBY ASSUME THE ROLE OF PROSECUTOR.— We also find unmeritorious Junio and Lorica's argument that Judge Cacatian-Beltran "arrogated unto herself the role of a prosecutor and a judge" when she insisted that the accused stand trial although she did not find any grave abuse of discretion on the part of Justice Secretary de Lima. When a court acts, whether its action is consistent or inconsistent with a prosecutor's recommendation, it rules on the prosecutor's action and does not thereby assume the role of a prosecutor. The case of *Hipos, Sr. v. Bay* best explains why we so rule: To clarify, we never stated in *Ledesma* that a judge is allowed to deny a Motion to Withdraw Information from the prosecution *only* when there is grave abuse of discretion on the part of the prosecutors moving for such withdrawal. Neither did we rule therein that where there is no grave abuse of discretion on the part of the prosecutors, the denial of the Motion to Withdraw Information is void. What we held therein is that a trial judge commits grave abuse of discretion if he denies a Motion to Withdraw Information **without an independent and complete assessment of the issues presented in such Motion**. With the independent and thorough assessment and evaluation of the merits of the joint motion to withdraw information that Judge Cacatian-Beltran undertook before dismissing it, she acted as a judge should and can in no way be said to have assumed the role of a prosecutor. The parties, for their part, are not without any remedy as the Rules of Court amply provide for the remedy against a judicial action believed to be grossly abusive when the remedy of direct appeal is not available. We cannot rule on this point in the present case, however, as this is a matter not before us in this administrative recourse against Judge Cacatian-Beltran.

R E S O L U T I O N

BRION, *J.*:

For our resolution is the Report and Recommendation[1] dated August 13, 2013 of the Office of the Court Administrator (*OCA*) in OCA I.P.I. No. 12-3879-RTJ.

The Antecedents

Claire Ann Campos, a 17-year old student, filed an affidavit-complaint for violation of Republic Act (*R.A.*) No. 7610 (the Child Abuse Law) and R.A. No. 7277 (the Magna Carta for the Disabled) before the Tuguegarao City Prosecution Office against Sr. Remy Angela Junio and Dr. Josephine D. Lorica, the President and the Dean of the School of Health Services, respectively, of St. Paul University of the Philippines (*SPUP*).

In her complaint, Claire alleged that she was refused enrolment by SPUP for the B.S. Nursing course in her sophomore year because of her cleft palate; she alleged that the refusal was made despite her completion of SPUP's College Freshmen Program Curriculum.

In its resolution dated August 22, 2008, the prosecutor's office found probable cause to indict Junio and Lorica of the crimes charged, and recommended the filing of the corresponding informations against them.

On September 8, 2008, Junio and Lorica appealed the August 22, 2008 resolution of the prosecutor's office, but Undersecretary Jose Vicente Salazar of the Department of Justice (*DOJ*) denied their petition for review in his resolution of February 24, 2011.

On March 31, 2011, the prosecutor's office filed two informations against Junio and Lorica for violations of Section 10(a), Article VI, in relation with Article 3(a) and (b) of R.A. No. 7610, and Section 12 of R.A. No. 7277 before the

[1] See Report and Recommendation dated August 13, 2013, unnumbered page.

Regional Trial Court (*RTC*), Branch 4, Tuguegarao City, presided by Judge Lyliha Aquino.

On April 27, 2011, the cases were assigned to Judge Marivic A. Cacatian-Beltran of the RTC, Branch 3, Tuguegarao City, due to the inhibition of Judge Aquino.

On April 4, 2011, Junio and Lorica sought a reconsideration of the DOJ's February 24, 2011 resolution.

On May 5, 2011, the RTC found probable cause to issue warrants of arrest against Junio and Lorica. Accordingly, it issued the warrants of arrest against them.

On May 24, 2011, Lorica posted bail for her provisional liberty.

On May 25, 2011, Junio and Lorica filed an *urgent motion to hold in abeyance further proceedings and to recall warrants of arrest*. Junio posted bail on the same day.

In its order dated June 14, 2011, the RTC denied Junio and Lorica's *urgent motion to hold in abeyance further proceedings and to recall warrants of arrest*.

Meanwhile, DOJ Secretary Leila de Lima granted Junio and Lorica's motion for reconsideration and set aside the February 24, 2011 resolution of Undersecretary Salazar. Accordingly, in her resolution dated August 8, 2011, she directed the Cagayan Provincial Prosecutor to immediately cause the withdrawal of the informations for violations of R.A. Nos. 7610 and 7277 against Junio and Lorica for lack of probable cause.

On August 12, 2011, Junio and Lorica filed a manifestation and motion before the RTC, praying for the cancellation of their scheduled arraignment, and for the dismissal of the cases against them.

On September 5, 2011, the City Prosecutor, Junio and Lorica filed a *joint motion to withdraw informations* in view of Secretary De Lima's August 8, 2011 resolution.

On September 14, 2011, Judge Cacatian-Beltran issued an order stating that "the motion relative to the resolution of the Department of Justice is deemed submitted for resolution."[2]

On December 20, 2011, Junio, Lorica and the City Prosecutor filed a *joint motion for resolution*.

In its order of January 6, 2012, the RTC denied the *joint motion to withdraw informations* for lack of merit.

The City Prosecutor, Junio and Lorica moved to reconsider this order, but the RTC denied their motion in its order dated April 10, 2012.

The Administrative Complaint

Junio and Lorica filed an affidavit-complaint against Judge Cacatian-Beltran for violation of Rules 1.02, 3.01, 3.02, and 3.05 of the Code of Judicial Conduct. They alleged that Judge Cacatian-Beltran only resolved the joint motion to withdraw informations after almost four months from the time it was submitted for resolution. They claimed that four months was beyond the period prescribed by existing rules for the resolution of simple motions.

Junio and Lorica further alleged that Judge Cacatian-Beltran "arrogated unto herself the role of a prosecutor and a judge"[3] when she insisted that they stand for trial although she did not find any grave abuse of discretion on the part of Justice Secretary De Lima.

In her comment, Judge Cacatian-Beltran explained that Junio and Lorica might have conducted a follow-up of the motions to dismiss at Branch 4 where the records of the criminal cases had been retained, and that the staff of Branch 4 failed to inform her of any follow-up by Junio and Lorica and/or by their counsel. She maintained that she "lost no time in finishing the draft"[4] of

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[2] *Rollo*, Annex "C", unnumbered page.

[3] See Affidavit-Complaint, unnumbered page.

[4] See page 7 of Comment, unnumbered page.

her January 6, 2012 order when the joint motion for resolution was brought to her attention.

Judge Cacatian-Beltran maintained that the RTC was not bound by the findings of the Secretary of Justice since her court had already acquired jurisdiction over the case. She added that she made an independent assessment of the evidence before denying the motion. She further stated that she acted promptly on all other incidents in the case.

The OCA's Report and Recommendation

In its Report and Recommendation dated August 13, 2013, the OCA recommended that: (1) the administrative complaint against Judge Cacatian-Beltran be dismissed for being judicial in nature; and (2) Judge Cacatian-Beltran be admonished to strictly comply with the reglementary periods to act on pending motions and other incidents in her court.

The OCA held that errors committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings. It explained that the aberrant acts allegedly committed by Judge Cacatian-Beltran relate to the exercise of her judicial functions, and added that only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice should be administratively sanctioned.

The OCA, nonetheless, ruled that Judge Cacatian-Beltran should be admonished to be more mindful of the reglementary periods to resolve pending motions.

Our Ruling

After due consideration, we **approve and adopt** the OCA's recommendations as our own ruling.

Delay in resolving a motion

Section 15(1), Article VIII of the Constitution requires lower court judges to decide a case within the period of ninety (90) days. Rule 3.05, Canon 3 of the Code of Judicial Conduct likewise

holds that judges should administer justice without delay and directs every judge to dispose of the courts' business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the ninety (90) day period is mandatory. This mandate applies even to motions or interlocutory matters or incidents pending before a magistrate.[5]

In the present case, the City Prosecutor's *joint motion to withdraw informations* was deemed submitted for resolution on September 14, 2011. Judge Cacatian-Beltran, however, did not act on the motion within the prescribed three (3) month period (or up to December 13, 2011), and instead ruled on it only on January 6, 2012.

In her defense, Judge Cacatian-Beltran explained that Junio and Lorica might have conducted a follow-up of the motions to dismiss at Branch 4 where the records of the criminal cases were retained, and that the staff of Branch 4 failed to inform her of any follow-up by Junio and Lorica and/or their counsel. We note, however, that Branch 4 is paired with Judge Cacatian-Beltran's Branch 3 per Circular No. 7-74, as amended by SC Circular No. 19-98. Since Criminal Case Nos. 14053-54 had been assigned to Judge Cacatian-Beltran, it was incumbent upon her to update herself on the developments in these consolidated cases; she should have kept her own record of cases and noted therein the status of each case to ensure prompt and effective action. To do this, Judge Cacatian-Beltran should have adopted a record management system and organized her docket – an approach that she appears not to have done.

Sections 9 and 11, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, classifies undue delay in rendering a decision or order as a less serious charge, with the following administrative sanctions: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

[5] *Dela Cruz v. Judge Vallarta*, 546 Phil. 292 (2007).

However, the records are bereft of any evidence showing that there had been ***undue delay*** (as shown by the records), any attendant bad faith, any intent to prejudice a party to the case, or some other ulterior ends. The OCA, in fact, pointedly ruled that the inaction was not attended with malice: Judge Cacatian-Beltran resolved the joint motion to withdraw informations two (2) days after she learned of its existence on January 4, 2012.

To our mind, these circumstances are sufficient to mitigate the liability of Judge Cacatian-Beltran and keep us from imposing a fine or suspension from office. Accordingly, we find sufficient and warranted the OCA's recommended penalty of admonition.

Denial of the joint motion to withdraw informations

The trial court is **not bound to adopt the resolution of the Secretary of Justice** since it is mandated to independently evaluate or assess the merits of the case; in the exercise of its discretion, it may agree or disagree with the recommendation of the Secretary of Justice. Reliance on the resolution of the Secretary of Justice alone would be an abdication of the trial court's duty and jurisdiction to determine a *prima facie* case.[6] We stress that once a criminal complaint or information is filed in court, any disposition of the case (whether it be a dismissal, an acquittal or a conviction of the accused) rests within the exclusive jurisdiction, competence, and discretion of the trial court; it is the best and sole judge of what to do with the case before it.[7]

In resolving a motion to dismiss a case or to withdraw the information filed by the public prosecutor (on his own initiative or pursuant to the directive of the Secretary of Justice), either for insufficiency of evidence in the possession of the prosecutor or for lack of probable cause, the trial court should not merely rely on the findings of the public prosecutor or of the Secretary

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[6] See *Flores v. Gonzalez*, G.R. No. 188197, August 3, 2010, 626 SCRA 661, 674.

[7] See *Crespo v. Judge Mogul, Jr.*, 235 Phil. 465, 476 (1987).

of Justice that no crime had been committed or that the evidence in the possession of the public prosecutor is insufficient to support a judgment of conviction of the accused.[8] To do so is to surrender a power constitutionally vested in the Judiciary to the Executive.

In the present case, Judge Cacatian-Beltran does not appear to have arbitrarily denied the joint motion to withdraw informations. The records show that she evaluated and assessed the informations, the resolution of the City Prosecutor, the affidavit and reply-affidavit of the complainants, the counter-affidavit and rejoinder and the appeal memorandum of Junio and Lorica, and the supporting documents attached to them.

In her January 6, 2012 order, Judge Cacatian-Beltran notably explained the basis for her denial. No proof whatsoever exists in all these, showing that bad faith, malice or any corrupt purpose attended the issuance of her order. It is also important to note in this regard that the issue of whether Judge Cacatian-Beltran correctly denied the joint motion to withdraw informations, despite the finding of Secretary De Lima of lack of probable cause, is judicial in nature: Junio and Lorica's remedy under the circumstances should have been made with the proper court for the appropriate judicial action, not with the OCA by means of an administrative complaint.

We also find unmeritorious Junio and Lorica's argument that Judge Cacatian-Beltran "arrogated unto herself the role of a prosecutor and a judge"[9] when she insisted that the accused stand trial although she did not find any grave abuse of discretion on the part of Justice Secretary de Lima. When a court acts, whether its action is consistent or inconsistent with a prosecutor's recommendation, it rules on the prosecutor's action and does not thereby assume the role of a prosecutor. The case of *Hipos, Sr. v. Bay*[10] best explains why we so rule:

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[8] *Santos v. Orda*, 481 Phil. 93, 106 (2004).

[9] *Supra* note 2.

[10] G.R. Nos. 174813-15, March 17, 2009, 581 SCRA 674, 687; italics supplied, emphasis ours.

To clarify, we never stated in *Ledesma* that a judge is allowed to deny a Motion to Withdraw Information from the prosecution *only* when there is grave abuse of discretion on the part of the prosecutors moving for such withdrawal. Neither did we rule therein that where there is no grave abuse of discretion on the part of the prosecutors, the denial of the Motion to Withdraw Information is void. What we held therein is that a trial judge commits grave abuse of discretion if he denies a Motion to Withdraw Information **without an independent and complete assessment of the issues presented in such Motion**.

With the independent and thorough assessment and evaluation of the merits of the joint motion to withdraw information that Judge Cacatian-Beltran undertook before dismissing it, she acted as a judge should and can in no way be said to have assumed the role of a prosecutor. The parties, for their part, are not without any remedy as the Rules of Court amply provide for the remedy against a judicial action believed to be grossly abusive when the remedy of direct appeal is not available. We cannot rule on this point in the present case, however, as this is a matter not before us in this administrative recourse against Judge Cacatian-Beltran.

WHEREFORE, premises considered, we **APPROVE AND ADOPT** as our own the August 13, 2013 Report and Recommendation of the Office of the Court Administrator. Judge Marivic A. Cacatian-Beltran is hereby **ADMONISHED** and **REMINDED** that she should dispose of her cases within the period required by law.

SO ORDERED.

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

THIRD DIVISION

[UDK No. 14817. January 13, 2014]

IN THE MATTER OF THE PETITION FOR *HABEAS CORPUS* OF MINOR SHANG KO VINGSON YU

SHIRLY VINGSON @ SHIRLY VINGSON DEMAISIP, *petitioner, vs.* **JOVY CABCABAN,** *respondent.*

SYLLABUS

REMEDIAL LAW; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; PARENTS SHOULD HAVE CUSTODY OVER THEIR MINOR CHILDREN BUT THE STATE HAS THE RIGHT TO INTERVENE WHERE THE PARENTS, RATHER THAN CARE FOR THEIR CHILDREN, TREAT THEM CRUELLY AND ABUSIVELY.— Under Section 1, Rule 102 of the Rules of Court, the writ of *habeas corpus* is available, not only in cases of illegal confinement or detention by which any person is deprived of his liberty, but also in cases involving the rightful custody over a minor. The general rule is that parents should have custody over their minor children. But the State has the right to intervene where the parents, rather than care for such children, treat them cruelly and abusively, impairing their growth and well-being and leaving them emotional scars that they carry throughout their lives unless they are liberated from such parents and properly counseled. Since this case presents factual issues and since the parties are all residents of Bacolod City, it would be best that such issues be resolved by a Family Court in that city. Meantime, considering the presumption that the police authorities acted regularly in placing Shang Ko in the custody of Calvary Kids, the Court believes that she should remain there pending hearing and adjudication of this custody case. Besides, she herself has expressed preference to stay in that place.

APPEARANCES OF COUNSEL

Manalac & Associates Law Office for Shirly Vingson.

D E C I S I O N

ABAD, *J.*:

Petitioner Shirly Vingson (Shirly) alleged that Shang Ko Vingson Yu (Shang Ko),[1] her 14-year-old daughter, ran away from home on September 23, 2011. On November 2, 2011 Shirly went to the police station in Bacolod City upon receipt of information that Shang Ko was in the custody of respondent Jovy Cabcaban (Cabcaban), a police officer in that station. Since Cabcaban refused to release Shang Ko to her, Shirly sought the help of the National Bureau of Investigation (NBI) to rescue her child. An NBI agent, Arnel Pura (Pura), informed Shirly that Shang Ko was no longer with Cabcaban but was staying with a private organization called Calvary Kids. Pura told her, however, that the child was fine and had been attending school.

This prompted petitioner Shirly to file a petition for *habeas corpus* against respondent Cabcaban and the unnamed officers of Calvary Kids before the Court of Appeals (CA) rather than the Regional Trial Court of Bacolod City citing as reason several threats against her life in that city.

In a Resolution dated December 18, 2012,[2] the CA resolved in CA-G.R. SP 07261 to deny the petition for its failure to clearly allege who has custody of Shang Ko. According to the CA, *habeas corpus* may not be used as a means of obtaining evidence on the whereabouts of a person or as a means of finding out who has specifically abducted or caused the disappearance of such person.[3] The CA denied petitioner Shirly's motion for reconsideration on January 8, 2013, hence, this petition for review.

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[1] In a police blotter, however, the minor signed her name as Shangco Vingson, *rollo*, p. 60.

[2] CA-G.R. SP 07261, penned by Justice Gabriel T. Ingles with the concurrence of Justices Pampio A. Abarintos and Pedro B. Corales, *rollo*, pp. 14-16.

[3] *Martinez v. Dir. Gen. Mendoza*, 530 Phil. 627, 635 (2006).

In her Comment,[4] respondent Cabcaban claimed that on September 28, 2011 police officers found Shang Ko crying outside a church. When queried, the latter refused to give any information about herself. Thus, they indorsed her case to the Bacolod City Police Women and Children Protection Desk that Cabcaban headed. After the initial interview, Cabcaban referred Shang Ko to *Balay Pasilungan*, a temporary shelter for abused women and children.

Respondent Cabcaban further claimed that on the next day, a social worker sat with the minor who said that her mother Shirly had been abusive in treating her. She narrated that on September 27, 2011 Shirly instructed another daughter to give Shang Ko ₱280.00 and take her to the pier to board a boat going to Iloilo City.[5] Shang Ko was told to look for a job there and to never come back to Bacolod City. Since she had nowhere to go when she arrived in Iloilo City, Shang Ko decided to return to Bacolod City with the money given her. She went to her best friend's house but was turned away for fear of Shirly. She called her sister so that she and her boyfriend could get her but they, too, turned her down.[6]

Respondent Cabcaban also claimed that Shang Ko pleaded with the police and the social worker not to return her to her mother. As a result, the Bacolod City Police filed a complaint[7] against petitioner Shirly for violation of Republic Act 7610 or the Special Protection of Children Against Abuse, Exploitation, and Discrimination Act. The police sent notice to Shirly inviting her to a conference but she refused to receive such notice. Two days later, however, she came and spoke to Cabcaban, pointing out that Shang Ko had been a difficult child with a tendency to steal. From their conversation, Cabcaban surmised that Shirly did not want to take her daughter back, having offered to pay for her daily expenses at the shelter.

[4] *Rollo*, pp. 55-58.

[5] Ferry tickets attached, *id.* at 62.

[6] Police blotter, *id.* at 60; Sworn Statement of Shangco Vingson, *id.* at 79-83.

[7] BCPO WCCD Case NR: 2013-078, *id.* at 78.

Respondent Cabcaban said that on October 29, 2011 she decided to turn over Shang Ko to the Calvary Kids, a private organization that gave sanctuary and schooling to abandoned and abused children.[8] On November 2, 2011 petitioner Shirly showed up at the police station asking for her daughter. Cabcaban told her that Shang Ko was in a sanctuary for abandoned children and that the police officer had to first coordinate with it before she can disclose where Shang Ko was. But Shirly was adamant and threatened her with a lawsuit. Cabcaban claimed that Shang Ko's father was a Taiwanese and that Shirly wanted the child back to use her as leverage for getting financial support from him.

Respondent Cabcaban further claimed that one year later, NBI agents led by Pura went to the police station to verify Shirly's complaint that Cabcaban had kidnapped Shang Ko. Cabcaban accompanied the NBI agents to Calvary Kids to talk to the institution's social worker, school principal, and director. They provided the NBI agents with the child's original case study report[9] and told them that it was not in Shang Ko's best interest to return her to her mother who abused and maltreated her. Shang Ko herself told the NBI that she would rather stay at Calvary Kids because she was afraid of what would happen to her if she returned home.[10] As proof, Shang Ko wrote a letter stating that, contrary to her mother's malicious insinuations, Cabcaban actually helped her when she had nowhere to go after her family refused to take her back.[11]

Under Section 1, Rule 102 of the Rules of Court, the writ of *habeas corpus* is available, not only in cases of illegal confinement or detention by which any person is deprived of his liberty, but also in cases involving the rightful custody over a minor.[12] The

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[8] Calvary Kids Voluntary Commitment Form, *id.* at 68.

[9] *Id.* at 88-95.

[10] Calvary Kids Case Study Update, *id.* at 72-74.

[11] *Id.* at 76.

[12] *Bagtas v. Santos*, G.R. No. 166682, November 27, 2009, 606 SCRA 101, 111.

general rule is that parents should have custody over their minor children. But the State has the right to intervene where the parents, rather than care for such children, treat them cruelly and abusively, impairing their growth and well-being and leaving them emotional scars that they carry throughout their lives unless they are liberated from such parents and properly counseled.

Since this case presents factual issues and since the parties are all residents of Bacolod City, it would be best that such issues be resolved by a Family Court in that city. Meantime, considering the presumption that the police authorities acted regularly in placing Shang Ko in the custody of Calvary Kids, the Court believes that she should remain there pending hearing and adjudication of this custody case. Besides, she herself has expressed preference to stay in that place.

WHEREFORE, the Court **SETS ASIDE** the Court of Appeals Resolutions in CA-G.R. SP 07261 dated December 18, 2012 and January 8, 2013 and **ORDERS** this custody case forwarded to the Family Court of Bacolod City for hearing and adjudication as the evidence warrants. Meantime, until such court orders otherwise, let the minor Shang Ko Vingson remain in the custody of Calvary Kids of Bacolod City.

Further, the Court **ORDERS** petitioner Shirly Vingson @ Shirly Vingson Demaisip to pay the balance of the docket and other legal fees within 10 days from receipt of this Resolution.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 161106. January 13, 2014]

WORLDWIDE WEB CORPORATION and CHERRYLL L. YU, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondents.*

[G.R. No. 161266. January 13, 2014]

PLANET INTERNET CORP., *petitioner, vs.* **PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; AN APPLICATION FOR A SEARCH WARRANT IS NOT A CRIMINAL ACTION; CONFORMITY OF THE PUBLIC PROSECUTOR IS NOT NECESSARY TO GIVE THE AGGRIEVED PARTY PERSONALITY TO QUESTION AN ORDER QUASHING SEARCH WARRANTS.— Petitioners contend that PLDT had no personality to question the quashal of the search warrants without the conformity of the public prosecutor. They argue that it violated Section 5, Rule 110 of the Rules of Criminal Procedure, to wit: SEC. 5. *Who must prosecute criminal actions.*—All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. The above provision states the general rule that the public prosecutor has direction and control of the prosecution of "(a)ll criminal actions commenced by a complaint or information." However, a search warrant is obtained, not by the filing of a complaint or an information, but by the filing of an application therefor. Furthermore, as we held in *Malaloan v. Court of Appeals,* an application for a search warrant is a "special criminal process," rather than a criminal action: x x x **In American jurisdictions, from which we have taken our jural concept and provisions on search warrants, such warrant is definitively considered merely as a process,**

generally issued by a court in the exercise of its ancillary jurisdiction, and not a criminal action to be entertained by a court pursuant to its original jurisdiction. We emphasize this fact for purposes of both issues as formulated in this opinion, with the catalogue of authorities herein. Clearly then, an application for a search warrant is not a criminal action. Meanwhile, we have consistently recognized the right of parties to question orders quashing those warrants. Accordingly, we sustain the CA's ruling that the conformity of the public prosecutor is not necessary before an aggrieved party moves for reconsideration of an order granting a motion to quash search warrants.

2. **ID.; ID.; ID.; ID.; ID.; AN ORDER QUASHING A SEARCH WARRANT, WHICH WAS ISSUED INDEPENDENTLY PRIOR TO THE FILING OF A CRIMINAL ACTION, PARTAKES OF A FINAL ORDER THAT CAN BE THE PROPER SUBJECT OF AN APPEAL.—** Petitioners' reliance upon *Marcelo* is misplaced. An application for a search warrant is a judicial process conducted either as an incident in a main criminal case already filed in court or in anticipation of one yet to be filed. Whether the criminal case (of which the search warrant is an incident) has already been filed before the trial court is significant for the purpose of determining the proper remedy from a grant or denial of a motion to quash a search warrant. Where the search warrant is issued as an incident in a pending criminal case, as it was in *Marcelo*, the quashal of a search warrant is merely interlocutory. There is still "something more to be done in the said criminal case, *i.e.*, the determination of the guilt of the accused therein." In contrast, where a search warrant is applied for and issued in anticipation of a criminal case yet to be filed, the order quashing the warrant (and denial of a motion for reconsideration of the grant) ends the judicial process. There is nothing more to be done thereafter. Thus, the CA correctly ruled that *Marcelo* does not apply to this case. Here, the applications for search warrants were instituted as principal proceedings and not as incidents to pending criminal actions. When the search warrants issued were subsequently quashed by the RTC, there was nothing left to be done by the trial court. Thus, the quashal of the search warrants were final orders, not interlocutory, and an appeal may be properly taken therefrom.

3. ID.; ID.; ID.; ID.; ID.; TRIAL JUDGES DETERMINE PROBABLE CAUSE IN THE EXERCISE OF THEIR JUDICIAL FUNCTIONS; A TRIAL JUDGE'S FINDING OF PROBABLE CAUSE FOR THE ISSUANCE OF SEARCH WARRANT IS ACCORDED RESPECT BY THE REVIEWING COURTS WHEN THE FINDING HAS SUBSTANTIAL BASIS.— In the issuance of a search warrant, probable cause requires "such facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and the objects sought in connection with that offense are in the place to be searched." There is no exact test for the determination of probable cause in the issuance of search warrants. It is a matter wholly dependent on the finding of trial judges in the process of exercising their judicial function. They determine probable cause based on "evidence showing that, more likely than not, a crime has been committed and that it was committed" by the offender. When a finding of probable cause for the issuance of a search warrant is made by a trial judge, the finding is accorded respect by reviewing courts: x x x. It is presumed that a judicial function has been regularly performed, absent a showing to the contrary. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination. Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.

4. ID.; ID.; ID.; ID.; ID.; A SEARCH WARRANT NEED NOT DESCRIBE THE ITEMS TO BE SEIZED IN PRECISE AND MINUTE DETAIL; THE WARRANT IS VALID WHEN IT ENABLES THE POLICE OFFICERS TO READILY IDENTIFY THE PROPERTIES TO BE SEIZED AND LEAVES THEM WITH NO DISCRETION REGARDING THE ARTICLES TO BE SEIZED.— A general warrant is defined as "(a) search or arrest warrant that is not particular as to the person to be arrested or the property to be seized." It is one that allows the "seizure of one thing under a warrant describing another" and gives the officer executing the warrant the discretion over which items to take. Such discretion is

abhorrent, as it makes the person, against whom the warrant is issued, vulnerable to abuses. Our Constitution guarantees our right against unreasonable searches and seizures, and safeguards have been put in place to ensure that people and their properties are searched only for the most compelling and lawful reasons. Section 2, Article III of the 1987 Constitution provides: Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no such search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. In furtherance of this constitutional provision, Sections 3 and 4, Rule 126 of the Rules of Court, amplify the rules regarding the following places and items to be searched under a search warrant: SEC. 3. *Personal property to be seized.*—A search warrant may be issued for the search and seizure of personal property: a) Subject of the offense; b) Stolen or embezzled and other proceeds, or fruits of the offense; or c) Used or intended to be used as the means of committing an offense. SEC. 4. *Requisites for issuing search warrant.*—A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines. Within the context of the above legal requirements for valid search warrants, the Court has been mindful of the difficulty faced by law enforcement officers in describing the items to be searched, especially when these items are technical in nature, and when the extent of the illegal operation is largely unknown to them. *Vallejo v. Court of Appeals* ruled as follows: The things to be seized must be described with particularity. Technical precision of description is not required. It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission. Indeed, the law does not require that the things to be seized must be described in precise and minute detail as to leave no room for

doubt on the part of the searching authorities. If this were the rule, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things to look for.**Any description of the place or thing to be searched that will enable the officer making the search with reasonable certainty to locate such place or thing is sufficient.** Furthermore, the Court also had occasion to rule that the particularity of the description of the place to be searched and the things to be seized is required "wherever and whenever it is feasible." A search warrant need not describe the items to be seized in precise and minute detail. The warrant is valid when it enables the police officers to readily identify the properties to be seized and leaves them with no discretion regarding the articles to be seized.

5. ID.; ID.; ID.; ID.; ID.; THE REQUIREMENT OF PARTICULARITY IN THE DESCRIPTION OF THE THINGS TO BE SEIZED IS FULFILLED WHEN THE ITEMS DESCRIBED IN THE SEARCH WARRANT BEAR A DIRECT RELATION TO THE OFFENSE FOR WHICH THE WARRANT IS SOUGHT.— In this case, considering that items that looked like "innocuous goods" were being used to pursue an illegal operation that amounts to theft, law enforcement officers would be hard put to secure a search warrant if they were required to pinpoint items with one hundred percent precision. In *People v. Veloso*, we pronounced that "[t]he police should not be hindered in the performance of their duties, which are difficult enough of performance under the best of conditions, by superficial adherence to technicality or far-fetched judicial interference." A search warrant fulfills the requirement of particularity in the description of the things to be seized when the things described are limited to those that bear a direct relation to the offense for which the warrant is being issued. To our mind, PLDT was able to establish the connection between the items to be searched as identified in the warrants and the crime of theft of its telephone services and business. Prior to the application for the search warrants, Rivera conducted ocular inspection of the premises of petitioners and was then able to confirm that they had "utilized various telecommunications equipment consisting of computers, lines, cables, antennas, modems, or routers, multiplexers, PABX or switching equipment, and support equipment such as software,

diskettes, tapes, manuals and other documentary records to support the illegal toll bypass operations." In *HPS Software and Communication Corp. v. PLDT*, we upheld a similarly worded description of items to be seized by virtue of the search warrants, because these items had been sufficiently identified physically and shown to bear a relation to the offenses charged.

APPEARANCES OF COUNSEL

Madrid & Associates for petitioners in G.R. No. 161106.
Oscar F. Martinez for petitioner in G.R. No. 161266.
Angara Abello Concepcion Regala & Cruz for PLDT.

D E C I S I O N

SERENO, *C.J.*:

Petitioners filed the present Petitions under Rule 45 of the Rules of Court to set aside the Decision[1] dated 20 August 2003 and the Resolution[2] dated 27 November 2003 of the Court of Appeals (CA) reversing the quashal of the search warrants previously issued by the Regional Trial Court (RTC).

Police Chief Inspector Napoleon Villegas of the Regional Intelligence Special Operations Office (RISOO) of the Philippine National Police filed applications for warrants[3] before the RTC of Quezon City, Branch 78, to search the office premises of petitioner Worldwide Web Corporation (WWC)[4] located at the 11th floor, IBM Plaza Building, No. 188 Eastwood City, Libis,

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[1] *Rollo* (G.R. No. 161106), pp. 10-18. The Decision of the Court of Appeals Special Thirteenth Division in CA-G.R. CR No. 26190 was penned by Associate Justice Roberto A. Barrios with Associate Justices Rebecca de Guia-Salvador and Jose C. Mendoza (now a member of this Court) concurring.

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

[3] *Id.* at 69-71.

[4] WWC is a domestic corporation that ceased business operations on 30 June 2002. It was an Internet service provider and a subscriber to the telephone services of respondent PLDT. Petitioner Cheryll L. Yu is a former director of WWC.

Quezon City, as well as the office premises of petitioner Planet Internet Corporation (Planet Internet)[5] located at UN 2103, 21/F Orient Square Building, Emerald Avenue, *Barangay* San Antonio, Pasig City. The applications alleged that petitioners were conducting illegal toll bypass operations, which amounted to theft and violation of Presidential Decree No. 401 (Penalizing the Unauthorized Installation of Water, Electrical or Telephone Connections, the Use of Tampered Water or Electrical Meters and Other Acts), to the damage and prejudice of the Philippine Long Distance Telephone Company (PLDT).[6]

On 25 September 2001, the trial court conducted a hearing on the applications for search warrants. The applicant and Jose Enrico Rivera (Rivera) and Raymund Gali (Gali) of the Alternative Calling Pattern Detection Division of PLDT testified as witnesses.

According to Rivera, a legitimate international long distance call should pass through the local exchange or public switch telephone network (PSTN) on to the toll center of one of the international gateway facilities (IGFs)[7] in the Philippines.[8] The call is then transmitted to the other country through voice circuits, either via fiber optic submarine cable or microwave radio using satellite facilities, and passes the toll center of one of the IGFs

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[5] Planet Internet is registered with the National Telecommunications Commission (NTC) as a Value-Added Service (VAS) provider. Section 3(h), Article I of Republic Act No. 7925 (Public Telecommunications Policy Act of the Philippines) defines a VAS provider as "an entity which, relying on the transmission, switching and local distribution facilities of the local exchange and inter-exchange operators, and overseas carriers, offers enhanced services beyond those ordinarily provided for by such carriers."

[6] *Rollo* (G.R. No. 161106), p. 638; TSN, 25 September 2001, p. 6.

[7] An IGF "comprises equipment which makes possible the interfacing or interconnection between (1) a domestic telecommunication system, like that of PLDT, and (2) the cables or other equipment for transmitting electronically messages from points within the Philippines to points outside the Philippines, as well as messages originating from points outside to points inside the Philippines." (*Philippine Long Distance Telephone Company v. National Telecommunications Commission*, 311 Phil. 548, 558 (1995)).

[8] *Rollo* (G.R. No. 161106), pp. 87-92, Affidavit of Jose Enrico G. Rivera.

in the destination country. The toll center would then meter the call, which will pass through the PSTN of the called number to complete the circuit. In contrast, petitioners were able to provide international long distance call services to any part of the world by using PLDT's telephone lines, but bypassing its IGF. This scheme constitutes toll bypass, a "method of routing and completing international long distance calls using lines, cables, antenna and/or wave or frequency which connects directly to the local or domestic exchange facilities of the originating country or the country where the call is originated."[9]

On the other hand, Gali claimed that a phone number serviced by PLDT and registered to WWC was used to provide a service called GlobalTalk, "an internet-based international call service, which can be availed of via prepaid or billed/post-paid accounts."[10] During a test call using GlobalTalk, Gali dialed the local PLDT telephone number 6891135, the given access line. After a voice prompt required him to enter the user code and personal identification number (PIN) provided under a GlobalTalk pre-paid account, he was then requested to enter the destination number, which included the country code, phone number and a pound (#) sign. The call was completed to a phone number in Taiwan. However, when he checked the records, it showed that the call was only directed to the local number 6891135. This indicated that the international test call using GlobalTalk bypassed PLDT's IGF.

Based on the records of PLDT, telephone number 6891135 is registered to WWC with address at UN 2103, 21/F Orient Square Building, Emerald Avenue, *Barangay* San Antonio, Pasig City.[11] However, upon an ocular inspection conducted by Rivera at this address, it was found that the occupant of the unit is Planet Internet, which also uses the telephone lines registered to WWC.[12] These telephone lines are interconnected to a server and used as dial-up access lines/numbers of WWC.

[9] *Id.* at 88-89.

[10] *Id.* at 72-86, Affidavit of Raymund D. Gali.

[11] *Id.* at 77.

[12] *Id.* at 90.

Gali further alleged that because PLDT lines and equipment had been illegally connected by petitioners to a piece of equipment that routed the international calls and bypassed PLDT's IGF, they violated Presidential Decree (P.D.) No. 401 as amended,[13] on unauthorized installation of telephone connections. Petitioners also committed theft, because through their misuse of PLDT phone lines/numbers and equipment and with clear intent to gain, they illegally stole business and revenues that rightly belong to PLDT. Moreover, they acted contrary to the letter and intent of Republic Act (R.A.) No. 7925, because in bypassing the IGF of PLDT, they evaded the payment of access and bypass charges in its favor while "piggy-backing" on its multi-million dollar facilities and infrastructure, thus stealing its business revenues from international long distance calls. Further, petitioners acted in gross violation of Memorandum Circular No. 6-2-92 of the National Telecommunications Commission (NTC) prohibiting the use of customs premises equipment (CPE) without first securing type approval license from the latter.

Based on a five-day sampling of the phone line of petitioners, PLDT computed a monthly revenue loss of ₱764,718.09. PLDT likewise alleged that petitioners deprived it of foreign exchange revenues, and evaded the payment of taxes, license fees, and charges, to the prejudice of the government.

During the hearing, the trial court required the identification of the office premises/units to be searched, as well as their

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[13] P.D. 401, Sec. 1. Any person who installs any water, electrical, telephone or piped gas connection without previous authority from the Metropolitan Waterworks and Sewerage System, the Manila Electric Company, the Philippine Long Distance Telephone Company, or the Manila Gas Corporation, as the case may be, tampers and/or uses tampered water, electrical or gas meters, jumpers or other devices whereby water, electricity or piped gas is stolen; steals or pilfers water, electric or piped gas meters, or water, electric and/or telephone wires, or piped gas pipes or conduits; knowingly possesses stolen or pilfered water, electrical or gas meters as well as stolen or pilfered water, electrical and/or telephone wires, or piped gas pipes and conduits, shall, upon conviction, be punished with *prision correccional* in its minimum period or a fine ranging from two thousand to six thousand pesos, or both. (Underscoring supplied.)

floor plans showing the location of particular computers and servers that would be taken.[14]

On 26 September 2001, the RTC granted the application for search warrants.[15] Accordingly, the following warrants were issued against the office premises of petitioners, authorizing police officers to seize various items:

1. Search Warrant No. Q-01-3856,[16] issued for violation of paragraph one (1) of Article 308 (theft) in relation to Article 309 of the Revised Penal Code against WWC, Adriel S. Mirto, Kevin L. Tan, Cherryll L. Yu, Carmelo J. Canto, III, Ferdinand B. Masi, Message One International Corporation, Adriel S. Mirto, Nova Christine L. Dela Cruz, Robertson S. Chiang, and Nolan B. Sison with business address at 11/F IBM Plaza Building, No. 188 Eastwood City, Cyberpark Libis, Quezon City:

a) Computers or any equipment or device capable of accepting information, applying the process of the information and supplying the results of this process;

b) Software, Diskettes, Tapes or equipment or device used for recording or storing information; and

c) Manuals, application forms, access codes, billing statements, receipts, contracts, communications and documents relating to securing and using telephone lines and/or equipment.

2. Search Warrant No. Q-01-3857,[17] issued for violation of P.D. 401 against Planet Internet Corporation/Mercury One, Robertson S. Chiang, Nikki S. Chiang, Maria Sy Be Chiang, Ben C. Javellana, Carmelita Tuason with business address at UN 2103, 21/F Orient Square Building, Emerald Avenue, *Barangay* San Antonio, Pasig City:

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[14] *Rollo* (G.R. No. 161106), pp. 654-661; TSN, 25 September 2001, pp. 22-29.

[15] *Id.* at 666-669.

[16] *Rollo* (G.R. No. 161266), pp. 326-333.

[17] *Id.* at 336-340.

a) Modems or Routers or any equipment or device that enables data terminal equipment such as computers to communicate with other data terminal equipment via a telephone line;

b) Computers or any equipment or device capable of accepting information applying the prescribed process of the information and supplying the results of this process;

c) Lines, Cables and Antennas or equipment or device capable of transmitting air waves or frequency, such as an IPL and telephone lines and equipment;

d) Multiplexers or any equipment or device that enables two or more signals from different sources to pass through a common cable or transmission line;

e) PABX or Switching Equipment, Tapes or equipment or device capable of connecting telephone lines;

f) Software, Diskettes, Tapes or equipment or device used for recording or storing information; and

g) Manuals, application forms, access codes, billing statement, receipts, contracts, checks, orders, communications and documents, lease and/or subscription agreements or contracts, communications and documents relating to securing and using telephone lines and/or equipment.

3. Search Warrant No. Q-01-3858,[18] issued for violation of paragraph one (1) of Article 308 (theft) in relation to Article 309 of the Revised Penal Code against Planet Internet Corporation/ Mercury One, Robertson S. Chiang, Nikki S. Chiang, Maria Sy Be Chiang, Ben C. Javellana, Carmelita Tuason with business address at UN 2103, 21/F Orient Square Building, Emerald Avenue, *Barangay* San Antonio, Pasig City:

a) Modems or Routers or any equipment or device that enables data terminal equipment such as computers to communicate with other data terminal equipment via a telephone line;

b) Computers or any equipment or device capable of accepting information applying the prescribed process of the information and supplying the results of this process;

[18] *Id.* at 343-347.

c) Lines, Cables and Antennas or equipment or device capable of transmitting air waves or frequency, such as an IPL and telephone lines and equipment;

d) Multiplexers or any equipment or device that enables two or more signals from different sources to pass through a common cable or transmission line;

e) PABX or Switching Equipment, Tapes or equipment or device capable of connecting telephone lines;

f) Software, Diskettes, Tapes or equipment or device used for recording or storing information; and

g) Manuals, application forms, access codes, billing statement, receipts, contracts, checks, orders, communications and documents, lease and/or subscription agreements or contracts, communications and documents relating to securing and using telephone lines and/or equipment.

The warrants were implemented on the same day by RISOO operatives of the National Capital Region Police Office.

Over a hundred items were seized,[19] including 15 central processing units (CPUs), 10 monitors, numerous wires, cables, diskettes and files, and a laptop computer.[20] Planet Internet notes that even personal diskettes of its employees were confiscated; and areas not devoted to the transmission of international calls, such as the President's Office and the Information Desk, were searched. Voltage regulators, as well as reserve and broken computers, were also seized.

Petitioners WWC and Cherryll Yu,[21] and Planet Internet[22] filed their respective motions to quash the search warrants,

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[19] *Id.* at 350-359, Inventory Receipt.

[20] *Id.* at 8, p. 6, Petition for Review on *Certiorari* dated 22 December 2003 filed by Planet Internet.

[21] *Rollo* (G.R. No.161106), pp. 97-111, Motion to Quash and to Release Seized Articles and Documents (Re: Search Warrant No. Q-01-3856) dated 2 October 2001.

[22] *Rollo* (G.R. No. 161266), pp. 360-363, Motion to Quash dated 17 October 2001.

citing basically the same grounds: (1) the search warrants were issued without probable cause, since the acts complained of did not constitute theft; (2) toll bypass, the act complained of, was not a crime; (3) the search warrants were general warrants; and (4) the objects seized pursuant thereto were "fruits of the poisonous tree."

PLDT filed a Consolidated Opposition[23] to the motions to quash.

In the hearing of the motions to quash on 19 October 2001, the test calls alluded to by Gali in his Affidavit were shown to have passed the IGF of Eastern Telecommunications (Philippines) Inc. (Eastern) and of Capital Wireless (Capwire).[24] Planet Internet explained that Eastern and Capwire both provided international direct dialing services, which Planet Internet marketed by virtue of a "Reseller Agreement." Planet Internet used PLDT lines for the first phase of the call; but for the second phase, it used the IGF of either Eastern or Capwire. Planet Internet religiously paid PLDT for its domestic phone bills and Eastern and Capwire for its IGF usage. None of these contentions were refuted by PLDT.

The RTC granted the motions to quash on the ground that the warrants issued were in the nature of general warrants.[25] Thus, the properties seized under the said warrants were ordered released to petitioners.

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[23] *Id.* at 364-393, dated 29 October 2001.

[24] *Id.* at 5-6, pp. 3-4, Petition for Review on *Certiorari* dated 22 December 2003 filed by Planet Internet.

[25] *Id.* at 421-429, Resolutions dated 13 November 2001. The pertinent portion of the Resolutions reads:

While it may be true that during the application for search warrant on September 25, 2001, in view of the technical nature of the crime alleged to be committed, the Court ordered for these things to be seized, the Court now admits it was precipitate in doing so.

A perusal of the items that were ordered seized by the Court reveals that they partake of a general warrant so much so that they can likewise be used by the respondents in their legitimate business. Thus, the effect of such issuance would literally place the herein respondents out of business.

PLDT moved for reconsideration,[26] but its motion was denied[27] on the ground that it had failed to get the conformity of the City Prosecutor prior to filing the motion, as required under Section 5, Rule 110 of the Rules on Criminal Procedure.

THE CA RULING

PLDT appealed to the CA, where the case was docketed as CA-G.R. No. 26190. The CA reversed and set aside the assailed RTC Resolutions and declared the search warrants valid and effective.[28]

Petitioners separately moved for reconsideration of the CA ruling.[29] Among the points raised was that PLDT should have

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[26] *Rollo* (G.R. No.161106), pp. 158-166, Motion for Reconsideration dated 16 November 2001.

[27] *Id.* at 175, Resolution dated 14 December 2001.

[28] *Id.* at 10-18, Decision of the CA Special Thirteenth Division in CA-G.R. CR No. 26190 dated 20 August 2003. In concluding that the assailed warrants were not general warrants, the CA reasoned:

Unlike in the cases cited by the appellees, the search warrants did not sanction indiscriminately the taking of things regardless of whether the transactions for which these were used were legal or illegal. The articles targeted have a direct relation to the criminal offense imputed and of which the applicant had adduced evidence, other than the articles themselves, sufficient to prove the charge.

The description of the objects to be searched and seized need not be of tight specificity and unerring accuracy. *A search warrant may be said to particularly describe the things to be seized when the description therein is as specific as the circumstances will ordinarily allow* (*People vs. Rubio,* 57 Phil. 384), *or when the things described are limited to those which bear direct relation to the offense for which the warrant is being issued.* (*Bache & Co. vs. Ruiz,* 37 SCRA 823).

Where, by the nature of the goods to be seized, their description must be rather general, it is not required that a technical description be given, as this would mean that no warrant could issue. (*Uy vs. Unfish Paking [sic] Corp. vs. BIR,* G.R. No. 129651, Oct. 20, 2000). Taking into consideration the nature of the articles so described, it is clear that no other more adequate and detailed description could have been given. (Italics in the original)

[29] CA *rollo*, pp. 450-480.

filed a petition for *certiorari* rather than an appeal when it questioned the RTC Resolution before the CA. The appellate court denied the Motions for Reconsideration.[30]

Rule 45 Petitions were separately filed by petitioners WWC and Cherryll Yu,[31] and Planet Internet[32] to assail the CA Decision and Resolution. The Court consolidated the two Petitions.[33]

ISSUES

I. Whether the CA erred in giving due course to PLDT's appeal despite the following procedural infirmities:

   1. PLDT, without the conformity of the public prosecutor, had no personality to question the quashal of the search warrants;

   2. PLDT assailed the quashal orders via an appeal rather than a petition for *certiorari* under Rule 65 of the Rules of Court.

II. Whether the assailed search warrants were issued upon probable cause, considering that the acts complained of allegedly do not constitute theft.

III. Whether the CA seriously erred in holding that the assailed search warrants were not general warrants.

OUR RULING

I.

1. An application for a search warrant is not a criminal action; conformity of the public prosecutor is not necessary to give the aggrieved party personality to question an order quashing search warrants.

[30] *Rollo* (G.R. No. 161266), pp. 28-29, Resolution of the CA Former Special Thirteenth Division in CA-G.R. CR No. 26190 dated 27 November 2003.

[31] *Rollo* (G.R. No. 161106), pp. 23-51.

[32] *Rollo* (G.R. No. 161266), pp. 3-18.

[33] *Id.* at 62-63, Resolution dated 4 February 2004.

Petitioners contend that PLDT had no personality to question the quashal of the search warrants without the conformity of the public prosecutor. They argue that it violated Section 5, Rule 110 of the Rules of Criminal Procedure, to wit:

> SEC. 5. *Who must prosecute criminal actions.*—All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor.

The above provision states the general rule that the public prosecutor has direction and control of the prosecution of "(a)ll criminal actions commenced by a complaint or information." However, a search warrant is obtained, not by the filing of a complaint or an information, but by the filing of an application therefor.[34]

Furthermore, as we held in *Malaloan v. Court of Appeals,*[35] an application for a search warrant is a "special criminal process," rather than a criminal action:

> The basic flaw in this reasoning is in erroneously equating the application for and the obtention of a search warrant with the institution and prosecution of a criminal action in a trial court. It would thus categorize what is only a special criminal *process*, the power to issue which is inherent in *all* courts, as equivalent to a criminal *action*, jurisdiction over which is reposed in *specific* courts of indicated competence. It ignores the fact that the requisites, procedure and purpose for the issuance of a search warrant are completely different from those for the institution of a criminal action.
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> For, indeed, a warrant, such as a warrant of arrest or a search warrant, merely constitutes process. A search warrant is defined in our jurisdiction as an order in writing issued in the name of the People of the Philippines signed by a judge and directed to a peace officer, commanding him to search for personal property and bring it before the court. A search warrant is in the nature of a criminal process akin to a writ of discovery. It is a special and peculiar remedy, drastic in its nature, and made necessary because of a public necessity.

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[34] RULES OF COURT, Rule 126, Sec. 2.

[35] G.R. No. 104879, 6 May 1994, 232 SCRA 249.

In American jurisdictions, from which we have taken our jural concept and provisions on search warrants, such warrant is definitively considered merely as a process, generally issued by a court in the exercise of its ancillary jurisdiction, and not a criminal action to be entertained by a court pursuant to its original jurisdiction. We emphasize this fact for purposes of both issues as formulated in this opinion, with the catalogue of authorities herein.[36] (Emphasis supplied)

Clearly then, an application for a search warrant is not a criminal action. Meanwhile, we have consistently recognized the right of parties to question orders quashing those warrants.[37] Accordingly, we sustain the CA's ruling that the conformity of the public prosecutor is not necessary before an aggrieved party moves for reconsideration of an order granting a motion to quash search warrants.

2. An order quashing a search warrant, which was issued independently prior to the filing of a criminal action, partakes of a final order that can be the proper subject of an appeal.

Petitioners also claim that since the RTC ruling on the motions to quash was interlocutory, it cannot be appealed under Rule 41 of the Rules of Court. PLDT should have filed a Rule 65 petition instead. Petitioners cite, as authority for their position, *Marcelo v. de Guzman*.[38] The Court held therein as follows:

But is the order of Judge de Guzman denying the motion to quash the search warrant and to return the properties seized thereunder final in character, or is it merely interlocutory? In *Cruz vs. Dinglasan*, this Court, citing American jurisprudence, resolved this issue thus:

> Where accused in criminal proceeding has petitioned for the return of goods seized, the order of restoration by an inferior

[36] *Id.* at 256-257.

[37] *Washington Distillers, Inc. v. Court of Appeals,* 329 Phil. 650 (1996); *Columbia Pictures, Inc. v. Flores*, G.R. No. 78631, 29 June 1993, 223 SCRA 761; *20th Century Fox Films Corp. v. Court of Appeals*, 247 Phil. 624 (1988); *La Chemise Lacoste, SA v. Fernandez*, 214 Phil. 332 (1984).

[38] 200 Phil. 137 (1982).

court is interlocutory and hence, not appealable; likewise, a denial, by the US District Court, of defendant's petition for the return of the articles seized under a warrant is such an interlocutory order. (56 C.J. 1253).

A final order is defined as one which disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined; on the other hand an order is interlocutory if it does not dispose of a case completely, but leaves something more to be done upon its merits. Tested against this criterion, the search warrant issued in Criminal Case No. 558 is indisputably of interlocutory character because it leaves something more to be done in the said criminal case, *i.e.*, the determination of the guilt of the accused therein.[39]

Petitioners' reliance upon *Marcelo* is misplaced.

An application for a search warrant is a judicial process conducted either as an incident in a main criminal case already filed in court or in anticipation of one yet to be filed.[40] Whether the criminal case (of which the search warrant is an incident) has already been filed before the trial court is significant for the purpose of determining the proper remedy from a grant or denial of a motion to quash a search warrant.

Where the search warrant is issued as an incident in a pending criminal case, as it was in *Marcelo*, the quashal of a search warrant is merely interlocutory. There is still "something more to be done in the said criminal case, *i.e.*, the determination of the guilt of the accused therein."[41]

In contrast, where a search warrant is applied for and issued in anticipation of a criminal case yet to be filed, the order quashing the warrant (and denial of a motion for reconsideration of the grant) ends the judicial process. There is nothing more to be done thereafter.

Thus, the CA correctly ruled that *Marcelo* does not apply to this case. Here, the applications for search warrants were instituted

[39] *Id.* at 142-143.

[40] *Malaloan v. Court of Appeals*, *supra*.

[41] *Marcelo v. de Guzman*, *supra* at 143.

as principal proceedings and not as incidents to pending criminal actions. When the search warrants issued were subsequently quashed by the RTC, there was nothing left to be done by the trial court. Thus, the quashal of the search warrants were final orders, not interlocutory, and an appeal may be properly taken therefrom.

II.

Trial judges determine probable cause in the exercise of their judicial functions. A trial judge's finding of probable cause for the issuance of a search warrant is accorded respect by reviewing courts when the finding has substantial basis.

Petitioners claim that no probable cause existed to justify the issuance of the search warrants.

The rules pertaining to the issuance of search warrants are enshrined in Section 2, Article III of the 1987 Constitution:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and **no search warrant** or warrant of arrest **shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce**, and particularly describing the place to be searched and the persons or things to be seized. (Emphasis supplied)

In the issuance of a search warrant, probable cause requires "such facts and circumstances that would lead a reasonably prudent man to believe that an offense has been committed and the objects sought in connection with that offense are in the place to be searched."[42]

There is no exact test for the determination of probable cause[43] in the issuance of search warrants. It is a matter wholly dependent

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[42] *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550, 565 (2004).

[43] *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875 (1996).

on the finding of trial judges in the process of exercising their judicial function.[44] They determine probable cause based on "evidence showing that, more likely than not, a crime has been committed and that it was committed" by the offender.[45]

When a finding of probable cause for the issuance of a search warrant is made by a trial judge, the finding is accorded respect by reviewing courts:

> x x x. It is presumed that a judicial function has been regularly performed, absent a showing to the contrary. A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination. Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.[46]

The transcript of stenographic notes during the hearing for the application for search warrants on 25 September 2001 shows that Judge Percival Mandap Lopez asked searching questions to the witnesses and particularly sought clarification on the alleged illegal toll bypass operations of petitioners, as well as the pieces of evidence presented. Thus, the Court will no longer disturb the finding of probable cause by the trial judge during the hearing for the application for the search warrants.

However, petitioners insist that the determination of the existence of probable cause necessitates the prior determination of whether a crime or an offense was committed in the first place. In support of their contention that there was no probable cause for the issuance of the search warrants, petitioners put

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[44] *Manly Sportwear Manufacturing, Inc. v. Dadodette Enterprises*, 507 Phil. 375 (2005).

[45] *Santos v. Pryce Gases, Inc.*, G.R. No. 165122, 23 November 2007, 538 SCRA 474, 484.

[46] *People v. Tee*, 443 Phil. 521, 539-540 (2003).

forward the adage *nullum crimen, nulla poena sine lege* – there is no crime when there is no law punishing it. Petitioners argue that there is no law punishing toll bypass, the act complained of by PLDT. Thus, no offense was committed that would justify the issuance of the search warrants.

According to PLDT, toll bypass enables international calls to appear as local calls and not overseas calls, thus effectively evading payment to the PLDT of access, termination or bypass charges, and accounting rates; payment to the government of taxes; and compliance with NTC regulatory requirements. PLDT concludes that toll bypass is prohibited, because it deprives "legitimate telephone operators, like PLDT… of the compensation which it is entitled to had the call been properly routed through its network."[47] As such, toll bypass operations constitute theft, because all of the elements of the crime are present therein.

On the other hand, petitioners WWC and Cherryll Yu argue that there is no theft to speak of, because the properties allegedly taken from PLDT partake of the nature of "future earnings and lost business opportunities" and, as such, are uncertain, anticipative, speculative, contingent, and conditional. PLDT cannot be deprived of such unrealized earnings and opportunities because these do not belong to it in the first place.

Upon a review of the records of the case, we understand that the Affidavits of Rivera and Gali that accompanied the applications for the search warrants charge petitioners with the crime, not of toll bypass *per se*, but of **theft** of PLDT's international long distance call business **committed by means of** the alleged toll bypass operations.

For theft to be committed in this case, the following elements must be shown to exist: (1) the taking by petitioners (2) of PLDT's personal property (3) with intent to gain (4) without the consent of PLDT (5) accomplished without the use of violence against or intimidation of persons or the use of force upon things.[48]

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[47] *Rollo* (G.R. No. 161106), p. 599, p. 22, Comment (to Planet Internet's Petition) by PLDT.

[48] *People v. Avecilla*, G.R. No. L-46370, 2 June 1992, 209 SCRA 466.

Petitioners WWC and Cherryll Yu only take issue with categorizing the earnings and business as personal properties of PLDT. However, in *Laurel v. Abrogar*,[49] we have already held that the use of PLDT's communications facilities without its consent constitutes theft of its telephone services and business:

> x x x "[I]nternational long distance calls," the matter alleged to be stolen in the instant case, take the form of electrical energy, it cannot be said that such international long distance calls were personal properties belonging to PLDT since the latter could not have acquired ownership over such calls. PLDT merely encodes, augments, enhances, decodes and transmits said calls using its complex communications infrastructure and facilities. PLDT not being the owner of said telephone calls, then it could not validly claim that such telephone calls were taken without its consent. **It is the use of these communications facilities without the consent of PLDT that constitutes the crime of theft, which is the unlawful taking of the telephone services and business.**
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> **Therefore, the business of providing telecommunication and the telephone service are personal property under Article 308 of the Revised Penal Code, and the act of engaging in ISR is an act of "subtraction" penalized under said article**. However, the Amended Information describes the thing taken as, "international long distance calls," and only later mentions "stealing the business from PLDT" as the manner by which the gain was derived by the accused. In order to correct this inaccuracy of description, this case must be remanded to the trial court and the prosecution directed to amend the Amended Information, to clearly state that **the property subject of the theft are the services and business of respondent PLDT**. Parenthetically, this amendment is not necessitated by a mistake in charging the proper offense, which would have called for the dismissal of the information under Rule 110, Section 14 and Rule 119, Section 19 of the Revised Rules on Criminal Procedure. To be sure, **the crime is properly designated as one of theft**. The purpose of the amendment is simply to ensure that the accused is fully and sufficiently apprised of the nature and cause of the charge against him, and thus guaranteed of his rights under the Constitution. (Emphasis supplied)

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[49] G.R. No. 155076, 13 January 2009, 576 SCRA 41, 56-57.

In *Laurel*, we reviewed the existing laws and jurisprudence on the generally accepted concept of personal property in civil law as "anything susceptible of appropriation."[50] It includes ownership of telephone services, which are protected by the penal provisions on theft. We therein upheld the Amended Information charging the petitioner with the crime of theft against PLDT inasmuch as the allegation was that the former was engaged in international simple resale (ISR) or "the unauthorized routing and completing of international long distance calls using lines, cables, antennae, and/or air wave frequency and connecting these calls directly to the local or domestic exchange facilities of the country where destined."[51] We reasoned that since PLDT encodes, augments, enhances, decodes and transmits telephone calls using its complex communications infrastructure and facilities, the use of these communications facilities without its consent constitutes theft, which is the unlawful taking of telephone services and business. We then concluded that the business of providing telecommunications and telephone services is personal property under Article 308 of the Revised Penal Code, and that the act of engaging in ISR is an act of "subtraction" penalized under said article.

Furthermore, toll bypass operations could not have been accomplished without the installation of telecommunications equipment to the PLDT telephone lines. Thus, petitioners may also be held liable for violation of P.D. 401, to wit:

Section 1. **Any person who installs** any water, electrical, **telephone** or piped gas **connection without previous authority from** the Metropolitan Waterworks and Sewerage System, the Manila Electric Company, **the Philippine Long Distance Telephone Company**, or the Manila Gas Corporation, as the case may be, tampers and/or

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[50] *Id.* at 51.

[51] As defined, while ISR involves the direct connection to the local or domestic exchange facilities of the destination country, toll bypass involves the direct connection to the local or domestic exchange facilities of the originating country. In both instances, the international calls completed were made to appear as having originated and at the same time destined to an area within the Philippines. Hence, it is regarded and charged as a local or domestic call.

uses tampered water, electrical or gas meters, jumpers or other devices whereby water, electricity or piped gas is stolen; steals or pilfers water, electric or piped gas meters, or water, electric and/or telephone wires, or piped gas pipes or conduits; knowingly possesses stolen or pilfered water, electrical or gas meters as well as stolen or pilfered water, electrical and/or telephone wires, or piped gas pipes and conduits, **shall, upon conviction, be punished with *prision correccional* in its minimum period or a fine ranging from two thousand to six thousand pesos, or both**. (Emphasis supplied)

The peculiar circumstances attending the situation compel us to rule further on the matter of probable cause. During the hearing of the motions to quash the search warrants, the test calls conducted by witnesses for PLDT were shown to have connected to the IGF of either Eastern or Capwire to complete the international calls.

A trial judge's finding of probable cause may be set aside and the search warrant issued by him based on his finding may be quashed if the person against whom the warrant is issued presents clear and convincing evidence that when the police officers and witnesses testified, they committed a deliberate falsehood or reckless disregard for the truth on matters that are essential or necessary to a showing of probable cause.[52] In that case, the finding of probable cause is a nullity, because the trial judge was intentionally misled by the witnesses.[53]

On the other hand, innocent and negligent omissions or misrepresentation of witnesses will not cause the quashal of a search warrant.[54] In this case, the testimonies of Rivera and Gali that the test calls they conducted did not pass through PLDT's IGF are true. They neglected, however, to look into the possibility that the test calls may have passed through other IGFs in the Philippines, which was exactly what happened. Nevertheless, the witnesses did not commit a deliberate falsehood.

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[52] *Abuan v. People*, 536 Phil. 672, 700-701 (2006).

[53] *Id.*

[54] *Id.*

Even Planet Internet stated that the conclusion that the test calls bypassed all IGFs in the country was made "carelessly and haphazardly."[55]

On this score, the quashal of the search warrants is not in order. It must be noted that the trial judge did not quash the warrants in this case based on lack of probable cause. Instead, the issue before us is whether the CA erred in reversing the RTC, which ruled that the search warrants are general warrants.

III.

The requirement of particularity in the description of things to be seized is fulfilled when the items described in the search warrant bear a direct relation to the offense for which the warrant is sought.

Petitioners claim that the subject search warrants were in the nature of general warrants because the descriptions therein of the objects to be seized are so broad and all-encompassing as to give the implementing officers wide discretion over which articles to seize. In fact, the CA observed that the targets of the search warrants were not illegal *per se*, and that they were "innocuous goods." Thus, the police officers were given blanket authority to determine whether the objects were legal or not, as in fact even pieces of computer equipment not involved in telecommunications or Internet service were confiscated.

On the other hand, PLDT claims that a search warrant already fulfills the requirement of particularity of description when it is as specific as the circumstances will ordinarily allow.[56] Furthermore, it cites *Kho v. Makalintal*,[57] in which the Court allowed leeway in the description of things to be seized, taking into consideration the effort and the time element involved in the prosecution of criminal cases.

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[55] *Rollo* (G.R. No. 161266), p. 36.

[56] *Bache and Co., (Phil.) Inc. v. Ruiz*, 147 Phil. 794 (1971).

[57] 365 Phil. 54 (1994).

The Office of the Solicitor General (OSG), in its Comment[58] filed with the CA, likewise prayed for the reversal of the quashal of the search warrants in view of the OSG's position that the scheme was a case of electronic theft, and that the items sought to be seized could not be described with calibrated precision. According to the OSG, assuming that the seized items could also be used for other legitimate businesses, the fact remains that the items were used in the commission of an offense.

A general warrant is defined as "(a) search or arrest warrant that is not particular as to the person to be arrested or the property to be seized."[59] It is one that allows the "seizure of one thing under a warrant describing another" and gives the officer executing the warrant the discretion over which items to take.[60]

Such discretion is abhorrent, as it makes the person, against whom the warrant is issued, vulnerable to abuses. Our Constitution guarantees our right against unreasonable searches and seizures, and safeguards have been put in place to ensure that people and their properties are searched only for the most compelling and lawful reasons.

Section 2, Article III of the 1987 Constitution provides:

> Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no such search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In furtherance of this constitutional provision, Sections 3 and 4, Rule 126 of the Rules of Court, amplify the rules regarding

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[58] *Rollo* (G.R. No. 161106), pp. 303-336.

[59] *Black's Law Dictionary,* "warrant," p. 1585.

[60] *Vallejo v. Court of Appeals*, G.R. No. 156413, 14 April 2004, 427 SCRA 658.

the following places and items to be searched under a search warrant:

SEC. 3. *Personal property to be seized.*—A search warrant may be issued for the search and seizure of personal property:

a) Subject of the offense;

b) Stolen or embezzled and other proceeds, or fruits of the offense; or

c) Used or intended to be used as the means of committing an offense.

SEC. 4. *Requisites for issuing search warrant.*—A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Within the context of the above legal requirements for valid search warrants, the Court has been mindful of the difficulty faced by law enforcement officers in describing the items to be searched, especially when these items are technical in nature, and when the extent of the illegal operation is largely unknown to them. *Vallejo v. Court of Appeals*[61] ruled as follows:

> The things to be seized must be described with particularity. Technical precision of description is not required. It is only necessary that there be reasonable particularity and certainty as to the identity of the property to be searched for and seized, so that the warrant shall not be a mere roving commission. Indeed, the law does not require that the things to be seized must be described in precise and minute detail as to leave no room for doubt on the part of the searching authorities. If this were the rule, it would be virtually impossible for the applicants to obtain a warrant as they would not know exactly what kind of things to look for. **Any description of the place or thing to be searched that will enable the officer making the search with reasonable certainty to locate such place or thing is sufficient**. (Emphasis supplied)

[61] *Id.* at 670.

Furthermore, the Court also had occasion to rule that the particularity of the description of the place to be searched and the things to be seized is required "wherever and whenever it is feasible."[62] A search warrant need not describe the items to be seized in precise and minute detail.[63] The warrant is valid when it enables the police officers to readily identify the properties to be seized and leaves them with no discretion regarding the articles to be seized.[64]

In this case, considering that items that looked like "innocuous goods" were being used to pursue an illegal operation that amounts to theft, law enforcement officers would be hard put to secure a search warrant if they were required to pinpoint items with one hundred percent precision. In *People v. Veloso*, we pronounced that "[t]he police should not be hindered in the performance of their duties, which are difficult enough of performance under the best of conditions, by superficial adherence to technicality or far-fetched judicial interference."[65]

A search warrant fulfills the requirement of particularity in the description of the things to be seized when the things described are limited to those that bear a direct relation to the offense for which the warrant is being issued.[66]

To our mind, PLDT was able to establish the connection between the items to be searched as identified in the warrants and the crime of theft of its telephone services and business. Prior to the application for the search warrants, Rivera conducted ocular inspection of the premises of petitioners and was then able to confirm that they had "utilized various telecommunications equipment consisting of computers, lines, cables, antennas, modems, or routers, multiplexers, PABX or switching equipment, and support equipment such as software, diskettes, tapes, manuals

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[62] *People v. Veloso*, 48 Phil. 169 (1925).

[63] *Hon Ne Chan v. Honda Motor Co., Ltd.*, 565 Phil. 545, 557 (2007).

[64] *Id.*

[65] *People v. Veloso*, *supra*, at 182.

[66] *Bache and Co., (Phil.) Inc. v. Ruiz*, *supra* note 56.

and other documentary records to support the illegal toll bypass operations."[67]

In *HPS Software and Communication Corp. v. PLDT*,[68] we upheld a similarly worded[69] description of items to be seized by virtue of the search warrants, because these items had been sufficiently identified physically and shown to bear a relation to the offenses charged.

WHEREFORE, the petitions are **DENIED**. The Court of Appeals Decision dated 20 August 2003 and Resolution dated 27 November 2003 in CA-G.R. CR No. 26190 are **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[67] *Rollo* (G.R. No. 161106), pp. 648-649.

[68] G.R. Nos. 170217 and 170694, 10 December 2012, 687 SCRA 426.

[69] The description in the search warrants reads:

a) LINES, CABLES AND ANTENNAS or equipment or device capable of transmitting air waves or frequency, such as an IPL and telephone lines and equipment;

b) COMPUTERS or any equipment or device capable of accepting information applying the prescribed process of the information and supplying the result of this processes;

c) MODEMS or any equipment or device that enables data terminal equipment such as computers to communicate with each other data-terminal equipment via a telephone line;

d) MULTIPLEXERS or any equipment or device that enables two or more signals from different sources to pass through a common cable or transmission line;

e) SWITCHING EQUIPMENT or equipment or device capable of connecting telephone lines;

f) SOFTWARE, DISKETTES, TAPES, OR EQUIPMENT, or device used for recording or storing information; and

g) Manuals, phone cards, access codes, billing statement, receipts, contracts, checks, orders, communications, and documents, lease and/or subscription agreements or contracts, communications and documents pertaining to securing and using telephone lines and or equipment in relation to Mr. Yap/HPS' ISR Operations.

THIRD DIVISION

[G.R. No. 166995. January 13, 2014]

DENNIS T. VILLAREAL, *petitioner, vs.* **CONSUELO C. ALIGA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS IN CRIMINAL CASES; THE PETITION SHOULD HAVE BEEN FILED BY THE STATE THROUGH THE OFFICE OF THE SOLICITOR GENERAL SINCE THE PETITION FILED ESSENTIALLY ASSAILS THE CRIMINAL, NOT THE CIVIL, ASPECT OF THE COURT OF APPEALS DECISION.—** In the case at bar, the petition filed essentially assails the criminal, not the civil, aspect of the CA Decision. It must even be stressed that petitioner never challenged before the CA, and in this Court, the RTC judgment which absolved respondent Aliga from civil liability in view of the return of the ₱60,000.00 subject matter of the offense on October 30, 1996. Therefore, the petition should have been filed only by the State through the OSG. Petitioner lacks the personality or legal standing to question the CA Decision because it is only the OSG which can bring actions on behalf of the State in criminal proceedings before the Supreme Court and the CA. Unlike in *Montañez v. Cipriano* where we adopted a liberal view, the OSG, in its Comment on this case, neither prayed that the petition be granted nor expressly ratified and adopted as its own the petition for the People of the Philippines. Instead, it merely begged to excuse itself from filing a Comment due to conflict of interest and for not having been impleaded in the case.

2. **ID.; ID.; JUDGMENTS; A JUDGMENT OF ACQUITTAL MAY BE ASSAILED ONLY IN A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.—** Petitioner also committed another procedural blunder. A petition for *certiorari* under Rule 65 of the *Rules* should have been filed instead of herein petition for review on *certiorari* under Rule 45. The People may assail a judgment of acquittal only via petition for *certiorari* under Rule 65 of the *Rules*. If the

petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court *a quo*, the constitutional right of the accused against double jeopardy would be violated.

3. ID.; ID.; ID.; A JUDGMENT OF ACQUITTAL, WHETHER ORDERED BY THE TRIAL COURT OR THE APPELLATE COURT, IS FINAL, UNAPPEALABLE, AND IMMEDIATELY EXECUTORY UPON ITS PROMULGATION.— Indeed, a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation. The rationale for the rule is elucidated in the oft-cited case of *People v. Hon. Velasco*: The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State. x x x." Thus, Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty." It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. x x x With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

4. ID.; ID.; ID.; EXCEPTIONS TO THE RULE ON DOUBLE JEOPARDY DOES NOT EXIST IN CASE AT BAR.— The rule against double jeopardy is not without exceptions, which are: (1) Where there has been deprivation of due process and where there is a finding of a mistrial, or (2) Where there has been a grave abuse of discretion under exceptional circumstances. Unfortunately for petitioner, We find that these exceptions do not exist in this case. *First*, there is no deprivation of due process or a mistrial. In fact, petitioner did not make any allegation to that effect. What the records show is that

during the trial, both parties had more than sufficient occasions to be heard and to present their evidence. The same is true during the appeal before the CA. The State, represented by the OSG, was not deprived of a fair opportunity to prove its case. And *second*, no grave abuse of discretion could be attributed to the CA. It could not be said that its judgment was issued without jurisdiction, and, for this reason, void. Again, petitioner did not even allege that the CA gravely abused its discretion. Instead, what he asserted was that the CA "gravely erred" in the evaluation and assessment of the evidence presented by the parties. Certainly, what he questioned was the purported errors of judgment or those involving misappreciation of evidence or errors of law, which, as aforesaid, cannot be raised and be reviewed in a Rule 65 petition. To repeat, a writ of *certiorari* can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion, not those which call for the evaluation of evidence and factual findings. x x x Upon perusal of the records, it is Our considered view that the conclusions arrived at by the CA cannot, by any measure, be characterized as capricious, whimsical or arbitrary.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Cayetano Sebastian Ata Dado & Cruz for respondent.

D E C I S I O N

PERALTA, ***J.*:**

Challenged in this petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure (*Rules*) are the April 27, 2004 Decision[1] and August 10, 2004 Resolution,[2] of the Court of Appeals (*CA*) in CA-G.R. CR No. 25581 entitled *People of the Philippines v. Consuelo Cruz Aliga* which acquitted

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[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Marina L. Buzon and Mariano C. del Castillo (now a member of the Supreme Court), concurring; *rollo*, pp. 61-75.

[2] *Id.* at 77-78.

respondent Consuelo C. Aliga (*Aliga*) from the offense charged and, in effect, reversed and set aside the July 12, 2001 Decision[3] of the Regional Trial Court (*RTC*), Branch 147, Makati City.

On October 31, 1996, an Information was filed against respondent Aliga for the crime of Qualified Theft thru Falsification of Commercial Document, committed as follows:

> That on or about the 30th day of October 1996, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, being then an accountant of Dentrade Inc., herein represented by Dennis T. Villareal, and who has access to the company's checking accounts did then and there willfully, unlawfully and feloniously with grave abuse of confidence, with intent [to] gain and without the consent of the owner thereof, take, steal and carry away from complainant's office, United Coconut Planters Bank Check No. HOF 681039 dated October 24, 1996 in the amount of ₱5,000.00, once in possession of said check, did then and there willfully, unlawfully and feloniously falsify the amount by changing it to ₱65,000.00 and having the same encashed with the bank, thereafter misappropriate and convert to her own personal use and benefit the amount of ₱60,000.00 to the damage and prejudice of the herein complainant, Dentrade Inc., in the aforementioned amount of ₱60,000.00.[4]

During her arraignment on December 6, 1996, respondent Aliga pleaded not guilty.[5] After the RTC resolved to deny petitioner's motion for issuance of a hold departure order against respondent Aliga and the latter's motion to suspend proceedings,[6] trial on the merits ensued. Both the prosecution and the defense were able to present the testimonies of their witnesses and their respective documentary exhibits.

The Court of Appeals, substantially adopting the trial court's findings, narrated the relevant facts as follows:

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[3] *Id.* at 636-640.

[4] *Id.* at 79.

[5] *Id.* at 102.

[6] *Id.* at 101, 155, 168.

Apart from the documentary exhibits "A" to "F", the combined testimonies of the prosecution witnesses Elsa Doroteo, Diosdado Corompido, Yolanda Martirez and NBI agent John Leonard David tend to establish the following factual milieu:

Complainant Dennis T. Villareal is the President and General Manager of Dentrade, Inc., a corporation with principal office address at the 7/F Citibank Center 8741 Paseo de Roxas, Makati City. As a businessman, Villareal maintains checking accounts with the head office of China Banking Corporation (Chinabank) in Paseo de Roxas and United Coconut Planters Bank (UCPB) in Makati Avenue, both banks are located in Makati City. He has under his employ, Elsa Doroteo, as executive secretary, Diosdado Corompido, as messenger, Yolanda Martirez, as chief accountant, [respondent] Consuelo Cruz Aliga and Annaliza Perez, as accounting clerks.

[Respondent] has custody of the personal checks of Villareal. She prepares the personal checks by typing its contents and submits them to Villareal for his signature. After the signed checks are delivered to her, she in turn, gives the checks to the messenger for encashment with the bank.

Sometime in October 1996, Villareal's governess asked Doroteo for the payment covering the year 1995 for his children's teacher in horseback riding. Doroteo replied that the said fees had been paid. To verify the matter, Doroteo instructed Perez, one of the accounting clerks, to produce the originals of the returned checks from [the] personal account of Villareal. Upon examining the returned checks, Doroteo found out that the fees for the horseback riding instructor had indeed been paid and that there were large encashments reflected on the checks in typewritten form. Doroteo informed Villareal of her findings. Villareal examined the returned checks and was surprised as he never authorized the large encashments.

Upon advice of his lawyer, Atty. Victor Lazatin of the ACCRA Law Offices, Mr. Villareal sent a letter to the National Bureau of Investigation (NBI) asking for assistance in the investigation of the matter (Exh. "A"). A few days thereafter, NBI agents John Leonard David and Rafael Ragos arrived at the Dentrade office. They examined the particular checks which involved large amounts and interviewed Doroteo.

When asked by the two NBI agents, Villareal told them that there were three (3) checks pending for his signature, UCPB checks, all

in petty cash: one check was for ₱1,000.00, another for ₱5,000.00, and the last one for ₱6,000.00. They were all in typewritten form which [respondent] prepared. As suggested by the NBI agents, Villareal signed the three (3) checks. Doroteo had the three checks photocopied then released their originals to [respondent].

On instruction of Villareal, Doroteo and NBI agent David went to UCPB the next day hoping that one of the checks will be encashed. At or about 3:00 p.m. on that day, Doroteo asked the bank teller if Villareal's three checks were encashed. The bank teller informed Doroteo that UCPB check in the amount of ₱65,000.00 was encashed. Doroteo was surprised because she was then holding a photocopy of the original check for ₱5,000.00 while she saw the teller holding a check for ₱65,000.00 but the check number and date were exactly the same as that of its photocopy. Obviously, the number "6" was intercalated in the check by adding the said number before the digits "5,000.00." Upon Doroteo's request, the teller gave her a photocopy of the supposedly altered check.

Doroteo reported back to the Dentrade office and handed to Villareal the photocopy of the check bearing the amount of ₱65,000.00. When summoned, [respondent] arrived then executed a statement voluntarily giving back the amount of ₱60,000.00 to Villareal in the presence of his lawyers Lazatin and Vallente, and Doroteo. The said statement was in the handwriting of [respondent] (Exh. "D"), which reads:

> "After being confronted by Mr. Dennis T. Villareal, I am voluntarily surrendering the ₱60,000.00 as part of the proceeds of UCPB check # 681039 dated October 30, 1996 as follows (in ₱1,000.00 bills)
>
> (serial no. of ₱1,000.00 bills subject of the statement)."

Doroteo photocopied the ₱1,000.00 bills (Exh. "E"). After [respondent] admitted the taking of the excess amount of ₱60,000.00, the NBI agents placed her under arrest and took her to the NBI detention center.

According to witness Corompido, Villareal's messenger, at 10:00 a.m. of October 30, 1996, he was bound for UCPB, Makati Avenue branch. [Respondent] requested him to pay her "Extelcom" bill and asked him to meet her at the UCPB bank. After several minutes, the two met at the bank. [Respondent] handed to Corompido her "Extelcom" bill and one personal check of Villareal in the amount

of ₱65,000.00. [Respondent] returned to the Dentrade [office]. Corompido gave to the teller [respondent's] "Extelcom" payment and also the personal check of Villareal for ₱65,000.00. The teller release the ₱65,000.00 to Corompido who signed on the stamped portion of the check.

[Respondent] Aliga has a different version for her defense. She claimed that on October 30, 1996 at around 2:30 p.m., the NBI agents arrested her but they did [not] inform [her] of her constitutional rights to remain silent and to be assisted by counsel; that she was actually an accounting assistant to Dentrade's chief accountant, Yolanda Martirez, the accounting clerk being Annaliza Perez; that she was not in charge of Villareal's personal checking account, but Martirez; that Perez was the one in custody of the [checkbooks] pertaining to the personal checking accounts of Villareal with UCPB and [Chinabank]; that Doroteo was in possession of another [checkbook] and kept it in Villareal's residence.

[Respondent] admitted that the UCPB and Chinabank checks were also used for the replenishment of the cash advances made by Villareal; that the replenishment was prepared using a typewriter by Martirez, Perez, Doroteo and herself; that there was no regulation or control mechanism in their office where the responsibility for preparing any particular check on the personal account of Villareal could be identified; that the issuance of checks against the personal checking accounts at the UCPB and Chinabank were frequent, from 5 to 12 checks daily; and that there were no accompanying vouchers to record the purposes for which the checks were issued; and that it was Martirez who monitors Villareal's personal checks at the UCPB and Chinabank.[7]

Additionally, respondent Aliga claimed that Perez, Doroteo, and Martirez are also using typewriter in the check preparation.[8] Moreover, at the time she was summoned by Villareal inside his office, the two NBI agents (David and Ragos) and Villareal's counsels (Attys. Lazatin and Vallente) were joined in by NBI Director Toledo.[9] The extent of the NBI's participation is disputed. While respondent Aliga[10] maintained that she was already

[7] *Id.* at 62-65.

[8] *Id.* at 639.

[9] TSN, March 9, 2001, pp. 7-9; *id.* at 510-512.

[10] *Id.* at 5-7; *id.* at 508-510.

arrested by the NBI at the moment she was called to the office of Villareal, David[11] testified that they were merely silent spectators therein, just witnessing the confrontation or interview conducted by Villareal and not even talking to respondent Aliga.

The RTC succinctly opined that the evidence of the prosecution is very clear that respondent Aliga must have been the one who made the intercalation in the subject check, and that even without her written admission (Exhibit "D"), the evidence presented constitutes proof beyond reasonable doubt. The July 12, 2001 Decision disposed:

> WHEREFORE, in view of the foregoing, the Court, finding the accused CONSUELO CRUZ ALIGA guilty beyond reasonable doubt of the crime charged, hereby sentences her to suffer an indeterminate sentence of 14 years, 8 months of *reclusion temporal* as the minimum to 20 years of *reclusion temporal* as the maximum.
>
> It appearing that the amount of ₱60,000.00 subject of the offense was already returned by the accused, the Court hereby absolves the accused of civil liability in this case.
>
> SO ORDERED.[12]

Respondent Aliga appealed to the CA, which, on April 27, 2004, reversed and set aside the judgment of the RTC on the grounds that: (1) her admission or confession of guilt before the NBI authorities, which already qualifies as a custodial investigation, is inadmissible in evidence because she was not informed of her rights to remain silent and to have competent and independent counsel preferably of her own choice; and (2) the totality of the circumstantial evidence presented by the prosecution is insufficient to overcome the presumption of innocence of the accused.

Petitioner's motion for reconsideration was denied by the CA on August 10, 2004; hence, this petition raising the issues for resolution as follows:

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[11] TSN, October 26, 2000, pp. 40-50; *rollo*, pp. 392-402.

[12] *Rollo*, p. 640.

I.

THE COURT OF APPEALS GRAVELY ERRED IN DECLARING INADMISSIBLE RESPONDENT'S VOLUNTARY ADMISSION OF GUILT, ON ITS CLEARLY SPECULATIVE AND CONJECTURAL PREMISE THAT RESPONDENT'S FREEDOM OF ACTION WAS IMPAIRED WHEN SHE MADE THE ADMISSION, CONSIDERING THAT:

A. AS LAID DOWN BY THIS HONORABLE COURT, AN ADMISSION OF GUILT SHIFTS THE BURDEN TO THE DEFENSE TO SHOW THAT IT WAS EXTRACTED BY FORCE OR DURESS.

B. CONTRARY TO THE JURISPRUDENTIAL GUIDELINES LAID DOWN BY THIS HONORABLE COURT, THE COURT OF APPEALS ERRONEOUSLY CONCLUDED THAT RESPONDENT WAS "EFFECTIVELY PLACED UNDER CUSTODIAL INVESTIGATION" BY THE SHEER PHYSICAL PRESENCE OF THE NBI AGENTS WHEN THE ADMISSION WAS MADE.

C. RESPONDENT'S VOLUNTARY ADMISSION WAS MADE TO A PRIVATE INDIVIDUAL, *I.E.,* PETITIONER HEREIN.

II.

THE COURT OF APPEALS GRAVELY ERRED, IF NOT ACTED IN EXCESS OF ITS JURISDICTION, WHEN IT CONCLUDED THAT THE PROSECUTION'S EVIDENCE WAS INSUFFICIENT TO OVERCOME RESPONDENT'S PRESUMPTION OF INNOCENCE, CONSIDERING THAT:

A. CONTRARY TO THIS HONORABLE COURT'S JURISPRUDENTIAL RULING, THE COURT OF APPEALS ENTIRELY OVERLOOKED THE EVIDENCE ON RECORD AND EXACTED DIRECT EVIDENCE FROM THE PROSECUTION.

B. THE COURT OF APPEALS' ERRONEOUS CONCLUSION THAT RESPONDENT IS INNOCENT IS BASED ON ITS FINDING OF A SUPPOSED INSUFFICIENCY OF EVIDENCE WHICH IS CONTRADICTED BY THE EVIDENCE ON RECORD.

C. THE COURT OF APPEALS DEPARTED FROM SETTLED JURISPRUDENCE, REQUIRING FROM THE PROSECUTION A QUANTUM OF EVIDENCE GREATER THAN PROOF BEYOND REASONABLE DOUBT, WHEN IT:

1. ERRONEOUSLY RULED THAT THE PROSECUTION FAILED TO DISCOUNT THE POSSIBILITY THAT SOMEONE ELSE COULD HAVE CAUSED THE ALTERATION ON THE CHECK; AND

2. FAULTING THE PROSECUTION FOR NOT PRESENTING PETITIONER AS A WITNESS.

D. THE COURT OF APPEALS GRAVELY ERRED WHEN, BASED ON NOTHING MORE THAN RESPONDENT'S DENIALS, IT DEPARTED FROM THE WELL-SETTLED RULE LAID DOWN BY THIS HONORABLE COURT THAT THE TRIAL COURT'S FINDINGS OF FACT AND CONCLUSIONS BASED THEREON, AS WELL AS ITS ASSESSMENT OF THE CREDIBILITY OF THE WITNESSES, ARE CONCLUSIVE UPON APPELLATE COURTS.[13]

On the other hand, respondent Aliga countered that:

I.

THE PETITION FOR REVIEW ON *CERTIORARI* SHOULD BE DISMISSED FOR RAISING ONLY QUESTIONS OF FACTS.

II.

THE PETITION FOR REVIEW ON *CERTIORARI* SHOULD BE DISMISSED ON THE GROUND OF DOUBLE JEOPARDY.

III.

PETITIONER HAS NO STANDING TO FILE THE INSTANT PETITION FOR REVIEW ON *CERTIORARI*.

IV.

WITHOUT PREJUDICE TO THE FOREGOING ARGUMENTS, THE PETITION FOR REVIEW ON *CERTIORARI* SHOULD BE DISMISSED

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

FOR FAILURE TO SHOW THAT THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN ISSUING THE 27 APRIL 2004 AND 10 AUGUST 2004 DECISIONS; ON THE CONTRARY, THE DECISIONS APPEAR TO BE IN ACCORD WITH THE FACTS AND THE APPLICABLE LAW AND JURISPRUDENCE.[14]

The petition is unmeritorious.

The petition should have been filed by the State through the OSG

Petitioner took a procedural misstep when he filed the present petition without the representation of the Office of the Solicitor General (OSG). In *Bautista v. Cuneta-Pangilinan*,[15] We underscored:

x x x The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the Office of the Solicitor General (OSG). Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. The OSG is the law office of the Government.

To be sure, in criminal cases, the acquittal of the accused or the dismissal of the case against him can only be appealed by the Solicitor General, acting on behalf of the State. The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned. In a catena of cases, this view has been time and again espoused and maintained by the Court. In *Rodriguez v. Gadiane,* it was categorically stated that if the criminal case is dismissed by the trial court or if there is an acquittal, the appeal on the criminal aspect of the case must

[14] *Id.* at 724-725.

[15] G.R. No. 189754, October 24, 2012, 684 SCRA 521.

be instituted by the Solicitor General in behalf of the State. The capability of the private complainant to question such dismissal or acquittal is limited only to the civil aspect of the case. The same determination was also arrived at by the Court in *Metropolitan Bank and Trust Company v. Veridiano II*. In the recent case of *Bangayan, Jr. v. Bangayan*, the Court again upheld this guiding principle.

Worthy of note is the case of *People v. Santiago*, wherein the Court had the occasion to bring this issue to rest. The Court elucidated:

> It is well settled that in criminal cases where the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability. Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal therefrom on the criminal aspect may be undertaken only by the State through the Solicitor General. Only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not take such appeal. However, the said offended party or complainant may appeal the civil aspect despite the acquittal of the accused.
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> In a special civil action for *certiorari* filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in [the] name of said complainant.

Thus, the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the Solicitor General. As a rule, only the Solicitor General may represent

the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.[16]

In the case at bar, the petition filed essentially assails the criminal, not the civil, aspect of the CA Decision. It must even be stressed that petitioner never challenged before the CA, and in this Court, the RTC judgment which absolved respondent Aliga from civil liability in view of the return of the ₱60,000.00 subject matter of the offense on October 30, 1996. Therefore, the petition should have been filed only by the State through the OSG. Petitioner lacks the personality or legal standing to question the CA Decision because it is only the OSG which can bring actions on behalf of the State in criminal proceedings before the Supreme Court and the CA. Unlike in *Montañez v. Cipriano*[17]where we adopted a liberal view, the OSG, in its Comment on this case,[18] neither prayed that the petition be granted nor expressly ratified and adopted as its own the petition for the People of the Philippines. Instead, it merely begged to excuse itself from filing a Comment due to conflict of interest and for not having been impleaded in the case.

A judgment of acquittal may be assailed only in a petition for *certiorari* under Rule 65 of the Rules of Court

Petitioner also committed another procedural blunder. A petition for *certiorari* under Rule 65 of the *Rules* should have been filed instead of herein petition for review on *certiorari* under Rule 45. The People may assail a judgment of acquittal only via petition for *certiorari* under Rule 65 of the *Rules*. If the petition, regardless of its nomenclature, merely calls for an ordinary review of the findings of the court *a quo*, the constitutional right of the accused against double jeopardy would be violated.[19]

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[16] *Bautista v. Cuneta-Pangilinan, supra*, at 534-537 (Citations omitted).

[17] G.R. No. 181089, October 22, 2012, 684 SCRA 315.

[18] *Rollo*, pp. 744-760.

[19] *People v. Sandiganbayan (First Div.)*, 524 Phil. 496, 522 (2006).

The Court made this clear in *People v. Sandiganbayan (First Div.)*,[20] thus:

x x x A petition for review on *certiorari* under Rule 45 of the Rules of Court and a petition for *certiorari* under Rule 65 of the Rules of Court are two and separate remedies. A petition under Rule 45 brings up for review errors of judgment, while a petition for *certiorari* under Rule 65 covers errors of jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion is not an allowable ground under Rule 45. A petition for review under Rule 45 of the Rules of Court is a mode of appeal. Under Section 1 of the said Rule, a party aggrieved by the decision or final order of the Sandiganbayan may file a petition for review on *certiorari* with this Court:

> Section 1. *Filing of petition with Supreme Court*. - A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court, or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

However, the provision must be read in relation to Section 1, Rule 122 of the Revised Rules of Court, which provides that any party may appeal from a judgment or final order "unless the accused will thereby be placed in double jeopardy." The judgment that may be appealed by the aggrieved party envisaged in the Rule is *a judgment convicting the accused, and not a judgment of acquittal*. The State is barred from appealing such judgment of acquittal by a petition for review.

Section 21, Article III of the Constitution provides that "no person shall be twice put in jeopardy of punishment for the same offense." The rule is that a judgment acquitting the accused is final and immediately executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy. Such acquittal is final and unappealable on the ground of double jeopardy whether it happens at the trial court or on appeal at the CA. Thus, the State is proscribed from appealing the judgment of acquittal of the accused to this Court under Rule 45 of the Rules of Court.

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[20] *Supra*.

x x x x x x x x x

A judgment of acquittal may be assailed by the People in a petition for *certiorari* under Rule 65 of the Rules of Court without placing the accused in double jeopardy. However, in such case, the People is burdened to establish that the court *a quo*, in this case, the Sandiganbayan, acted without jurisdiction or grave abuse of discretion amounting to excess or lack of jurisdiction. Grave abuse of discretion generally refers to capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law, or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. No grave abuse of discretion may be attributed to a court simply because of its alleged misapplication of facts and evidence, and erroneous conclusions based on said evidence. *Certiorari* will issue only to correct errors of jurisdiction, and not errors or mistakes in the findings and conclusions of the trial court.[21]

The nature of *certiorari* action was expounded in *People v. Court of Appeals (Fifteenth Div.)*:[22]

x x x *Certiorari* alleging grave abuse of discretion is an extraordinary remedy. Its use is confined to extraordinary cases wherein the action of the inferior court is wholly void. Its aim is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. No grave abuse of discretion may be attributed to the court simply because of its alleged misappreciation of facts and evidence. While *certiorari* may be used to correct an abusive acquittal, the petitioner in such extraordinary proceeding must clearly demonstrate that the lower court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[23]

and further in *First Corporation v. Former Sixth Division of the Court of Appeals*:[24]

[21] *People v. Sandiganbayan (First Div.)*, *supra*, at 517-523. (Emphasis in the original)

[22] 545 Phil. 278 (2007).

[23] *People v. Court of Appeals (Fifteenth Div.)*, *supra*, at 293-294. (Citations omitted)

[24] 553 Phil. 526 (2007).

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* – beyond the ambit of appeal. In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. x x x It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo*.[25]

The case does not fall within the exception to rule on double jeopardy

Indeed, a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation.[26] The rationale for the rule is elucidated in the oft-cited case of *People v. Hon. Velasco*:[27]

The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the rights of the citizen, when brought in unequal contest with the State. x x x." Thus, Green expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty."

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct

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[25] *First Corporation v. Former Sixth Division of the Court of Appeals*, *supra*, at 540-541.

[26] See *People v. Court of Appeals (Fifteenth Div.)*, *supra* note 22, at 292; *People v. Sandiganbayan (First Div.)*, *supra* note 19, at 517; *People v. Hon. Tria-Tirona*, 502 Phil. 31, 37 (2005); and *People v. Hon. Velasco*, 394 Phil. 517, 554 (2000).

[27] *Supra*.

consequence of the finality of his acquittal. The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful conviction." The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. This interest encompasses his right to have his guilt or innocence determined in a single proceeding by the initial jury empanelled to try him, for society's awareness of the heavy personal strain which the criminal trial represents for the individual defendant is manifested in the willingness to limit Government to a single criminal proceeding to vindicate its very vital interest in enforcement of criminal laws. The ultimate goal is prevention of government oppression; the goal finds its voice in the finality of the initial proceeding. As observed in *Lockhart v. Nelson*, "(t)he fundamental tenet animating the Double Jeopardy Clause is that the State should not be able to oppress individuals through the abuse of the criminal process." Because the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair.[28]

People v. Court of Appeals (Fifteenth Div.)[29] also stated:

x x x The finality-of-acquittal doctrine has several avowed purposes. Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials. It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction. And finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty. In *People v. Velasco*, we stressed that an acquitted defendant is entitled to

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[28] *People v. Hon. Velasco*, *supra* note 26, at 555-557. (Citations omitted)

[29] *Supra* note 22.

the right of repose as a direct consequence of the finality of his acquittal x x x.[30]

However, the rule against double jeopardy is not without exceptions, which are: (1) Where there has been deprivation of due process and where there is a finding of a mistrial, or (2) Where there has been a grave abuse of discretion under exceptional circumstances.[31] Unfortunately for petitioner, We find that these exceptions do not exist in this case.

First, there is no deprivation of due process or a mistrial. In fact, petitioner did not make any allegation to that effect. What the records show is that during the trial, both parties had more than sufficient occasions to be heard and to present their evidence. The same is true during the appeal before the CA. The State, represented by the OSG, was not deprived of a fair opportunity to prove its case.

And *second*, no grave abuse of discretion could be attributed to the CA. It could not be said that its judgment was issued without jurisdiction, and, for this reason, void. Again, petitioner did not even allege that the CA gravely abused its discretion. Instead, what he asserted was that the CA "gravely erred" in the evaluation and assessment of the evidence presented by the parties. Certainly, what he questioned was the purported errors of judgment or those involving misappreciation of evidence or errors of law, which, as aforesaid, cannot be raised and be reviewed in a Rule 65 petition. To repeat, a writ of *certiorari* can only correct errors of jurisdiction or those involving the commission of grave abuse of discretion, not those which call for the evaluation of evidence and factual findings.

x x x Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*. An error of judgment is one in which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act

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[30] *People v. Court of Appeals (Fifth Division)*, *supra* note 22, at 292-293. (Citations omitted)

[31] *Id.* at 293.

complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. Since no error of jurisdiction can be attributed to public respondent in her assessment of the evidence, *certiorari* will not lie.[32]

Upon perusal of the records, it is Our considered view that the conclusions arrived at by the CA cannot, by any measure, be characterized as capricious, whimsical or arbitrary. While it may be argued that there have been instances where the appreciation of facts might have resulted from possible lapses in the evaluation of the evidence, nothing herein detracts from the fact that relevant and material evidence was scrutinized, considered and evaluated as proven by the CA's lengthy discussion of its opinion. We note that the petition basically raises issues pertaining to alleged errors of judgment, not errors of jurisdiction, which is tantamount to an appeal, contrary to the express injunction of the Constitution, the Rules of Court, and prevailing jurisprudence. Conformably then, we need not embark upon review of the factual and evidentiary issues raised by petitioner, as these are obviously not within the realm of Our jurisdiction.

WHEREFORE, the instant petition is **DISMISSED** for lack of merit. The acquittal of herein respondent Consuelo C. Aliga by the Court of Appeals in its April 27, 2004 Decision and August 10, 2004 Resolution in CA-G.R. CR No. 25581, entitled *People of the Philippines v. Consuelo Cruz Aliga,* is **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

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[32] *People v. Hon. Tria-Tirona*, *supra* note 26, at 39. See also *First Corporation v. Former Sixth Division of the Court of Appeals*, *supra* note 24, at 540-541.

SECOND DIVISION

[G.R. No. 183204. January 13, 2014]

THE METROPOLITAN BANK and TRUST COMPANY, *petitioner, vs.* **ANA GRACE ROSALES and YO YUK TO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; BREACH OF CONTRACT; THE "HOLD OUT" CLAUSE IN THE APPLICATION AND AGREEMENT FOR DEPOSIT ACCOUNT APPLIES ONLY IF THERE IS A VALID AND EXISTING OBLIGATION ARISING FROM ANY OF THE SOURCES OF OBLIGATION ENUMERATED IN ARTICLE 1157 OF THE CIVIL CODE; REFUSAL TO RELEASE RESPONDENTS' DEPOSIT DESPITE DEMAND, NOT JUSTIFIED IN CASE AT BAR.— Petitioner's reliance on the "Hold Out" clause in the Application and Agreement for Deposit Account is misplaced. The "Hold Out" clause applies only if there is a valid and existing obligation arising from any of the sources of obligation enumerated in Article 1157 of the Civil Code, to wit: law, contracts, quasi-contracts, delict, and quasi-delict. In this case, petitioner failed to show that respondents have an obligation to it under any law, contract, quasi-contract, delict, or quasi-delict. And although a criminal case was filed by petitioner against respondent Rosales, this is not enough reason for petitioner to issue a "Hold Out" order as the case is still pending and no final judgment of conviction has been rendered against respondent Rosales. In fact, it is significant to note that at the time petitioner issued the "Hold Out" order, the criminal complaint had not yet been filed. Thus, considering that respondent Rosales is not liable under any of the five sources of obligation, there was no legal basis for petitioner to issue the "Hold Out" order. Accordingly, we agree with the findings of the RTC and the CA that the "Hold Out" clause does not apply in the instant case. In view of the foregoing, we find that petitioner is guilty of breach of contract

when it unjustifiably refused to release respondents' deposit despite demand.

2. ID.; ID.; ID.; ID.; ID.; ID.; PETITIONER BANK LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES FOR REFUSING TO RELEASE BANK DEPOSIT WITHOUT LEGAL BASIS.— Having breached its contract with respondents, petitioner is liable for damages. In cases of breach of contract, moral damages may be recovered only if the defendant acted fraudulently or in bad faith, or is "guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations." In this case, a review of the circumstances surrounding the issuance of the "Hold Out" order reveals that petitioner issued the "Hold Out" order in bad faith. x x x As we see it then, respondents are entitled to moral damages. As to the award of exemplary damages, Article 2229 of the Civil Code provides that exemplary damages may be imposed "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." They are awarded only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. In this case, we find that petitioner indeed acted in a wanton, fraudulent, reckless, oppressive or malevolent manner when it refused to release the deposits of respondents without any legal basis. We need not belabor the fact that the banking industry is impressed with public interest. As such, "the highest degree of diligence is expected, and high standards of integrity and performance are even required of it." It must therefore "treat the accounts of its depositors with meticulous care and always to have in mind the fiduciary nature of its relationship with them." For failing to do this, an award of exemplary damages is justified to set an example. The award of attorney's fees is likewise proper pursuant to paragraph 1, Article 2208 of the Civil Code.

APPEARANCES OF COUNSEL

Marcos Ochoa Serapio & Tan Law Firm for petitioner.
Punzalan Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Bank deposits, which are in the nature of a simple loan or mutuum,[1] must be paid upon demand by the depositor.[2]

This Petition for Review on *Certiorari*[3] under Rule 45 of the Rules of Court assails the April 2, 2008 Decision[4] and the May 30, 2008 Resolution[5] of the Court of Appeals (CA) in CA-G.R. CV No. 89086.

Factual Antecedents

Petitioner Metropolitan Bank and Trust Company is a domestic banking corporation duly organized and existing under the laws of the Philippines.[6] Respondent Ana Grace Rosales (Rosales) is the owner of China Golden Bridge Travel Services,[7] a travel agency.[8] Respondent Yo Yuk To is the mother of respondent Rosales.[9]

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[1] *Allied Banking Corporation v. Lim Sio Wan,* 573 Phil. 89, 102 (2008).

[2] *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 104612, May 10, 1994, 232 SCRA 302, 309-310.

[3] *Rollo,* pp. 11-41.

[4] CA *rollo*, pp. 125-149; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Sesinando E. Villon.

[5] *Id.* at 170-171.

[6] *Rollo,* p. 276.

[7] Sometimes referred to in the records as "China Golden Bridge Travel and Tours, Inc."

[8] *Rollo*, p. 239.

[9] *Id.*

In 2000, respondents opened a Joint Peso Account[10] with petitioner's Pritil-Tondo Branch.[11] As of August 4, 2004, respondents' Joint Peso Account showed a balance of ₱2,515,693.52.[12]

In May 2002, respondent Rosales accompanied her client Liu Chiu Fang, a Taiwanese National applying for a retiree's visa from the Philippine Leisure and Retirement Authority (PLRA), to petitioner's branch in Escolta to open a savings account, as required by the PLRA.[13] Since Liu Chiu Fang could speak only in Mandarin, respondent Rosales acted as an interpreter for her.[14]

On March 3, 2003, respondents opened with petitioner's Pritil-Tondo Branch a Joint Dollar Account[15] with an initial deposit of US$14,000.00.[16]

On July 31, 2003, petitioner issued a "Hold Out" order against respondents' accounts.[17]

On September 3, 2003, petitioner, through its Special Audit Department Head Antonio Ivan Aguirre, filed before the Office of the Prosecutor of Manila a criminal case for Estafa through False Pretences, Misrepresentation, Deceit, and Use of Falsified Documents, docketed as I.S. No. 03I-25014,[18] against respondent Rosales.[19] Petitioner accused respondent Rosales and an unidentified woman as the ones responsible for the unauthorized

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[10] Joint Peso Account No. 224-322405145-0; Records, Volume I, p. 9.

[11] *Id.*

[12] *Id.* at 10.

[13] CA *rollo*, p. 126.

[14] *Id.* at 135.

[15] Joint Dollar Account No. 0224-01041-0; Records, Volume I, p. 12.

[16] *Id.* at 14.

[17] CA *rollo*, p. 126.

[18] Records, Volume I, p. 3.

[19] CA *rollo*, pp. 126-127.

and fraudulent withdrawal of US$75,000.00 from Liu Chiu Fang's dollar account with petitioner's Escolta Branch.[20] Petitioner alleged that on February 5, 2003, its branch in Escolta received from the PLRA a Withdrawal Clearance for the dollar account of Liu Chiu Fang;[21] that in the afternoon of the same day, respondent Rosales went to petitioner's Escolta Branch to inform its Branch Head, Celia A. Gutierrez (Gutierrez), that Liu Chiu Fang was going to withdraw her dollar deposits in cash;[22] that Gutierrez told respondent Rosales to come back the following day because the bank did not have enough dollars;[23] that on February 6, 2003, respondent Rosales accompanied an unidentified impostor of Liu Chiu Fang to the bank;[24] that the impostor was able to withdraw Liu Chiu Fang's dollar deposit in the amount of US$75,000.00;[25] that on March 3, 2003, respondents opened a dollar account with petitioner; and that the bank later discovered that the serial numbers of the dollar notes deposited by respondents in the amount of US$11,800.00 were the same as those withdrawn by the impostor.[26]

Respondent Rosales, however, denied taking part in the fraudulent and unauthorized withdrawal from the dollar account of Liu Chiu Fang.[27] Respondent Rosales claimed that she did not go to the bank on February 5, 2003.[28] Neither did she inform Gutierrez that Liu Chiu Fang was going to close her account.[29] Respondent Rosales further claimed that after Liu

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[20] *Id.*

[21] Records, Volume II, p. 388.

[22] *Id.* at 396.

[23] *Id.*

[24] *Id.*

[25] CA *rollo*, p. 127.

[26] *Id.* at unpaged to 140.

[27] Records, Volume I, p.223.

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

[29] *Id.*

Chiu Fang opened an account with petitioner, she lost track of her.[30] Respondent Rosales' version of the events that transpired thereafter is as follows:

On February 6, 2003, she received a call from Gutierrez informing her that Liu Chiu Fang was at the bank to close her account.[31] At noon of the same day, respondent Rosales went to the bank to make a transaction.[32] While she was transacting with the teller, she caught a glimpse of a woman seated at the desk of the Branch Operating Officer, Melinda Perez (Perez).[33] After completing her transaction, respondent Rosales approached Perez who informed her that Liu Chiu Fang had closed her account and had already left.[34] Perez then gave a copy of the Withdrawal Clearance issued by the PLRA to respondent Rosales.[35] On June 16, 2003, respondent Rosales received a call from Liu Chiu Fang inquiring about the extension of her PLRA Visa and her dollar account.[36] It was only then that Liu Chiu Fang found out that her account had been closed without her knowledge.[37] Respondent Rosales then went to the bank to inform Gutierrez and Perez of the unauthorized withdrawal.[38] On June 23, 2003, respondent Rosales and Liu Chiu Fang went to the PLRA Office, where they were informed that the Withdrawal Clearance was issued on the basis of a Special Power of Attorney (SPA) executed by Liu Chiu Fang in favor of a certain Richard So.[39] Liu Chiu Fang, however, denied executing the SPA.[40]

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[30] *Id.* at 224.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.* at 225.

[39] *Id.* at 224-225.

[40] *Id.* at 225.

The following day, respondent Rosales, Liu Chiu Fang, Gutierrez, and Perez met at the PLRA Office to discuss the unauthorized withdrawal.[41] During the conference, the bank officers assured Liu Chiu Fang that the money would be returned to her.[42]

On December 15, 2003, the Office of the City Prosecutor of Manila issued a Resolution dismissing the criminal case for lack of probable cause.[43] Unfazed, petitioner moved for reconsideration.

On September 10, 2004, respondents filed before the Regional Trial Court (RTC) of Manila a Complaint[44] for Breach of Obligation and Contract with Damages, docketed as Civil Case No. 04110895 and raffled to Branch 21, against petitioner. Respondents alleged that they attempted several times to withdraw their deposits but were unable to because petitioner had placed their accounts under "Hold Out" status.[45] No explanation, however, was given by petitioner as to why it issued the "Hold Out" order.[46] Thus, they prayed that the "Hold Out" order be lifted and that they be allowed to withdraw their deposits.[47] They likewise prayed for actual, moral, and exemplary damages, as well as attorney's fees.[48]

Petitioner alleged that respondents have no cause of action because it has a valid reason for issuing the "Hold Out" order.[49] It averred that due to the fraudulent scheme of respondent Rosales, it was compelled to reimburse Liu Chiu Fang the amount

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[41] *Id.*

[42] *Id.*

[43] *Id.* at 205-207.

[44] *Id.* at 2-8.

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

[46] *Id.* at 4.

[47] *Id.* at 6.

[48] *Id.* at 7.

[49] *Id.* at 27-31.

of US$75,000.00[50] and to file a criminal complaint for Estafa against respondent Rosales.[51]

While the case for breach of contract was being tried, the City Prosecutor of Manila issued a Resolution dated February 18, 2005, reversing the dismissal of the criminal complaint.[52] An Information, docketed as Criminal Case No. 05-236103,[53] was then filed charging respondent Rosales with Estafa before Branch 14 of the RTC of Manila.[54]

Ruling of the Regional Trial Court

On January 15, 2007, the RTC rendered a Decision[55] finding petitioner liable for damages for breach of contract.[56] The RTC ruled that it is the duty of petitioner to release the deposit to respondents as the act of withdrawal of a bank deposit is an act of demand by the creditor.[57] The RTC also said that the recourse of petitioner is against its negligent employees and not against respondents.[58] The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering [petitioner] METROPOLITAN BANK & TRUST COMPANY to allow [respondents] ANA GRACE ROSALES and YO YUK TO to withdraw their Savings and Time Deposits with the agreed interest, actual damages of ₱50,000.00, moral damages of ₱50,000.00, exemplary damages of ₱30,000.00 and 10% of the amount due [respondents] as and for attorney's fees plus the cost of suit.

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[50] *Id.* at 25.

[51] *Id.* at 27.

[52] *Id.* at 252.

[53] *Rollo,* p. 280.

[54] Records, Volume I, p. 252.

[55] Records, Volume II, pp. 502-508; penned by Judge Amor A. Reyes.

[56] *Id.* at 508.

[57] *Id.*

[58] *Id.*

The counterclaim of [petitioner] is hereby DISMISSED for lack of merit.

SO ORDERED.[59]

Ruling of the Court of Appeals

Aggrieved, petitioner appealed to the CA.

On April 2, 2008, the CA affirmed the ruling of the RTC but deleted the award of actual damages because "the basis for [respondents'] claim for such damages is the professional fee that they paid to their legal counsel for [respondent] Rosales' defense against the criminal complaint of [petitioner] for estafa before the Office of the City Prosecutor of Manila and not this case."[60] Thus, the CA disposed of the case in this wise:

WHEREFORE, premises considered, the Decision dated January 15, 2007 of the RTC, Branch 21, Manila in Civil Case No. 04-110895 is AFFIRMED with MODIFICATION that the award of actual damages to [respondents] Rosales and Yo Yuk To is hereby DELETED.

SO ORDERED.[61]

Petitioner sought reconsideration but the same was denied by the CA in its May 30, 2008 Resolution.[62]

Issues

Hence, this recourse by petitioner raising the following issues:

A. THE [CA] ERRED IN RULING THAT THE "HOLD-OUT" PROVISION IN THE APPLICATION AND AGREEMENT FOR DEPOSIT ACCOUNT DOES NOT APPLY IN THIS CASE.

B. THE [CA] ERRED WHEN IT RULED THAT PETITIONER'S EMPLOYEES WERE NEGLIGENT IN RELEASING LIU CHIU FANG'S FUNDS.

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[59] *Id.*

[60] CA *rollo*, p. 148.

[61] *Id.* at 148-149.

[62] *Id.* at 170-171.

C. THE [CA] ERRED IN AFFIRMING THE AWARD OF MORAL DAMAGES, EXEMPLARY DAMAGES, AND ATTORNEY'S FEES.[63]

Petitioner's Arguments

Petitioner contends that the CA erred in not applying the "Hold Out" clause stipulated in the Application and Agreement for Deposit Account.[64] It posits that the said clause applies to any and all kinds of obligation as it does not distinguish between obligations arising *ex contractu* or *ex delictu*.[65] Petitioner also contends that the fraud committed by respondent Rosales was clearly established by evidence;[66] thus, it was justified in issuing the "Hold-Out" order.[67]

Petitioner likewise denies that its employees were negligent in releasing the dollars.[68] It claims that it was the deception employed by respondent Rosales that caused petitioner's employees to release Liu Chiu Fang's funds to the impostor.[69]

Lastly, petitioner puts in issue the award of moral and exemplary damages and attorney's fees. It insists that respondents failed to prove that it acted in bad faith or in a wanton, fraudulent, oppressive or malevolent manner.[70]

Respondents' Arguments

Respondents, on the other hand, argue that there is no legal basis for petitioner to withhold their deposits because they have

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[63] *Rollo*, p. 282.

[64] *Id.* at 283-284.

[65] *Id.* at 284.

[66] *Id.* at 284-295.

[67] *Id.* at 295.

[68] *Id.* at 295-296.

[69] *Id.*

[70] *Id.* at 297-302.

no monetary obligation to petitioner.[71] They insist that petitioner miserably failed to prove its accusations against respondent Rosales.[72] In fact, no documentary evidence was presented to show that respondent Rosales participated in the unauthorized withdrawal.[73] They also question the fact that the list of the serial numbers of the dollar notes fraudulently withdrawn on February 6, 2003, was not signed or acknowledged by the alleged impostor.[74] Respondents likewise maintain that what was established during the trial was the negligence of petitioner's employees as they allowed the withdrawal of the funds without properly verifying the identity of the depositor.[75] Furthermore, respondents contend that their deposits are in the nature of a loan; thus, petitioner had the obligation to return the deposits to them upon demand.[76] Failing to do so makes petitioner liable to pay respondents moral and exemplary damages, as well as attorney's fees.[77]

Our Ruling

The Petition is bereft of merit.

At the outset, the relevant issues in this case are (1) whether petitioner breached its contract with respondents, and (2) if so, whether it is liable for damages. The issue of whether petitioner's employees were negligent in allowing the withdrawal of Liu Chiu Fang's dollar deposits has no bearing in the resolution of this case. Thus, we find no need to discuss the same.

The "Hold Out" clause does not apply to the instant case.

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[71] *Id.* at 247-248.

[72] *Id.* at 251.

[73] *Id.* at 256.

[74] *Id.* at 260-261.

[75] *Id.* at 265-270

[76] *Id.* at 246-247.

[77] *Id.* at 270-272.

Petitioner claims that it did not breach its contract with respondents because it has a valid reason for issuing the "Hold Out" order. Petitioner anchors its right to withhold respondents' deposits on the Application and Agreement for Deposit Account, which reads:

> Authority to Withhold, Sell and/or Set Off:
>
> The Bank is hereby authorized to withhold as security for any and all obligations with the Bank, all monies, properties or securities of the Depositor now in or which may hereafter come into the possession or under the control of the Bank, whether left with the Bank for safekeeping or otherwise, or coming into the hands of the Bank in any way, for so much thereof as will be sufficient to pay any or all obligations incurred by Depositor under the Account or by reason of any other transactions between the same parties now existing or hereafter contracted, to sell in any public or private sale any of such properties or securities of Depositor, and to apply the proceeds to the payment of any Depositor's obligations heretofore mentioned.
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> x x x x x x x x x
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> JOINT ACCOUNT
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> x x x x x x x x x
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> The Bank may, at any time in its discretion and with or without notice to all of the Depositors, assert a lien on any balance of the Account and apply all or any part thereof against any indebtedness, matured or unmatured, that may then be owing to the Bank by any or all of the Depositors. It is understood that if said indebtedness is only owing from any of the Depositors, then this provision constitutes the consent by all of the depositors to have the Account answer for the said indebtedness to the extent of the equal share of the debtor in the amount credited to the Account.[78]

Petitioner's reliance on the "Hold Out" clause in the Application and Agreement for Deposit Account is misplaced.

The "Hold Out" clause applies only if there is a valid and existing obligation arising from any of the sources of obligation

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[78] Records, Volume II, p. 346.

enumerated in Article 1157[79]of the Civil Code, to wit: law, contracts, quasi-contracts, delict, and quasi-delict. In this case, petitioner failed to show that respondents have an obligation to it under any law, contract, quasi-contract, delict, or quasi-delict. And although a criminal case was filed by petitioner against respondent Rosales, this is not enough reason for petitioner to issue a "Hold Out" order as the case is still pending and no final judgment of conviction has been rendered against respondent Rosales. In fact, it is significant to note that at the time petitioner issued the "Hold Out" order, the criminal complaint had not yet been filed. Thus, considering that respondent Rosales is not liable under any of the five sources of obligation, there was no legal basis for petitioner to issue the "Hold Out" order. Accordingly, we agree with the findings of the RTC and the CA that the "Hold Out" clause does not apply in the instant case.

In view of the foregoing, we find that petitioner is guilty of breach of contract when it unjustifiably refused to release respondents' deposit despite demand. Having breached its contract with respondents, petitioner is liable for damages.

Respondents are entitled to moral and exemplary damages and attorney's fees.

In cases of breach of contract, moral damages may be recovered only if the defendant acted fraudulently or in bad faith,[80] or is

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[79] Article 1157. Obligations arise from:

(1) Law;

(2) Contracts;

(3) Quasi-contracts;

(4) Acts or omissions punished by law; and

(5) Quasi-delicts.

[80] Article 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

"guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations."[81]

In this case, a review of the circumstances surrounding the issuance of the "Hold Out" order reveals that petitioner issued the "Hold Out" order in bad faith. First of all, the order was issued without any legal basis. Second, petitioner did not inform respondents of the reason for the "Hold Out."[82] Third, the order was issued prior to the filing of the criminal complaint. Records show that the "Hold Out" order was issued on July 31, 2003,[83] while the criminal complaint was filed only on September 3, 2003.[84] All these taken together lead us to conclude that petitioner acted in bad faith when it breached its contract with respondents. As we see it then, respondents are entitled to moral damages.

As to the award of exemplary damages, Article 2229[85] of the Civil Code provides that exemplary damages may be imposed "by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." They are awarded only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[86]

In this case, we find that petitioner indeed acted in a wanton, fraudulent, reckless, oppressive or malevolent manner when it refused to release the deposits of respondents without any legal basis. We need not belabor the fact that the banking industry is

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[81] *Bankard, Inc. v. Dr. Feliciano*, 529 Phil. 53, 61 (2006).

[82] CA *rollo*, p. 133.

[83] *Id.* at 126.

[84] *Id.*

[85] Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[86] Article 2232 of the Civil Code provides that:

In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

impressed with public interest.[87] As such, "the highest degree of diligence is expected, and high standards of integrity and performance are even required of it."[88] It must therefore "treat the accounts of its depositors with meticulous care and always to have in mind the fiduciary nature of its relationship with them."[89] For failing to do this, an award of exemplary damages is justified to set an example.

The award of attorney's fees is likewise proper pursuant to paragraph 1, Article 2208[90] of the Civil Code.

In closing, it must be stressed that while we recognize that petitioner has the right to protect itself from fraud or suspicions of fraud, the exercise of this right should be done within the bounds of the law and in accordance with due process, and not in bad faith or in a wanton disregard of its contractual obligation to respondents.

WHEREFORE, the Petition is hereby **DENIED**. The assailed April 2, 2008 Decision and the May 30, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 89086 are hereby **AFFIRMED**.

SO ORDERED.

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

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[87] *Solidbank Corporation v. Spouses Arrieta,* 492 Phil. 95, 104-105 (2005) and *Prudential Bank v. Lim*, 511 Phil. 100, 114 (2005).

[88] *Solidbank Corporation v. Spouses Arrieta, id.* at 104.

[89] *Id.*

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

(1) When exemplary damages are awarded.

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SECOND DIVISION

[G.R. No. 185798. January 13, 2014]

FIL-ESTATE PROPERTIES, INC. and FIL-ESTATE NETWORK, INC., *petitioners, vs.* **SPOUSES CONRADO and MARIA VICTORIA RONQUILLO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; THE NON-PERFORMANCE OF PETITIONER'S OBLIGATION ENTITLES RESPONDENTS TO RESCISSION UNDER ARTICLE 1191 OF THE NEW CIVIL CODE.— Indeed, the non-performance of petitioners' obligation entitles respondents to rescission under Article 1191 of the New Civil Code which states: Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him. The injured party may choose between the fulfillment and the rescission of the obligation, with payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. More in point is Section 23 of Presidential Decree No. 957, the rule governing the sale of condominiums, which provides: Section 23. Non-Forfeiture of Payments. No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. **Such buyer may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate.** Conformably with these provisions of law, respondents are entitled to rescind the contract and demand reimbursement for the payments they had made to petitioners.

2. ID.; ID.; ID.; THE ISSUES RAISED HAD ALREADY BEEN SETTLED BY THE COURT IN THE CASE OF *FIL-ESTATE PROPERTIES, INC. V. SPOUSES GO,* WHERE THE COURT STATED THAT THE ASIAN FINANCIAL CRISIS IS NOT AN INSTANCE OF *CASO FORTUITO*.— Notably, the issues had already been settled by the Court in the case of *Fil-Estate Properties, Inc. v. Spouses Go* promulgated on 17 August 2007, where the Court stated that the Asian financial crisis is not an instance of *caso fortuito*. Bearing the same factual milieu as the instant case, G.R. No. 165164 involves the same company, Fil-Estate, albeit about a different condominium property. The company likewise reneged on its obligation to respondents therein by failing to develop the condominium project despite substantial payment of the contract price. Fil-Estate advanced the same argument that the 1997 Asian financial crisis is a fortuitous event which justifies the delay of the construction project. First off, the Court classified the issue as a question of fact which may not be raised in a petition for review considering that there was no variance in the factual findings of the HLURB, the Office of the President and the Court of Appeals. Second, the Court cited the previous rulings of *Asian Construction and Development Corporation v. Philippine Commercial International Bank* and *Mondragon Leisure and Resorts Corporation v. Court of Appeals* holding that the 1997 Asian financial crisis did not constitute a valid justification to renege on obligations. The Court expounded: Also, we cannot generalize that the Asian financial crisis in 1997 was unforeseeable and beyond the control of a business corporation. It is unfortunate that petitioner apparently met with considerable difficulty *e.g.* increase cost of materials and labor, even before the scheduled commencement of its real estate project as early as 1995. However, a real estate enterprise engaged in the pre-selling of condominium units is concededly a master in projections on commodities and currency movements and business risks. The fluctuating movement of the Philippine peso in the foreign exchange market is an everyday occurrence, and fluctuations in currency exchange rates happen everyday, thus, not an instance of *caso fortuito.* The aforementioned decision becomes a precedent to future cases in which the facts are substantially the same, as in this case. The principle of *stare decisis*, which means adherence to judicial precedents, applies. In said case, the Court ordered the refund of the total

amortizations paid by respondents plus 6% legal interest computed from the date of demand. The Court also awarded attorney's fees. We follow that ruling in the case before us.

3. ID.; ID.; ID.; THE RESULTING MODIFICATION OF THE AWARD OF LEGAL INTEREST IS IN LINE WITH THE COURT'S RECENT RULING IN *NACAR V. GALLERY FRAMES,* EMBODYING THE AMENDMENT INTRODUCED BY BANGKO SENTRAL NG PILIPINAS MONETARY BOARD IN BSP-MB CIRCULAR NO. 799 WHICH PEGGED THE INTEREST RATE AT 6% REGARDLESS OF THE SOURCE OF OBLIGATION; AWARD OF ATTORNEY'S FEES AND MORAL DAMAGES, LIKEWISE SUSTAINED.— The resulting modification of the award of legal interest is, also, in line with our recent ruling in *Nacar v. Gallery Frames,* embodying the amendment introduced by the Bangko Sentral ng Pilipinas Monetary Board in BSP-MB Circular No. 799 which pegged the interest rate at 6% regardless of the source of obligation. We likewise affirm the award of attorney's fees because respondents were forced to litigate for 14 years and incur expenses to protect their rights and interest by reason of the unjustified act on the part of petitioners. The imposition of ₱10,000.00 administrative fine is correct pursuant to Section 38 of Presidential Decree No. 957 which reads: Section 38. Administrative Fines. The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court. Finally, we sustain the award of moral damages. In order that moral damages may be awarded in breach of contract cases, the defendant must have acted in bad faith, must be found guilty of gross negligence amounting to bad faith, or must have acted in wanton disregard of contractual obligations. The Arbiter found petitioners to have acted in bad faith when they breached their contract, when they failed to address respondents' grievances and when they adamantly refused to refund respondents' payment. In fine, we find no reversible error on the merits in the impugned Court of Appeals' Decision and Resolution.

APPEARANCES OF COUNSEL

Fritz-Erich J. Baldoria & Patrick A. Padilla for petitioners.
Cornelio P. Aldon for respondents.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 100450 which affirmed the Decision of the Office of the President in O.P. Case No. 06-F-216.

As culled from the records, the facts are as follow:

Petitioner Fil-Estate Properties, Inc. is the owner and developer of the Central Park Place Tower while co-petitioner Fil-Estate Network, Inc. is its authorized marketing agent. Respondent Spouses Conrado and Maria Victoria Ronquillo purchased from petitioners an 82-square meter condominium unit at Central Park Place Tower in Mandaluyong City for a pre-selling contract price of FIVE MILLION ONE HUNDRED SEVENTY-FOUR THOUSAND ONLY (₱5,174,000.00). On 29 August 1997, respondents executed and signed a Reservation Application Agreement wherein they deposited ₱200,000.00 as reservation fee. As agreed upon, respondents paid the full downpayment of ₱1,552,200.00 and had been paying the ₱63,363.33 monthly amortizations until September 1998.

Upon learning that construction works had stopped, respondents likewise stopped paying their monthly amortization. Claiming to have paid a total of ₱2,198,949.96 to petitioners, respondents through two (2) successive letters, demanded a full refund of their payment with interest. When their demands went unheeded,

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[1] Penned by Associate Justice Arturo G. Tayag with Associate Justices Martin S. Villarama, Jr. (now Supreme Court Associate Justice) and Noel G. Tijam, concurring. *Rollo*, pp. 34-46.

respondents were constrained to file a Complaint for Refund and Damages before the Housing and Land Use Regulatory Board (HLURB). Respondents prayed for reimbursement/refund of ₱2,198,949.96 representing the total amortization payments, ₱200,000.00 as and by way of moral damages, attorney's fees and other litigation expenses.

On 21 October 2000, the HLURB issued an Order of Default against petitioners for failing to file their Answer within the reglementary period despite service of summons.[2]

Petitioners filed a motion to lift order of default and attached their position paper attributing the delay in construction to the 1997 Asian financial crisis. Petitioners denied committing fraud or misrepresentation which could entitle respondents to an award of moral damages.

On 13 June 2002, the HLURB, through Arbiter Atty. Joselito F. Melchor, rendered judgment ordering petitioners to jointly and severally pay respondents the following amount:

a) The amount of TWO MILLION ONE HUNDRED NINETY-EIGHT THOUSAND NINE HUNDRED FORTY NINE PESOS & 96/100 (₱2,198,949.96) with interest thereon at twelve percent (12%) per annum to be computed from the time of the complainants' demand for refund on October 08, 1998 until fully paid,

b) ONE HUNDRED THOUSAND PESOS (₱100,000.00) as moral damages,

c) FIFTY THOUSAND PESOS (₱50,000.00) as attorney's fees,

d) The costs of suit, and

e) An administrative fine of TEN THOUSAND PESOS (₱10,000.00) payable to this Office fifteen (15) days upon receipt of this decision, for violation of Section 20 in relation to Section 38 of PD 957.[3]

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[2] *Id.* at 68.

[3] *Id.* at 92.

The Arbiter considered petitioners' failure to develop the condominium project as a substantial breach of their obligation which entitles respondents to seek for rescission with payment of damages. The Arbiter also stated that mere economic hardship is not an excuse for contractual and legal delay.

Petitioners appealed the Arbiter's Decision through a petition for review pursuant to Rule XII of the 1996 Rules of Procedure of HLURB. On 17 February 2005, the Board of Commissioners of the HLURB denied[4] the petition and affirmed the Arbiter's Decision. The HLURB reiterated that the depreciation of the peso as a result of the Asian financial crisis is not a fortuitous event which will exempt petitioners from the performance of their contractual obligation.

Petitioners filed a motion for reconsideration but it was denied[5] on 8 May 2006. Thereafter, petitioners filed a Notice of Appeal with the Office of the President On 18 April 2007, petitioners' appeal was dismissed[6] by the Office of the President for lack of merit. Petitioners moved for a reconsideration but their motion was denied[7] on 26 July 2007.

Petitioners sought relief from the Court of Appeals through a petition for review under Rule 43 containing the same arguments they raised before the HLURB and the Office of the President:

I.

THE HONORABLE OFFICE OF THE PRESIDENT ERRED IN AFFIRMING THE DECISION OF THE HONORABLE HOUSING AND LAND USE REGULATORY BOARD AND ORDERING PETITIONERS-APPELLANTS TO REFUND RESPONDENTS-APPELLEES THE SUM OF ₱2,198,949.96 WITH 12% INTEREST FROM 8 OCTOBER 1998 UNTIL FULLY PAID, CONSIDERING THAT THE COMPLAINT STATES NO CAUSE OF ACTION AGAINST PETITIONERS-APPELLANTS.

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[4] *Id.* at 113-115.

[5] *Id.* at 129-130.

[6] *Id.* at 178-180.

[7] *Id.* at 191.

II.

THE HONORABLE OFFICE OF THE PRESIDENT ERRED IN AFFIRMING THE DECISION OF THE OFFICE BELOW ORDERING PETITIONERS-APPELLANTS TO PAY RESPONDENTS-APPELLEES THE SUM OF ₱100,000.00 AS MORAL DAMAGES AND ₱50,000.00 AS ATTORNEY'S FEES CONSIDERING THE ABSENCE OF ANY FACTUAL OR LEGAL BASIS THEREFOR.

III.

THE HONORABLE OFFICE OF THE PRESIDENT ERRED IN AFFIRMING THE DECISION OF THE HOUSING AND LAND USE REGULATORY BOARD ORDERING PETITIONERS-APPELLANTS TO PAY ₱10,000.00 AS ADMINISTRATIVE FINE IN THE ABSENCE OF ANY FACTUAL OR LEGAL BASIS TO SUPPORT SUCH FINDING.[8]

On 30 July 2008, the Court of Appeals denied the petition for review for lack of merit. The appellate court echoed the HLURB Arbiter's ruling that "a buyer for a condominium/ subdivision unit/lot unit which has not been developed in accordance with the approved condominium/subdivision plan within the time limit for complying with said developmental requirement may opt for reimbursement under Section 20 in relation to Section 23 of Presidential Decree (P.D.) 957 x x x."[9] The appellate court supported the HLURB Arbiter's conclusion, which was affirmed by the HLURB Board of Commission and the Office of the President, that petitioners' failure to develop the condominium project is tantamount to a substantial breach which warrants a refund of the total amount paid, including interest. The appellate court pointed out that petitioners failed to prove that the Asian financial crisis constitutes a fortuitous event which could excuse them from the performance of their contractual and statutory obligations. The appellate court also affirmed the award of moral damages in light of petitioners' unjustified refusal to satisfy respondents' claim and the legality of the administrative fine, as provided in Section 20 of Presidential Decree No. 957.

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[8] See Petition for Review filed with the Court of Appeals. *Id.* at 198-199.

[9] *Id.* at 42.

Petitioners sought reconsideration but it was denied in a Resolution[10] dated 11 December 2008 by the Court of Appeals.

Aggrieved, petitioners filed the instant petition advancing substantially the same grounds for review:

A.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT AFFIRMED *IN TOTO* THE DECISION OF THE OFFICE OF THE PRESIDENT WHICH SUSTAINED RESCISSION AND REFUND IN FAVOR OF THE RESPONDENTS DESPITE LACK OF CAUSE OF ACTION.

B.

GRANTING FOR THE SAKE OF ARGUMENT THAT THE PETITIONERS ARE LIABLE UNDER THE PREMISES, THE HONORABLE COURT OF APPEALS ERRED WHEN IT AFFIRMED THE HUGE AMOUNT OF INTEREST OF TWELVE PERCENT (12%).

C.

THE HONORABLE COURT OF APPEALS LIKEWISE ERRED WHEN IT AFFIRMED *IN TOTO* THE DECISION OF THE OFFICE OF THE PRESIDENT INCLUDING THE PAYMENT OF ₱100,000.00 AS MORAL DAMAGES, ₱50,000.00 AS ATTORNEY'S FEES AND ₱10,000.00 AS ADMINISTRATIVE FINE IN THE ABSENCE OF ANY FACTUAL OR LEGAL BASIS TO SUPPORT SUCH CONCLUSIONS.[11]

Petitioners insist that the complaint states no cause of action because they allegedly have not committed any act of misrepresentation amounting to bad faith which could entitle respondents to a refund. Petitioners claim that there was a mere delay in the completion of the project and that they only resorted to "suspension and reformatting as a testament to their commitment to their buyers." Petitioners attribute the delay to the 1997 Asian financial crisis that befell the real estate industry.

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

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

Invoking Article 1174 of the New Civil Code, petitioners maintain that they cannot be held liable for a fortuitous event.

Petitioners contest the payment of a huge amount of interest on account of suspension of development on a project. They liken their situation to a bank which this Court, in *Overseas Bank v. Court of Appeals*,[12] adjudged as not liable to pay interest on deposits during the period that its operations are ordered suspended by the Monetary Board of the Central Bank.

Lastly, petitioners aver that they should not be ordered to pay moral damages because they never intended to cause delay, and again blamed the Asian economic crisis as the direct, proximate and only cause of their failure to complete the project. Petitioners submit that moral damages should not be awarded unless so stipulated except under the instances enumerated in Article 2208 of the New Civil Code. Lastly, petitioners refuse to pay the administrative fine because the delay in the project was caused not by their own deceptive intent to defraud their buyers, but due to unforeseen circumstances beyond their control.

Three issues are presented for our resolution: 1) whether or not the Asian financial crisis constitute a fortuitous event which would justify delay by petitioners in the performance of their contractual obligation; 2) assuming that petitioners are liable, whether or not 12% interest was correctly imposed on the judgment award, and 3) whether the award of moral damages, attorney's fees and administrative fine was proper.

It is apparent that these issues were repeatedly raised by petitioners in all the legal fora. The rulings were consistent that first, the Asian financial crisis is not a fortuitous event that would excuse petitioners from performing their contractual obligation; second, as a result of the breach committed by petitioners, respondents are entitled to rescind the contract and to be refunded the amount of amortizations paid including interest and damages; and third, petitioners are likewise obligated to pay attorney's fees and the administrative fine.

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[12] 192 Phil. 355 (1981).

This petition did not present any justification for us to deviate from the rulings of the HLURB, the Office of the President and the Court of Appeals.

Indeed, the non-performance of petitioners' obligation entitles respondents to rescission under Article 1191 of the New Civil Code which states:

> Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

More in point is Section 23 of Presidential Decree No. 957, the rule governing the sale of condominiums, which provides:

> Section 23. Non-Forfeiture of Payments. No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. **Such buyer may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate.** (Emphasis supplied).

Conformably with these provisions of law, respondents are entitled to rescind the contract and demand reimbursement for the payments they had made to petitioners.

Notably, the issues had already been settled by the Court in the case of *Fil-Estate Properties, Inc. v. Spouses Go*[13] promulgated on 17 August 2007, where the Court stated that the Asian financial crisis is not an instance of *caso fortuito*.

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[13] 557 Phil. 377 (2007).

Bearing the same factual milieu as the instant case, G.R. No. 165164 involves the same company, Fil-Estate, albeit about a different condominium property. The company likewise reneged on its obligation to respondents therein by failing to develop the condominium project despite substantial payment of the contract price. Fil-Estate advanced the same argument that the 1997 Asian financial crisis is a fortuitous event which justifies the delay of the construction project. First off, the Court classified the issue as a question of fact which may not be raised in a petition for review considering that there was no variance in the factual findings of the HLURB, the Office of the President and the Court of Appeals. Second, the Court cited the previous rulings of *Asian Construction and Development Corporation v. Philippine Commercial International Bank*[14] and *Mondragon Leisure and Resorts Corporation v. Court of Appeals*[15] holding that the 1997 Asian financial crisis did not constitute a valid justification to renege on obligations. The Court expounded:

> Also, we cannot generalize that the Asian financial crisis in 1997 was unforeseeable and beyond the control of a business corporation. It is unfortunate that petitioner apparently met with considerable difficulty *e.g.* increase cost of materials and labor, even before the scheduled commencement of its real estate project as early as 1995. However, a real estate enterprise engaged in the pre-selling of condominium units is concededly a master in projections on commodities and currency movements and business risks. The fluctuating movement of the Philippine peso in the foreign exchange market is an everyday occurrence, and fluctuations in currency exchange rates happen everyday, thus, not an instance of *caso fortuito*.[16]

The aforementioned decision becomes a precedent to future cases in which the facts are substantially the same, as in this case. The principle of *stare decisis*, which means adherence to judicial precedents, applies.

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[14] 522 Phil. 168, 180-181 (2006).

[15] 499 Phil. 268, 279 (2005).

[16] *Fil-Estate Properties, Inc. v. Spouses Go, supra* note 13 at 384.

In said case, the Court ordered the refund of the total amortizations paid by respondents plus 6% legal interest computed from the date of demand. The Court also awarded attorney's fees. We follow that ruling in the case before us.

The resulting modification of the award of legal interest is, also, in line with our recent ruling in *Nacar v. Gallery Frames,*[17] embodying the amendment introduced by the Bangko Sentral ng Pilipinas Monetary Board in BSP-MB Circular No. 799 which pegged the interest rate at 6% regardless of the source of obligation.

We likewise affirm the award of attorney's fees because respondents were forced to litigate for 14 years and incur expenses to protect their rights and interest by reason of the unjustified act on the part of petitioners.[18] The imposition of ₱10,000.00 administrative fine is correct pursuant to Section 38 of Presidential Decree No. 957 which reads:

> Section 38. Administrative Fines. The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court.

Finally, we sustain the award of moral damages. In order that moral damages may be awarded in breach of contract cases, the defendant must have acted in bad faith, must be found guilty of gross negligence amounting to bad faith, or must have acted in wanton disregard of contractual obligations.[19] The Arbiter found petitioners to have acted in bad faith when they breached their contract, when they failed to address respondents' grievances and when they adamantly refused to refund respondents' payment.

In fine, we find no reversible error on the merits in the impugned Court of Appeals' Decision and Resolution.

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[17] G.R. No. 189871, 13 August 2013.

[18] *Maglasang v. Northwestern University, Inc.*, G.R. No. 188986, 20 March 2013, 694 SCRA 128, 140.

[19] *Almeda Development and Equipment Corp. v. Metro Motor Sales, Inc.*, 534 Phil. 672, 675 (2006).

WHEREFORE, the petition is **PARTLY GRANTED**. The appealed Decision is **AFFIRMED** with the **MODIFICATION** that the legal interest to be paid is SIX PERCENT (6%) on the amount due computed from the time of respondents' demand for refund on 8 October 1998.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 190928. January 13, 2014]

TEAM ENERGY CORPORATION (formerly MIRANT PAGBILAO CORP.), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE ADDED TAX (VAT); REFUNDS OR TAX CREDITS OF INPUT TAX; TAXPAYER CAN FILE HIS ADMINISTRATIVE CLAIM FOR REFUND OR CREDIT ANYTIME WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD AND THE COMMISSIONER OF INTERNAL REVENUE (CIR) WILL THEN HAVE 120 DAYS FROM SUCH FILING TO DECIDE THE CLAIM; WHEN JUDICIAL CLAIM THEREFOR MAY BE FILED WITH THE COURT OF TAX APPEALS.— In the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation* (*San Roque ponencia*), this Court emphasized that Section 112 (A) and (C) of the Tax Code must be interpreted according to its clear, plain and unequivocal language. In said case, we held that the taxpayer can file his administrative claim

for refund or issuance of tax credit certificate anytime within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will then have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. Thus, the Court expounded: x x x Section 112 (A) and (C) must be interpreted according to its clear, plain and unequivocal language. **The taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA.** This is not only the plain meaning but also the only logical interpretation of Section 112 (A) and (C).

2. ID.; ID.; ID.; ID.; PETITIONER'S JUDICIAL CLAIM FOR REFUND FOR THE FIRST QUARTER OF 2002 TIMELY FILED IN CASE AT BAR.— We therefore disagree with the CTA *En Banc*'s finding that petitioner's judicial claim for the first quarter of 2002 was not timely filed. The *San Roque* ponencia firmly enunciates that the taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. What is only required of him is to file his judicial claim within thirty (30) days after denial of his claim by respondent or after the expiration of the 120-day period within which respondent can decide on its claim. Here, there is no question that petitioner timely filed its administrative claim with the Bureau of Internal Revenue within the required period. However, since its administrative claim was filed within the two-year prescriptive period and its judicial claim was filed on the first day after the expiration of the 120-day period granted to respondent, to decide on its claim, we rule that petitioner's claim for refund for the first quarter of 2002 should be granted. All told, we revert to the CTA First Division's finding that petitioner's total refundable amount should be ₱69,618,971.19, representing petitioner's unutilized

input VAT paid on its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales of power generation services to the National Power Corporation for the taxable year 2002.

APPEARANCES OF COUNSEL

Follosco Morallos & Herce for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the Decision[1] dated August 14, 2009 and Resolution[2] dated January 5, 2010 of the Court of Tax Appeals (*CTA*) *En Banc* in CTA EB No. 422, which modified the Decision[3] dated May 16, 2008 and Resolution[4] dated September 8, 2008 of the CTA First Division, insofar as it reduced the amount of refund granted from ₱69,618,971.19 to ₱51,134,951.40.

The facts follow.

On the following dates, petitioner filed with the Bureau of Internal Revenue (*BIR*) its first to fourth quarterly value-added tax (*VAT*) returns for the calendar year 2002:

Quarter	*Date Filed*
First	April 25, 2002

[1] Penned by Associate Justice Olga Palanca-Enriquez, with Presiding Justice Ernesto D. Acosta, dissenting and concurring, and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova, concurring; *rollo*, pp. 36-55.

[2] *Id.* at 69-78.

[3] Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta and Associate Justice Lovell R. Bautista, concurring; *id.* at 13-30.

[4] *Id.* at 32-34.

Second	July 23, 2002
Third	October 25, 2002
Fourth	January 27, 2003

Subsequently, on December 22, 2003, petitioner filed an administrative claim for refund of unutilized input VAT with Revenue District Office No. 60, Lucena City, in the total amount of ₱79,918,002.95 for calendar year 2002.

However, due to respondent's inaction, petitioner elevated its claim before the CTA First Division on April 22, 2004.

In his Answer, respondent interposed the following special and affirmative defenses:

5. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent;

6. To support its claim, it is imperative for petitioner to prove the following, *viz.*:

a. The registration requirements of a value-added taxpayer in compliance with Section 6 (a) and (b) of Revenue Regulations No. 6-97 in relation to Section 4.107-1 (a) of Revenue Regulations No. 7-95, and Section 236 of the Tax Code, as amended;

b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code, as amended;

c. Proof of compliance with the prescribed checklist of requirements to be submitted involving claim for VAT refund in pursuance to Revenue Memorandum Order No. 53-98, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non* prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended. It is worthy of emphasis that Section 112 (D) of the Tax Code, as amended, requires the submission of complete documents in support of the application filed with the Bureau of Internal Revenue before the 120-day audit period shall apply, and before the taxpayer

could avail of judicial remedies as provided for in the law. Hence, petitioner's failure to submit proof of compliance with the above-stated requirements warrants immediate dismissal of the petition for review.

d. That the input taxes of ₱79,918,002.95 allegedly paid by the petitioner on its purchases of goods and services for the four (4) quarters of the year 2002 were attributable to its zero-rated sales and such have not been applied against any output tax and were not carried over in the succeeding taxable quarter or quarters;

e. That petitioner's administrative and judicial claims for tax credit or refund of unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Sections 112 (A) and (D) and 229 of the TAX Code, as amended;

f. That petitioner's domestic purchases of goods and services were made in the course of its trade and business, properly supported by VAT invoices and/or official receipts and other documents, such as subsidiary purchase Journal, showing that it actually paid VAT in accordance with Sections 110 (A) (2) and 113 of the Tax Code as amended, and in pursuance to Section 4.104-5 (a) & (b) of Revenue Regulations No. 7-95 (Re: Substantiation of Claims for Input Tax Credit);

g. The requirements as enumerated under Section 4.104-2 of Revenue Regulations 7-95. (Re: Persons who can avail of the Input Tax Credits);

7. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation and, as such, they are looked upon with disfavor.[5]

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[5] *Id.* at 40-43. (Citations omitted)

After trial on the merits, the CTA First Division rendered judgment as follows:

WHEREFORE, IN VIEW OF ALL THE FOREGOING, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Thus, Respondent is hereby **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **SIXTY NINE MILLION SIX HUNDRED EIGHTEEN THOUSAND NINE HUNDRED SEVENTY-ONE AND 19/100 PESOS (₱69,618,971.19)**, representing unutilized input value-added taxes paid by petitioner on its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales of power generation services to the National Power Corporation for the taxable year 2002.

SO ORDERED.[6]

Not satisfied, respondent filed his Motion for Partial Reconsideration against said decision, which the CTA First Division denied in a Resolution dated September 8, 2008.

On October 10, 2007, respondent filed a Petition for Review with the CTA *En Banc*.

In a Decision dated August 14, 2009, the CTA *En Banc* affirmed the CTA First Division's decision with the modification that the refundable amount be reduced to ₱51,134,951.40. The *fallo* reads:

WHEREFORE, premises considered, the petition is hereby **PARTLY GRANTED**. The assailed Decision dated May 16, 2008 and Resolution dated September 8, 2008 are hereby **AFFIRMED**, with modification that only ₱51,134,951.40 is the refundable amount to respondent for taxable year 2002. Accordingly, the Commissioner of Internal Revenue is hereby **ORDERED** to **REFUND** or **ISSUE** a **TAX CREDIT CERTIFICATE** in favor of Team Energy Corporation the reduced amount of **FIFTY-ONE MILLION ONE HUNDRED THIRTY- FOUR THOUSAND NINE HUNDRED FIFTY-ONE AND 40/100 (₱51,134,951.40)**, representing the latter's excess and unutilized input VAT for the period covering calendar year 2002.

SO ORDERED.[7]

[6] *Id.* at 30. (Emphasis in the original)

[7] *Id.* at 54-55. (Emphasis in the original)

Unfazed, petitioner filed a motion for reconsideration against said Decision, but the same was denied in a Resolution dated January 5, 2010.

Hence, the present petition wherein petitioner raises the following issues for our resolution:

THE CTA *EN BANC* COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISALLOWED PETITIONER'S INPUT VAT FOR THE FIRST QUARTER AMOUNTING TO ₱18,484,019.79 BASED ON PRESCRIPTION BECAUSE:

A. PETITIONER FILED ITS JUDICIAL CLAIM FOR REFUND WELL WITHIN THE TWO-YEAR PRESCRIPTIVE PERIOD RECKONED FROM THE DATE OF FILING OF THE QUARTERLY VAT RETURN PURSUANT TO LONG STANDING JURISPRUDENCE, WHICH THE HONORABLE COURT EXPRESSLY RECOGNIZED IN ATLAS CONSOLIDATED MINING AND DEVELOPMENT CORPORATION V. COMMISSIONER OF INTERNAL REVENUE, G.R. NOS. 141104 & [148763], JUNE 8, 2007 ("ATLAS CASE").

B. THE CTA *EN BANC* SHOULD NOT HAVE HASTILY RELIED ON THE CONTRARY RULING OF THE HONORABLE COURT IN COMMISSIONER OF INTERNAL REVENUE V. MIRANT PAGBILAO CORPORATION, G.R. NO. 172129, SEPTEMBER 12, 2008 ("MIRANT PAGBILAO CASE") AS THE HONORABLE COURT COULD NOT HAVE INTENDED TO REVERSE THE DOCTRINE IN THE ATLAS CASE IN THE LIGHT OF ARTICLE VIII, SECTION 4 (3) OF THE CONSTITUTION.

C. ASSUMING, BUT WITHOUT CONCEDING, THAT THE MIRANT PAGBILAO CASE REVERSED THE DOCTRINE IN THE ATLAS CASE, THE SAME SHOULD BE APPLIED PROSPECTIVELY AND NOT RETROACTIVELY TO THE PREJUDICE OF PETITIONER WHO RELIED IN GOOD FAITH ON PREVAILING JURISPRUDENCE AT THE TIME OF FILING OF ITS JUDICIAL CLAIM FOR REFUND.[8]

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[8] *Id.* at 120-121.

Simply, the sole issue for our resolution is whether or not petitioner timely filed its judicial claim for refund of input VAT for the first quarter of 2002.

To appropriately address this issue, it is relevant to quote Section 112 (A) and (C) of the Tax Code, *viz.*:

SEC. 112. *Refund or Tax Credits of Input Tax*. –

(A) Zero-rated or Effectively Zero-rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax; *Provided, however*, That in the case of zero-rated sales under Section 106 (A)(2)(a)(1), (2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the *Bangko Sentral ng Pilipinas* (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of good of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue a tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

In its assailed decision, the CTA *En Banc* reduced petitioner's claim for refund of its excess or unutilized input VAT to ₱51,134,951.40 on the ground that petitioner's judicial claim for the first quarter of 2002 was filed beyond the two-year period prescribed under Section 112 (A) of the Tax Code, to wit:

As regards the fifth requisite, *Section 112 (A) of the NIRC of 1997, as amended*, provides that a VAT-registered taxpayer whose sale is zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for refund or issuance of a TCC of its creditable input tax or paid attributable to such sales.

In the recent case of *Commissioner of Internal Revenue v. Mirant Pagbilao (Formerly Southern Energy Quezon, Inc.)*, 565 SCRA 154 (hereafter referred to as the "Mirant Case"), the Supreme Court definitely settled the issue on the reckoning of the prescriptive period on claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales, as follows:

x x x x x x x x x

Pursuant to the above ruling of the Supreme Court, it is clear that the two-year prescriptive period provided in *Section 112 (A) of the NIRC of 1997, as amended*, should be counted not from the payment of the tax, but from the close of the taxable quarter when the sales were made.

Pursuant to the above ruling of the Supreme Court, the following are the pertinent dates relevant to petitioner's claim for refund:

Period (2002)	**Close of Taxable Quarter**	**Last Day for Filing of the Claim**
1st Quarter	March 31, 2002	March 31, 2004
2nd Quarter	June 30, 2002	June 30, 2004
3rd Quarter	September 30, 2002	September 30, 2004
4th Quarter	December 31, 2002	December 31, 2004

Record shows that respondent filed its administrative claim for refund or issuance of a TCC on December 22, 2003, while the judicial claim for refund was filed on April 22, 2004. Since respondent filed

its judicial claim for refund for the four quarters of 2002, only on April 22, 2004, twenty-two (22) days from March 31, 2004, the last day prescribed by the Mirant Case, respondent is barred from claiming refund of its unutilized input taxes for the first quarter of 2002.

Therefore, the claim for refund granted by the First Division of this Court in the amount of ₱69,618,971.19 should be reduced by deducting the portion of the claim corresponding to the first quarter that had already prescribed, x x x.

x x x x x x x x x

In sum, the Court *En Banc* finds that the total substantiated input tax filed within the two-year prescriptive period of respondent TeaM Energy amounts to ₱51,134,951.40 only.[9]

Recently, however, in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*[10] (*San Roque ponencia*), this Court emphasized that Section 112 (A) and (C) of the Tax Code must be interpreted according to its clear, plain and unequivocal language.

In said case, we held that the taxpayer can file his administrative claim for refund or issuance of tax credit certificate anytime within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will then have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. Thus, the Court expounded:

Section 112 (C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

x x x the taxpayer affected may, **within thirty (30) days from receipt of the decision denying the claim or after the**

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

[10] G.R. Nos. 187485, 196113, and 197156, February 12, 2013, 690 SCRA 336.

> **expiration of the one hundred twenty-day period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

This law is clear, plain and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

x x x x x x x x x

There are three compelling reasons why the 30-day period need not necessarily fall within the two-year prescriptive period, as long as the administrative claim is filed within the two-year prescriptive period.

First, Section 112 (A) clearly, plainly and unequivocally provides that the taxpayer "may, **within two (2) years** after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of the creditable input tax due or paid to such sales." In short, **the law states that the taxpayer may apply with the Commissioner for a refund or credit "within two (2) years," which means at anytime within two years. Thus, the application for refund or credit may be filed by the taxpayer with the Commissioner on the last day of the two-year prescriptive period and it will still strictly comply with the law. The two-year prescriptive period is a grace period in favor of the taxpayer and he can avail of the full period before his right to apply for a tax refund or credit is barred by prescription.**

Second, Section 112 (C) provides that the Commissioner shall decide the application for refund or credit "within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A)." The reference in Section 112 (C) of the submission of documents "in support of the application filed in accordance with Subsection (A)" means that the application in Section 112 (A) is the administrative claim that the Commissioner must decide within the 120-day period. In short, the two-year prescriptive period in Section 112 (A) refers to the period within which the taxpayer can file an administrative

claim for tax refund or credit. **Stated otherwise, the two-year prescriptive period does not refer to the filing of the judicial claim with the CTA but to the filing of the administrative claim with the Commissioner. As held in *Aichi*, the "phrase 'within two years x x x apply for the issuance of a tax credit or refund" refers to applications for refund/credit with the CIR and not to appeals made to the CTA."**

Third, if the 30-day period, or any part of it, is required to fall within the two-year prescriptive period (equivalent to 730 days), then the taxpayer must file his administrative claim for refund or credit within the first 610 days of the two-year prescriptive period. **Otherwise, the filing of the administrative claim beyond the first 610 days will result in the appeal to the CTA being filed beyond the two-year prescriptive period**. Thus, if the taxpayer files his administrative claim on the 611th day, the Commissioner, with his 120-day period, will have until the 731st day to decide the claim. If the Commissioner decides only on the 731st day, or does not decide at all, the taxpayer can no longer file his judicial claim with the CTA because the two-year prescriptive period (equivalent to 730 days) has lapsed. The 30-day period granted by law to the taxpayer to file an appeal before the CTA becomes utterly useless, even if the taxpayer complied with the law by filing his administrative claim within the two-year prescriptive period.

The theory that the 30-day period must fall within the two-year prescriptive period adds a condition that is not found in the law. It results in truncating 120 days from the 730 days that the law grants the taxpayer for filing his administrative claim with the Commissioner. This Court cannot interpret a law to defeat, wholly or even partly, a remedy that the law expressly grants in clear, plain and unequivocal language.

Section 112 (A) and (C) must be interpreted according to its clear, plain and unequivocal language. **The taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA.** This is

not only the plain meaning but also the only logical interpretation of Section 112 (A) and (C).[11] (Emphasis supplied)

Based on the aforequoted discussions, we therefore disagree with the CTA *En Banc*'s finding that petitioner's judicial claim for the first quarter of 2002 was not timely filed.

The *San Roque ponencia* firmly enunciates that the taxpayer can file his administrative claim for refund or credit at any time within the two-year prescriptive period. What is only required of him is to file his judicial claim within thirty (30) days after denial of his claim by respondent or after the expiration of the 120-day period within which respondent can decide on its claim.

Here, there is no question that petitioner timely filed its administrative claim with the Bureau of Internal Revenue within the required period. However, since its administrative claim was filed within the two-year prescriptive period and its judicial claim was filed on the first day after the expiration of the 120-day period granted to respondent, to decide on its claim, we rule that petitioner's claim for refund for the first quarter of 2002 should be granted.

All told, we revert to the CTA First Division's finding that petitioner's total refundable amount should be ₱69,618,971.19, representing petitioner's unutilized input VAT paid on its domestic purchases of goods and services and importation of goods attributable to its effectively zero-rated sales of power generation services to the National Power Corporation for the taxable year 2002.

WHEREFORE, in view of the foregoing, the Decision dated August 14, 2009 and Resolution dated January 5, 2010 of the Court of Tax Appeals *En Banc,* in CTA EB No. 422 are hereby **AFFIRMED** with **MODIFICATION** that petitioner's total refundable amount shall be ₱69,618,971.19.

SO ORDERED.

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

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[11] *Commissioner of Internal Revenue v. San Roque Power Corporation*, *supra*, at 387-392. (Citations omitted; emphasis in the original)

SECOND DIVISION

[G.R. No. 192034. January 13, 2014]

ALPHA SHIP MANAGEMENT CORPORATION/JUNEL M. CHAN and/or CHUO-KAIUN COMPANY, LIMITED, *petitioners, vs.* **ELEOSIS V. CALO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; PERMANENT TOTAL DISABILITY; AN EMPLOYEE'S DISABILITY BECOMES PERMANENT AND TOTAL WHEN SO DECLARED BY THE COMPANY-DESIGNATED PHYSICIAN, OR IN CASE OF ABSENCE OF SUCH A DECLARATION EITHER OF FITNESS OR PERMANENT TOTAL DISABILITY, UPON THE LAPSE OF THE 120 OR 240 DAY TREATMENT PERIOD, WHILE THE EMPLOYEES' DISABILITY CONTINUES AND HE IS UNABLE TO ENGAGE IN GAINFUL EMPLOYMENT DURING SUCH PERIOD.— Article 192(c)(1) of the Labor Code provides that: Art. 192. Permanent total disability. – x x x (c) The following disabilities shall be deemed total and permanent: (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules; The 120-day period may be extended up to 240 days, under Rule X, Section 2 of the Amended Rules on Employees Compensation and pursuant to the pronouncement in *Vergara v. Hammonia Maritime Services, Inc*. stating that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability. It is settled that the above provisions of the Labor Code and the Amended Rules on Employees Compensation on disabilities apply to seafarers; the POEA Standard Employment Contract, which respondent holds, is not the sole basis for determining their rights in the event of work-related injury, illness or death. It may likewise be true that under respondent's POEA Standard

Employment Contract, only those injuries or disabilities that are classified as Grade 1 are considered total and permanent. However, the Court has made it clear, in *Kestrel Shipping Co., Inc. v. Munar*, that – x x x **if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally or permanently disabled**. x x x Thus, from the above, it can be said that an employee's disability becomes permanent and total when so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120 or 240-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability. This is true "regardless of whether the employee loses the use of any part of his body."

2. ID.; ID.; ID.; ID.; WHEN RESPONDENT WAS DECLARED FIT TO WORK ON JULY 18, 2006, SUCH DECLARATION BECAME IRRELEVANT, FOR BY THEN, RESPONDENT HAD BEEN UNDER MEDICAL TREATMENT AND UNABLE TO ENGAGE IN GAINFUL EMPLOYMENT FOR MORE THAN 240 DAYS.— Respondent was repatriated on October 12, 2004 and underwent treatment by the company-designated physician, Dr. Cruz, until October 14, 2005, or for a *continuous period of over one year* – or for more than the statutory 120-day or even 240-day period. During said treatment period, Dr. Cruz did not arrive at a definite assessment of respondent's fitness or disability; thus, respondent's medical condition remained unresolved. It was only on July 18, 2006 that respondent was declared fit to work by Dr. Cruz. Such declaration, however, became irrelevant, for by then, respondent had been under medical treatment and unable to engage in gainful employment for more than 240 days. Pursuant to the doctrine in *Kestrel,* the conclusive presumption that the respondent is totally and permanently disabled thus arose. The CA is therefore correct in declaring that respondent suffered permanent total disability.

3. ID.; ID.; ID.; ID.; THE ISSUE OF WHICH AMONG THE TWO DIAGNOSES OR OPINIONS SHOULD PREVAIL, THAT OF THE COMPANY-DESIGNATED PHYSICIAN OR RESPONDENT'S PERSONAL PHYSICIAN, IS RENDERED IRRELEVANT IN VIEW OF THE LAPSE OF THE 240-DAY PERIOD.— In the same manner, the issue of which among the two diagnoses or opinions should prevail – that of Dr. Cruz or Dr. Vicaldo – is rendered irrelevant in view of the lapse of the said 240-day period. As far as the parties are concerned, respondent's medical treatment and disability continued for more than 240 days without any finding or diagnosis by the company-designated physician that he was fit to resume work. Thus, consonant with law and jurisprudence, respondent is entitled to a declaration of permanent total disability, as well as the corresponding benefit attached thereto in the amount of US$60,000.00.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario for petitioners.
Romulo P. Valmores for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

An employee's disability becomes permanent and total when so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120- or 240-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability.

Assailed in this Petition for Review on *Certiorari*[1] are the December 17, 2009 Decision[2] of the Court of Appeals (CA) in

[1] *Rollo*, pp. 42-70.

[2] *Id.* at 73-95; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion.

CA-G.R. SP No. 105550 which reversed and set aside the March 31, 2008 Decision[3] of the National Labor Relations Commission (NLRC) and reinstated the March 30, 2007 Decision[4] of the Labor Arbiter, and its April 26, 2010 Resolution[5] denying reconsideration thereof.

Factual Antecedents

Respondent Eleosis V. Calo worked for petitioners – Alpha Ship Management Corporation, Junel M. Chan and their foreign principal, Chuo-Kaiun Company Limited (CKCL) – since 1998 under seven employment contracts. On February 17, 2004, respondent was once more hired by petitioners as Chief Cook on board CKCL's vessel, MV Iris. Respondent commenced his duties as Chief Cook aboard MV Iris on March 5, 2004.

On July 13, 2004, while MV Iris was in Shanghai, China, respondent suffered back pain on the lower part of his lumbar region and urinated with solid particles. On checkup, the doctor found him suffering from urinary tract infection and renal colic, and was given antibiotics. When respondent's condition did not improve, he consulted another doctor in Chile sometime in August 2004, and was found to have kidney problems and urinary tract infection but was declared fit for work on a "light duty" basis.[6]

On September 19, 2004, respondent suffered an attack of severe pain in his loin area below the ribs radiating to his groin. At the Honmoku Hospital in Yokohama, Japan, respondent was diagnosed with suspected renal and/or ureter calculus.[7] He was declared "unfit for work" and advised to be sent home and undergo further detailed examination and treatment.[8]

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[3] *Id.* at 314-322; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

[4] *Id.* at 234-244; penned by Labor Arbiter Aliman D. Mangandog.

[5] *Id.* at 97-98.

[6] *Id.* at 75.

[7] *Id.* at 100.

[8] *Id.*

Respondent was thus repatriated on October 12, 2004 and was referred by petitioners to Dr. Nicomedes G. Cruz (Dr. Cruz), the company-designated physician.

On October 20, 2004, Dr. Cruz examined respondent, and thereafter, in his Medical Report,[9] Dr. Cruz wrote:

> The patient was seen today in our clinic. The IVP x-ray showed mild prostate enlargement with signs suggestive of cystitis. He was seen by our urologist and repeat urinalysis was requested.
>
> DIAGNOSIS:
> To consider Ureterolithiasis, right
>
> MEDICATION:
> Buscopan
>
> Advised to come back on November 10, 2004[10]

Respondent was examined once more on November 10, 2004, and his Medical Report[11] for such examination reads as follows:

> The patient was seen today in our clinic. The urinalysis done was normal. He complains of right lumbosacral pain which is probably secondary to lumbosacral muscular strain. He was seen by our urologist and ultrasound of the KUB-P was requested.
>
> DIAGNOSIS:
> To consider Ureterolithiasis, right
>
> MEDICATION:
> Mobic
>
> Advised to come back on November 17, 2004

Respondent returned to Dr. Cruz for check-up on November 17, 2004. His Medical Report[12] for such appointment states:

> The patient was seen today in our clinic. The ultrasound of the KUB showed the following 1) small, mild calyceal non-obstructing

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[9] *Id.* at 102.

[10] *Id.*

[11] *Id.* at 103.

[12] *Id.* at 104.

stone his [sic] left kidney 2) cortical cyst at the inferior pole of the left kidney 3) small parenchymal calcification in the mid portion of the right kidney and 4) mild prostatic enlargement with concretion. Our urologist recommended medical dissolution of the left kidney stone since it is small. However, he recommended lumbosacral x-ray of the back to evaluate the right lower back pain.

DIAGNOSIS:
Ureterolithiasis, left

MEDICATION:
Sambong
Acalka
Macrodantin

Advised to come back on December 15, 2004[13]

On December 15, 2004, respondent returned to Dr. Cruz for check-up, and in his Medical Report[14] he wrote:

The patient was seen today in our clinic. There is occasional low back pain. The x–ray showed mild lumbar osteophytes. He is for urinalysis and ultrasound of the kidneys.

DIAGNOSIS:
Ureterolithiasis, left

MEDICATION:
Sambong
Acalka
Macrodantin

Advised to come back on January 5, 2005[15]

Dr. Cruz's Medical Report[16] for January 5, 2005 reads as follows:

The patient was seen today in our clinic. The latest ultrasound of the kidneys showed the persistence of non-obstructing calculus

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[13] *Id.*

[14] Id at 105.

[15] *Id.*

[16] *Id.* at 106.

located at the middle calyx of the left kidney. The right kidney is normal. The urinalysis showed microhematuria. Clinically, he still has occasional low back pain. Our urologist recommended KUB x-ray with bowel preparation.

DIAGNOSIS:
Nephrolithiasis, left

MEDICATION:
Sambong
Acalka
Macrodantin

Advised to come back on January 12, 2005[17]

Further Medical Reports[18] indicate that respondent returned to Dr. Cruz for additional check-ups on January 12 and 17, 2005; February 7, 14 and 18, 2005; March 4, 9 and 30, 2005; April 4, 20 and 27, 2005; May 11 and 18, 2005; June 8, 20 and 27, 2005; July 18, 25 and 27, 2005; August 3, 22 and 31, 2005; September 14, 2005; and October 5 and 14, 2005.

Meanwhile, on July 28, 2005, respondent – who felt that his condition has not improved – consulted another specialist in internal medicine, Dr. Efren R. Vicaldo (Dr. Vicaldo), who issued the following diagnosis contained in a two-page Medical Certificate:[19]

July 28, 2005

TO WHOM IT MAY CONCERN:

This is to certify that Eleosis V. Calo, 57 years of age, of Parañaque City was examined and treated as out[-]patient/confined in this hospital on/from July 28, 2005 with the following findings and/or diagnosis/ diagnoses:

Hypertension I
Nephrolithiasis, left
Impediment Grade X (20.15%)

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[17] *Id.*

[18] *Id.* at 107-132.

[19] *Id.* at 228-229.

(signed)
EFREN R. VICALDO, M.D.

JUSTIFICATION OF IMPEDIMENT GRADE X (20.15%)
FOR SEAMAN ELEOSIS V. CALO

- This patient/seaman presented with a history of passing sandy material in the urine noted sometime August of 2004. He had a check up in Shanghai and he was diagnosed [with] UTI. He had another check up in Peru with the same diagnosis of urinary tract infection. He had episodes of lumbar pain, cold sweats and abdominal pain for which he had a check up in Japan [in] September, 2004. He underwent abdominal ultrasound, urinalysis and Xray of the KUB.
- He was subsequently repatriated [in] October, 2004 and he underwent several laboratory work up. He was diagnosed [with] hypertension and nephrolithiasis, left.
- When seen at the clinic, his blood pressure was elevated at 130/90 mmHg; the rest of his PE findings were unremarkable.
- He is now unfit to resume work as seaman in any capacity.
- His illness is considered work aggravated/related.
- He requires maintenance medication to control his hypertension to prevent other cardiovascular complications such as coronary artery disease, stroke and renal insufficiency.
- With his nephrolithiasis, he is prone to develop ascending urinary tract infection so that he has to monitor his urinalysis and be treated for any signs of infection.
- He may require intervention in the form of lithotripsy or surgery to remove his nephrolithiasis.
- His renal colic may be a recurrent discomfort impairing his quality of life.
- He is not expected to land a gainful employment given his medical background.

Thank you.

(signed)
Efren R. Vicaldo, M.D.[20]

Respondent underwent surgery for his nephrolithiasis on August 31, 2005. On September 12, 2005, respondent took an x-ray examination which registered the following results:

ROENTGENOLOGICAL FINDINGS:
Previous film not available for comparison.

Plain radiograph of the KUB shows gas and fecal-filled bowel loops which partially obscure both renal shadows.
No opaque lithiasis noted.
Spur formations are noted on the lumbar vertebrae.

IMPRESSION:
DEGENERATIVE OSSEOUS CHANGES OF THE LUMBAR VERTEBRAE[21]

Respondent filed a claim for disability benefits with petitioners, but the claim was denied.

Thus, on October 18, 2005, respondent filed against the petitioners a Complaint[22] for the recovery of total permanent disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees.

On July 3, 2006, respondent returned to Dr. Cruz and underwent urinalysis, ultrasound and x-ray. On July 18, 2006, Dr. Cruz issued his final Medical Report,[23] stating thus:

He (respondent) was repatriated because of right flank pain and gross hematuria. The IVP done showed mild prostatic enlargement with signs of cystitis. Ultrasound of the KUB done revealed small mild calyseal non-obstructing stone on the left side. The recent x-ray

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[20] *Id*.

[21] *Id.* at 232.

[22] NLRC records, p. 2.

[23] *Rollo*, p. 132.

showed neither opacity nor filling defect. The IVP showed pyelitis (inflammation of the kidney). The repeat ultrasound showed decrease in the size of the echogenic focus and cyst in the upper pole of the left kidney. The right kidney is normal. Last August 31, 2005, he underwent ESWL.

He was last seen in our clinic last October 14, 2005 and was advised to come back on November 07, 2005 but failed to do so.

At present, the repeat urinalysis is normal. The ultrasound of the KUB showed left renal cortical cyst and enlarged prostate gland with concretions. Our urologist opined that Mr. Calo is now stone free and normal.

He is now fit to work as a seafarer on account of the [absence of kidney stones].

DIAGNOSIS:
Nephrolithiasis, left, treated

RECOMMENDATION:
He is fit to work.[24]

Ruling of the Labor Arbiter

On March 30, 2007, the Labor Arbiter issued his Decision[25] which decreed as follows:

WHEREFORE, both respondent companies are ordered to pay, jointly and severally, the complainant, the amount of US$60,000.00 or its peso equivalent at the time of payment as disability compensation and US$6,000.00 or its peso equivalent at the time of payment, as attorney's fees.

Other claims are DISMISSED for lack of merit.

SO ORDERED.[26]

The Labor Arbiter granted permanent total disability benefits and attorney's fees to respondent, but denied his claim for moral and exemplary damages.

[24] *Id.*

[25] *Supra* note 4.

[26] *Id.* at 244.

The Labor Arbiter held that respondent suffered permanent disability as a result of his inability to work despite undergoing treatment and medication by the company-designated physician for more than 120 days, or from October 15, 2004 through July 18, 2006; the company-designated physician's July 18, 2006 "fit to work" declaration was irrelevant and belated as it was made long after the expiration of the continuous 120-day period during which respondent was unable to work, which thus entitles the latter to permanent total disability benefits under the law. The Labor Arbiter cited *United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*,[27] which held:

Notatu dignum is the correct observation of the appellate court in its above-quoted portion of its decision that it was only after respondent had filed a claim for permanent disability that Doctors Abaya and Hill declared him fit for sea duty.

But even in the absence of an official finding by the company-designated physicians that respondent is unfit for sea duty, respondent is deemed to have suffered permanent disability. Permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. It is undisputed that from the time respondent suffered a heart attack on December 5, 1997, he was unable to work for more than 120 days, his cardiac rehabilitation and physical therapy having ended only on May 28, 1998.

That respondent was found to be "fit to return to work" by Clinica Manila (where he underwent regular cardiac rehabilitation program and physical therapy from January 15 to May 28, 1998 under UPL's account) on September 22, 1998 or a few months after his rehabilitation does not matter. *Crystal Shipping Inc. v. Natividad* teaches:

> Petitioners tried to contest the above findings by showing that respondent was able to work again as a chief mate in March 2001. Nonetheless, this information does not alter the fact that as a result of his illness, respondent was unable to work as a chief mate for almost three years. It is of no consequence that respondent was cured after a couple of years. The law does

[27] 521 Phil. 380 (2006).

> not require that the illness should be incurable. What is important is that he was unable to perform his customary work for more than 120 days which constitutes permanent total disability. An award of a total and permanent disability benefit would be germane to the purpose of the benefit, which is to help the employee in making ends meet at the time when he is unable to work.[28] (Underscoring supplied)

Ruling of the National Labor Relations Commission

Petitioners appealed to the NLRC. On March 31, 2008, the NLRC rendered its Decision[29] granting petitioners' appeal and reversing the Labor Arbiter's March 30, 2007 Decision, thus:

> **WHEREFORE**, the appeal is GRANTED. The decision of the Labor Arbiter dated March 30, 2007 is VACATED and SET ASIDE and a new one entered dismissing the complaint for lack of merit.
>
> **SO ORDERED**.[30]

In a Resolution[31] dated June 30, 2008 respondent's Motion for Reconsideration was denied.

Essentially, the NLRC held that for purposes of claiming disability benefits under the Philippine Overseas Employment Administration (POEA) Standard Employment Contract, it is the company-designated physician, Dr. Cruz – and not respondent's physician Dr. Vicaldo – who should make the corresponding proclamation or finding that respondent suffered permanent total or partial disability. Thus, Dr. Cruz's July 18, 2006 Medical Report declaring respondent as fit to work prevails over Dr. Vicaldo's July 28, 2005 Medical Certificate declaring respondent unfit to resume work as seaman in any capacity.

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[28] *Id.* at 393-394.

[29] *Supra* note 3.

[30] *Id.* at 321.

[31] NLRC records, pp. 431-433.

The NLRC added that while the July 18, 2006 certification of fitness was issued more than one year following respondent's disembarkation, its belated issuance is not sufficient to establish petitioners' liability for disability compensation, especially where respondent was to blame for his failure to report to Dr. Cruz and continue treatment. The NLRC was referring to respondent's failure to return for further treatment by Dr. Cruz, as directed, after October 14, 2005. It held that as a result, respondent's Complaint was prematurely filed since his treatment was still ongoing at the time of its filing, and that he is guilty of unjustified abandonment of treatment.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[32] filed with the CA, respondent sought a reversal of the Decision of the NLRC, arguing that the latter committed grave abuse of discretion and gross error in upholding Dr. Cruz's July 18, 2006 Medical Report; in disregarding the 120-day rule which entitles the employee to permanent disability benefits in the event of continuous inability to perform his work for more than 120 days; and in ordering the dismissal of his Complaint.

On December 17, 2009, the CA issued the assailed Decision which contained the following decretal portion:

WHEREFORE, premises considered, the March 31, 2008 Decision and June 30, 2008 Resolution of public respondent National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Accordingly, the March 30, 2007 Decision of the Labor Arbiter is **REINSTATED**.

SO ORDERED.[33]

The CA held that the company-designated physician's findings are not conclusive and binding on the issue of the employee's state of health, disability, or fitness to resume work. It held, thus:

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[32] Docketed as CA-G.R. SP No. 105550.

[33] *Rollo*, pp. 94-95.

In fine, therefore, the better view is this: While it is mandatory for the seafarer to be examined first by the company-designated physician, the latter's findings, however, should not be conclusive and binding upon the former nor upon the courts or labor tribunals. The seafarer's right to seek the opinion of his own doctor should be recognized. In case of disagreement between the findings of his doctor and those of the company physician, the parties may jointly seek the opinion of a third, independent doctor, whose decision shall be final and binding upon them. In the absence, however, of the opinion of a third, independent doctor as in this case, the findings of the company-designated physician and the seafarer's physician should be duly evaluated and weighed against each other based on their inherent merits. The foregoing, to Our mind, is more in accord with the spirit of the law and jurisprudence, not to mention the policy of social justice.[34]

The CA found incredible Dr. Cruz's findings in his July 18, 2006 Medical Report, which it held were self-serving and hearsay as they were based on the opinion of an unnamed urologist, whose opinion was not backed by the appropriate separate medical certificate.

The CA added that the NLRC gravely erred in not considering that respondent had already been under medical treatment and incapacitated to work for more than 120 days, or even 240 days – which is the maximum allowable period of treatment pursuant to Rule X, Section 2 of the Amended Rules on Employee's Compensation[35] and the pronouncement in *Vergara*

[34] *Id.* at 87.

[35] Which provides:

RULE X

Temporary Total Disability

x x x x x x x x x

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 pa*id.* However, the System may declare the total and permanent status at anytime 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.

v. Hammonia Maritime Services, Inc.[36] which held that if the 120-day period elapsed and no declaration of disability or fitness is made because the employee required further medical treatment, then treatment should continue up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists; a temporary total disability only becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability. The CA held that herein respondent was repatriated on October 12, 2004, and his last medical examination was conducted on October 14, 2005; clearly, more than 240 days have elapsed without respondent having been declared either fit to work or permanently disabled. He was declared fit to work only on July 18, 2006, or long after his labor Complaint was filed and almost two years from his repatriation; respondent is thus deemed permanently disabled.

Finally, the CA declared that respondent's permanent disability was total, considering that both his personal physician Dr. Vicaldo and the company-designated physician Dr. Cruz declared him "unfit to work as seaman in any capacity" and "is not expected to land a gainful employment given his medical background," and that there was persistence of the left kidney stone "located inside the diverticulum and it is impossible to pass out the stone thru his urine." It held that for total disability to exist, it is not required that the employee be absolutely disabled or totally paralyzed; it is merely necessary that the injury or illness be such that the employee cannot pursue his/her usual work and earn therefrom. And to be permanent, a total disability should last continuously for more than 120 days – or 240 days, per the *Vergara* ruling.

Petitioners filed a Motion for Reconsideration,[37] but the CA denied the same in its April 26, 2010 Resolution. Hence, the present Petition.

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[36] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 628.

[37] CA *rollo*, pp. 363-376.

Issues

Petitioners submit the following issues for resolution:

1. Whether x x x respondent is entitled to disability benefits under the POEA Standard Employment Contract for Seafarers despite the fact that he was declared fit to work.

2. Whether x x x respondent is entitled to attorney's fees.[38]

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that a pronouncement be made denying respondent the adjudged disability benefits and attorney's fees, petitioners maintain that respondent is not entitled to disability benefits and attorney's fees; and even granting without admitting that respondent is entitled to disability benefits, the same should be limited to US$10,075.00 in view of the Grade 10 disability rating given by Dr. Vicaldo, respondent's personal physician.

With regard to disability benefits, petitioners argue that although respondent was subjected to treatment for one year and nine months (or from October 20, 2004, respondent's first examination by Dr. Cruz, up to July 3, 2006, respondent's last visit to the latter) and that Dr. Cruz's July 18, 2006 Medical Report *cum* declaration of fitness to work was issued later, the prolonged treatment should be blamed on respondent as he failed to report to Dr. Cruz when required; instead, he sought treatment from his personal physician and abandoned treatment being made by Dr. Cruz.

Petitioners insist further that as between Dr. Cruz and Dr. Vicaldo, the former's opinion and diagnosis as the company-designated physician should prevail, pursuant to the provisions of the employment contract, law, and jurisprudence.

Petitioners add that respondent's own personal physician, Dr. Vicaldo, did not declare respondent to be suffering from

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[38] *Rollo*, p. 50.

permanent total disability; in fact, Dr. Vicaldo diagnosed him as suffering from a mere Grade 10 disability which, under his employment contract, entitles respondent to receive only US$10,075.00, and not the adjudged US$60,000.00. In other words, respondent's illness – nephrolithiasis – is not a Grade 1 disability which entitles him to the maximum disability compensation.

On the issue of attorney's fees, petitioners claim that as a necessary result of the fact that respondent is not entitled to disability compensation, no attorney's fees may be awarded to him as well. They add that they were not amiss in their obligations toward respondent, and saw to it that he was given appropriate treatment and medication until he was finally declared fit to work; and that they acted in good faith and shouldered all of respondent's expenses in obtaining treatment for his condition. In view of their good faith and the faithful observance of their obligations under the law, respondent has no right to recover attorney's fees.

Respondent's Argument

In his Comment,[39] respondent counters that the CA was correct in ruling that the company-designated physician's findings are not conclusive and binding; that Dr. Cruz's findings in his July 18, 2006 Medical Report were self-serving and hearsay as they were based on the opinion of an unnamed urologist and not of his personal knowledge; and that the said July 18, 2006 Medical Report is self-serving for having been issued only after his Complaint was filed.

Respondent adds that he is not guilty of abandonment of treatment, stating that he has been under treatment by the company-designated physician for over eight months, without improvement in his condition, which thus gave him the right to consult another physician.

On the issue of the adjudged disability benefit, respondent argues that he is entitled to the full US$60,000.00, and not

[39] *Id.* at 331-351.

merely the lower amount of US$10,075.00 advanced by petitioners. Citing *Oriental Shipmanagement Co., Inc. v. Bastol*,[40] he contends that "permanent disability" is defined as the inability of a worker to perform his job for more than 120 days, without regard to the loss of any part of his body; thus, his inability to perform his usual work as Chief Cook on board an ocean-going vessel for more than 120 days due to his illness makes his disability total and permanent and entitles him to full disability benefits under the law.

Finally, respondent insists on the correctness of the award of attorney's fees, arguing that petitioners' unjustified failure/refusal to satisfy his claim for disability benefits compelled him to litigate to protect his rights and interests, for which he is entitled to attorney's fees equivalent to 10% of the monetary award.

Our Ruling

The Court denies the Petition.

Article 192(c)(1) of the Labor Code provides that:

Art. 192. Permanent total disability. – x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

The 120-day period may be extended up to 240 days, under Rule X, Section 2 of the Amended Rules on Employees Compensation and pursuant to the pronouncement in *Vergara v. Hammonia Maritime Services, Inc*.[41] stating that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment

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[40] G.R. No. 186289, June 29, 2010, 622 SCRA 352, 384.

[41] *Supra* note 36 at 629.

period in case of absence of a declaration of fitness or permanent disability.

It is settled that the above provisions of the Labor Code and the Amended Rules on Employees Compensation on disabilities apply to seafarers;[42] the POEA Standard Employment Contract, which respondent holds, is not the sole basis for determining their rights in the event of work-related injury, illness or death. It may likewise be true that under respondent's POEA Standard Employment Contract, only those injuries or disabilities that are classified as Grade 1 are considered total and permanent. However, the Court has made it clear, in *Kestrel Shipping Co., Inc. v. Munar*,[43] that –

x x x **if those injuries or disabilities with a disability grading from 2 to 14, hence, partial and permanent, would incapacitate a seafarer from performing his usual sea duties for a period of more than 120 or 240 days, depending on the need for further medical treatment, then he is, under legal contemplation, totally or permanently disabled**. In other words, an impediment should be characterized as partial and permanent not only under the Schedule of Disabilities found in Section 32 of the POEA-SEC but should be so under the relevant provisions of the Labor Code and the Amended Rules on Employee[s] Compensation (AREC) implementing Title II, Book IV of the Labor Code. That while the seafarer is partially injured or disabled, he is not precluded from earning doing [sic] the same work he had before his injury or disability or that he is accustomed or trained to do. **Otherwise, if his illness or injury prevents him from engaging in gainful employment for more than 120 or 240 days, as the case may be, he shall be deemed totally and permanently disabled**.

Moreover, the company-designated physician is expected to arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days. That should he fail to do so and the seafarer's medical condition

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[42] *PHILASIA Shipping Agency Corporation v. Tomacruz*, G.R. No. 181180, August 15, 2012, 678 SCRA 503, 515; *Valenzona v. Fair Shipping Corporation*, G.R. No.176884, October 19, 2011, 659 SCRA 642, 651.

[43] G.R. No. 198501, January 30, 2013, 689 SCRA 795.

remains unresolved, the seafarer shall be deemed totally or permanently disabled.

x x x x x x x x x

Consequently, if after the lapse of the stated periods, the seafarer is still incapacitated to perform his usual sea duties and the company-designated physician had not yet declared him fit to work or permanently disabled, whether total or permanent, the conclusive presumption that the latter is totally and permanently disabled arises.[44] (Emphasis supplied)

Thus, from the above, it can be said that an employee's disability becomes permanent and total when so declared by the company-designated physician, or, in case of absence of such a declaration either of fitness or permanent total disability, upon the lapse of the 120 or 240[45]-day treatment period, while the employee's disability continues and he is unable to engage in gainful employment during such period, and the company-designated physician fails to arrive at a definite assessment of the employee's fitness or disability. This is true "regardless of whether the employee loses the use of any part of his body."[46]

Respondent was repatriated on October 12, 2004 and underwent treatment by the company-designated physician, Dr. Cruz, until October 14, 2005, or for a *continuous period of over one year* – or for more than the statutory 120-day[47] or even 240-day[48] period. During said treatment period, Dr. Cruz did not arrive at a definite assessment of respondent's fitness or disability; thus, respondent's medical condition remained

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[44] *Id.* at 809-814.

[45] If further medical treatment is necessary.

[46] *Maersk Filipinas Crewing Inc. v. Mesina*, G.R. No. 200837, June 5, 2013; *Valenzona v. Fair Shipping Corporation*, *supra* note 42 at 652; *Quitoriano v. Jebsens Maritime, Inc*., G.R. No. 179868, January 21, 2010, 610 SCRA 529, 536; *Crystal Shipping, Inc. v. Natividad*, 510 Phil. 332, 340 (2005).

[47] Four months.

[48] Eight months.

unresolved. It was only on July 18, 2006 that respondent was declared fit to work by Dr. Cruz. Such declaration, however, became irrelevant, for by then, respondent had been under medical treatment and unable to engage in gainful employment for more than 240 days. Pursuant to the doctrine in *Kestrel,* the conclusive presumption that the respondent is totally and permanently disabled thus arose. The CA is therefore correct in declaring that respondent suffered permanent total disability.

In the same manner, the issue of which among the two diagnoses or opinions should prevail – that of Dr. Cruz or Dr. Vicaldo – is rendered irrelevant in view of the lapse of the said 240-day period. As far as the parties are concerned, respondent's medical treatment and disability continued for more than 240 days without any finding or diagnosis by the company-designated physician that he was fit to resume work. Thus, consonant with law and jurisprudence, respondent is entitled to a declaration of permanent total disability, as well as the corresponding benefit attached thereto in the amount of US$60,000.00.

The Court likewise notes the CA's finding that while respondent was given an Impediment Grade 10 (20.15%) by his physician, he was nevertheless deemed unfit to work as seaman in any capacity and not expected to land gainful employment given his medical background. Moreover, it has been found that surgical intervention may be required to remove respondent's nephrolithiasis; if not, he is prone to develop ascending urinary tract infection. It must be remembered that in August 2004, while respondent was still on ship duty, he was diagnosed with urinary tract infection by a company-approved physician and declared fit to work, but only on a "light duty" basis; and when the same infection recurred with his kidney stones, he was declared unfit to work by the physician at Honmoku Hospital in Japan. If respondent's nephrolithiasis is not cured, certainly he cannot be expected to return to work under his condition.

With respect to attorney's fees, it is clear that respondent was compelled to litigate due to petitioners' failure to satisfy his valid claim. Where an employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled

to an award of attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.[49]

Lastly, while the Labor Arbiter's March 30, 2007 Decision is correct and should be reinstated, a modification thereof is in order, in that the awards therein should be paid in no other form than in Philippine pesos.[50]

WHEREFORE, the Petition is **DENIED**. The assailed December 17, 2009 Decision and April 26, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 105550 are **AFFIRMED**, and the March 30, 2007 Decision of the Labor Arbiter is **REINSTATED**, with the **MODIFICATION** that petitioners Alpha Ship Management Corporation, Junel M. Chan and/or Chuo-Kaiun Company Limited are ordered to jointly and severally pay respondent Eleosis V. Calo the amounts of US$60,000.00 as disability compensation and US$6,000.00 as attorney's fees in Philippine pesos, computed at the exchange rate prevailing at the time of payment.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197760. January 13, 2014]

TEAM ENERGY CORPORATION (Formerly MIRANT PAGBILAO CORPORATION), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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[49] *Quitoriano v. Jebsens Maritime, Inc.*, *supra* note 46 at 537.

[50] *Id.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE ADDED TAX (VAT); CLAIM FOR REFUNDS OR TAX CREDITS OF INPUT TAX; IF AFTER THE 120-DAY MANDATORY PERIOD, THE COMMISSIONER OF INTERNAL REVENUE (CIR) FAILS TO ACT ON THE APPLICATION FOR TAX REFUND OR CREDIT, THE REMEDY OF THE TAXPAYER IS TO APPEAL THE INACTION OF THE CIR TO THE COURT OF TAX APPEALS (CTA) WITHIN 30 DAYS.—** It is clear that a VAT-registered taxpayer claiming for refund or tax credit of their excess and unutilized input VAT must file their administrative claim within two years from the close of the taxable quarter when the sales were made. After that, the taxpayer must await the decision or ruling of denial of its claim, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision or ruling of denial or expiration of the 120-day period, it may file its petition for review with the CTA within thirty (30) days. In the *Aichi* case, this Court ruled that the 120-30-day period in Section 112 (C) of the NIRC is mandatory and its non-observance is fatal to the filing of a judicial claim with the CTA. In this case, the Court explained that if after the 120-day mandatory period, the Commissioner of Internal Revenue (*CIR*) fails to act on the application for tax refund or credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within thirty (30) days. The judicial claim, therefore, need not be filed within the two-year prescriptive period but has to be filed within the required 30-day period after the expiration of the 120 days.

2. **ID.; ID.; ID.; ID.; THE MANDATORY AND JURISDICTIONAL NATURE OF THE 120-30 DAY RULE DOES NOT APPLY ON CLAIMS FOR REFUND THAT WERE PREMATURELY FILED DURING THE INTERIM PERIOD FROM THE ISSUANCE OF BUREAU OF INTERNAL REVENUE (BIR) RULING NO. DA-489-03 ON DECEMBER 10, 2003 TO OCTOBER 6, 2010 WHEN THE *AICHI* DOCTRINE WAS ADOPTED; CASE AT BAR.—** Recently, however, in the case of *Commissioner of Internal Revenue v. San Roque Power*

Corporation (*San Roque*), the Court clarified that the mandatory and jurisdictional nature of the 120-30-day rule does not apply on claims for refund that were prematurely filed during the interim period from the issuance of Bureau of Internal Revenue (*BIR*) Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the *Aichi* doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of the *Aichi* decision, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 where the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. x x x In the present case, petitioner filed its judicial claim on April 18, 2007 or after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before October 6, 2010, the date when the *Aichi* case was promulgated. Thus, even though petitioner's judicial claim was prematurely filed without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the instant case as it was filed within the period exempted from the 120-30-day mandatory period.

APPEARANCES OF COUNSEL

Follosco Morallos & Herce for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks to reverse and set aside the May 2, 2011[1] and the July 15, 2011[2] Resolutions of the Court

[1] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino and Amelia R. Cotangco-Manalastas, concurring; Associate Justice Lovell R. Bautista, dissenting; Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, on wellness leave, *rollo*, pp. 48-61.

[2] *Rollo,* pp. 66-70.

of Tax Appeals (*CTA*) *En Banc* in CTA EB Case No. 706. The assailed resolutions affirmed the November 26, 2010 Amended Decision[3] of the CTA Special First Division in CTA Case No. 7617, which dismissed petitioner's claim for tax refund or issuance of a tax credit certificate for failure to comply with the 120-day period provided under Section 112 (C) of the National Internal Revenue Code (*NIRC*).

The facts, as found by the CTA, follow:

Petitioner is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC) under a Build, Operate, Transfer (BOT) scheme. As such, it is registered with the BIR as a VAT taxpayer in accordance with Section 107 of the National Internal Revenue Code (NIRC) of 1977 (now Section 236 of the NIRC of 1997), with Tax Identification No. 001-726-870-000, as shown on its BIR Certificate of Registration No. OCN8RC0000017854.

On December 17, 2004, petitioner filed with the BIR Audit Information, Tax Exemption and Incentives Division an Application for VAT Zero-Rate for the supply of electricity to the NPC from January 1, 2005 to December 31, 2005, which was subsequently approved.

Petitioner filed with the BIR its Quarterly VAT Returns for the first three quarters of 2005 on April 25, 2005, July 26, 2005, and October 25, 2005, respectively. Likewise, petitioner filed its Monthly VAT Declaration for the month of October 2005 on November 21, 2005, which was subsequently amended on May 24, 2006. These VAT Returns reflected, among others, the following entries:

Exhibit	Period Covered	Zero-Rated Sales/Receipts	Taxable Sales	Output VAT	Input VAT
"C"	1st Qtr-2005	₱ 3,044,160,148.16	₱ 1,397,107.80	₱ 139,710.78	₱ 16,803,760.82
"D"	2nd Qtr-2005	3,038,281,557.57	1,241,576.30	124,157.63	32,097,482.29
"E"	3rd Qtr-2005	3,125,371,667.08	452,411.64	45,241.16	16,937,644.73
"G" (amended)	October 2005		910,949.50	91,094.95	14,297,363.76
	Total	**₱ 9,207,813,372.81**	**₱ 4,002,045.24**	**₱ 400,204.52**	**₱ 80,136,251.60**

[3] Penned by Associate Justice Caesar A. Casanova, with Presiding Justice Ernesto D. Acosta, concurring and Associate Justice Lovell R. Bautista, dissenting; *id.* at 35-39.

On December 20, 2006, petitioner filed an administrative claim for cash refund or issuance of tax credit certificate corresponding to the input VAT reported in its Quarterly VAT Returns for the first three quarters of 2005 and Monthly VAT Declaration for October 2005 in the amount of ₱80,136,251.60, citing as legal bases Section 112 (A), in relation to Section 108 (B)(3) of the NIRC of 1997, Section 4.106-2(c) of Revenue Regulations No. 7-95, Revenue Memorandum Circular No. 61-2005, and the case of **Maceda v. Macaraig**.

Due to respondent's inaction on its claim, petitioner filed the instant Petition for Review before this Court on April 18, 2007.

In his Answer filed on May 27, 2007, respondent interposed the following Special and Affirmative Defenses:

5. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses.
6. Petitioner's alleged claim for refund is subject to administrative investigation/examination by respondent.
7. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provision of law.
8. To support its claim for refund, it is imperative for petitioner to prove the following, viz.:
    a. The registration requirements of a value-added taxpayer in compliance with the pertinent provision of the Tax Code, of 1997, as amended, and its implementing revenue regulations;
    b. The invoicing and accounting requirements for VAT-registered persons, as well as the filing and payment of VAT in compliance with the provisions of Sections 113 and 114 of the Tax Code of 1997, as amended;
    c. Proof of compliance with the submission of complete documents in support of the administrative claim for refund pursuant to Section 112 (D) of the Tax Code of 1997, as amended, otherwise there would be no sufficient compliance with the filing of administrative claim for refund which is a condition *sine qua non*

prior to the filing of judicial claim in accordance with the provision of Section 229 of the Tax Code, as amended;

d. That the input taxes of ₱80,136,261.60 allegedly representing unutilized input VAT from its domestic purchases of capital goods, domestic purchases of goods other than capital goods, domestic purchases of services, services rendered by nonresidents, importation of capital goods and importation of goods other than capital goods were:

d.i paid by petitioner;

d.ii attributable to its zero-rated sales;

d.iii used in the course of its trade or business; and

d.iv such have not been applied against any output tax;

e. That petitioner's claim for tax credit or refund of the unutilized input tax (VAT) was filed within two (2) years after the close of the taxable quarter when the sales were made in accordance with Section 112 (A) of the Tax Code of 1997, as amended;

f. That petitioner has complied with the governing rules and regulations with reference to recovery of tax erroneously or illegally collected as explicitly found in Sections 112 (A) and 229 of the Tax Code, as amended.

g. Petitioner failed to prove compliance with the aforementioned requirements.

9. Furthermore, in action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from common burden cannot be permitted to exist upon vague implications. (*Asiatic Petroleum Co. [P.I.] v. Llanes*, *49 Phil. 446,* cited in *Collector of Internal Revenue v. Manila Jockey Club, 98 Phil. 670*);

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

During trial, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, waived his right to present evidence.

This case was submitted for decision on July 13, 2009, after the parties filed their respective Memorandum.[4]

In a Decision[5] dated July 13, 2010, the CTA Special First Division partially granted petitioner's claim for refund or issuance of tax credit certificate. It held as follows:

WHEREFORE, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent is hereby ORDERED TO REFUND or in the alternative, ISSUE A TAX CREDIT CERTIFICATE in the amount of SEVENTY-NINE MILLION ONE HUNDRED EIGHTY-FIVE THOUSAND SIX HUNDRED SEVENTEEN AND 33/100 PESOS (₱79,185,617.33) in favor of petitioner, representing unutilized input VAT, attributable to its effectively zero-rated sales of power generation services to NPC for the period covering January 1, 2005 to October 31, 2005.

SO ORDERED.

Disgruntled, respondent filed a Motion for Reconsideration against said decision.

On November 26, 2010, the CTA Special First Division rendered an Amended Decision granting respondent's Motion for Reconsideration. In light of this Court's ruling in *Commissioner of Internal Revenue v. Aichi Forging Company, Inc.*[6] (*Aichi*), it reversed and set aside the earlier decision of the CTA Special First Division. Thus:

In the case at bench, petitioner's administrative claim was filed on December 20, 2006 which is well within the two-year [prescriptive]

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[4] *Id.* at 15-18. (Citations omitted; emphasis in the original)

[5] *Id.* at 14-33.

[6] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

period prescribed under Section 112 (A) of the NIRC. Observing the 120-day period for the Commissioner to render a decision on the administrative claim, as required under Section 112 (D) of the NIRC, petitioner's judicial claim should have been filed not earlier than April 19, 2007. Petitioner, however, filed its judicial claim on April 18, 2007 or only 199 days from December 20, 2006, thus, prematurely filed.

Accordingly, petitioner's claim for refund/credit of excess input VAT, covering the period January 1 to October 31, 2005, warrants a dismissal for having been prematurely filed.

WHEREFORE, the Motion for Reconsideration (Re: Decision promulgated 13 July 2010) of the respondents is hereby **GRANTED**. The assailed July 13, 2010 Decision is hereby **REVERSED** and **SET ASIDE** and CTA Case No. 7617 is hereby considered **DISMISSED** for having been prematurely filed.

SO ORDERED.[7]

Petitioner then filed a Petition for Review with the CTA *En Banc* arguing that the requirement to exhaust the 120-day period for respondent to act on its administrative claim for input VAT refund/credit under Section 112 (C) of the NIRC is merely a species of the doctrine of exhaustion of administrative remedies and is, therefore, not jurisdictional.

In a Resolution dated May 2, 2011, the CTA *En Banc* denied the petition for lack of merit. Its *fallo* reads:

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED DUE COURSE** for lack of merit.

Attys. Rachel P. Follosco and Froilyn P. Doyaoen-Pagayatan are hereby **ADMONISHED** to be more careful in the discharge of their duty to the court as a lawyer under the Code of Professional Responsibility.

SO ORDERED.[8]

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[7] *Rollo*, pp. 38-39. (Emphasis in the original)

[8] *Id.* at 60. (Emphasis in the original)

Unfazed, petitioner filed a Motion for Reconsideration. However, the same was denied in a Resolution dated July 15, 2011.

Hence, the present petition.

Petitioner invokes the following grounds to support its petition:

I.

THE CTA ACQUIRED JURISDICTION OVER THE PETITION FOR REVIEW FILED WITH AND TRIED BY THE SPECIAL FIRST DIVISION OF THE CTA DUE TO FAILURE OF THE RESPONDENT CIR TO INVOKE THE RULE OF NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES.

II.

THE CTA *EN BANC*'S APPLICATION OF THE RECENT JUDICIAL INTERPRETATION OF THE SUPREME COURT IN THE AICHI CASE TO THE INSTANT PETITION FOR REVIEW IS ERRONEOUS BECAUSE:

A) IT VIOLATES ESTABLISHED RULES PROHIBITING RETROACTIVE APPLICATION OF JUDICIAL DECISIONS;

B) IT WILL BE UNJUST AND INEQUITABLE TO THE PETITIONER WHO RELIED IN GOOD FAITH ON PREVAILING JURISPRUDENCE AT THE TIME OF INSTITUTING THE ADMINISTRATIVE AND JUDICIAL CLAIMS; AND,

C) IT WILL UNJUSTLY ENRICH THE GOVERNMENT AT THE EXPENSE OF THE PETITIONER.[9]

In essence, the issue is whether or not the CTA has jurisdiction to take cognizance of the instant case.

Prefatorily, to address the issue of lack of jurisdiction, there is a need to discuss Section 112 (A) and (C) which states:

SEC. 112. ***Refunds or Tax Credits of Input Tax.*** **–**

(A) Zero-Rated or Effectively Zero-Rated Sales. – Any VAT-registered person, whose sales are zero-rated or effectively zero-

[9] *Id.* at 84.

rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x.

x x x x x x x x x

(C) ***Period within which Refund or Tax Credit of Input Taxes shall be Made***. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

From the foregoing, it is clear that a VAT-registered taxpayer claiming for refund or tax credit of their excess and unutilized input VAT must file their administrative claim within two years from the close of the taxable quarter when the sales were made. After that, the taxpayer must await the decision or ruling of denial of its claim, whether full or partial, or the expiration of the 120-day period from the submission of complete documents in support of such claim. Once the taxpayer receives the decision or ruling of denial or expiration of the 120-day period, it may file its petition for review with the CTA within thirty (30) days.

In the *Aichi* case, this Court ruled that the 120-30-day period in Section 112 (C) of the NIRC is mandatory and its non-observance is fatal to the filing of a judicial claim with the CTA. In this case, the Court explained that if after the 120-day mandatory period, the Commissioner of Internal Revenue (*CIR*) fails to act on the application for tax refund or credit, the remedy of the taxpayer is to appeal the inaction of the CIR to the CTA within thirty (30) days. The judicial claim, therefore, need not

be filed within the two-year prescriptive period but has to be filed within the required 30-day period after the expiration of the 120 days. Thus:

> Section 112 (D) of the NIRC clearly provides that the CIR has "120 days, from the date of the submission of the complete documents in support of the application [for tax refund/credit]," within which to grant or deny the claim. In case of full or partial denial by the CIR, the taxpayer's recourse is to file an appeal before the CTA within 30 days from receipt of the decision of the CIR. However, if after the 120-day period the CIR fails to act on the application for tax refund/credit, the remedy of the taxpayer is to appeal the inaction of the CIR to [the] CTA within 30 days.
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> x x x x x x x x x
>
> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, **apply for the issuance of a tax credit certificate or refund** of creditable input tax due or paid attributable to such sales." The phrase "within two years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the **application** filed in accordance with **Subsections (A)** and (B)" within which to decide on the claim.
>
> **In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR**. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. **In both instances, the taxpayer has 30 days within which to file an appeal with the CTA**. **As we see it then, the 120-day period is crucial in filing an appeal with the CTA**.[10] (Emphasis supplied)

[10] *Commissioner of Internal Revenue v. Aichi Forging Company, Inc*., *supra* note 6, at 443-444. (Emphasis in the original)

Recently, however, in the case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[11] (*San Roque*), the Court clarified that the mandatory and jurisdictional nature of the 120-30-day rule does not apply on claims for refund that were prematurely filed during the interim period from the issuance of Bureau of Internal Revenue (*BIR*) Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the *Aichi* doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of the *Aichi* decision, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 where the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. It expounded on the matter in this wise:

> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the "**taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review**." Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
>
> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.
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> x x x x x x x x x

[11] G.R. Nos. 187485, 196113, 197156, February 12, 2013, 690 SCRA 336.

Since the Commissioner has **exclusive and original jurisdiction to interpret tax laws**, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who, in good faith, relied on the BIR regulation or ruling prior to its reversal. Section 246 provides as follows:

> Section 246. *Non-retroactivity of Rulings*. – Any modification or reversal of any of the **rules and regulations** promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (Emphasis supplied)

Thus, a general interpretative rule issued by the Commissioner may be relied upon by the taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, "**Any** revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered by Section 246.

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Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

BIR Ruling No. DA-489-03 is a general interpretative rule because it is a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits,

that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was, in fact, asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120-130 day periods are mandatory and jurisdictional.[12]

In the present case, petitioner filed its judicial claim on April 18, 2007 or after the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 but before October 6, 2010, the date when the *Aichi* case was promulgated. Thus, even though petitioner's judicial claim was prematurely filed without waiting for the expiration of the 120-day mandatory period, the CTA may still take cognizance of the instant case as it was filed within the period exempted from the 120-30-day mandatory period.

WHEREFORE, the foregoing considered, the instant Petition for Review on *Certiorari* is hereby **GRANTED**. The May 2, 2011 and the July 15, 2011 Resolutions of the Court of Tax Appeals *En Banc* in CTA EB Case No. 706 are **REVERSED** and **SET ASIDE**. Let this case be remanded to the Court of Tax Appeals for the proper determination of the refundable amount.

SO ORDERED.

Velasco, Jr., Abad, and *Mendoza, JJ.,* concur.

Leonen, J., I dissent consistent with my position in *CIR v. San Roque* (2013).

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[12] *Commissioner of Internal Revenue v. San Roque Power Corporation*, *supra,* at 401-404. (Citations omitted, emphasis in the original)

EN BANC

[A.C. No. 5581. January 14, 2014]

ROSE BUNAGAN-BANSIG, *complainant, vs.* **ATTY. ROGELIO JUAN A. CELERA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DISBARMENT; CONCEPT; REQUIRED QUANTUM OF PROOF.—** A disbarment case is *sui generis* for it is neither purely civil nor purely criminal, but is rather an investigation by the court into the conduct of its officers. The issue to be determined is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or in this case, the failure of respondent to answer the charges against him despite numerous notices. In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.

2. **ID.; ID.; ID.; ID.; THERE IS PREPONDERANT EVIDENCE IN CASE AT BAR THAT RESPONDENT CONTRACTED A SECOND MARRIAGE DESPITE THE EXISTENCE OF HIS FIRST MARRIAGE.—** In the instant case, there is a preponderance of evidence that respondent contracted a second marriage despite the existence of his first marriage. The first marriage, as evidenced by the certified xerox copy of the Certificate of Marriage issued on October 3, 2001 by the City Civil Registry of Manila, Gloria C. Pagdilao, states that

respondent Rogelio Juan A. Celera contracted marriage on May, 8, 1997 with Gracemarie R. Bunagan at the Church of Saint Augustine, Intramuros, Manila; the second marriage, however, as evidenced by the certified xerox copy of the Certificate of Marriage issued on October 4, 2001 by the City Civil Registry of San Juan, Manila, states that respondent Rogelio Juan A. Celera contracted marriage on January 8, 1998 with Ma. Cielo Paz Torres Alba at the Mary the Queen Church, Madison St., Greenhills, San Juan, Metro Manila. Bansig submitted certified xerox copies of the marriage certificates to prove that respondent entered into a second marriage while the latter's first marriage was still subsisting. We note that the second marriage apparently took place barely a year from his first marriage to Bunagan which is indicative that indeed the first marriage was still subsisting at the time respondent contracted the second marriage with Alba.

3. ID.; ID.; ID.; ID.; RESPONDENT'S DEFIANT STANCE AGAINST THE COURT WERE DELIBERATE, MANEUVERING THE LIBERALITY OF THE COURT IN ORDER TO DELAY THE DISPOSITION OF THE CASE AND TO EVADE THE CONSEQUENCES OF HIS ACTIONS.— Respondent exhibited a deplorable lack of that degree of morality required of him as a member of the Bar. He made a mockery of marriage, a sacred institution demanding respect and dignity. His act of contracting a second marriage while his first marriage is subsisting constituted grossly immoral conduct and are grounds for disbarment under Section 27, Rule 138 of the Revised Rules of Court. This case cannot be fully resolved, however, without addressing rather respondent's defiant stance against the Court as demonstrated by his repetitive disregard of its Resolution requiring him to file his comment on the complaint. This case has dragged on since 2002. In the span of more than 10 years, the Court has issued numerous directives for respondent's compliance, but respondent seemed to have preselected only those he will take notice of and the rest he will just ignore. The Court has issued several resolutions directing respondent to comment on the complaint against him, yet, to this day, he has not submitted any answer thereto. He claimed to have not received a copy of the complaint, thus, his failure to comment on the complaint against him. Ironically, however, whenever it is a show cause order, none of them have

escaped respondent's attention. Even assuming that indeed the copies of the complaint had not reached him, he cannot, however, feign ignorance that there is a complaint against him that is pending before this Court which he could have easily obtained a copy had he wanted to. The Court has been very tolerant in dealing with respondent's nonchalant attitude towards this case; accommodating respondent's endless requests, manifestations and prayers to be given a copy of the complaint. The Court, as well as Bansig, as evidenced by numerous affidavits of service, have relentlessly tried to reach respondent for more than a decade; sending copies of the Court's Resolutions and complaint to different locations - both office and residential addresses of respondent. However, despite earnest efforts of the Court to reach respondent, the latter, however conveniently offers a mere excuse of failure to receive the complaint. When said excuse seemed no longer feasible, respondent just disappeared. In a manner of speaking, respondent's acts were deliberate, maneuvering the liberality of the Court in order to delay the disposition of the case and to evade the consequences of his actions. Ultimately, what is apparent is respondent's deplorable disregard of the judicial process which this Court cannot countenance.

4. ID.; ID.; ID.; ID.; RESPONDENT'S ACTS CONSTITUTE WILLFUL DISOBEDIENCE OF THE LAWFUL ORDERS OF THE COURT, WHICH UNDER SECTION 27, RULE 138 OF THE RULES OF COURT IS IN ITSELF ALONE A SUFFICIENT CAUSE FOR SUSPENSION OR DISBARMENT.— Clearly, respondent's acts constitute willful disobedience of the lawful orders of this Court, which under Section 27, Rule 138 of the Rules of Court is in itself alone a sufficient cause for suspension or disbarment. Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Respondent's conduct indicates a high degree of irresponsibility. We have repeatedly held that a Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively." Respondent's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of the Court's lawful orders which is only too deserving of reproof." x x x Considering respondent's propensity

to disregard not only the laws of the land but also the lawful orders of the Court, it only shows him to be wanting in moral character, honesty, probity and good demeanor. He is, thus, unworthy to continue as an officer of the court.

5. REMEDIAL LAW; EVIDENCE; SECONDARY EVIDENCE; THE CERTIFIED XEROX COPIES OF THE MARRIAGE CONTRACTS, ISSUED BY A PUBLIC OFFICER IN CUSTODY THEREOF, ARE ADMISSIBLE AS THE BEST EVIDENCE OF THEIR CONTENTS, AS PROVIDED FOR UNDER SECTION 7 OF RULE 130 OF THE RULES OF COURT.— The certified xerox copies of the marriage contracts, issued by a public officer in custody thereof, are admissible as the best evidence of their contents, as provided for under Section 7 of Rule 130 of the Rules of Court, to wit: Sec. 7. *Evidence admissible when original document is a public record*. – When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. Moreover, the certified xerox copies of the marriage certificates, other than being admissible in evidence, also clearly indicate that respondent contracted the second marriage while the first marriage is subsisting. By itself, the certified xerox copies of the marriage certificates would already have been sufficient to establish the existence of two marriages entered into by respondent. The certified xerox copies should be accorded the full faith and credence given to public documents. For purposes of this disbarment proceeding, these Marriage Certificates bearing the name of respondent are competent and convincing evidence to prove that he committed bigamy, which renders him unfit to continue as a member of the Bar.

APPEARANCES OF COUNSEL

Carmelo Z. Lasam for complainant.

D E C I S I O N

PER CURIAM:

Before us is a Petition for Disbarment[1] dated January 8, 2002 filed by complainant Rose Bunagan-Bansig (*Bansig*) against respondent Atty. Rogelio Juan A. Celera (*respondent*) for Gross Immoral Conduct.

In her complaint, Bansig narrated that, on May 8, 1997, respondent and Gracemarie R. Bunagan (*Bunagan*), entered into a contract of marriage, as evidenced by a certified xerox copy of the certificate of marriage issued by the City Civil Registry of Manila.[2] Bansig is the sister of Gracemarie R. Bunagan, legal wife of respondent.

However, notwithstanding respondent's marriage with Bunagan, respondent contracted another marriage on January 8, 1998 with a certain Ma. Cielo Paz Torres Alba (*Alba*), as evidenced by a certified xerox copy of the certificate of marriage issued by the City Registration Officer of San Juan, Manila.[3]

Bansig stressed that the marriage between respondent and Bunagan was still valid and in full legal existence when he contracted his second marriage with Alba, and that the first marriage had never been annulled or rendered void by any lawful authority.

Bansig alleged that respondent's act of contracting marriage with Alba, while his marriage is still subsisting, constitutes grossly immoral and conduct unbecoming of a member of the Bar, which renders him unfit to continue his membership in the Bar.

In a Resolution[4] dated February 18, 2002, the Court resolved to require respondent to file a comment on the instant complaint.

Respondent failed to submit his comment on the complaint, despite receipt of the copy of the Court's Resolution, as evidenced

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

[2] *Id.* at 4.

[3] *Id.* at 5.

[4] *Id.* at 6.

by Registry Return Receipt No. 30639. Thus, the Court, in a Resolution[5] dated March 17, 2003, resolved to require respondent to show cause why he should not be disciplinarily dealt with or held in contempt for failing to file his comment on the complaint against him.[6]

On December 10, 2002, Bansig filed an Omnibus *Ex Parte* Motion[7] praying that respondent's failure to file his comment on the complaint be deemed as a waiver to file the same, and that the case be submitted for disposition.

On May 4, 2003, in a Motion, respondent claimed that while it appeared that an administrative case was filed against him, he did not know the nature or cause thereof since other than Bansig's Omnibus Motion, he received no other pleading or any processes of this Court. Respondent, however, countered that Bansig's Omnibus Motion was merely a ploy to frighten him and his wife from pursuing the criminal complaints for falsification of public documents they filed against Bansig and her husband. He also explained that he was able to obtain a copy of the Court's Show Cause Order only when he visited his brother who is occupying their former residence at 59-B Aguho St., Project 3, Quezon City. Respondent further averred that he also received a copy of Bansig's Omnibus Motion when the same was sent to his law office address.

Respondent pointed out that having been the family's erstwhile counsel and her younger sister's husband, Bansig knew his law office address, but she failed to send a copy of the complaint to him. Respondent suspected that Bansig was trying to mislead him in order to prevent him from defending himself. He added that Bansig has an unpaid obligation amounting to ₱2,000,000.00 to his wife which triggered a sibling rivalry. He further claimed that he and his wife received death threats from unknown persons; thus, he transferred to at least two (2) new residences, *i.e.*, in

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[5] *Id.* at 14.

[6] *Id.* at 8.

[7] *Id.* at 10-13.

Sampaloc, Manila and Angeles City. He then prayed that he be furnished a copy of the complaint and be given time to file his answer to the complaint.

In a Resolution[8] dated July 7, 2003, the Court resolved to (a) require Bansig to furnish respondent with a copy of the administrative complaint and to submit proof of such service; and (b) require respondent to file a comment on the complaint against him.

In compliance, Bansig submitted an Affidavit of Mailing to show proof that a copy of the administrative complaint was furnished to respondent at his given address which is No. 238 Mayflower St., Ninoy Aquino Subdivision, Angeles City, as evidenced by Registry Receipt No. 2167.[9]

On March 17, 2004, considering that respondent failed anew to file his comment despite receipt of the complaint, the Court resolved to require respondent to show cause why he should not be disciplinarily dealt with or held in contempt for such failure.[10]

On June 3, 2004, respondent, in his Explanation,[11] reiterated that he has yet to receive a copy of the complaint. He claimed that Bansig probably had not complied with the Court's Order, otherwise, he would have received the same already. He requested anew that Bansig be directed to furnish him a copy of the complaint.

Again, on August 25, 2004, the Court granted respondent's prayer that he be furnished a copy of the complaint, and required Bansig to furnish a copy of the complaint to respondent.[12]

On October 1, 2004, Bansig, in her Manifestation,[13] lamented the dilatory tactics allegedly undertaken by respondent in what

[8] *Id.* at 17.

[9] *Id.* at 18.

[10] *Id.* at 23.

[11] *Id.* at 24-25.

[12] *Id.* at 27.

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

was supposedly a simple matter of receipt of complaint. Bansig asserted that the Court should sanction respondent for his deliberate and willful act to frustrate the actions of the Court. She attached a copy of the complaint and submitted an Affidavit of Mailing stating that again a copy of the complaint was mailed at respondent's residential address in Angeles City as shown by Registry Receipt No. 3582.

On May 16, 2005, the Court anew issued a Show Cause Order to respondent as to why he should not be disciplinarily dealt with or held in contempt for failure to comply with the Resolution dated July 7, 2003 despite service of copy of the complaint by registered mail.[14]

On August 1, 2005, the Court noted the returned and unserved copy of the Show Cause Order dated May 16, 2005 sent to respondent at 238 Mayflower St., Ninoy Aquino Subd. under Registry Receipt No. 55621, with notation "RTS-Moved." It likewise required Bansig to submit the correct and present address of respondent.[15]

On September 12, 2005, Bansig manifested that respondent had consistently indicated in his correspondence with the Court No. 238 Mayflower St., Ninoy Aquino Subdivision, Angeles City as his residential address. However, all notices served upon him on said address were returned with a note "moved" by the mail server. Bansig averred that in Civil Case No. 59353, pending before the Regional Trial Court (*RTC*), Branch 1, Tuguegarao City, respondent entered his appearance as counsel with mailing address to be at "Unit 8, Halili Complex, 922 Aurora Blvd., Cubao, Quezon City."[16]

On February 13, 2006, the Court resolved to resend a copy of the Show Cause Order dated May 16, 2005 to respondent at his new address at Unit 8, Halili Complex, 922 Aurora Blvd., Cubao, Quezon City.[17]

[14] *Id.* at 39.

[15] *Id.* at 42.

[16] *Id.* at 43-44.

[17] *Id.* at 46.

On June 30, 2008, due to respondent's failure to comply with the Show Cause Order dated May 16, 2005, for failure to file his comment on this administrative complaint as required in the Resolution dated July 7, 2003, the Court resolved to: (a) IMPOSE upon Atty. Celera a FINE of ₱1,000.00 payable to the court, or a penalty of imprisonment of five (5) days if said fine is not paid, and (b) REQUIRE Atty. Celera to COMPLY with the Resolution dated July 7, 2003 by filing the comment required thereon.[18]

In a Resolution[19] dated January 27, 2010, it appearing that respondent failed to comply with the Court's Resolutions dated June 30, 2008 and July 7, 2003, the Court resolved to: (1) DISPENSE with the filing by respondent of his comment on the complaint; (2) ORDER the arrest of Atty. Celera; and (3) DIRECT the Director of the National Bureau of Investigation *(NBI)* to (a) ARREST and DETAIN Atty. Celera for non-compliance with the Resolution dated June 30, 2008; and (b) SUBMIT a report of compliance with the Resolution. The Court likewise resolved to REFER the complaint to the Integrated Bar of the Philippines for investigation, report and recommendation.[20]

However, the Return of Warrant[21] dated March 24, 2010, submitted by Atty. Frayn M. Banawa, Investigation Agent II, Anti-Graft Division of the NBI, showed that respondent cannot be located because neither Halili Complex nor No. 922 Aurora Blvd., at Cubao, Quezon City cannot be located. During surveillance, it appeared that the given address, *i.e.,* No. 922 Aurora Blvd., Cubao, Quezon City was a vacant lot with debris of a demolished building. Considering that the given address cannot be found or located and there were no leads to determine respondent's whereabouts, the warrant of arrest cannot be enforced.

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[18] *Id.* at 48.

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

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

[21] *Id.*

The Integrated Bar of the Philippines, meanwhile, in compliance with the Court's Resolution, reported that as per their records, the address of respondent is at No. 41 Hoover St., Valley View Royale Subd., Taytay, Rizal.

Respondent likewise failed to appear before the mandatory conference and hearings set by the Integrated Bar of the Philippines, Commission on Bar Discipline *(IBP-CBD),* despite several notices. Thus, in an Order dated August 4, 2010, Commissioner Rebecca Villanueva-Maala, of the IBP-CBD, declared respondent to be in default and the case was submitted for report and recommendation. The Order of Default was received by respondent as evidenced by a registry return receipt. However, respondent failed to take any action on the matter.

On January 3, 2011, the IBP-CBD, in its Report and Recommendation, recommended that respondent Atty. Celera be suspended for a period of two (2) years from the practice of law.

RULING

A disbarment case is *sui generis* for it is neither purely civil nor purely criminal, but is rather an investigation by the court into the conduct of its officers.[22] The issue to be determined is whether respondent is still fit to continue to be an officer of the court in the dispensation of justice. Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or in this case, the failure of respondent to answer the charges against him despite numerous notices.

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. For the Court to exercise its disciplinary powers, the case against the respondent must be established by

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[22] *In re Almacen,* No. L-27654, February 18, 1970, 31 SCRA 562.

clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.[23]

In the instant case, there is a preponderance of evidence that respondent contracted a second marriage despite the existence of his first marriage. The first marriage, as evidenced by the certified xerox copy of the Certificate of Marriage issued on October 3, 2001 by the City Civil Registry of Manila, Gloria C. Pagdilao, states that respondent Rogelio Juan A. Celera contracted marriage on May, 8, 1997 with Gracemarie R. Bunagan at the Church of Saint Augustine, Intramuros, Manila; the second marriage, however, as evidenced by the certified xerox copy of the Certificate of Marriage issued on October 4, 2001 by the City Civil Registry of San Juan, Manila, states that respondent Rogelio Juan A. Celera contracted marriage on January 8, 1998 with Ma. Cielo Paz Torres Alba at the Mary the Queen Church, Madison St., Greenhills, San Juan, Metro Manila.

Bansig submitted certified xerox copies of the marriage certificates to prove that respondent entered into a second marriage while the latter's first marriage was still subsisting. We note that the second marriage apparently took place barely a year from his first marriage to Bunagan which is indicative that indeed the first marriage was still subsisting at the time respondent contracted the second marriage with Alba.

The certified xerox copies of the marriage contracts, issued by a public officer in custody thereof, are admissible as the best evidence of their contents, as provided for under Section 7 of Rule 130 of the Rules of Court, to wit:

> Sec. 7. *Evidence admissible when original document is a public record*. – When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.

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[23] *Ferancullo v. Ferancullo,* 538 Phil. 501, 511 (2006).

Moreover, the certified xerox copies of the marriage certificates, other than being admissible in evidence, also clearly indicate that respondent contracted the second marriage while the first marriage is subsisting. By itself, the certified xerox copies of the marriage certificates would already have been sufficient to establish the existence of two marriages entered into by respondent. The certified xerox copies should be accorded the full faith and credence given to public documents. For purposes of this disbarment proceeding, these Marriage Certificates bearing the name of respondent are competent and convincing evidence to prove that he committed bigamy, which renders him unfit to continue as a member of the Bar.[24]

The Code of Professional Responsibility provides:

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 should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Respondent exhibited a deplorable lack of that degree of morality required of him as a member of the Bar. He made a mockery of marriage, a sacred institution demanding respect and dignity. His act of contracting a second marriage while his first marriage is subsisting constituted grossly immoral conduct and are grounds for disbarment under Section 27, Rule 138 of the Revised Rules of Court.[25]

This case cannot be fully resolved, however, without addressing rather respondent's defiant stance against the Court as

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[24] See *Villatuya v. Tabalingcos*, A.C. No. 6622, July 10, 2012, 676 SCRA 37.

[25] *Id.* at 53.

demonstrated by his repetitive disregard of its Resolution requiring him to file his comment on the complaint. This case has dragged on since 2002. In the span of more than 10 years, the Court has issued numerous directives for respondent's compliance, but respondent seemed to have preselected only those he will take notice of and the rest he will just ignore. The Court has issued several resolutions directing respondent to comment on the complaint against him, yet, to this day, he has not submitted any answer thereto. He claimed to have not received a copy of the complaint, thus, his failure to comment on the complaint against him. Ironically, however, whenever it is a show cause order, none of them have escaped respondent's attention. Even assuming that indeed the copies of the complaint had not reached him, he cannot, however, feign ignorance that there is a complaint against him that is pending before this Court which he could have easily obtained a copy had he wanted to.

The Court has been very tolerant in dealing with respondent's nonchalant attitude towards this case; accommodating respondent's endless requests, manifestations and prayers to be given a copy of the complaint. The Court, as well as Bansig, as evidenced by numerous affidavits of service, have relentlessly tried to reach respondent for more than a decade; sending copies of the Court's Resolutions and complaint to different locations - both office and residential addresses of respondent. However, despite earnest efforts of the Court to reach respondent, the latter, however conveniently offers a mere excuse of failure to receive the complaint. When said excuse seemed no longer feasible, respondent just disappeared. In a manner of speaking, respondent's acts were deliberate, maneuvering the liberality of the Court in order to delay the disposition of the case and to evade the consequences of his actions. Ultimately, what is apparent is respondent's deplorable disregard of the judicial process which this Court cannot countenance.

Clearly, respondent's acts constitute willful disobedience of the lawful orders of this Court, which under Section 27, Rule 138 of the Rules of Court is in itself alone a sufficient cause for suspension or disbarment. Respondent's cavalier attitude in

repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Respondent's conduct indicates a high degree of irresponsibility. We have repeatedly held that a Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively." Respondent's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in his character; it also underscores his disrespect of the Court's lawful orders which is only too deserving of reproof."[26]

Section 27, Rule 138 of the Rules of Court provides:

> Sec. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefor*. - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

Considering respondent's propensity to disregard not only the laws of the land but also the lawful orders of the Court, it only shows him to be wanting in moral character, honesty, probity and good demeanor. He is, thus, unworthy to continue as an officer of the court.

IN VIEW OF ALL THE FOREGOING, we find respondent ATTY. ROGELIO JUAN A. CELERA, guilty of grossly immoral conduct and willful disobedience of lawful orders rendering him unworthy of continuing membership in the legal profession. He is thus ordered **DISBARRED** from the practice of law and his name stricken off the Roll of Attorneys, effective immediately.

Let copies of this Decision be furnished the Office of the Bar Confidant, which shall forthwith record it in the personal

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[26] See *Sebastian v. Bajar,* 559 Phil. 211, 224 (2007).

file of respondent. All the Courts of the Philippines and the Integrated Bar of the Philippines shall disseminate copies thereof to all its Chapters.

SO ORDERED.

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

Sereno, C.J., on leave.

FIRST DIVISION

[A.C. No. 10135. January 15, 2014]

EDGARDO AREOLA, *complainant, vs.* **ATTY. MARIA VILMA MENDOZA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; INSTANT ADMINISTRATIVE COMPLAINT FOR GROSS MISCONDUCT AGAINST RESPONDENT PROFOUNDLY LACKS EVIDENCE TO SUPPORT THE ALLEGATIONS CONTAINED THEREIN.— After a judicious examination of the records, the Court finds that the instant Complaint against Atty. Mendoza profoundly lacks evidence to support the allegations contained therein. All Areola has are empty assertions against Atty. Mendoza that she demanded money from his co-detainees. The Court agrees with the IBP that Areola is not the proper party to file the Complaint against Atty. Mendoza. He is not even a client of Atty. Mendoza. He claims that he filed the Complaint on behalf of his co-detainees Seronda, Arca, Mirador and Spouses Perez, but it is apparent that no

document was submitted which would show that they authorized Areola to file a Complaint. They did not sign the Complaint he prepared. No affidavit was even executed by the said co-detainees to substantiate the matters Areola raised. Consequently, the Court rejects Areola's statements, especially as regards Atty. Mendoza's alleged demands of money. The Court agrees with the observations of the Investigating Commissioner that Areola initiated this complaint when he felt insulted because Atty. Mendoza refused to acknowledge the pleadings and motions he prepared for his co-detainees who are PAO clients of Atty. Mendoza. It appears that Areola is quite knowledgeable with Philippine laws. However, no matter how good he thinks he is, he is still not a lawyer. He is not authorized to give legal advice and file pleadings by himself before the courts. His familiarity with Philippine laws should be put to good use by cooperating with the PAO instead of filing baseless complaints against lawyers and other government authorities. It seems to the Court that Areola thinks of himself as more intelligent and better than Atty. Mendoza, based on his criticisms against her. In his Reply, he made fun of her grammatical errors and tagged her as using *carabao english*. He also called the PAO as "Pa-Amin Office" which seriously undermines the reputation of the PAO. While Areola may have been frustrated with the way the PAO is managing the significant number of cases it deals with, all the more should he exert efforts to utilize his knowledge to work with the PAO instead of maligning it.

2. ID.; ID.; RESPONDENT MADE IRRESPONSIBLE ADVICES TO HER CLIENTS IN VIOLATION OF RULE 1.02 AND RULE 15.07 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; RESPONDENT'S CARELESS REMARK IS UNCALLED FOR AND ONLY LESSENS THE CONFIDENCE OF THE PUBLIC IN OUR LEGAL SYSTEM.— Interestingly, Atty. Mendoza admitted that she advised her clients to approach the judge and plead for compassion so that their motions would be granted. This admission corresponds to one of Areola's charges against Atty. Mendoza—that she told her clients "*Iyak-iyakan lang ninyo si Judge Martin at palalayain na kayo. Malambot ang puso noon.*" Atty. Mendoza made it appear that the judge is easily moved if a party resorts to dramatic antics such as begging and crying in order for their cases to be dismissed. As such,

the Court agrees with the IBP Board of Governors that Atty. Mendoza made irresponsible advices to her clients in violation of *Rule 1.02* and *Rule 15.07* of the *Code of Professional Responsibility*. It is the mandate of *Rule 1.02* that "a lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system." *Rule 15.07* states that "a lawyer shall impress upon his client compliance with the laws and the principles of fairness." Atty. Mendoza's improper advice only lessens the confidence of the public in our legal system. Judges must be free to judge, without pressure or influence from external forces or factors according to the merits of a case. Atty. Mendoza's careless remark is uncalled for. It must be remembered that a lawyer's duty is not to his client but to the administration of justice. To that end, his client's success is wholly subordinate. His conduct ought to and must always be scrupulously observant of the law and ethics. Any means, not honorable, fair and honest which is resorted to by the lawyer, even in the pursuit of his devotion to his client's cause, is condemnable and unethical.

3. **ID.; ID.; RECOMMENDED PENALTY OF TWO (2) MONTHS SUSPENSION CONSIDERED EXCESSIVE AND NOT COMMENSURATE TO RESPONDENT'S INFRACTIONS; WHILE HER REMARK WAS INAPPROPRIATE AND UNBECOMING, HER COMMENT IS NOT DISPARAGING AND REPROACHFUL SO AS TO CAUSE DISHONOR AND DISGRACE TO THE JUDICIARY.—** The Court deems the penalty of suspension for two (2) months as excessive and not commensurate to Atty. Mendoza's infraction. Disbarment and suspension of a lawyer, being the most severe forms of disciplinary sanction, should be imposed with great caution and only in those cases where the misconduct of the lawyer as an officer of the court and a member of the bar is established by clear, convincing and satisfactory proof. The Court notes that when Atty. Mendoza made the remark "*Iyak-iyakan lang ninyo si Judge Martin at palalayain na kayo. Malambot ang puso noon*", she was not compelled by bad faith or malice. While her remark was inappropriate and unbecoming, her comment is not disparaging and reproachful so as to cause dishonor and disgrace to the Judiciary.

4. **ID.; ID.; IN ADMINISTRATIVE CASES, THE COURT MAY REFRAIN FROM IMPOSING ACTUAL PENALTIES IN**

THE PRESENCE OF MITIGATING FACTORS; THE COURT TAKES NOTE OF RESPONDENTS LACK OF ILL-MOTIVE AND HER BEING A PAO LAWYER AS HER MAIN SOURCE OF LIVELIHOOD AND THE FACT THAT THE COMPLAINT FILED AGAINST HER IS CLEARLY BASELESS.— In several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty. The Court takes note of Atty. Mendoza's lack of ill-motive in the present case and her being a PAO lawyer as her main source of livelihood. Furthermore, the complaint filed by Areola is clearly baseless and the only reason why this was ever given consideration was due to Atty. Mendoza's own admission. For these reasons, the Court deems it just to modify and reduce the penalty recommended by the IBP Board of Governors.

R E S O L U T I O N

REYES, *J.*:

This refers to the administrative complaint[1] filed by Edgardo D. Areola (Areola) a.k.a. Muhammad Khadafy against Atty. Maria Vilma Mendoza (Atty. Mendoza), from the Public Attorney's Office (PAO) for violation of her attorney's oath of office, deceit, malpractice or other gross misconduct in office under Section 27, Rule 138 of the Revised Rules of Court, and for violation of the Code of Professional Responsibility.

In the letter-complaint dated November 13, 2006 addressed to the Honorable Commissioners, Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP), Areola stated that he was filing the complaint in behalf of his co-detainees Allan Seronda, Aaron Arca, Joselito Mirador, Spouses Danilo Perez and Elizabeth Perez. He alleged that on October 23, 2006,

[1] *Rollo,* pp. 2-10.

during Prisoners' Week, Atty. Mendoza, visited the Antipolo City Jail and called all detainees with pending cases before the Regional Trial Court (RTC), Branch 73, Antipolo City where she was assigned, to attend her speech/lecture.[2] Areola claimed that Atty. Mendoza stated the following during her speech:

> **"*O kayong may mga kasong drugs na may pangpiyansa o pang-areglo ay maging praktikal sana kayo kung gusto ninyong makalaya agad. Upang makatiyak kayo na hindi masasayang ang pera ninyo ay sa akin ninyo ibigay o ng kamag-anak ninyo ang pera at ako na ang bahalang maglagay kay Judge Martin at Fiscal banqui; at kayong mga detenidong mga babae na no bail ang kaso sa drugs, iyak-iyakan lang ninyo si Judge Martin at palalayain na kayo. Malambot ang puso noon*."**[3]

Atty. Mendoza allegedly said that as she is handling more than 100 cases, all detainees should prepare and furnish her with their *Sinumpaang Salaysay* so that she may know the facts of their cases and their defenses and also to give her the necessary payment for their transcript of stenographic notes.[4]

Areola furthermore stated that when he helped his co-inmates in drafting their pleadings and filing motions before the RTC Branch 73, Antipolo City, Atty. Mendoza undermined his capability, to wit:

(1) Atty. Mendoza purportedly scolded detainee Seronda when she learned that the latter was assisted by Areola in filing a Motion to Dismiss for Violation of Republic Act No. 8942 (Speedy Trial Act of 1998) in the latter's criminal case for rape, which was pending before the RTC, Branch 73, Antipolo City. She got angrier when Seronda retorted that he allowed Areola to file the motion for him since there was nobody to help him.

(2) Areola assisted Spouses Danilo and Elizabeth Perez in filing their Joint Motion for Consolidation of Trial of Consolidated

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[2] *Id.* at 3.

[3] *Id.* at 4.

[4] *Id.*

Offenses and Joint Motion to Plead Guilty to a Lesser Offense. The spouses were likewise scolded for relying on the Complainant and alleged that the respondent asked for ₱2,000.00 to represent them.

(3) Areola helped another co-detainee, Mirador in filing an "*Ex-parte* Motion to Plead Guilty to a Lesser Offense." When Atty. Mendoza learned of it, she allegedly scolded Mirador and discredited Areola.[5]

In her unverified Answer[6] dated January 5, 2007, Atty. Mendoza asseverated that the filing of the administrative complaint against her is a harassment tactic by Areola as the latter had also filed several administrative cases against judges in the courts of Antipolo City including the jail warden of Taytay, Rizal where Areola was previously detained. These actuations show that Areola has a penchant for filing various charges against anybody who does not accede to his demand.[7] Atty. Mendoza contended that Areola is not a lawyer but represented himself to his co-detainees as one.[8] She alleged that the motions/pleadings prepared and/or filed by Areola were not proper.

After both parties failed to appear in the Mandatory Conference set by the IBP on August 15, 2008, the Investigating Commissioner considered the non-appearance as a waiver on their part. Nonetheless, in the interest of justice, both parties were required to submit their respective position papers.[9]

On December 29, 2009, the Investigating Commissioner issued his Report and Recommendation.[10] The Investigating Commissioner stated that the Complainant is knowledgeable in the field of law. While he may be of service to his fellow detainees,

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

[6] *Id.* at 33-39.

[7] *Id.* at 33.

[8] *Id.* at 35.

[9] *Id.* at 145.

[10] *Id.* at 141-150.

he must, however, be subservient to the skills and knowledge of a full fledged lawyer. He however found no convincing evidence to prove that Atty. Mendoza received money from Areola's co-detainees as alleged. The charges against Atty. Mendoza were also uncorroborated, *viz*:

> There is no convincing evidence that will prove that the respondent received money from the inmates since the charges are uncorroborated. In fact, the complainant is not the proper party to file the instant case since he was not directly affected or injured by the act/s being complained of. No single affidavits of the affected persons were attached to prove the said charges. Hence, it is simply hearsay in nature.[11]

Nonetheless, Atty. Mendoza admitted in her Answer that she advised her clients and their relatives to approach the judge and the fiscal "to beg and cry" so that their motions would be granted and their cases against them would be dismissed. To the Investigating Commissioner, this is highly unethical and improper as the act of Atty. Mendoza degrades the image of and lessens the confidence of the public in the judiciary.[12] The Investigating Commissioner recommended that Atty. Mendoza be suspended from the practice of law for a period of two (2) months.[13]

In a Notice of Resolution[14] dated November 19, 2011, the Board of Governors resolved to adopt and approve the Report and Recommendation of the Investigating Commissioner.

Atty. Mendoza sought to reconsider the Resolution[15] dated November 19, 2011 but the IBP Board of Governors denied her motion in its Resolution[16] dated May 10, 2013. The Resolution

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[11] *Id.* at 148.

[12] *Id.* at 149.

[13] *Id.* at 150.

[14] *Id.* at 140.

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

[16] *Id.* at 165.

of the IBP Board of Governors was transmitted to the Court for final action pursuant to Rule 139-B, Section 12, Paragraph b[17] of the Revised Rules of Court.

The Court's Ruling

After a judicious examination of the records, the Court finds that the instant Complaint against Atty. Mendoza profoundly lacks evidence to support the allegations contained therein. All Areola has are empty assertions against Atty. Mendoza that she demanded money from his co-detainees.

The Court agrees with the IBP that Areola is not the proper party to file the Complaint against Atty. Mendoza. He is not even a client of Atty. Mendoza. He claims that he filed the Complaint on behalf of his co-detainees Seronda, Arca, Mirador and Spouses Perez, but it is apparent that no document was submitted which would show that they authorized Areola to file a Complaint. They did not sign the Complaint he prepared. No affidavit was even executed by the said co-detainees to substantiate the matters Areola raised. Consequently, the Court rejects Areola's statements, especially as regards Atty. Mendoza's alleged demands of money.

The Court agrees with the observations of the Investigating Commissioner that Areola initiated this complaint when he felt insulted because Atty. Mendoza refused to acknowledge the pleadings and motions he prepared for his co-detainees who are PAO clients of Atty. Mendoza.[18] It appears that Areola is

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[17] Rule 139-B, Section 12. Review and decision by the Board of Governors. -

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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.

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[18] *Rollo*, p. 147.

quite knowledgeable with Philippine laws. However, no matter how good he thinks he is, he is still not a lawyer. He is not authorized to give legal advice and file pleadings by himself before the courts. His familiarity with Philippine laws should be put to good use by cooperating with the PAO instead of filing baseless complaints against lawyers and other government authorities. It seems to the Court that Areola thinks of himself as more intelligent and better than Atty. Mendoza, based on his criticisms against her. In his Reply,[19] he made fun of her grammatical errors and tagged her as using *carabao english*[20]. He also called the PAO as "Pa-Amin Office"[21] which seriously undermines the reputation of the PAO. While Areola may have been frustrated with the way the PAO is managing the significant number of cases it deals with, all the more should he exert efforts to utilize his knowledge to work with the PAO instead of maligning it.

Interestingly, Atty. Mendoza admitted that she advised her clients to approach the judge and plead for compassion so that their motions would be granted. This admission corresponds to one of Areola's charges against Atty. Mendoza—that she told her clients "*Iyak-iyakan lang ninyo si Judge Martin at palalayain na kayo. Malambot ang puso noon.*" Atty. Mendoza made it appear that the judge is easily moved if a party resorts to dramatic antics such as begging and crying in order for their cases to be dismissed.

As such, the Court agrees with the IBP Board of Governors that Atty. Mendoza made irresponsible advices to her clients in violation of *Rule 1.02* and *Rule 15.07* of the *Code of Professional Responsibility*. It is the mandate of *Rule 1.02* that "a lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system." *Rule 15.07* states that "a lawyer shall impress upon his client compliance with the laws and the principles of fairness."

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[19] *Id.* at 48-57.

[20] *Id.* at 55.

[21] *Id.* at 4.

Atty. Mendoza's improper advice only lessens the confidence of the public in our legal system. Judges must be free to judge, without pressure or influence from external forces or factors[22] according to the merits of a case. Atty. Mendoza's careless remark is uncalled for.

It must be remembered that a lawyer's duty is not to his client but to the administration of justice. To that end, his client's success is wholly subordinate. His conduct ought to and must always be scrupulously observant of the law and ethics. Any means, not honorable, fair and honest which is resorted to by the lawyer, even in the pursuit of his devotion to his client's cause, is condemnable and unethical.[23]

In spite of the foregoing, the Court deems the penalty of suspension for two (2) months as excessive and not commensurate to Atty. Mendoza's infraction. Disbarment and suspension of a lawyer, being the most severe forms of disciplinary sanction, should be imposed with great caution and only in those cases where the misconduct of the lawyer as an officer of the court and a member of the bar is established by clear, convincing and satisfactory proof.[24] The Court notes that when Atty. Mendoza made the remark "*Iyak-iyakan lang ninyo si Judge Martin at palalayain na kayo. Malambot ang puso noon*", she was not compelled by bad faith or malice. While her remark was inappropriate and unbecoming, her comment is not disparaging and reproachful so as to cause dishonor and disgrace to the Judiciary.

In several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse,

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[22] *Ala v. Judge Peras*, A.M. No. RTJ-11-2283, November 16, 2011, 660 SCRA 193, 214.

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

[24] *Buado v. Layag,* 479 Phil. 808, 817 (2004); *Berbano v. Atty. Barcelona,* 457 Phil. 331, 341 (2004).

family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.[25] The Court takes note of Atty. Mendoza's lack of ill-motive in the present case and her being a PAO lawyer as her main source of livelihood.[26] Furthermore, the complaint filed by Areola is clearly baseless and the only reason why this was ever given consideration was due to Atty. Mendoza's own admission. For these reasons, the Court deems it just to modify and reduce the penalty recommended by the IBP Board of Governors.

WHEREFORE, premises considered, the Court finds Atty. Maria Vilma Mendoza GUILTY of giving improper advice to her clients in violation of Rule 1.02 and Rule 15.07 of the Code of Professional Responsibility and is accordingly meted out the penalty of **REPRIMAND**, with the **STERN WARNING** that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

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

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[25] *Rayos v. Atty. Hernandez*, 544 Phil. 447, 463 (2007).

[26] *Rollo*, p. 159.

THIRD DIVISION

[A.M. No. P-12-3043. January 15, 2014]
(Formerly OCA I.P.I. No. 08-2953-P)

ATTY. MARCOS R. SUNDIANG, *complainant, vs*. **ERLITO DS. BACHO, Sheriff IV, Regional Trial Court, Branch 124, Caloocan City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; SHERIFFS; RESPONDENT SHERIFF VIOLATED THE PROCEDURAL STEPS IN SECTION 10, RULE 141 OF THE RULES OF COURT AS AMENDED BY A.M. NO. 04-2-04-SC IN THE IMPLEMENTATION OF WRITS OR PROCESSES OF THE COURT FOR WHICH EXPENSES ARE TO BE INCURRED.— It is clear from the Rule that before an interested party pays the expenses of a sheriff, the latter should first estimate the amount which will then be submitted to the court for its approval. Upon approval, the interested party deposits the amount with the clerk of court and *ex officio* sheriff. The latter then disburses the amount to the sheriff assigned to execute the writ. Thereafter, the amount received shall then be liquidated and any unspent amount shall be refunded to the party making the deposit. From there on, the sheriff shall render a full report. The failure of the sheriff to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor, makes him administratively liable. In the instant case, none of these procedures were complied with by respondent sheriff. He never submitted an estimate to the court for approval, but, on his own, demanded and received sums of money from the complainant. Neither did he advise the complainant that the sheriff's expenses approved by the court should be deposited with the clerk of court and *ex-officio* sheriff. Furthermore, no liquidation was ever submitted to the court.

2. ID.; ID.; ID.; ID.; SHERIFFS ARE NOT ALLOWED TO RECEIVE ANY VOLUNTARY PAYMENTS FROM PARTIES IN THE COURSE OF THE PERFORMANCE OF THEIR DUTIES; ANY AMOUNT RECEIVED BY SHERIFFS IN EXCESS OF THE LAWFUL FEES ALLOWED IN SECTION 10 IS AN UNLAWFUL EXACTION THAT RENDERS THEM LIABLE FOR GRAVE MISCONDUCT, DISHONESTY, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— It must be stressed that sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. Nor can a sheriff request or ask sums of money from a party-litigant without observing the proper procedural steps. Even assuming that such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will complainant's acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense. Any amount received by sheriffs in excess of the lawful fees allowed in Section 10 is an unlawful exaction. It constitutes unauthorized fees. This renders them liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service.

D E C I S I O N

PERALTA, *J.*:

The instant administrative case arose from the complaint filed by Atty. Marcos P. Sundiang,[1] charging respondent Erlito DS. Bacho, Sheriff IV of the Regional Trial Court of Caloocan City, Branch 124 (*RTC*), with extortion, neglect of duty and violation of Republic Act No. 3019.

The antecedents are as follows:

Plaintiffs spouses Rene Castañeda and Nenita P. Castañeda filed a complaint for *accion publiciana* against defendants Pedro

[1] Plaintiffs' counsel in Civil Case No. C-17890 entitled *Sps. Rene Castañeda and Nenita P. Castañeda v. Pedro and Rosie Galacan, Vicente Quesada, Pablo Quesada, Antonio and Norma Bagares.*

and Rosie Galacan, Vicente Quesada, Pablo Quesada, Antonio and Norma Bagares for allegedly depriving them of the use and possession of a parcel of residential lot registered in their name, located in Camarin, Caloocan City.

After trial, the RTC rendered a Decision[2] on October 8, 2001 in favor of the plaintiffs. The RTC ruled, among other things, that as owners of the subject property, plaintiffs have a better right over the property as against the defendants. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants and all persons claiming right under them, directing the latter to:
>
> 1. Vacate and surrender peaceful possession to the plaintiffs of the subject property, described under Transfer Certificate of Title No. 4844, located at Lot 7, Block 26, Maligaya Park, Barangay 177, Zone 15, Purok 4, Camarin, Caloocan City;
> 2. Pay the plaintiffs moral damages in the amount of ₱50,000.00;
> 3. Pay attorney's fees in the amount of Ten Thousand Pesos (₱10,000.00); and
> 4. Costs of suit.
>
> Defendants' counterclaim is DISMISSED for lack of merit.
>
> SO ORDERED.[3]

Defendants appealed before the Court of Appeals (*CA*), which affirmed the Decision of the RTC in its Decision dated August 5, 2003. Defendants then sought recourse before the Supreme Court, but the Court denied the petition in a Resolution dated January 28, 2004. In a Resolution dated March 29, 2004, the Court denied defendants' motion for reconsideration with finality.

On October 20, 2004, a Writ of Execution was issued by the RTC in favor of the plaintiffs. However, since the defendants

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[2] *Rollo*, pp. 3-15.

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

refused to vacate the premises and remove the structures therein, the writ was not implemented. Hence, plaintiffs filed a motion praying for the issuance of writ of demolition. On November 12, 2004, the RTC issued the Writ of Demolition[4] prayed for.

Complainant avers that prior to the issuance of the writ of demolition, respondent sheriff demanded One Hundred Fifty Thousand Pesos (₱150,000.00) for the implementation of the writ. Consequently, respondent sheriff received the following amounts: Sixty Thousand Pesos (₱60,000.00) on November 23, 2004; Fifty Thousand Pesos (₱50,000.00) on December 10, 2004; and Forty Thousand Pesos (₱40,000.00) on or about August 15, 2005. Despite receipt of the amounts, however, respondent sheriff failed to place the plaintiffs in possession of the subject property because he failed to remove the structures inside and in front of the subject property; hence, ingress and egress to the property was hindered.

On the other hand, respondent sheriff averred that he received the amount of Sixty Thousand Pesos (₱60,000.00) from the complainant. However, he denied that he demanded such payment for his personal benefit. He explained that the amount was used to pay for the food and fees of the laborers, who were hired to undertake the demolition of the concrete structures on the subject property and those contracted to provide security for the workers during the demolition. He found it difficult to evict the defendants because the latter employed various means to prevent the implementation of the writ of demolition issued by the RTC. Nevertheless, respondent sheriff claimed that he was able to fully implement the writ and that the subject property was delivered to the possession of the plaintiffs on December 10, 2004, as evidenced by his Sheriff's Return. After the demolition and turn-over, however, some of the defendants and unidentified persons re-entered the subject property and reconstructed their houses thereon. Hence, the RTC found them guilty of indirect contempt and were meted the penalty of fine. Respondent sheriff further contended that the task of removing the shanties erected

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

by the defendants outside the subject property is the function of the local government concerned and no longer the duty of respondent sheriff.

In a Resolution[5] dated November 23, 2009, the Court referred the case to the Executive Judge of the RTC, Caloocan City, for investigation, report and recommendation. In her Report and Recommendation[6] dated September 22, 2010, Investigating Judge Thelma Canlas Trinidad-Pe Aguirre recommended that the complaint against respondent sheriff be dismissed for want of evidence. Judge Trinidad-Pe Aguirre's Report was referred to the Office of the Court Administrator (*OCA*) for evaluation, report and recommendation.

In a Memorandum[7] dated November 10, 2011, the OCA recommended that respondent sheriff be held liable for conduct prejudicial to the best interest of the service, and that he be suspended for a period of one (1) year. The OCA found that respondent disregarded the procedural steps laid down by Section 9 (now Section 10), Rule 141 of the Rules of Court regarding the sheriff's expenses in executing the writ. The OCA's recommendation provides:

x x x In view of the foregoing, it is most respectfully recommended for Your Honor's consideration that:

1. The instant administrative matter be RE-DOCKETED as a regular administrative case against respondent Sheriff ERLITO DS. BACHO, Sheriff IV, Regional Trial Court, Branch 124, Caloocan City; and

2. Respondent Sheriff Erlito DS. Bacho be found GUILTY of CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and that the penalty of SUSPENSION from work for a period of ONE (1) YEAR be imposed upon him.

Respectfully submitted.[8]

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[5] *Id.* at 55.

[6] *Id.* at 59-70.

[7] *Id.* at 266-279.

[8] *Id.* at 279.

The Court's Ruling

We agree with the conclusion of the OCA that respondent sheriff violated Section 10, Rule 141 of the Rules of Court, but do not agree with the recommended penalty.

In the implementation of writs or processes of the court for which expenses are to be incurred, sheriffs are mandated to comply with Section 10, Rule 141 of the Rules of Court, as amended by A.M. No. 04-2-04-SC, the pertinent portion of which reads:

> 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 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 with 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.[9]

It is clear from the Rule that before an interested party pays the expenses of a sheriff, the latter should first estimate the amount which will then be submitted to the court for its approval. Upon approval, the interested party deposits the amount with the clerk of court and *ex officio* sheriff. The latter then disburses the amount to the sheriff assigned to execute the writ. Thereafter, the amount received shall then be liquidated and any unspent

[9] Emphasis supplied.

amount shall be refunded to the party making the deposit. From there on, the sheriff shall render a full report.[10]

The failure of the sheriff to observe the following: (1) prepare an estimate of expenses to be incurred in executing the writ; (2) ask for the court's approval of his estimates; (3) render an accounting; and (4) issue an official receipt for the total amount he received from the judgment debtor,[11] makes him administratively liable.

In the instant case, none of these procedures were complied with by respondent sheriff. He never submitted an estimate to the court for approval, but, on his own, demanded and received sums of money from the complainant. Neither did he advise the complainant that the sheriff's expenses approved by the court should be deposited with the clerk of court and *ex-officio* sheriff. Furthermore, no liquidation was ever submitted to the court.

It must be stressed that sheriffs are not allowed to receive any *voluntary* payments from parties in the course of the performance of their duties. Nor can a sheriff request or ask sums of money from a party-litigant without observing the proper procedural steps. Even assuming that such payments were indeed given and received in good faith, this fact alone would not dispel the suspicion that such payments were made for less than noble purposes. Neither will complainant's acquiescence or consent to such expenses absolve the sheriff for his failure to secure the prior approval of the court concerning such expense.[12]

Any amount received by sheriffs in excess of the lawful fees allowed in Section 10 is an unlawful exaction. It constitutes unauthorized fees. This renders them liable for grave misconduct,

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[10] *Urbanozo v. Flora*, A.M. No. P-06-2169 (Formerly OCA I.P.I. No. 05-2251-P), March 28, 2008, 550 SCRA 16, 24.

[11] *Gonzalez v. Calo,* A.M. No. P-12-3028 (Formerly OCA I.P.I. No. 11-3649-P), April 11, 2012, 669 SCRA 109, 120.

[12] *Id.* at 120-121.

dishonesty, and conduct prejudicial to the best interest of the service.[13]

Section 52 (A) (20), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service classifies conduct prejudicial to the best interest of the service as a grave offense, which is punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and by dismissal for the second offense. The Court, however, deems it appropriate to impose the penalty of suspension of six (6) months and one (1) day, which is within the range of the penalty, instead of the maximum penalty of one (1) year, as recommended by the OCA in light of the circumstances surrounding the case and prevailing jurisprudence on first-time offenders of this nature.

WHEREFORE, premises considered, respondent Erlito DS. Bacho, Sheriff IV, Regional Trial Court, Branch 124, Caloocan City, is found **GUILTY** of Conduct Prejudicial to the Best Interest of the Service and is meted the penalty of **SUSPENSION** from service, without pay, for a period of six (6) months and one (1) day. He is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

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

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[13] *Hofer v. Tan,* 555 Phil. 168, 180 (2007).

FIRST DIVISION

[G.R. No. 156407. January 15, 2014]

THELMA M. ARANAS, *petitioner, vs.* **TERESITA V. MERCADO, FELIMON V. MERCADO, CARMENCITA M. SUTHERLAND, RICHARD V. MERCADO, MA. TERESITA M. ANDERSON, and FRANKLIN L. MERCADO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL AN ORDER DENYING A MOTION FOR APPROVAL OF THE INVENTORY OF ESTATE PROPERTIES; APPEAL WOULD NOT BE THE CORRECT RECOURSE.— The propriety of the special action for *certiorari* as a remedy depended on whether the assailed orders of the RTC were final or interlocutory in nature. In *Pahila-Garrido v. Tortogo*, the Court [ruled] x x x The remedy against an interlocutory order not subject of an appeal is an appropriate special civil action under Rule 65, provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. Then is *certiorari* under Rule 65 allowed to be resorted to. The assailed order of March 14, 2001 denying Teresita's motion for the approval of the inventory and the order dated May 18, 2001 denying her motion for reconsideration were interlocutory. This is because the inclusion of the properties in the inventory was not yet a final determination of their ownership. Hence, the approval of the inventory and the concomitant determination of the ownership as basis for inclusion or exclusion from the inventory were provisional and subject to revision at anytime during the course of the administration proceedings. x x x On the other hand, an appeal would not be the correct recourse for Teresita, *et al.* to take against the assailed orders. The *final judgment rule* embodied in the first paragraph of Section 1, Rule 41, *Rules of Court*, which also governs appeals in special proceedings, stipulates that only the judgments, final orders (and resolutions) of a court of law "that completely disposes of the case, or of a particular matter therein when declared by

these Rules to be appealable" may be the subject of an appeal in due course. The same rule states that an interlocutory order or resolution (interlocutory because it deals with preliminary matters, or that the trial on the merits is yet to be held and the judgment rendered) is expressly made non-appealable.

2. ID.; SPECIAL PROCEEDINGS; LETTERS OF ADMINISTRATION; THE REGIONAL TRIAL COURT (RTC) IS VESTED WITH WIDE DISCRETION ON THE ISSUE OF WHAT PROPERTIES SHOULD BE INCLUDED IN THE INVENTORY; SUCH DETERMINATION IS PROVISIONAL.— The objective of the *Rules of Court* in requiring the inventory and appraisal of the estate of the decedent is "to aid the court in revising the accounts and determining the liabilities of the executor or the administrator, and in making a final and equitable distribution (partition) of the estate and otherwise to facilitate the administration of the estate." Hence, the RTC that presides over the administration of an estate is vested with wide discretion on the question of what properties should be included in the inventory. According to *Peralta v. Peralta*, the CA cannot impose its judgment in order to supplant that of the RTC on the issue of which properties are to be included or excluded from the inventory in the absence of "positive abuse of discretion," for in the administration of the estates of deceased persons, "the judges enjoy ample discretionary powers and the appellate courts should not interfere with or attempt to replace the action taken by them, unless it be shown that there has been a positive abuse of discretion." As long as the RTC commits no patently grave abuse of discretion, its orders must be respected as part of the regular performance of its judicial duty. There is no dispute that the jurisdiction of the trial court as an intestate court is special and limited. The trial court cannot adjudicate title to properties claimed to be a part of the estate but are claimed to belong to third parties by title adverse to that of the decedent and the estate, not by virtue of any right of inheritance from the decedent. All that the trial court can do regarding said properties is to determine whether or not they should be included in the inventory or properties to be administered by the administrator. Such determination is provisional and may be still revised.

3. ID.; ID.; ID.; ID.; WHERE THE RTC ACTED WITH CIRCUMSPECTION AND WITHOUT PATENT GRAVE ABUSE OF DISCRETION, ITS ORDER MUST BE RESPECTED.— The determination of which properties should be excluded from or included in the inventory of estate properties was well within the authority and discretion of the RTC as an intestate court. In making its determination, the RTC acted with circumspection, and proceeded under the guiding policy that it was best to include all properties in the possession of the administrator or were known to the administrator to belong to Emigdio rather than to exclude properties that could turn out in the end to be actually part of the estate. As long as the RTC commits no patent grave abuse of discretion, its orders must be respected as part of the regular performance of its judicial duty.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The probate court is authorized to determine the issue of ownership of properties for purposes of their inclusion or exclusion from the inventory to be submitted by the administrator, but its determination shall only be provisional unless the interested parties are all heirs of the decedent, or the question is one of collation or advancement, or the parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired. Its jurisdiction extends to matters incidental or collateral to the settlement and distribution of the estate, such as the determination of the status of each heir and whether property included in the inventory is the conjugal or exclusive property of the deceased spouse.

Antecedents

Emigdio S. Mercado (Emigdio) died intestate on January 12, 1991, survived by his second wife, Teresita V. Mercado (Teresita),

and their five children, namely: Allan V. Mercado, Felimon V. Mercado, Carmencita M. Sutherland, Richard V. Mercado, and Maria Teresita M. Anderson; and his two children by his first marriage, namely: respondent Franklin L. Mercado and petitioner Thelma M. Aranas (Thelma).

Emigdio inherited and acquired real properties during his lifetime. He owned corporate shares in Mervir Realty Corporation (Mervir Realty) and Cebu Emerson Transportation Corporation (Cebu Emerson). He assigned his real properties in exchange for corporate stocks of Mervir Realty, and sold his real property in Badian, Cebu (Lot 3353 covered by Transfer Certificate of Title No. 3252) to Mervir Realty.

On June 3, 1991, Thelma filed in the Regional Trial Court (RTC) in Cebu City a petition for the appointment of Teresita as the administrator of Emigdio's estate (Special Proceedings No. 3094-CEB).[1] The RTC granted the petition considering that there was no opposition. The letters of administration in favor of Teresita were issued on September 7, 1992.

As the administrator, Teresita submitted an inventory of the estate of Emigdio on December 14, 1992 for the consideration and approval by the RTC. She indicated in the inventory that at the time of his death, Emigdio had "left no real properties but only personal properties" worth ₱6,675,435.25 in all, consisting of cash of ₱32,141.20; furniture and fixtures worth ₱20,000.00; pieces of jewelry valued at ₱15,000.00; 44,806 shares of stock of Mervir Realty worth ₱6,585,585.80; and 30 shares of stock of Cebu Emerson worth ₱22,708.25.[2]

Claiming that Emigdio had owned other properties that were excluded from the inventory, Thelma moved that the RTC direct Teresita to amend the inventory, and to be examined regarding it. The RTC granted Thelma's motion through the order of January 8, 1993.

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[1] Instead of *administratrix,* the gender-fair term *administrator* is used.

[2] *Rollo*, p. 118.

On January 21, 1993, Teresita filed a compliance with the order of January 8, 1993,[3] supporting her inventory with copies of three certificates of stocks covering the 44,806 Mervir Realty shares of stock;[4] the deed of assignment executed by Emigdio on January 10, 1991 involving real properties with the market value of ₱4,440,651.10 in exchange for 44,407 Mervir Realty shares of stock with total par value of ₱4,440,700.00;[5] and the certificate of stock issued on January 30, 1979 for 300 shares of stock of Cebu Emerson worth ₱30,000.00.[6]

On January 26, 1993, Thelma again moved to require Teresita to be examined under oath on the inventory, and that she (Thelma) be allowed 30 days within which to file a formal opposition to or comment on the inventory and the supporting documents Teresita had submitted.

On February 4, 1993, the RTC issued an order expressing the need for the parties to present evidence and for Teresita to be examined to enable the court to resolve the motion for approval of the inventory.[7]

On April 19, 1993, Thelma opposed the approval of the inventory, and asked leave of court to examine Teresita on the inventory.

With the parties agreeing to submit themselves to the jurisdiction of the court on the issue of what properties should be included in or excluded from the inventory, the RTC set dates for the hearing on that issue.[8]

Ruling of the RTC

After a series of hearings that ran for almost eight years, the RTC issued on March 14, 2001 an order finding and holding

[3] *Id.* at 125.

[4] *Id.* at 127-129.

[5] *Id.* at 130.

[6] *Id.* at 134.

[7] *Id.* at 56.

[8] *Id.* at 135.

that the inventory submitted by Teresita had excluded properties that should be included, and accordingly ruled:

> WHEREFORE, in view of all the foregoing premises and considerations, the Court hereby denies the administratrix's motion for approval of inventory. The Court hereby orders the said administratrix to re-do the inventory of properties which are supposed to constitute as the estate of the late Emigdio S. Mercado by including therein the properties mentioned in the last five immediately preceding paragraphs hereof and then submit the revised inventory within sixty (60) days from notice of this order.
>
> The Court also directs the said administratrix to render an account of her administration of the estate of the late Emigdio S. Mercado which had come to her possession. She must render such accounting within sixty (60) days from notice hereof.
>
> SO ORDERED.[9]

On March 29, 2001, Teresita, joined by other heirs of Emigdio, timely sought the reconsideration of the order of March 14, 2001 on the ground that one of the real properties affected, Lot No. 3353 located in Badian, Cebu, had already been sold to Mervir Realty, and that the parcels of land covered by the deed of assignment had already come into the possession of and registered in the name of Mervir Realty.[10] Thelma opposed the motion.

On May 18, 2001, the RTC denied the motion for reconsideration,[11] stating that there was no cogent reason for the reconsideration, and that the movants' agreement as heirs to submit to the RTC the issue of what properties should be included or excluded from the inventory already estopped them from questioning its jurisdiction to pass upon the issue.

Decision of the CA

Alleging that the RTC thereby acted with grave abuse of discretion in refusing to approve the inventory, and in ordering

[9] *Id.* at 140.

[10] *Id.* at 24.

[11] *Id.* at 156.

her as administrator to include real properties that had been transferred to Mervir Realty, Teresita, joined by her four children and her stepson Franklin, assailed the adverse orders of the RTC promulgated on March 14, 2001 and May 18, 2001 by petition for *certiorari*, stating:

I

THE HONORABLE RESPONDENT JUDGE HAS COMMITTED GRAVE ABUSE OF JURISDICTION (*sic*) AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT THE REAL PROPERTY WHICH WAS SOLD BY THE LATE EMIGDIO S. MERCADO DURING HIS LIFETIME TO A PRIVATE CORPORATION (MERVIR REALTY CORPORATION) BE INCLUDED IN THE INVENTORY OF THE ESTATE OF THE LATE EMIGDIO S. MERCADO.

II

THE HONORABLE RESPONDENT JUDGE HAS COMMITTED GRAVE ABUSE OF JURISDICTION (*sic*) AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT REAL PROPERTIES WHICH ARE IN THE POSSESSION OF AND ALREADY REGISTERED IN THE NAME (OF) PRIVATE CORPORATION (MERVIR REALTY CORPORATION) BE INCLUDED IN THE INVENTORY OF THE ESTATE OF THE LATE EMIGDIO S. MERCADO.

III

THE HONORABLE RESPONDENT JUDGE HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN HOLDING THAT PETITIONERS ARE NOW ESTOPPED FROM QUESTIONING ITS JURISDICTION IN PASSING UPON THE ISSUE OF WHAT PROPERTIES SHOULD BE INCLUDED IN THE INVENTORY OF THE ESTATE OF THE LATE EMIGDIO MERCADO.[12]

On May 15, 2002, the CA partly granted the petition for *certiorari*, disposing as follows:[13]

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[12] *Id.* at 25.

[13] *Id.* at 21-34; penned by Associate Justice Mercedes Gozo-Dadole (retired), and concurred by Associate Justice Salvador J. Valdez, Jr. (retired/deceased) and Associate Justice Amelita G. Tolentino.

WHEREFORE, FOREGOING PREMISES CONSIDERED, this petition is **GRANTED partially.** The assailed Orders dated March 14, 2001 and May 18, 2001 are hereby reversed and set aside insofar as the inclusion of parcels of land known as Lot No. 3353 located at Badian, Cebu with an area of 53,301 square meters subject matter of the Deed of Absolute Sale dated November 9, 1989 and the various parcels of land subject matter of the Deeds of Assignment dated February 17, 1989 and January 10, 1991 in the revised inventory to be submitted by the administratrix is concerned and **affirmed** in all other respects.

SO ORDERED.

The CA opined that Teresita, *et al.* had properly filed the petition for *certiorari* because the order of the RTC directing a new inventory of properties was interlocutory; that pursuant to Article 1477 of the *Civil Code*, to the effect that the ownership of the thing sold "shall be transferred to the vendee" upon its "actual and constructive delivery," and to Article 1498 of the *Civil Code*, to the effect that the sale made through a public instrument was equivalent to the delivery of the object of the sale, the sale by Emigdio and Teresita had transferred the ownership of Lot No. 3353 to Mervir Realty because the deed of absolute sale executed on November 9, 1989 had been notarized; that Emigdio had thereby ceased to have any more interest in Lot 3353; that Emigdio had assigned the parcels of land to Mervir Realty as early as February 17, 1989 "for the purpose of saving, as in avoiding taxes with the difference that in the Deed of Assignment dated January 10, 1991, additional seven (7) parcels of land were included"; that as to the January 10, 1991 deed of assignment, Mervir Realty had been "even at the losing end considering that such parcels of land, subject matter(s) of the Deed of Assignment dated February 12, 1989, were again given monetary consideration through shares of stock"; that even if the assignment had been based on the deed of assignment dated January 10, 1991, the parcels of land could not be included in the inventory "considering that there is nothing wrong or objectionable about the estate planning scheme"; that the RTC, as an intestate court, also had no power to take cognizance of and determine the issue of title to property registered

in the name of third persons or corporation; that a property covered by the Torrens system should be afforded the presumptive conclusiveness of title; that the RTC, by disregarding the presumption, had transgressed the clear provisions of law and infringed settled jurisprudence on the matter; and that the RTC also gravely abused its discretion in holding that Teresita, *et al*. were estopped from questioning its jurisdiction because of their agreement to submit to the RTC the issue of which properties should be included in the inventory.

The CA further opined as follows:

> In the instant case, public respondent court erred when it ruled that petitioners are estopped from questioning its jurisdiction considering that they have already agreed to submit themselves to its jurisdiction of determining what properties are to be included in or excluded from the inventory to be submitted by the administratrix, because actually, a reading of petitioners' Motion for Reconsideration dated March 26, 2001 filed before public respondent court clearly shows that petitioners are not questioning its jurisdiction but the manner in which it was exercised for which they are not estopped, since that is their right, considering that there is grave abuse of discretion amounting to lack or in excess of limited jurisdiction when it issued the assailed Order dated March 14, 2001 denying the administratrix's motion for approval of the inventory of properties which were already titled and in possession of a third person that is, Mervir Realty Corporation, a private corporation, which under the law possessed a personality distinct and separate from its stockholders, and in the absence of any cogency to shred the veil of corporate fiction, the presumption of conclusiveness of said titles in favor of Mervir Realty Corporation should stand undisturbed.
>
> Besides, public respondent court acting as a probate court had no authority to determine the applicability of the doctrine of piercing the veil of corporate fiction and even if public respondent court was not merely acting in a limited capacity as a probate court, private respondent nonetheless failed to adjudge competent evidence that would have justified the court to impale the veil of corporate fiction because to disregard the separate jurisdictional personality of a corporation, the wrongdoing must be clearly and convincingly established since it cannot be presumed.[14]

[14] *Rollo*, pp. 32-33.

On November 15, 2002, the CA denied the motion for reconsideration of Teresita, *et al*.[15]

Issue

Did the CA properly determine that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction in directing the inclusion of certain properties in the inventory notwithstanding that such properties had been either transferred by sale or exchanged for corporate shares in Mervir Realty by the decedent during his lifetime?

Ruling of the Court

The appeal is meritorious.

I
Was *certiorari* the proper recourse to assail the questioned orders of the RTC?

The first issue to be resolved is procedural. Thelma contends that the resort to the special civil action for *certiorari* to assail the orders of the RTC by Teresita and her co-respondents was not proper.

Thelma's contention cannot be sustained.

The propriety of the special civil action for *certiorari* as a remedy depended on whether the assailed orders of the RTC were final or interlocutory in nature. In *Pahila-Garrido v. Tortogo*,[16] the Court distinguished between *final* and *interlocutory* orders as follows:

> The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case

[15] *Rollo*, p. 35.

[16] G.R. No. 156358, August 17, 2011, 655 SCRA 553, 566-567.

but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: *does the order or judgment leave something to be done in the trial court with respect to the merits of the case*? If it does, the order or judgment is interlocutory; otherwise, it is final.

The order dated November 12, 2002, which granted the application for the writ of preliminary injunction, was an interlocutory, not a final, order, and should not be the subject of an appeal. The reason for disallowing an appeal from an interlocutory order is to avoid multiplicity of appeals in a single action, which necessarily suspends the hearing and decision on the merits of the action during the pendency of the appeals. Permitting multiple appeals will necessarily delay the trial on the merits of the case for a considerable length of time, and will compel the adverse party to incur unnecessary expenses, for one of the parties may interpose as many appeals as there are incidental questions raised by him and as there are interlocutory orders rendered or issued by the lower court. An interlocutory order may be the subject of an appeal, but only after a judgment has been rendered, with the ground for appealing the order being included in the appeal of the judgment itself.

The remedy against an interlocutory order not subject of an appeal is an appropriate special civil action under Rule 65, provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. Then is *certiorari* under Rule 65 allowed to be resorted to.

The assailed order of March 14, 2001 denying Teresita's motion for the approval of the inventory and the order dated May 18, 2001 denying her motion for reconsideration were interlocutory. This is because the inclusion of the properties in the inventory was not yet a final determination of their ownership. Hence, the approval of the inventory and the concomitant determination of the ownership as basis for inclusion or exclusion from the inventory were provisional and subject to revision at anytime during the course of the administration proceedings.

In *Valero Vda. De Rodriguez v. Court of Appeals*,[17] the Court, in affirming the decision of the CA to the effect that the order of the intestate court excluding certain real properties from the inventory was interlocutory and could be changed or modified at anytime during the course of the administration proceedings, held that the order of exclusion was not a final but an interlocutory order "in the sense that it did not settle once and for all the title to the San Lorenzo Village lots." The Court observed there that:

> The prevailing rule is that for the purpose of determining whether a certain property should or should not be included in the inventory, **the probate court may pass upon the title thereto but such determination is not conclusive and is subject to the final decision in a separate action regarding ownership which may be instituted by the parties** (3 Moran's Comments on the Rules of Court, 1970 Edition, pages 448-9 and 473; *Lachenal vs. Salas,* L-42257, June 14, 1976, 71 SCRA 262, 266).[18] (Bold emphasis supplied)

To the same effect was *De Leon v. Court of Appeals*,[19] where the Court declared that a "probate court, whether in a testate or intestate proceeding, can only pass upon questions of title provisionally," and reminded, citing *Jimenez v. Court of Appeals*, that the "patent reason is the probate court's limited jurisdiction and the principle that questions of title or ownership, which result in inclusion or exclusion from the inventory of the property, can only be settled in a separate action." Indeed, in the cited case of *Jimenez v. Court of Appeals*,[20] the Court pointed out:

> All that the said court could do as regards the said properties is determine whether they should or should not be included in the inventory or list of properties to be administered by the administrator. **If there is a dispute as to the ownership, then the opposing parties**

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[17] No. L-39532, July 20, 1979, 91 SCRA 540.

[18] *Id.* at 545-546.

[19] G.R. No. 128781, August 6, 2002, 386 SCRA 216, 226-227.

[20] G.R. No. 75773, April 17, 1990, 184 SCRA 367, 372.

and the administrator have to resort to an ordinary action for a final determination of the conflicting claims of title because the probate court cannot do so. (Bold emphasis supplied)

On the other hand, an appeal would not be the correct recourse for Teresita, *et al*. to take against the assailed orders. The *final judgment rule* embodied in the first paragraph of Section 1, Rule 41, *Rules of Court*,[21] which also governs appeals in special proceedings, stipulates that only the judgments, final orders (and resolutions) of a court of law "that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable" may be the subject of an appeal in due course. The same rule states that an interlocutory order or resolution (interlocutory because it deals with preliminary matters, or that the trial on the merits is yet to be held and the judgment rendered) is expressly made non-appealable.

Multiple appeals are permitted in special proceedings as a practical recognition of the possibility that material issues may

[21] Section 1, Rule 41 of the *Rules of Court* (as amended under A.M. No. 07-7-12-SC; effective December 27, 2007) provides:

Section 1. *Subject of appeal.*— An **appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.**

No appeal may be taken from:

(a) An order denying a petition for relief or any similar motion seeking relief from judgment;

(b) An interlocutory order;

(c) An order disallowing or dismissing an appeal;

(d) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent;

(e) An order of execution;

(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

(g) An order dismissing an action without prejudice.

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

be finally determined at various stages of the special proceedings. Section 1, Rule 109 of the *Rules of Court* enumerates the specific instances in which multiple appeals may be resorted to in special proceedings, *viz*:

Section 1. *Orders or judgments from which appeals may be taken.* - An interested person may appeal in special proceedings from an order or judgment rendered by a Court of First Instance or a Juvenile and Domestic Relations Court, where such order or judgment:

(a) Allows or disallows a will;

(b) Determines who are the lawful heirs of a deceased person, or the distributive share of the estate to which such person is entitled;

(c) Allows or disallows, in whole or in part, any claim against the estate of a deceased person, or any claim presented on behalf of the estate in offset to a claim against it;

(d) Settles the account of an executor, administrator, trustee or guardian;

(e) Constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing, except that no appeal shall be allowed from the appointment of a special administrator; and

(f) Is the final order or judgment rendered in the case, and affects the substantial rights of the person appealing, unless it be an order granting or denying a motion for a new trial or for reconsideration.

Clearly, the assailed orders of the RTC, being interlocutory, did not come under any of the instances in which multiple appeals are permitted.

II

Did the RTC commit grave abuse of discretion in directing the inclusion of the properties in the estate of the decedent?

In its assailed decision, the CA concluded that the RTC committed grave abuse of discretion for including properties in

the inventory notwithstanding their having been transferred to Mervir Realty by Emigdio during his lifetime, and for disregarding the registration of the properties in the name of Mervir Realty, a third party, by applying the doctrine of piercing the veil of corporate fiction.

Was the CA correct in its conclusion?

The answer is in the negative. It is unavoidable to find that the CA, in reaching its conclusion, ignored the law and the facts that had fully warranted the assailed orders of the RTC.

Under Section 6(*a*), Rule 78 of the *Rules of Court*, the letters of administration may be granted at the discretion of the court to the surviving spouse, who is competent and willing to serve when the person dies intestate. Upon issuing the letters of administration to the surviving spouse, the RTC becomes duty-bound to direct the preparation and submission of the inventory of the properties of the estate, and the surviving spouse, as the administrator, has the duty and responsibility to submit the inventory within three months from the issuance of letters of administration pursuant to Rule 83 of the *Rules of Court*, *viz*:

> Section 1. *Inventory and appraisal to be returned within three months*. – Within three (3) months after his appointment every executor or administrator **shall** return to the court a **true inventory and appraisal of all the real and personal estate of the deceased which has come into his possession or knowledge**. In the appraisement of such estate, the court may order one or more of the inheritance tax appraisers to give his or their assistance.

The usage of the word *all* in Section 1, *supra*, demands the inclusion of all the real and personal properties of the decedent in the inventory.[22] However, the word *all* is qualified by the phrase *which has come into his possession or knowledge*, which

[22] The word *all* means "every one, or the whole number of particular; the whole number" (3 Words and Phrases 212, citing *State v. Maine Cent. R. Co.,* 66 Me. 488, 510). Standing alone, the word *all* means exactly what it imports; that is, nothing less than all (*Id.* at 213, citing *In re Staheli's Will,* 57 N.Y.S.2d 185, 188).

signifies that the properties must be known to the administrator to belong to the decedent or are in her possession as the administrator. Section 1 allows no exception, for the phrase *true inventory* implies that no properties appearing to belong to the decedent can be excluded from the inventory, regardless of their being in the possession of another person or entity.

The objective of the *Rules of Court* in requiring the inventory and appraisal of the estate of the decedent is "to aid the court in revising the accounts and determining the liabilities of the executor or the administrator, and in making a final and equitable distribution (partition) of the estate and otherwise to facilitate the administration of the estate."[23] Hence, the RTC that presides over the administration of an estate is vested with wide discretion on the question of what properties should be included in the inventory. According to *Peralta v. Peralta*,[24] the CA cannot impose its judgment in order to supplant that of the RTC on the issue of which properties are to be included or excluded from the inventory in the absence of "positive abuse of discretion," for in the administration of the estates of deceased persons, "the judges enjoy ample discretionary powers and the appellate courts should not interfere with or attempt to replace the action taken by them, unless it be shown that there has been a positive abuse of discretion."[25] As long as the RTC commits no patently grave abuse of discretion, its orders must be respected as part of the regular performance of its judicial duty.

There is no dispute that the jurisdiction of the trial court as an intestate court is special and limited. The trial court cannot adjudicate title to properties claimed to be a part of the estate but are claimed to belong to third parties by title adverse to that of the decedent and the estate, not by virtue of any right of inheritance from the decedent. All that the trial court can do regarding said properties is to determine whether or not they

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[23] *Siy Chong Keng v. Collector of Internal Revenue,* 60 Phil. 493, 500 (1934).

[24] 71 Phil. 66 (1940).

[25] *Id.* at 68.

should be included in the inventory of properties to be administered by the administrator. Such determination is provisional and may be still revised. As the Court said in *Agtarap v. Agtarap*:[26]

The general rule is that the jurisdiction of the trial court, either as a probate court or an intestate court, relates only to matters having to do with the probate of the will and/or settlement of the estate of deceased persons, but does not extend to the determination of questions of ownership that arise during the proceedings. The patent rationale for this rule is that such court merely exercises special and limited jurisdiction. As held in several cases, a probate court or one in charge of estate proceedings, whether testate or intestate, cannot adjudicate or determine title to properties claimed to be a part of the estate and which are claimed to belong to outside parties, not by virtue of any right of inheritance from the deceased but by title adverse to that of the deceased and his estate. All that the said court could do as regards said properties is to determine whether or not they should be included in the inventory of properties to be administered by the administrator. If there is no dispute, there poses no problem, but if there is, then the parties, the administrator, and the opposing parties have to resort to an ordinary action before a court exercising general jurisdiction for a final determination of the conflicting claims of title.

However, this general rule is subject to exceptions as justified by expediency and convenience.

First, the **probate court may provisionally pass upon in an intestate or a testate proceeding the question of inclusion in, or exclusion from, the inventory of a piece of property without prejudice to final determination of ownership in a separate action**. *Second,* if the **interested parties are all heirs to the estate**, or the question is one of collation or advancement, or the **parties consent to the assumption of jurisdiction by the probate court and the rights of third parties are not impaired**, **then the probate court is competent to resolve issues on ownership**. Verily, its jurisdiction extends to matters incidental or collateral to the settlement and distribution of the estate, such as the determination of the status of each heir and **whether the property in the inventory**

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[26] G.R. No. 177099, June 8, 2011, 651 SCRA 455.

is conjugal or exclusive property of the deceased spouse.[27] (Italics in the original; bold emphasis supplied)

It is clear to us that the RTC took pains to explain the factual bases for its directive for the inclusion of the properties in question in its assailed order of March 14, 2001, *viz*:

In the first place, the administratrix of the estate admitted that Emigdio Mercado was one of the heirs of Severina Mercado who, upon her death, left several properties as listed in the inventory of properties submitted in Court in Special Proceedings No. 306-R which are supposed to be divided among her heirs. The administratrix admitted, while being examined in Court by the counsel for the petitioner, that she did not include in the inventory submitted by her in this case the shares of Emigdio Mercado in the said estate of Severina Mercado. Certainly, said properties constituting Emigdio Mercado's share in the estate of Severina Mercado should be included in the inventory of properties required to be submitted to the Court in this particular case.

In the second place, the administratrix of the estate of Emigdio Mercado also admitted in Court that she did not include in the inventory shares of stock of Mervir Realty Corporation which are in her name and which were paid by her from money derived from the taxicab business which she and her husband had since 1955 as a conjugal undertaking. As these shares of stock partake of being conjugal in character, one-half thereof or of the value thereof should be included in the inventory of the estate of her husband.

In the third place, the administratrix of the estate of Emigdio Mercado admitted, too, in Court that she had a bank account in her name at Union Bank which she opened when her husband was still alive. Again, the money in said bank account partakes of being conjugal in character, and so, one-half thereof should be included in the inventory of the properties constituting as estate of her husband.

In the fourth place, it has been established during the hearing in this case that Lot No. 3353 of Pls-657-D located in Badian, Cebu containing an area of 53,301 square meters as described in and covered

[27] *Id.* at 471-473, citing, among others, *Coca v. Pizarras Vda. De Pangilinan*, No. L-27082, January 31, 1978, 81 SCRA 278, 283; *Alvarez v. Espiritu,* No. L-18833, August 14, 1965, 14 SCRA 892, 899; *Cunanan v. Amparo,* 80 Phil. 227 (1948); and *Pascual v. Pascual,* 73 Phil. 561 (1942).

by Transfer Certificate of Title No. 3252 of the Registry of Deeds for the Province of Cebu is still registered in the name of Emigdio S. Mercado until now. When it was the subject of Civil Case No. CEB-12690 which was decided on October 19, 1995, it was the estate of the late Emigdio Mercado which claimed to be the owner thereof. Mervir Realty Corporation never intervened in the said case in order to be the owner thereof. This fact was admitted by Richard Mercado himself when he testified in Court. x x x So the said property located in Badian, Cebu should be included in the inventory in this case.

Fifthly and lastly, it appears that the assignment of several parcels of land by the late Emigdio S. Mercado to Mervir Realty Corporation on January 10, 1991 by virtue of the Deed of Assignment signed by him on the said day (Exhibit N for the petitioner and Exhibit 5 for the administratrix) was a transfer in contemplation of death. It was made two days before he died on January 12, 1991. A transfer made in contemplation of death is one prompted by the thought that the transferor has not long to live and made in place of a testamentary disposition (1959 Prentice Hall, p. 3909). Section 78 of the National Internal Revenue Code of 1977 provides that the gross estate of the decedent shall be determined by including the value at the time of his death of all property to the extent of any interest therein of which the decedent has at any time made a transfer in contemplation of death. So, the inventory to be approved in this case should still include the said properties of Emigdio Mercado which were transferred by him in contemplation of death. Besides, the said properties actually appeared to be still registered in the name of Emigdio S. Mercado at least ten (10) months after his death, as shown by the certification issued by the Cebu City Assessor's Office on October 31, 1991 (Exhibit O).[28]

Thereby, the RTC strictly followed the directives of the *Rules of Court* and the jurisprudence relevant to the procedure for preparing the inventory by the administrator. The aforequoted explanations indicated that the directive to include the properties in question in the inventory rested on good and valid reasons, and thus was far from whimsical, or arbitrary, or capricious.

Firstly, the shares in the properties inherited by Emigdio from Severina Mercado should be included in the inventory because

[28] *Rollo*, pp. 139-140.

Teresita, *et al*. did not dispute the fact about the shares being inherited by Emigdio.

Secondly, with Emigdio and Teresita having been married prior to the effectivity of the *Family Code* in August 3, 1988, their property regime was the conjugal partnership of gains.[29] For purposes of the settlement of Emigdio's estate, it was unavoidable for Teresita to include his shares in the conjugal partnership of gains. The party asserting that specific property acquired during that property regime did not pertain to the conjugal partnership of gains carried the burden of proof, and that party must prove the exclusive ownership by one of them by clear, categorical, and convincing evidence.[30] In the absence of or pending the presentation of such proof, the conjugal partnership of Emigdio and Teresita must be provisionally liquidated to establish who the real owners of the affected properties were,[31] and which of the properties should form part of the estate of Emigdio. The portions that pertained to the estate of Emigdio must be included in the inventory.

Moreover, although the title over Lot 3353 was already registered in the name of Mervir Realty, the RTC made findings that put that title in dispute. Civil Case No. CEB-12692, a dispute that had involved the ownership of Lot 3353, was resolved in favor of the estate of Emigdio, and Transfer Certificate of Title No. 3252 covering Lot 3353 was still in Emigdio's name. Indeed, the RTC noted in the order of March 14, 2001, or ten years after his death, that Lot 3353 had remained registered in the name of Emigdio.

Interestingly, Mervir Realty did not intervene at all in Civil Case No. CEB-12692. Such lack of interest in Civil Case No. CEB-12692 was susceptible of various interpretations, including

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[29] See FAMILY CODE, Arts. 105, 116.

[30] *Dewara v. Lamela,* G.R. No. 179010, April 11, 2011, 647 SCRA 483, 490, citing *Coja v. Court of Appeals,* G.R. No. 151153, December 10, 2007, 539 SCRA 517, 528.

[31] See *Alvarez v. Espiritu,* No. L-18833, August 14, 1965, 14 SCRA 892, 899.

one to the effect that the heirs of Emigdio could have already threshed out their differences with the assistance of the trial court. This interpretation was probable considering that Mervir Realty, whose business was managed by respondent Richard, was headed by Teresita herself as its President. In other words, Mervir Realty appeared to be a family corporation.

Also, the fact that the deed of absolute sale executed by Emigdio in favor of Mervir Realty was a notarized instrument did not sufficiently justify the exclusion from the inventory of the properties involved. A notarized deed of sale only enjoyed the presumption of regularity in favor of its execution, but its notarization did not *per se* guarantee the legal efficacy of the transaction under the deed, and what the contents purported to be. The presumption of regularity could be rebutted by clear and convincing evidence to the contrary.[32] As the Court has observed in *Suntay v. Court of Appeals*:[33]

> x x x. Though the notarization of the deed of sale in question vests in its favor the presumption of regularity, it is not the intention nor the function of the notary public to validate and make binding an instrument never, in the first place, intended to have any binding legal effect upon the parties thereto. **The intention of the parties still and always is the primary consideration in determining the true nature of a contract**. (Bold emphasis supplied)

It should likewise be pointed out that the exchange of shares of stock of Mervir Realty with the real properties owned by Emigdio would still have to be inquired into. That Emigdio executed the deed of assignment two days prior to his death was a circumstance that should put any interested party on his guard regarding the exchange, considering that there was a finding about Emigdio having been sick of cancer of the pancreas at

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[32] *San Juan v. Offril,* G.R. No. 154609, April 24, 2009, 586 SCRA 439, 445-446 citing *Nazareno v. Court of Appeals,* G.R. No. 138842, October 18, 2000, 343 SCRA 637, 652.

[33] G.R. No. 114950, December 19, 1995, 251 SCRA 430, 452-453, cited in *Nazareno v. Court of Appeals,* G.R. No. 138842, October 18, 2000, 343 SCRA 637, 652.

the time.[34] In this regard, whether the CA correctly characterized the exchange as a form of an estate planning scheme remained to be validated by the facts to be established in court.

The fact that the properties were already covered by Torrens titles in the name of Mervir Realty could not be a valid basis for immediately excluding them from the inventory in view of the circumstances admittedly surrounding the execution of the deed of assignment. This is because:

> The Torrens system is not a mode of acquiring titles to lands; it is merely a system of registration of titles to lands. However, justice and equity demand that the titleholder should not be made to bear the unfavorable effect of the mistake or negligence of the State's agents, in the absence of proof of his complicity in a fraud or of manifest damage to third persons. The real purpose of the Torrens system is to quiet title to land and put a stop forever to any question as to the legality of the title, except claims that were noted in the certificate at the time of registration or that may arise subsequent thereto. Otherwise, the integrity of the Torrens system shall forever be sullied by the ineptitude and inefficiency of land registration officials, who are ordinarily presumed to have regularly performed their duties.[35]

Assuming that only seven titled lots were the subject of the deed of assignment of January 10, 1991, such lots should still be included in the inventory to enable the parties, by themselves, and with the assistance of the RTC itself, to test and resolve the issue on the validity of the assignment. The limited jurisdiction of the RTC as an intestate court might have constricted the determination of the rights to the properties arising from that deed,[36] but it does not prevent the RTC as intestate court from

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[34] *Rollo*, p. 138.

[35] *Rabaja Ranch Development Corporation v. AFP Retirement and Separation Benefits System,* G.R. No. 177181, July 7, 2009, 592 SCRA 201, 217, citing *Republic v. Guerrero,* G.R. No. 133168, March 28, 2006, 485 SCRA 424, 445.

[36] *Reyes-Mesugas v. Reyes,* G.R. No. 174835, March 22, 2010, 616 SCRA 345, 350, citing *Pio Barretto Realty Development, Inc. v. Court of Appeals,* G.R. Nos. 62431-33, August 3, 1984, 131 SCRA 606.

ordering the inclusion in the inventory of the properties subject of that deed. This is because the RTC as intestate court, albeit vested only with special and limited jurisdiction, was still "deemed to have all the necessary powers to exercise such jurisdiction to make it effective."[37]

Lastly, the inventory of the estate of Emigdio must be prepared and submitted for the important purpose of resolving the difficult issues of collation and advancement to the heirs. Article 1061 of the *Civil Code* required every compulsory heir and the surviving spouse, herein Teresita herself, to "bring into the mass of the estate any property or right which he (or she) may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition." Section 2, Rule 90 of the *Rules of Court* also provided that any advancement by the decedent on the legitime of an heir "may be heard and determined by the court having jurisdiction of the estate proceedings, and the *final order of the court thereon shall be binding on the person raising the questions and on the heir*." Rule 90 thereby expanded the special and limited jurisdiction of the RTC as an intestate court about the matters relating to the inventory of the estate of the decedent by authorizing it to direct the inclusion of properties donated or bestowed by gratuitous title to any compulsory heir by the decedent.[38]

The determination of which properties should be excluded from or included in the inventory of estate properties was well within the authority and discretion of the RTC as an intestate court. In making its determination, the RTC acted with circumspection, and proceeded under the guiding policy that it was best to include all properties in the possession of the administrator or were known to the administrator to belong to Emigdio rather than to exclude properties that could turn out in

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[37] *Pio Barretto Realty Development, Inc. v. Court of Appeals, supra* at 621.

[38] *Gregorio v. Madarang,* G.R. No. 185226, February 11, 2010, 612 SCRA 340, 345.

the end to be actually part of the estate. As long as the RTC commits no patent grave abuse of discretion, its orders must be respected as part of the regular performance of its judicial duty. *Grave abuse of discretion* means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[39]

In light of the foregoing, the CA's conclusion of grave abuse of discretion on the part of the RTC was unwarranted and erroneous.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on May 15, 2002; **REINSTATES** the orders issued on March 14, 2001 and May 18, 2001 by the Regional Trial Court in Cebu; **DIRECTS** the Regional Trial Court in Cebu to proceed with dispatch in Special Proceedings No. 3094-CEB entitled *Intestate Estate of the late Emigdio Mercado, Thelma Aranas, petitioner*, and to resolve the case; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

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

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[39] *Delos Santos v. Metropolitan Bank and Trust Company*, G.R. No. 153852, October 24, 2012, 684 SCRA 410, 422-423.

FIRST DIVISION

[G.R. No. 160600. January 15, 2014]

DOMINGO GONZALO, *petitioner, vs.* **JOHN TARNATE, JR.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; GOVERNMENT CONTRACT; SUBCONTRACTING OR ASSIGNMENT OF DPWH PROJECT IS PROHIBITED UNDER P.D. 1594; IT IS A VOID AND INEXISTENT CONTRACT.—** There is no question that every contractor is prohibited from subcontracting with or assigning to another person any contract or project that he has with the DPWH unless the DPWH Secretary has approved the subcontracting or assignment. This is pursuant to Section 6 of Presidential Decree No. 1594[.] x x x Gonzalo, who was the sole contractor of the project in question, subcontracted the implementation of the project to Tarnate in violation of the statutory prohibition. Their subcontract was illegal, therefore, because it did not bear the approval of the DPWH Secretary. Necessarily, the *deed of assignment* was also illegal, because it sprung from the subcontract. x x x Under Article 1409 (1) of the *Civil Code*, a contract whose cause, object or purpose is contrary to law is a void or inexistent contract. As such, a void contract cannot produce a valid one. To the same effect is Article 1422 of the *Civil Code*, which declares that "a contract, which is the direct result of a previous illegal contract, is also void and inexistent."

2. **ID.; ID.; ID.; ID.; THE DOCTRINE OF *IN PARI DELICTO* CANNOT PREVENT A RECOVERY IF DOING SO VIOLATES THE PUBLIC POLICY AGAINST UNJUST ENRICHMENT.—** According to Article 1412 (1) of the *Civil Code*, the guilty parties to an illegal contract cannot recover from one another and are not entitled to an affirmative relief because they are *in pari delicto* or in equal fault. The doctrine of *in pari delicto* is a universal doctrine that holds that no action arises, in equity or at law, from an illegal contract; no suit can be maintained for its specific performance, or to recover the property agreed to be sold or delivered, or the money agreed

to be paid, or damages for its violation; and where the parties are *in pari delicto*, no affirmative relief of any kind will be given to one against the other. Nonetheless, the application of the doctrine of *in pari delicto* is not always rigid. An accepted exception arises when its application contravenes well-established public policy. In this jurisdiction, public policy has been defined as "that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good." Unjust enrichment exists, according to *Hulst v. PR Builders*, *Inc.*, "when a person unjustly retains a benefit at 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 prevention of unjust enrichment is a recognized public policy of the State, for Article 22 of the *Civil Code* explicitly provides that "[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." x x x There is no question that Tarnate provided the equipment, labor and materials for the project in compliance with his obligations under the subcontract and the *deed of assignment*; and that it was Gonzalo as the contractor who received the payment for his contract with the DPWH as well as the 10% retention fee that should have been paid to Tarnate pursuant to the *deed of assignment*. Considering that Gonzalo refused despite demands to deliver to Tarnate the stipulated 10% retention fee that would have compensated the latter for the use of his equipment in the project, Gonzalo would be unjustly enriched at the expense of Tarnate if the latter was to be barred from recovering because of the rigid application of the doctrine of *in pari delicto*. The prevention of unjust enrichment called for the exception to apply in Tarnate's favor. Consequently, the RTC and the CA properly adjudged Gonzalo liable to pay Tarnate the equivalent amount of the 10% retention fee (*i.e.*, ₱233,526.13).

3. ID.; ID.; ID.; ID.; SUBCONTRACTING OF DPWH PROJECT BEING A VOID CONTRACT, THE GRANT OF MORAL DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES WAS INAPPROPRIATE.— The Court regards the grant of moral damages, attorney's fees and litigation

expenses to Tarnate to be inappropriate. We have ruled that no damages may be recovered under a void contract, which, being nonexistent, produces no juridical tie between the parties involved. It is notable, too, that the RTC and the CA did not spell out the sufficient factual and legal justifications for such damages to be granted.

4. ID.; ID.; ID.; ID.; THE ILLEGALITY OF THE CONTRACT SHOULD NOT BE ALLOWED TO DEPRIVE A PARTY FROM BEING FULLY COMPENSATED THROUGH THE IMPOSITION OF LEGAL INTEREST.— [T]he letter and spirit of Article 22 of the *Civil Code* command Gonzalo to make a *full* reparation or compensation to Tarnate. The illegality of their contract should not be allowed to deprive Tarnate from being *fully* compensated through the imposition of legal interest. Towards that end, interest of 6% *per annum* reckoned from September 13, 1999, the time of the judicial demand by Tarnate, is imposed on the amount of ₱233,526.13. Not to afford this relief will make a travesty of the justice to which Tarnate was entitled for having suffered too long from Gonzalo's unjust enrichment.

APPEARANCES OF COUNSEL

Jose Mencio Molintas for petitioner.
Marvin C. Yang-ed for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The doctrine of *in pari delicto*, which stipulates that the guilty parties to an illegal contract are not entitled to any relief, cannot prevent a recovery if doing so violates the public policy against unjust enrichment.

Antecedents

After the Department of Public Works and Highways (DPWH) had awarded on July 22, 1997 the contract for the improvement of the Sadsadan-Maba-ay Section of the Mountain Province-

Benguet Road in the total amount of ₱7,014,963.33 to his company, Gonzalo Construction,[1] petitioner Domingo Gonzalo (Gonzalo) subcontracted to respondent John Tarnate, Jr. (Tarnate) on October 15, 1997, the supply of materials and labor for the project under the latter's business known as JNT Aggregates. Their agreement stipulated, among others, that Tarnate would pay to Gonzalo eight percent and four percent of the contract price, respectively, upon Tarnate's first and second billing in the project.[2]

In furtherance of their agreement, Gonzalo executed on April 6, 1999 a *deed of assignment* whereby he, as the contractor, was assigning to Tarnate an amount equivalent to 10% of the total collection from the DPWH for the project. This 10% retention fee (equivalent to ₱233,526.13) was the rent for Tarnate's equipment that had been utilized in the project. In the *deed of assignment*, Gonzalo further authorized Tarnate to use the official receipt of Gonzalo Construction in the processing of the documents relative to the collection of the 10% retention fee and in encashing the check to be issued by the DPWH for that purpose.[3] The *deed of assignment* was submitted to the DPWH on April 15, 1999. During the processing of the documents for the retention fee, however, Tarnate learned that Gonzalo had unilaterally rescinded the *deed of assignment* by means of an *affidavit of cancellation of deed of assignment* dated April 19, 1999 filed in the DPWH on April 22, 1999;[4] and that the disbursement voucher for the 10% retention fee had then been issued in the name of Gonzalo, and the retention fee released to him.[5]

Tarnate demanded the payment of the retention fee from Gonzalo, but to no avail. Thus, he brought this suit against

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[1] Records, pp. 88-90.

[2] *Id.* at 26-28.

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

[4] *Id.* at 8.

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

Gonzalo on September 13, 1999 in the Regional Trial Court (RTC) in Mountain Province to recover the retention fee of ₱233,526.13, moral and exemplary damages for breach of contract, and attorney's fees.[6]

In his answer, Gonzalo admitted the *deed of assignment* and the authority given therein to Tarnate, but averred that the project had not been fully implemented because of its cancellation by the DPWH, and that he had then revoked the *deed of assignment*. He insisted that the assignment could not stand independently due to its being a mere product of the subcontract that had been based on his contract with the DPWH; and that Tarnate, having been fully aware of the illegality and ineffectuality of the *deed of assignment* from the time of its execution, could not go to court with unclean hands to invoke any right based on the invalid *deed of assignment* or on the product of such *deed of assignment*.[7]

Ruling of the RTC

On January 26, 2001, the RTC, opining that the *deed of assignment* was a valid and binding contract, and that Gonzalo must comply with his obligations under the *deed of assignment*, rendered judgment in favor of Tarnate as follows:

WHEREFORE, premises considered and as prayed for by the plaintiff, John Tarnate, Jr. in his Complaint for Sum of Money, Breach of Contract With Damages is hereby RENDERED in his favor and against the above-named defendant Domingo Gonzalo, the Court now hereby orders as follows:

1. Defendant Domingo Gonzalo to pay the Plaintiff, John Tarnate, Jr., the amount of TWO HUNDRED THIRTY THREE THOUSAND FIVE HUNDRED TWENTY SIX and 13/100 PESOS (₱233,526.13) representing the rental of equipment;

2. Defendant to pay Plaintiff the sum of THIRTY THOUSAND (₱30,000.00) PESOS by way of reasonable Attorney's Fees

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[6] *Id.* at 1-4.

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

for having forced/compelled the plaintiff to litigate and engage the services of a lawyer in order to protect his interest and to enforce his right. The claim of the plaintiff for attorney's fees in the amount of FIFTY THOUSAND PESOS (₱50,000.00) plus THREE THOUSAND PESOS (₱3,000.00) clearly appears to be unconscionable and therefore reduced to Thirty Thousand Pesos (₱30,000.00) as aforestated making the same to be reasonable;

3. Defendant to pay Plaintiff the sum of FIFTEEN THOUSAND PESOS (₱15,000.00) by way of litigation expenses;

4. Defendant to pay Plaintiff the sum of TWENTY THOUSAND PESOS (₱20,000.00) for moral damages and for the breach of contract; and

5. To pay the cost of this suit.

Award of exemplary damages in the instant case is not warranted for there is no showing that the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner analogous to the case of Xentrex Automotive, Inc. vs. Court of Appeals, 291 SCRA 66.[8]

Gonzalo appealed to the Court of Appeals (CA).

Decision of the CA

On February 18, 2003, the CA affirmed the RTC.[9]

Although holding that the subcontract was an illegal agreement due to its object being specifically prohibited by Section 6 of Presidential Decree No. 1594; that Gonzalo and Tarnate were guilty of entering into the illegal contract in violation of Section 6 of Presidential Decree No. 1594; and that the *deed of assignment*, being a product of and dependent on the subcontract, was also illegal and unenforceable, the CA did not apply the doctrine of *in pari delicto*, explaining that the doctrine applied only if the

[8] *Id.* at 110-120.

[9] *Rollo,* pp. 16-34; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justice Ruben T. Reyes (later Presiding Justice and a Member of the Court, but already retired) and Associate Justice Edgardo F. Sundiam (retired/deceased).

fault of one party was more or less equivalent to the fault of the other party. It found Gonzalo to be more guilty than Tarnate, whose guilt had been limited to the execution of the two illegal contracts while Gonzalo had gone to the extent of violating the *deed of assignment*. It declared that the crediting of the 10% retention fee equivalent to ₱233,256.13 to his account had unjustly enriched Gonzalo; and ruled, accordingly, that Gonzalo should reimburse Tarnate in that amount because the latter's equipment had been utilized in the project.

Upon denial of his motion for reconsideration,[10] Gonzalo has now come to the Court to seek the review and reversal of the decision of the CA.

Issues

Gonzalo contends that the CA erred in affirming the RTC because: (1) both parties were *in pari delicto*; (2) the *deed of assignment* was void; and (3) there was no compliance with the arbitration clause in the subcontract.

Gonzalo submits in support of his contentions that the subcontract and the *deed of assignment*, being specifically prohibited by law, had no force and effect; that upon finding both him and Tarnate guilty of violating the law for executing the subcontract, the RTC and the CA should have applied the rule of *in pari delicto*, to the effect that the law should not aid either party to enforce the illegal contract but should leave them where it found them; and that it was erroneous to accord to the parties relief from their predicament.[11]

Ruling

We deny the petition for review, but we delete the grant of moral damages, attorney's fees and litigation expenses.

There is no question that every contractor is prohibited from subcontracting with or assigning to another person any contract

[10] *Id.* at 36.

[11] *Id.* at 8-12.

or project that he has with the DPWH unless the DPWH Secretary has approved the subcontracting or assignment. This is pursuant to Section 6 of Presidential Decree No. 1594, which provides:

> Section 6. *Assignment and Subcontract*. – The contractor shall not assign, transfer, pledge, subcontract or make any other disposition of the contract or any part or interest therein except with the approval of the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be. Approval of the subcontract shall not relieve the main contractor from any liability or obligation under his contract with the Government nor shall it create any contractual relation between the subcontractor and the Government.

Gonzalo, who was the sole contractor of the project in question, subcontracted the implementation of the project to Tarnate in violation of the statutory prohibition. Their subcontract was illegal, therefore, because it did not bear the approval of the DPWH Secretary. Necessarily, the *deed of assignment* was also illegal, because it sprung from the subcontract. As aptly observed by the CA:

> x x x. The intention of the parties in executing the Deed of Assignment was merely to cover up the illegality of the sub-contract agreement. They knew for a fact that the DPWH will not allow plaintiff-appellee to claim in his own name under the Sub-Contract Agreement.
>
> Obviously, without the Sub-Contract Agreement there will be no Deed of Assignment to speak of. The illegality of the Sub-Contract Agreement necessarily affects the Deed of Assignment because the rule is that an illegal agreement cannot give birth to a valid contract. To rule otherwise is to sanction the act of entering into transaction the object of which is expressly prohibited by law and thereafter execute an apparently valid contract to subterfuge the illegality. The legal proscription in such an instance will be easily rendered nugatory and meaningless to the prejudice of the general public.[12]

Under Article 1409 (1) of the *Civil Code*, a contract whose cause, object or purpose is contrary to law is a void or inexistent

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[12] *Rollo,* p. 30.

contract. As such, a void contract cannot produce a valid one.[13] To the same effect is Article 1422 of the *Civil Code*, which declares that "a contract, which is the direct result of a previous illegal contract, is also void and inexistent."

We do not concur with the CA's finding that the guilt of Tarnate for violation of Section 6 of Presidential Decree No. 1594 was lesser than that of Gonzalo, for, as the CA itself observed, Tarnate had voluntarily entered into the agreements with Gonzalo.[14] Tarnate also admitted that he did not participate in the bidding for the project because he knew that he was not authorized to contract with the DPWH.[15] Given that Tarnate was a businessman who had represented himself in the subcontract as "being financially and organizationally sound and established, with the necessary personnel and equipment for the performance of the project,"[16] he justifiably presumed to be aware of the illegality of his agreements with Gonzalo. For these reasons, Tarnate was not less guilty than Gonzalo.

According to Article 1412 (1) of the *Civil Code*, the guilty parties to an illegal contract cannot recover from one another and are not entitled to an affirmative relief because they are *in pari delicto* or in equal fault. The doctrine of *in pari delicto* is a universal doctrine that holds that no action arises, in equity or at law, from an illegal contract; no suit can be maintained for its specific performance, or to recover the property agreed to be sold or delivered, or the money agreed to be paid, or damages for its violation; and where the parties are *in pari delicto*, no affirmative relief of any kind will be given to one against the other.[17]

Nonetheless, the application of the doctrine of *in pari delicto* is not always rigid. An accepted exception arises when its

[13] *Nool v. Court of Appeals*, G.R. No. 116635, July 24, 1997, 276 SCRA 149, 157.

[14] *Rollo*, pp. 31-32.

[15] TSN, July 24, 2000, pp. 23-24.

[16] Records, p. 26.

[17] *Rellosa v. Gaw Chee Hun*, 93 Phil. 827, 831 (1953).

application contravenes well-established public policy.[18] In this jurisdiction, public policy has been defined as "that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good."[19]

Unjust enrichment exists, according to *Hulst v. PR Builders, Inc.*,[20] "when a person unjustly retains a benefit at 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 prevention of unjust enrichment is a recognized public policy of the State, for Article 22 of the *Civil Code* explicitly provides that "[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." It is well to note that Article 22 "is part of the chapter of the Civil Code on Human Relations, the provisions of which were formulated as basic principles to be observed for the rightful relationship between human beings and for the stability of the social order; designed to indicate certain norms that spring from the fountain of good conscience; guides for human conduct that should run as golden threads through society to the end that law may approach its supreme ideal which is the sway and dominance of justice."[21]

There is no question that Tarnate provided the equipment, labor and materials for the project in compliance with his obligations under the subcontract and the *deed of assignment*; and that it was Gonzalo as the contractor who received the payment for his contract with the DPWH as well as the 10% retention fee that should have been paid to Tarnate pursuant to the *deed of*

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[18] *Pajuyo v. Court of Appeals*, G.R. No. 146364, June 3, 2004, 430 SCRA 492, 515.

[19] *Avon Cosmetics, Incorporated v. Luna*, G.R. No. 153674, December 20, 2006, 511 SCRA 376, 393-394.

[20] G.R. No. 156364, September 3, 2007, 532 SCRA 74.

[21] *Id.* at 96.

assignment.[22] Considering that Gonzalo refused despite demands to deliver to Tarnate the stipulated 10% retention fee that would have compensated the latter for the use of his equipment in the project, Gonzalo would be unjustly enriched at the expense of Tarnate if the latter was to be barred from recovering because of the rigid application of the doctrine of *in pari delicto*. The prevention of unjust enrichment called for the exception to apply in Tarnate's favor. Consequently, the RTC and the CA properly adjudged Gonzalo liable to pay Tarnate the equivalent amount of the 10% retention fee (*i.e.*, ₱233,526.13).

Gonzalo sought to justify his refusal to turn over the ₱233,526.13 to Tarnate by insisting that he (Gonzalo) had a debt of ₱200,000.00 to Congressman Victor Dominguez; that his payment of the 10% retention fee to Tarnate was conditioned on Tarnate paying that debt to Congressman Dominguez; and that he refused to give the 10% retention fee to Tarnate because Tarnate did not pay to Congressman Dominguez.[23] His justification was unpersuasive, however, because, firstly, Gonzalo presented no proof of the debt to Congressman Dominguez; secondly, he did not competently establish the agreement on the condition that supposedly bound Tarnate to pay to Congressman Dominguez;[24] and, thirdly, burdening Tarnate with Gonzalo's personal debt to Congressman Dominguez to be paid first by Tarnate would constitute another case of unjust enrichment.

The Court regards the grant of moral damages, attorney's fees and litigation expenses to Tarnate to be inappropriate. We have ruled that no damages may be recovered under a void contract, which, being nonexistent, produces no juridical tie between the parties involved.[25] It is notable, too, that the RTC and the CA did not spell out the sufficient factual and legal justifications for such damages to be granted.

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[22] TSN, August 28, 2000, pp. 44, 64, 70, and 71.

[23] *Id.* at 46-50.

[24] *Id.* at 51-54.

[25] *Hulst v. PR Builders*, *Inc., supra* note 20, at 94-95; *Menchavez v. Teves, Jr.*, G.R. No. 153201, January 26, 2005, 449 SCRA 380, 398-399.

Lastly, the letter and spirit of Article 22 of the *Civil Code* command Gonzalo to make a *full* reparation or compensation to Tarnate. The illegality of their contract should not be allowed to deprive Tarnate from being *fully* compensated through the imposition of legal interest. Towards that end, interest of 6% *per annum* reckoned from September 13, 1999, the time of the judicial demand by Tarnate, is imposed on the amount of ₱233,526.13. Not to afford this relief will make a travesty of the justice to which Tarnate was entitled for having suffered too long from Gonzalo's unjust enrichment.

WHEREFORE, we **AFFIRM** the decision promulgated on February 18, 2003, but **DELETE** the awards of moral damages, attorney's fees and litigation expenses; **IMPOSE** legal interest of 6% *per annum* on the principal of ₱233,526.13 reckoned from September 13, 1999; and **DIRECT** the petitioner to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 160758. January 15, 2014]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **GUARIÑA AGRICULTURAL and REALTY DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; MORTGAGE; WHEN THE FULL LOAN AMOUNT IS YET TO BE RELEASED AND WITHOUT A

VALID DEMAND, FORECLOSURE OF MORTGAGE WAS PREMATURE AND, THEREFORE, VOID AND INEFFECTUAL.— It is true that loans are often secured by a mortgage constituted on real or personal property to protect the creditor's interest in case of the default of the debtor. By its nature, however, a mortgage remains an accessory contract dependent on the principal obligation, such that enforcement of the mortgage contract will depend on whether or not there has been a violation of the principal obligation. While a creditor and a debtor could regulate the order in which they should comply with their reciprocal obligations, it is presupposed that in a loan the lender should perform its obligation – the release of the full loan amount – before it could demand that the borrower repay the loaned amount. In other words, Guariña Corporation would not incur in delay before DBP fully performed its reciprocal obligation. Considering that it had yet to release the entire proceeds of the loan, DBP could not yet make an effective demand for payment upon Guariña Corporation to perform its obligation under the loan. According to *Development Bank of the Philippines v. Licuanan*, it would only be when a demand to pay had been made and was subsequently refused that a borrower could be considered in default, and the lender could obtain the right to collect the debt or to foreclose the mortgage. Hence, Guariña Corporation would not be in default without the demand. Assuming that DBP could already exact from the latter its compliance with the loan agreement, the letter dated February 27, 1978 that DBP sent would still not be regarded as a demand to render Guariña Corporation in default under the principal contract because DBP was only thereby requesting the latter "to put up the deficiency in the value of improvements." Under the circumstances, DBP's foreclosure of the mortgage and the sale of the mortgaged properties at its instance were premature, and, therefore, void and ineffectual.

2. ID.; ID.; ID.; EFFECTS; MORTGAGOR IS ENTITLED TO RESTORATION OF POSSESSION AND PAYMENT OF REASONABLE RENTALS.— Having found and pronounced that the extrajudicial foreclosure by DBP was premature, and that the ensuing foreclosure sale was void and ineffectual, the Court affirms the order for the restoration of possession to Guariña Corporation and the payment of

reasonable rentals for the use of the resort. The CA properly held that the premature and invalid foreclosure had unjustly dispossessed Guariña Corporation of its properties. Consequently, the restoration of possession and the payment of reasonable rentals were in accordance with Article 561 of the *Civil Code*, which expressly states that one who recovers, according to law, possession unjustly lost shall be deemed for all purposes which may redound to his benefit to have enjoyed it without interruption.

3. REMEDIAL LAW; JUDGMENTS; *LAW OF THE CASE*; DEFINED AND EXPLAINED.— *Law of the case* has been defined as the opinion delivered on a former appeal, and means, more specifically, that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. x x x The doctrine of law of the case simply means, therefore, that when an appellate court has once declared the law in a case, its declaration continues to be the law of that case even on a subsequent appeal, notwithstanding that the rule thus laid down may have been reversed in other cases. For practical considerations, indeed, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded to the parties, the pronouncement should be regarded as the law of the case and should not be reopened on remand of the case to determine other issues of the case, like damages. But the law of the case, as the name implies, concerns only legal questions or issues thereby adjudicated in the former appeal.

4. ID.; ID.; ID.; LAW OF THE CASE DOCTRINE, NOT APPLICABLE IN CASE AT BAR.— [T]he *ex parte* proceeding on DBP's application for the issuance of the writ of possession was entirely independent from the judicial demand for specific performance herein. In fact, C.A.-G.R. No. 12670-SP, being the interlocutory appeal concerning the issuance of the writ of possession while the main case was pending, was not at all intertwined with any legal issue properly raised and litigated in C.A.-G.R. CV No. 59491, which was the appeal to determine whether or not DBP's foreclosure was valid and effectual. And,

secondly, the ruling in C.A.-G.R. No. 12670-SP did not settle any question of law involved herein because this case for specific performance was not a continuation of C.A.-G.R. No. 12670-SP (which was limited to the propriety of the issuance of the writ of possession in favor of DBP), and *vice versa*.

APPEARANCES OF COUNSEL

DBP Office of the Legal Counsel for petitioner.
Marie Karen C. Jiz, MD for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The foreclosure of a mortgage prior to the mortgagor's default on the principal obligation is premature, and should be undone for being void and ineffectual. The mortgagee who has been meanwhile given possession of the mortgaged property by virtue of a writ of possession issued to it as the purchaser at the foreclosure sale may be required to restore the possession of the property to the mortgagor and to pay reasonable rent for the use of the property during the intervening period.

The Case

In this appeal, Development Bank of the Philippines (DBP) seeks the reversal of the adverse decision promulgated on March 26, 2003 in C.A.-G.R. CV No. 59491,[1] whereby the Court of Appeals (CA) upheld the judgment rendered on January 6, 1998[2] by the Regional Trial Court, Branch 25, in Iloilo City (RTC) annulling the extra-judicial foreclosure of the real estate and chattel mortgages at the instance of DBP because the debtor-mortgagor, Guariña Agricultural and Realty Development

[1] *Rollo,* at 36-44; penned by Associate Justice Juan Q. Enriquez, Jr. (retired), and concurred in by Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Edgardo F. Sundiam (retired/deceased).

[2] CA *rollo*, at 23-34; penned by Judge Bartolome M. Fanuñal.

Corporation (Guariña Corporation), had not yet defaulted on its obligations in favor of DBP.

Antecedents

In July 1976, Guariña Corporation applied for a loan from DBP to finance the development of its resort complex situated in Trapiche, Oton, Iloilo. The loan, in the amount of ₱3,387,000.00, was approved on August 5, 1976.[3] Guariña Corporation executed a promissory note that would be due on November 3, 1988.[4] On October 5, 1976, Guariña Corporation executed a real estate mortgage over several real properties in favor of DBP as security for the repayment of the loan. On May 17, 1977, Guariña Corporation executed a chattel mortgage over the personal properties existing at the resort complex and those yet to be acquired out of the proceeds of the loan, also to secure the performance of the obligation.[5] Prior to the release of the loan, DBP required Guariña Corporation to put up a cash equity of ₱1,470,951.00 for the construction of the buildings and other improvements on the resort complex.

The loan was released in several instalments, and Guariña Corporation used the proceeds to defray the cost of additional improvements in the resort complex. In all, the amount released totalled ₱3,003,617.49, from which DBP withheld ₱148,102.98 as interest.[6]

Guariña Corporation demanded the release of the balance of the loan, but DBP refused. Instead, DBP directly paid some suppliers of Guariña Corporation over the latter's objection. DBP found upon inspection of the resort project, its developments and improvements that Guariña Corporation had not completed the construction works.[7] In a letter dated February 27, 1978,[8]

[3] *Rollo*, p. 37.

[4] Records, Vol. 1, p. 8.

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

[6] *Rollo,* pp. 37-38.

[7] *Id.* at 38.

[8] Records, Vol. 1, pp. 23-24.

and a telegram dated June 9, 1978,[9] DBP thus demanded that Guariña Corporation expedite the completion of the project, and warned that it would initiate foreclosure proceedings should Guariña Corporation not do so.[10]

Unsatisfied with the non-action and objection of Guariña Corporation, DBP initiated extrajudicial foreclosure proceedings. A notice of foreclosure sale was sent to Guariña Corporation. The notice was eventually published, leading the clients and patrons of Guariña Corporation to think that its business operation had slowed down, and that its resort had already closed.[11]

On January 6, 1979, Guariña Corporation sued DBP in the RTC to demand specific performance of the latter's obligations under the loan agreement, and to stop the foreclosure of the mortgages (Civil Case No. 12707).[12] However, DBP moved for the dismissal of the complaint, stating that the mortgaged properties had already been sold to satisfy the obligation of Guariña Corporation at a public auction held on January 15, 1979 at the Costa Mario Resort Beach Resort in Oton, Iloilo.[13] Due to this, Guariña Corporation amended the complaint on February 6, 1979[14] to seek the nullification of the foreclosure proceedings and the cancellation of the certificate of sale. DBP filed its answer on December 17, 1979,[15] and trial followed upon the termination of the pre-trial without any agreement being reached by the parties.[16]

In the meantime, DBP applied for the issuance of a writ of possession by the RTC. At first, the RTC denied the application

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[9] *Id.* at 25.

[10] *Rollo*, p. 38.

[11] *Id.*

[12] Records pp. 1-7

[13] *Id.* at 30-31.

[14] *Id.* at 40-46.

[15] *Id.* at 55-57.

[16] *Rollo*, pp. 38-39.

but later granted it upon DBP's motion for reconsideration. Aggrieved, Guariña Corporation assailed the granting of the application before the CA on *certiorari* (C.A.-G.R. No. 12670-SP entitled *Guariña Agricultural and Realty Development Corporation v. Development Bank of the Philippines*). After the CA dismissed the petition for *certiorari*, DBP sought the implementation of the order for the issuance of the writ of possession. Over Guariña Corporation's opposition, the RTC issued the writ of possession on June 16, 1982.[17]

Judgment of the RTC

On January 6, 1998, the RTC rendered its judgment in Civil Case No. 12707, disposing as follows:

> WHEREFORE, premises considered, the court hereby resolves that the extra-judicial sales of the mortgaged properties of the plaintiff by the Office of the Provincial Sheriff of Iloilo on January 15, 1979 are null and void, so with the consequent issuance of certificates of sale to the defendant of said properties, the registration thereof with the Registry of Deeds and the issuance of the transfer certificates of title involving the real property in its name.
>
> It is also resolved that defendant give back to the plaintiff or its representative the actual possession and enjoyment of all the properties foreclosed and possessed by it. To pay the plaintiff the reasonable rental for the use of its beach resort during the period starting from the time it (defendant) took over its occupation and use up to the time possession is actually restored to the plaintiff.
>
> And, on the part of the plaintiff, to pay the defendant the loan it obtained as soon as it takes possession and management of the beach resort and resume its business operation.
>
> Furthermore, defendant is ordered to pay plaintiff's attorney's fee of ₱50,000.00.
>
> So ORDERED.[18]

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[17] *Id.* at 39.

[18] CA *rollo*, p. 34.

Decision of the CA

On appeal (C.A.-G.R. CV No. 59491), DBP challenged the judgment of the RTC, and insisted that:

I

THE TRIAL COURT ERRED AND COMMITTED REVERSIBLE ERROR IN DECLARING DBP'S FORECLOSURE OF THE MORTGAGED PROPERTIES AS INVALID AND UNCALLED FOR.

II

THE TRIAL COURT GRIEVOUSLY ERRED IN HOLDING THE GROUNDS INVOKED BY DBP TO JUSTIFY FORECLOSURE AS "NOT SUFFICIENT." ON THE CONTRARY, THE MORTGAGE WAS FORECLOSED BY EXPRESS AUTHORITY OF PARAGRAPH NO. 4 OF THE MORTGAGE CONTRACT AND SECTION 2 OF P.D. 385 IN ADDITION TO THE QUESTIONED PAR. NO. 26 PRINTED AT THE BACK OF THE FIRST PAGE OF THE MORTGAGE CONRACT.

III

THE TRIAL COURT ERRED IN HOLDING THE SALES OF THE MORTGAGED PROPERTIES TO DBP AS INVALID UNDER ARTICLES 2113 AND 2141 OF THE CIVIL CODE.

IV

THE TRIAL COURT GRAVELY ERRED AND COMMITTED [REVERSIBLE] ERROR IN ORDERING DBP TO RETURN TO PLAINTIFF THE ACTUAL POSSESSION AND ENJOYMENT OF ALL THE FORECLOSED PROPERTIES AND TO PAY PLAINTIFF REASONABLE RENTAL FOR THE USE OF THE FORECLOSED BEACH RESORT.

V

THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES AGAINST DBP WHICH MERELY EXERCISED ITS RIGHTS UNDER THE MORTGAGE CONTRACT.[19]

In its decision promulgated on March 26, 2003,[20] however, the CA sustained the RTC's judgment but deleted the award of attorney's fees, decreeing:

[19] *Id.* at 49-51.

[20] *Supra* note 1.

WHEREFORE, in view of the foregoing, the Decision dated January 6, 1998, rendered by the Regional Trial Court of Iloilo City, Branch 25 in Civil Case No. 12707 for *Specific Performance with Preliminary Injunction* is hereby AFFIRMED with MODIFICATION, in that the award for attorney's fees is deleted.

SO ORDERED.[21]

DBP timely filed a motion for reconsideration, but the CA denied its motion on October 9, 2003.

Hence, this appeal by DBP.

Issues

DBP submits the following issues for consideration, namely:

WHETHER OR NOT THE DECISION OF THE COURT OF APPEALS DATED MARCH 26, 2003 AND ITS RESOLUTION DATED OCTOBER 9, DENYING PETITIONER'S MOTION FOR RECONSIDERATION WERE ISSUED IN ACCORDANCE WITH LAW, PREVAILING JURISPRUDENTIAL DECISION AND SUPPORTED BY EVIDENCE;

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ADHERED TO THE USUAL COURSE OF JUDICIAL PROCEEDINGS IN DECIDING C.A.-G.R. CV NO. 59491 AND THEREFORE IN ACCORDANCE WITH THE "LAW OF THE CASE DOCTRINE."[22]

Ruling

The appeal lacks merit.

1.
Findings of the CA were supported by the evidence as well as by law and jurisprudence

DBP submits that the loan had been granted under its supervised credit financing scheme for the development of a beach resort, and the releases of the proceeds would be subject to conditions

[21] *Rollo,* p. 43.

[22] *Id.* at 23.

that included the verification of the progress of works in the project to forestall diversion of the loan proceeds; and that under Stipulation No. 26 of the mortgage contract, further loan releases would be terminated and the account would be considered due and demandable in the event of a deviation from the purpose of the loan,[23] including the failure to put up the required equity and the diversion of the loan proceeds to other purposes.[24] It assails the declaration by the CA that Guariña Corporation had not yet been in default in its obligations despite violations of the terms of the mortgage contract securing the promissory note.

Guariña Corporation counters that it did not violate the terms of the promissory note and the mortgage contracts because DBP had fully collected the interest notwithstanding that the principal obligation did not yet fall due and become demandable.[25]

The submissions of DBP lack merit and substance.

The agreement between DBP and Guariña Corporation was a loan. Under the law, a loan requires the delivery of money or any other consumable object by one party to another who acquires ownership thereof, on the condition that the same amount or quality shall be paid.[26] Loan is a reciprocal obligation, as it arises from the same cause where one party is the creditor, and the other the debtor.[27] The obligation of one party in a reciprocal obligation is dependent upon the obligation of the other, and the performance should ideally be simultaneous. This means that in a loan, the creditor should release the full loan amount and the debtor repays it when it becomes due and demandable.[28]

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[23] *Id.* at 25.

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

[25] *Id.* at 127-137.

[26] Article 1953, in relation to Article 1933, *Civil Code*.

[27] IV Tolentino, *The Civil Code of the Philippines*, p. 175 (1999).

[28] *Subic Bay Metropolitan Authority v. Court of Appeals*, G.R. No. 192885, July 4, 2012, 675 SCRA 758, 766.

In its assailed decision, the CA found and held thusly:

x x x x x x x x x

x x x It is undisputed that appellee obtained a loan from appellant, and as security, executed real estate and chattel mortgages. However, it was never established that appellee was already in default. Appellant, in a telegram to the appellee reminded the latter to make good on its construction works, otherwise, it would foreclose the mortgage it executed. It did not mention that appellee was already in default. The records show that appellant did not make any demand for payment of the promissory note. It appears that the basis of the foreclosure was not a default on the loan but appellee's failure to complete the project in accordance with appellant's standards. In fact, appellant refused to release the remaining balance of the approved loan after it found that the improvements introduced by appellee were below appellant's expectations.

The loan agreement between the parties is a reciprocal obligation. Appellant in the instant case bound itself to grant appellee the loan amount of ₱3,387,000.00 condition on appellee's payment of the amount when it falls due. Furthermore, the loan was evidenced by the promissory note which was secured by real estate mortgage over several properties and additional chattel mortgage. Reciprocal obligations are those which arise from the same cause, and in which each party is a debtor and a creditor of the other, such that the obligation of one is dependent upon the obligation of the other (*Areola vs. Court of Appeals, 236 SCRA 643*). They are to be performed simultaneously such that the performance of one is conditioned upon the simultaneous fulfilment of the other (*Jaime Ong vs. Court of Appeals, 310 SCRA 1*). The promise of appellee to pay the loan upon due date as well as to execute sufficient security for said loan by way of mortgage gave rise to a reciprocal obligation on the part of appellant to release the entire approved loan amount. Thus, appellees are entitled to receive the total loan amount as agreed upon and not an incomplete amount.

The appellant did not release the total amount of the approved loan. Appellant therefore could not have made a demand for payment of the loan since it had yet to fulfil its own obligation. Moreover, the fact that appellee was not yet in default rendered the foreclosure proceedings premature and improper.

The properties which stood as security for the loan were foreclosed without any demand having been made on the principal obligation. For an obligation to become due, there must generally be a demand. Default generally begins from the moment the creditor demands the performance of the obligation. Without such demand, judicial or extrajudicial, the effects of default will not arise (*Namarco vs. Federation of United Namarco Distributors, Inc., 49 SCRA 238; Borje vs. CFI of Misamis Occidental, 88 SCRA 576*).

x x x x x x x x x

Appellant also admitted in its brief that it indeed failed to release the full amount of the approved loan. As a consequence, the real estate mortgage of appellee becomes unenforceable, as it cannot be entirely foreclosed to satisfy appellee's total debt to appellant (*Central Bank of the Philippines vs. Court of Appeals, 139 SCRA 46*).

Since the foreclosure proceedings were premature and unenforceable, it only follows that appellee is still entitled to possession of the foreclosed properties. However, appellant took possession of the same by virtue of a writ of possession issued in its favor during the pendency of the case. Thus, the trial court correctly ruled when it ordered appellant to return actual possession of the subject properties to appellee or its representative and to pay appellee reasonable rents.

However, the award for attorney's fees is deleted. As a rule, the award of attorney's fees is the exception rather than the rule and counsel's fees are not to be awarded every time a party wins a suit. Attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate (*Pimentel vs. Court of Appeals, et al., 307 SCRA 38*).[29]

x x x x x x x x x

We uphold the CA.

To start with, considering that the CA thereby affirmed the factual findings of the RTC, the Court is bound to uphold such findings, for it is axiomatic that the trial court's factual findings as affirmed by the CA are binding on appeal due to the Court not being a trier of facts.

[29] *Supra* note 1, at 41-43.

Secondly, by its failure to release the proceeds of the loan in their entirety, DBP had no right yet to exact on Guariña Corporation the latter's compliance with its own obligation under the loan. Indeed, if a party in a reciprocal contract like a loan does not perform its obligation, the other party cannot be obliged to perform what is expected of it while the other's obligation remains unfulfilled.[30] In other words, the latter party does not incur delay.[31]

Still, DBP called upon Guariña Corporation to make good on the construction works pursuant to the acceleration clause written in the mortgage contract (*i.e.*, Stipulation No. 26),[32] or else it would foreclose the mortgages.

DBP's actuations were legally unfounded. It is true that loans are often secured by a mortgage constituted on real or personal property to protect the creditor's interest in case of the default of the debtor. By its nature, however, a mortgage remains an accessory contract dependent on the principal obligation,[33] such that enforcement of the mortgage contract will depend on whether or not there has been a violation of the principal obligation. While a creditor and a debtor could regulate the order in which they should comply with their reciprocal obligations, it is presupposed that in a loan the lender should perform its obligation

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[30] *Cortes v. Court of Appeals*, G.R. No. 126083, July 12, 2006, 494 SCRA 570, 576.

[31] Article 1169, *Civil Code*; IV Tolentino, *op. cit.*, at 109.

[32] Records, Volume 2, at 646-a.

Stipulation No. 26 reads:

26. That the Mortgagee reserves the right to reduce or stop releases/advances if after inspection and verification the accomplishment of the financed project does not justify giving the full amount, or if the conditions of the project do not show improvement commensurate with the amount already advanced/released. In such an event or in the event of abandonment of the project, all advances/releases made shall automatically become due and demandable and the Mortgagee shall take such legal steps as are necessary to protect its interest.

[33] *Rigor v. Consolidated Orix Leasing and Financing Corporation*, 387 SCRA 437, 444.

– the release of the full loan amount – before it could demand that the borrower repay the loaned amount. In other words, Guariña Corporation would not incur in delay before DBP fully performed its reciprocal obligation.[34]

Considering that it had yet to release the entire proceeds of the loan, DBP could not yet make an effective demand for payment upon Guariña Corporation to perform its obligation under the loan. According to *Development Bank of the Philippines v. Licuanan*,[35] it would only be when a demand to pay had been made and was subsequently refused that a borrower could be considered in default, and the lender could obtain the right to collect the debt or to foreclose the mortgage. Hence, Guariña Corporation would not be in default without the demand.

Assuming that DBP could already exact from the latter its compliance with the loan agreement, the letter dated February 27, 1978 that DBP sent would still not be regarded as a demand to render Guariña Corporation in default under the principal contract because DBP was only thereby requesting the latter "to put up the deficiency in the value of improvements."[36]

Under the circumstances, DBP's foreclosure of the mortgage and the sale of the mortgaged properties at its instance were premature, and, therefore, void and ineffectual.[37]

Being a banking institution, DBP owed it to Guariña Corporation to exercise the highest degree of diligence, as well as to observe the high standards of integrity and performance in all its transactions because its business was imbued with public interest.[38]

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[34] *Selegna Management and Development Corporation v. United Coconut Planters Bank*, G.R. No. 165662, May 3, 2006, 489 SCRA 125, 138.

[35] G.R. No.150097, February 26, 2007, 516 SCRA 644.

[36] *Supra* note 8.

[37] *Development Bank of the Philippines v. Licuanan*, *supra*, note 35, at 654.

[38] *Comsavings Bank (now GSIS Family Savings Bank) v. Capistrano*, G.R. 170942, August 28, 2013; citing *Philippine National Bank v. Chea*

The high standards were also necessary to ensure public confidence in the banking system, for, according to *Philippine National Bank v. Pike*:[39] "The stability of banks largely depends on the confidence of the people in the honesty and efficiency of banks." Thus, DBP had to act with great care in applying the stipulations of its agreement with Guariña Corporation, lest it erodes such public confidence. Yet, DBP failed in its duty to exercise the highest degree of diligence by prematurely foreclosing the mortgages and unwarrantedly causing the foreclosure sale of the mortgaged properties despite Guariña Corporation not being yet in default. DBP wrongly relied on Stipulation No. 26 as its basis to accelerate the obligation of Guariña Corporation, for the stipulation was relevant to an Omnibus Agricultural Loan, to Guariña Corporation's loan which was intended for a project other than agricultural in nature.

Even so, Guariña Corporation did not elevate the actionability of DBP's negligence to the CA, and did not also appeal the CA's deletion of the award of attorney's fees allowed by the RTC. With the decision of the CA consequently becoming final and immutable as to Guariña Corporation, we will not delve any further on DBP's actionable actuations.

2.

The doctrine of *law of the case* did not apply herein

DBP insists that the decision of the CA in C.A.-G.R. No. 12670-SP already constituted the law of the case. Hence, the CA could not decide the appeal in C.A.-G.R. CV No. 59491 differently.

Guariña Corporation counters that the ruling in C.A.-G.R. No. 12670-SP did not constitute the law of the case because

Chee Chong, G.R. Nos. 170865 and 170892, April 25, 2012, 671 SCRA 49, 62-63; *Solidbank Corporation v. Arrieta*, G.R. No. 152720, February 17, 2005, 451 SCRA 711, 720; and *Philippine Commercial International Bank v. Court of Appeals*, G.R. Nos. 121413, 121479 and 128604, January 29, 2001, 350 SCRA 446, 472.

[39] G.R. No. 157845, September 20, 2005, 470 SCRA 328, 347.

C.A.-G.R. No. 12670-SP concerned the issue of possession by DBP as the winning bidder in the foreclosure sale, and had no bearing whatsoever to the legal issues presented in C.A.-G.R. CV No. 59491.

Law of the case has been defined as the opinion delivered on a former appeal, and means, more specifically, that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.[40]

The concept of *law of the case* is well explained in *Mangold v. Bacon*,[41] an American case, thusly:

> The general rule, nakedly and boldly put, is that legal conclusions announced on a first appeal, whether on the general law or the law as applied to the concrete facts, not only prescribe the duty and limit the power of the trial court to strict obedience and conformity thereto, but they become and remain the law of the case in all other steps below or above on subsequent appeal. The rule is grounded on convenience, experience, and reason. Without the rule there would be no end to criticism, reagitation, reexamination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigants were allowed to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal would result in the foolishness of the inquisitive youth who *pulled up his corn to see how it grew*. Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use.

The doctrine of law of the case simply means, therefore, that when an appellate court has once declared the law in a

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[40] *Kilosbayan, Incorporated v. Morato*, G.R. No. 118910, July 17, 1995, 246 SCRA 540, 559, citing *People v. Pinuila,* 103 Phil. 992, 999 (1958).

[41] 237 Mo. 496, cited and quoted in *Zarate v. Director of Lands*, 39 Phil. 747, 750 (1919).

case, its declaration continues to be the law of that case even on a subsequent appeal, notwithstanding that the rule thus laid down may have been reversed in other cases.[42] For practical considerations, indeed, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded to the parties, the pronouncement should be regarded as the law of the case and should not be reopened on remand of the case to determine other issues of the case, like damages.[43] But the law of the case, as the name implies, concerns only legal questions or issues thereby adjudicated in the former appeal.

The foregoing understanding of the concept of the *law of the case* exposes DBP's insistence to be unwarranted.

To start with, the *ex parte* proceeding on DBP's application for the issuance of the writ of possession was entirely independent from the judicial demand for specific performance herein. In fact, C.A.-G.R. No. 12670-SP, being the interlocutory appeal concerning the issuance of the writ of possession while the main case was pending, was not at all intertwined with any legal issue properly raised and litigated in C.A.-G.R. CV No. 59491, which was the appeal to determine whether or not DBP's foreclosure was valid and effectual. And, secondly, the ruling in C.A.-G.R. No. 12670-SP did not settle any question of law involved herein because this case for specific performance was not a continuation of C.A.-G.R. No. 12670-SP (which was limited to the propriety of the issuance of the writ of possession in favor of DBP), and *vice versa*.

3.

Guariña Corporation is legally entitled to the restoration of the possession of the resort complex and payment of reasonable rentals by DBP

Having found and pronounced that the extrajudicial foreclosure by DBP was premature, and that the ensuing foreclosure sale

[42] *Zarate v. Director of Lands*, 39 Phil. 747, 750 (1919).

[43] *Bachrach Motor Co.v. Esteva*, 67 Phil. 16 (1938).

was void and ineffectual, the Court affirms the order for the restoration of possession to Guariña Corporation and the payment of reasonable rentals for the use of the resort. The CA properly held that the premature and invalid foreclosure had unjustly dispossessed Guariña Corporation of its properties. Consequently, the restoration of possession and the payment of reasonable rentals were in accordance with Article 561 of the *Civil Code*, which expressly states that one who recovers, according to law, possession unjustly lost shall be deemed for all purposes which may redound to his benefit to have enjoyed it without interruption.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on March 26, 2003; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 161308. January 15, 2014]

RICARDO MEDINA, JR. *y* ORIEL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TRIAL COURT'S FACTUAL FINDINGS AND EVALUATION OF THE CREDIBILITY OF WITNESSES, ACCORDED RESPECT.— Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that

the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor. But here Ricardo has not projected any strong and compelling reasons to sway the Court into rejecting or revising such factual findings and evaluation in his favor.

2. **ID.; ID.; NON-PRESENTATION OF THE WEAPON USED IN THE KILLING IS NOT INDISPENSABLE FOR CONVICTION.—** The non-identification and non-presentation of the weapon actually used in the killing did not diminish the merit of the conviction primarily because other competent evidence and the testimonies of witnesses had directly and positively identified and incriminated Ricardo as the assailant of Lino. Hence, the establishment beyond reasonable doubt of Ricardo's guilt for the homicide did not require the production of the weapon used in the killing as evidence in court, for in arriving at its findings on the culpability of Ricardo the RTC, like other trial courts, clearly looked at, considered and appreciated the entirety of the record and the evidence. For sure, the weapon actually used was not indispensable considering that the finding of guilt was based on other evidence proving his commission of the crime.

3. **ID.; ID.; POSITIVE IDENTIFICATION OF THE WITNESSES PREVAILED OVER MERE DENIAL OF THE ACCUSED.—** [T]he witnesses incriminating Ricardo were not only credible but were not shown to have harbored any ill-motive towards him. They were surely entitled to full faith and credit for those reasons, and both the RTC and the CA did well in according such credence to them. Their positive identification of him as the assailant prevailed over his mere denial, because such denial, being negative and self-serving evidence, was undeserving of weight by virtue of its lack of substantiation by clear and convincing proof. Hence, his denial had no greater evidentiary value than the affirmative testimonies of the credible witnesses presented against him.

4. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; DEFENSE OF A RELATIVE; REQUISITES TO PROSPER.— In order that defense of a relative is to be appreciated in favor of Ricardo, the following requisites must concur, namely: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation. Like in self-defense, it is the accused who carries the burden to prove convincingly the attendance and concurrence of these requisites because his invocation of this defense amounts to an admission of having inflicted the fatal injury on the victim.

5. ID.; ID.; ID.; DEFENSE OF A RELATIVE WAS UNWORTHY OF BELIEF DUE TO ITS INCONGRUITY TO HUMAN EXPERIENCE.— In invoking defense of a relative, Ricardo states that his immediate impulse upon seeing Randolf being attacked by Lino with a knife was to get his own weapon and to aid in the defense of Randolf. But that theory was inconsistent with his declaration at the trial that Lino's fatal wound had been self-inflicted, as it presupposes direct responsibility for inflicting the mortal wound. Thus, his defense was unworthy of belief due to its incongruity with human experience.

6. ID.; HOMICIDE; AWARD OF CIVIL INDEMNITY, INCREASED.— The Court needs to raise the civil indemnity from ₱50,000.00 to ₱75,000.00 in order to conform to the current judicial policy on the matter. The other awards of civil liability are sustained because of the absence of any challenge against them.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Credibility of witnesses is determined by the conformity of their testimonies to human knowledge, observation and experience.

The Case

Ricardo Medina Jr. (Ricardo) appeals by petition for review on *certiorari* the affirmance of his conviction for homicide with modification of the penalty and civil liability by the Court of Appeals (CA) through the decision promulgated on July 7, 2003.[1] He had assailed his conviction handed down under the decision rendered on January 31, 2001 by the Regional Trial Court (RTC), Branch 266, in Pasig City.[2] His brother and co-accused, Randolf Medina (Randolf), was acquitted by the RTC for insufficiency of evidence.

Antecedents

This case concerns the fatal stabbing of Lino Mulinyawe (Lino) between 9:00 and 10:00 o'clock in the evening of April 3, 1997 at Jabson Street in Acacia, Pinagbuhatan, Pasig City. The stabbing was preceded by a fight during a basketball game between Ross Mulinyawe, Lino's son, and Ronald Medina, the younger brother of Ricardo and Randolf. In that fight, Ronald had hit Ross with a piece of stone. Hearing about the involvement of his brother in the fight, Randolf rushed to the scene and sent Ronald home. Ross was brought to the hospital for treatment. Once Lino learned that his son had sustained a head injury inflicted by one of the Medinas, he forthwith went towards the house of the Medinas accompanied by his drinking buddies, Jose Tapan and Abet Menes. He had a bread knife tucked in the back, but his companions were unarmed. Along the way, Lino encountered Randolf whom he confronted about the fight. The two of them had a heated argument. Although Randolf tried to explain what had really happened between Ross and Ronald, Lino lashed out at Randolf and gripped the latter's hand. Tapan almost simultaneously punched Randolf in the face. Lino, already holding the knife in his right hand, swung the

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[1] *Rollo*, pp. 26-37; penned by Associate Justice Martin S. Villarama, Jr., (now a member of this Court) with Associate Justice Elvi John Asuncion and Associate Justice Mario L. Guariña, III concurring.

[2] Records, pp. 408-417.

knife at Randolf who was not hit. Randolf retreated towards the store and took two empty bottles of beer, broke the bottles and attacked Lino with them. Arriving at the scene, Ricardo saw what was happening, and confronted Lino. A commotion ensued between them. Ricardo entered their house to get a kitchen knife and came out. Lino made a thrust at Ricardo but failed to hit the latter, who then stabbed Lino on the left side of his chest, near the region of the heart. Lino fell face down on the ground. After that, Ricardo walked away, while Randolf threw the broken bottles at the fallen Lino.

Lino's injuries were described as follows:

> Fairly nourished, fairly developed male cadaver, in rigor mortis, with postmortem lividity at the dependent portions of the body. Conjunctive lips and nailbeds are pale.
>
> HEAD, CHEST AND LEFT KNEE:
>
> (1) Lacerated wound, left parietal region, measuring 2 by 0.7 cm, 5 cm from the midsagittal line.
>
> (2) Abrasion, left parietal region, measuring 1.2 by 0.6 cm, 8 cm from the anterior midline.
>
> (3) Abrasion left maxillary region, measuring 2 by 0.3, 4.5 cm, from the anterior midline.
>
> (4) Stab wound, left mammary region, measuring 3.6 by 1.4 cm, 5.5 cm from the anterior line, 12 cm deep, directed posteriorwards, downwards, and medialwards, thru the 4th left intercostal space, piercing the pericardial sac and left ventricle.
>
> Cause of death is Stab wound of the chest.[3]

On April 4, 1997, the Office of the City Prosecutor of Pasig City charged Randolf with homicide.[4] The information was amended with leave of court to include Ricardo as a co-conspirator, alleging thusly:

> On or about April 3, 1997 in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating

[3] Records, p. 199-b.

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

together and both of them mutually helping and aiding one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, stab and employ personal violence upon the person of Lino M. Mulinyawe, thereby inflicting upon the latter stab wound, which directly caused his death.

Contrary to law.[5]

The Defense claimed that it was Lino who had attacked Ricardo with a knife, and that Lino had accidentally stabbed himself by falling frontward and into his own knife.

Judgment of the RTC

In its judgment rendered on January 31, 2001,[6] the RTC acquitted Randolf but convicted Ricardo of homicide. It found no evidence of conspiracy between Randolf and Ricardo because their actions appeared to be independent and separate from each other and did not show that they had mounted a joint attack against Lino. It rejected Ricardo's defense that the fatal stab wound of Lino had been self-inflicted, ratiocinating that:

The fatal wound of the deceased is: 'stab wound, left mamary [sic] region, measuring 3.6 by 1.4 cm, 5.5 cm from the anterior midline, 12 cm deep, directed posteriorwards, downwards, and medialwards, thru the 4th left intercostal space, piercing the pericardial sac and left ventricle.' (See Exh. J).

Randolf Medina testified that Lino Mulinyawe attacked him with a knife held with his right hand. **The trajectory of the stab wound sustained by Lino Mulinyawe at his left mammary region as shown by the Medico Legal Report and Medico Legal Examination on the cadaver of the deceased** (Exhs. J and L) **is incompatible and inconsistent with the defense of the accused that when Mulinyawe was making a thrust, he fell frontward and accidentally stabbed himself**. If the knife was held with the right hand of Lino Mulinyawe, the stab wound would not have been from the 'anterior midline, 12 cm deep, directed posteriorwards, downwards, and medialwards, thru the 4th left intercostal space, piercing

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[5] *Id.* at 82-84.

[6] *Supra* note 2.

the pericardial sac and left ventricle.' **The trajectory of the stab wound would have been leftward and upward the body of the deceased if he really fell frontward upon it.**[7] (Emphasis supplied)

The RTC disposed and decreed:

WHEREFORE, postulates considered, this Court ACQUITS Randolf Medina for insufficiency of evidence to prove his guilt of the charge of homicide against him.

However, the evidence of the prosecution has proven beyond reasonable doubt the GUILT of the accused Ricardo Medina, Jr. *y* Oriel for homicide and he is hereby sentenced with a penalty of imprisonment of Fourteen (14) years and Eight (8) Months and One (1) day to Seventeen (17) years and Four (4) Months of *reclusion temporal* in its medium period there being neither aggravating nor mitigating circumstance (Art. 64, par. 1, Revised Penal Code).

The widow Marivi Mulinyawe is hereby awarded the amount of Thirty Thousand Pesos (₱30,000.00) as actual damages and the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages, payable by Ricardo Medina, Jr. *y* Oriel.

The bonds posted by both accused are hereby cancelled.

SO ORDERED.[8]

Decision of the CA

Ricardo appealed, but the CA affirmed his conviction with modification of the penalty and the civil liability under the decision promulgated on July 7, 2003,[9] to wit:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED and the decision appealed from in Criminal Case No. 112091 is hereby AFFIRMED with MODIFICATIONS in that accused-appellant Ricardo Medina, Jr. y Oriel is hereby instead sentenced to suffer an indeterminate prison term of eight (8) years and one (1) day to *prision mayor*, as minimum, to fourteen (14)

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[7] Records, p. 416.

[8] *Id.* at 417.

[9] *Supra* note 1.

years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and that the award of actual damages is hereby reduced from Thirty Thousand Pesos (₱30,000.00) to Twenty Thousand Pesos (₱20,000.00) and the sum of Fifty Thousand Pesos (₱50,000.00) is further granted as death indemnity in addition to the award of Fifty Thousand Pesos (₱50,000.00) as moral damages.

With costs against the accused-appellant.

SO ORDERED.

After his motion for reconsideration was denied on November 21, 2003,[10] Ricardo appealed to the Court.

Issues

Ricardo now submits the following errors for consideration, namely:

I

THE LOWER COURT GRAVELY ERRED IN ITS FACTUAL FINDING THAT THE [PETITIONER] STABBED LINO MULINYAWE IN SPITE OF THE FACT THAT:

1. THE PROSECUTION WITHHELD THE PRESENTATION OF THE ACTUAL KNIVES DURING THE HEARING OF THE CASE – WHICH PRESENTATION AND BLOOD ANALYSIS ON THE TWO KNIVES COULD HAVE PROVEN THAT LINO MULINYAWE FELL ON HIS OWN KNIFE.
2. THE MEDICO-LEGAL TESTIMONY CORROBORATED THE FACT THAT LINO MULINYAWE FELL ON HIS OWN KNIFE.

II

THE COURT OF APPEALS GRAVELY ERRED IN ADOPTING THE TRIAL COURT'S OPINION THAT THE 'FATAL WOUND COULD NOT HAVE BEEN SELF-INFLICTED' WHICH WAS THE DIRECT OPPOSITE OF THE OPINION OF THE ONLY MEDICO-LEGAL EXPERT PRESENTED WHO POSITIVELY TESTIFIED THAT THE FATAL WOUND CAN POSSIBLY BE SELF-INFLICTED.

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[10] *Rollo,* pp. 39-41.

III

THE COURT OF APPEALS ERRED IN MAKING A FINDING THAT THE [PETITIONER] STABBED THE DECEASED BUT DISREGARDED X X X THE JUSTIFYING CIRCUMSTANCE OF DEFENSE OF A RELATIVE (ART. 11, RPC) X X X

IV

THE COURT OF APPEALS, EVEN ON THE ASSUMPTION THAT PETITIONER STABBED LINO MULINYAWE, DID NOT IMPOSE THE PROPER SENTENCE BY DISREGARDING THE PRESENCE OF MITIGATING CIRCUMSTANCES AND THE LACK OF AGGRAVATING CIRCUMSTANCE ATTENDANT TO THE CASE.[11]

Ruling of the Court

The appeal has no merit.

First of all, Ricardo argues that his stabbing and inflicting of the fatal wound on Lino were not proven beyond reasonable doubt.

The argument of Ricardo is a mere reiteration of his submissions that the CA had already exhaustively considered and passed upon. He has not added anything of substance or weight to persuasively show that the CA had erred in affirming the RTC.

Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation.[12] This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court

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[11] *Id.* at 8.

[12] *People v. Malicdem*, G.R. No. 184601, November 12, 2012, 685 SCRA 193, 201; *People v. Dumadag,* G.R. No. 176740, June 22, 2011, 652 SCRA 535, 543-544.

in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor.[13] But here Ricardo has not projected any strong and compelling reasons to sway the Court into rejecting or revising such factual findings and evaluation in his favor.

Secondly, Ricardo contends that the State did not present as evidence in court the two knives wielded by him and Lino despite repeated demands for their presentation; that had the knives been presented, it could have been demonstrated to the trial court that the smaller knife used by Lino had more blood stains than the knife held by him and would fit the size of the mortal wound; that his assertion that Lino had stabbed himself when he stumbled and lost his balance while swinging his knife at Randolf would have been thereby validated; and that in his testimony, Dr. Emmanuel Aranas of the PNP Crime Laboratory Service, Southern Police District, did not rule out the possibility that the wounds sustained by Lino were self-inflicted.

The contention deserves no serious consideration.

To start with, the following findings of the CA indicate that the evidence supporting the conviction for homicide was already overwhelming even without the presentation of the knife held by the victim, to wit:

> Reviewing the records, We find that appellant's guilt as the perpetrator of the unlawful killing of the victim Lino Mulinyawe had been adequately proven by prosecution evidence, both testimonial and physical. The credible and categorical testimonies of two (2) eyewitnesses during the entire incident on the night of April 3, 1997, Jeffrey and Sherwin, positively point to appellant as the one (1) who delivered the single fatal stabbing blow upon the victim while the latter was trying to counter the assault of appellant's brother, co-accused Randolf who was then holding a broken bottle. The lone knife thrust was directed at the heart of the victim, the wound penetrating said vital organ up to 12 centimeters deep, the direction, trajectory and depth of the stab wound clearly showing the intent to

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[13] *People v. Villacorta*, G.R. No. 186412, September 7, 2011, 657 SCRA 270, 277.

kill him. The medico-legal findings of Dr. Aranas sufficiently corroborate the account of said eyewitnesses that the victim was attacked frontally and the fatal stab wound caused by a single-bladed kitchen knife such as the one (1) identified in court, previously identified by the witness but only the photographs thereof were formally offered in evidence by the prosecution.

The totality of prosecution evidence more than satisfactorily proves the commission of the offense and appellant's authorship thereof. Contrary to appellant's contention, the non-presentation of blood samples from the victim and the accused as well as the instrument which accused used in perpetrating his felonious acts do not negate criminal liability – it is enough for the prosecution to establish by the required quantum of proof that a crime was committed and the accused was the author thereof. The presentation of the weapon is not a prerequisite for conviction. Such presentation and identification of the weapon used are not indispensable to prove the guilt of the accused much more so where the perpetrator has been positively identified by a credible witness. Appellant's insistence, therefore, that the presentation of the two (2) knives would prove his innocence is futile, irrelevant and immaterial, in the face of positive identification by two unbiased and credible eyewitnesses. Positive identification where categorical and consistent and without any showing of ill-motive on the part of the eyewitnesses testifying on the matter prevails over a denial. Denial being negative evidence which is self-serving in nature, cannot prevail over the positive identification of prosecution witnesses. More so in this case where the defense of denial is not corroborated by disinterested and credible witnesses: the mother of the accused whose presence in the crime scene was not sufficiently established and Edgar Erro whose testimony is found to be doubtful and not without bias.[14]

The non-identification and non-presentation of the weapon actually used in the killing did not diminish the merit of the conviction primarily because other competent evidence and the testimonies of witnesses had directly and positively identified and incriminated Ricardo as the assailant of Lino.[15] Hence, the establishment beyond reasonable doubt of Ricardo's guilt for

[14] CA *rollo,* pp. 135-136.

[15] *People v. Fernandez,* G.R. No. 134762, July 23, 2002, 385 SCRA 38, 45.

the homicide did not require the production of the weapon used in the killing as evidence in court, for in arriving at its findings on the culpability of Ricardo the RTC, like other trial courts, clearly looked at, considered and appreciated the entirety of the record and the evidence. For sure, the weapon actually used was not indispensable considering that the finding of guilt was based on other evidence proving his commission of the crime.[16]

In addition, the witnesses incriminating Ricardo were not only credible but were not shown to have harbored any ill-motive towards him. They were surely entitled to full faith and credit for those reasons, and both the RTC and the CA did well in according such credence to them. Their positive identification of him as the assailant prevailed over his mere denial, because such denial, being negative and self-serving evidence, was undeserving of weight by virtue of its lack of substantiation by clear and convincing proof.[17] Hence, his denial had no greater evidentiary value than the affirmative testimonies of the credible witnesses presented against him.[18]

And, thirdly, Ricardo's attribution of serious error to the CA for not appreciating the justifying circumstance of defense of a relative in his favor was bereft of any support from the records.

In order that defense of a relative is to be appreciated in favor of Ricardo, the following requisites must concur, namely: (1) unlawful aggression by the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) in case the provocation was given by the person attacked, that the person making the defense took no part in the provocation.[19] Like in self-defense, it is the accused who carries

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[16] *People v. Bagcal*, G.R. Nos. 107529-30, January 29, 2001, 350 SCRA 402, 409.

[17] *People v. Agcanas,* G. R. No. 174476, October 11, 2011, 658 SCRA 842, 847, citing *People v. Caisip*, 290 SCRA 451, 456.

[18] *Id*.

[19] *People v. Dano*, G.R. No. 117690, September 1, 2000, 339 SCRA 515, 528.

the burden to prove convincingly the attendance and concurrence of these requisites because his invocation of this defense amounts to an admission of having inflicted the fatal injury on the victim.

In invoking defense of a relative, Ricardo states that his immediate impulse upon seeing Randolf being attacked by Lino with a knife was to get his own weapon and to aid in the defense of Randolf. But that theory was inconsistent with his declaration at the trial that Lino's fatal wound had been self-inflicted, as it presupposes direct responsibility for inflicting the mortal wound. Thus, his defense was unworthy of belief due to its incongruity with human experience.

Verily, the issue of credibility, when it is decisive of the guilt or innocence of the accused, is determined by the conformity of the conflicting claims and recollections of the witnesses to common experience and to the observation of mankind as probable under the circumstances. It has been appropriately emphasized that "[w]e have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance."[20]

In fine, Ricardo has not convinced the Court in this appeal that the RTC and the CA overlooked, or misappreciated, or misread some fact or circumstance of weight and consequence that would have changed the outcome of the case in his favor.

The Court needs to raise the civil indemnity from ₱50,000.00 to ₱75,000.00 in order to conform to the current judicial policy on the matter.[21] The other awards of civil liability are sustained because of the absence of any challenge against them.

WHEREFORE, the Court **DENIES** the petition for review for its lack of merit; **AFFIRMS** the decision promulgated on

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[20] Salonga, *Philippine Law on Evidence*, 3rd Ed., 1964, p. 774, quoting New Jersey Vice Chancellor Van Fleet in *Daggers v. Van Dyck*, 37 N.J. Eq. 130.

[21] *People v. Bokingo*, G.R. No. 187536, August 10, 2011, 655 SCRA 313, 334; *People v. Teriapil*, G.R. No. 191361, March 2, 2011, 644 SCRA 491, 495.

July 7, 2003 in all respects, subject to the **MODIFICATION** that the civil indemnity is increased to ₱75,000.00; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Peralta,[*] and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 162365. January 15, 2014]

ROBERTO R. DAVID, *petitioner, vs.* **EDUARDO C. DAVID,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS ARE BINDING ON THE SUPREME COURT; APPLICATION.— Considering that the factual findings of the trial court, when affirmed by the CA, are binding on the Court, the Court affirms the judgment of the CA upholding Eduardo's exercise of the right of repurchase. Roberto could no longer assail the factual findings because his petition for review on *certiorari* was limited to the review and determination of questions of law only. A question of law exists when the doubt centers on what the law is on a certain set of undisputed facts, while a question of fact exists when the doubt centers on the truth or falsity of the alleged facts. Whether the conditions for the right to repurchase were complied

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[*] Vice Associate Justice Martin S. Villarama, Jr., who penned the decision under review, pursuant to the raffle of May 8, 2013.

with, or whether there was a tender of payment, is a question of fact. With both the RTC and the CA finding and holding that Eduardo had fulfilled the conditions for the exercise of the right to repurchase, therefore, we conclude that Eduardo had effectively repurchased the properties subject of the deed of sale.

2. CIVIL LAW; CONTRACTS; SALE WITH RIGHT TO REPURCHASE; PAYMENT BY DEPOSITING THE AMOUNT IN VENDOR'S ACCOUNT WAS AN EFFECTIVE EXERCISE OF THE RIGHT TO REPURCHASE.— In *Metropolitan Bank and Trust Company v. Tan*, the Court ruled that a redemption within the period allowed by law is not a matter of intent but of payment or valid tender of the full redemption price within the period. Verily, the tender of payment is the seller's manifestation of his desire to repurchase the property with the offer of immediate performance. As we stated in *Legaspi v. Court of Appeals*, a sincere tender of payment is sufficient to show the exercise of the right to repurchase. Here, Eduardo paid the repurchase price to Roberto by depositing the proceeds of the sale of the Baguio City lot in the latter's account. Such payment was an effective exercise of the right to repurchase.

3. ID.; ID.; ID.; EFFECTS OF COMPLIANCE WITH THE CONDITION FOR THE REPURCHASE.— In sales with the right to repurchase, the title and ownership of the property sold are immediately vested in the vendee, subject to the resolutory condition of repurchase by the vendor within the stipulated period. Accordingly, the ownership of the affected properties reverted to Eduardo once he complied with the condition for the repurchase, thereby entitling him to the possession of the other motor vehicle with trailer.

APPEARANCES OF COUNSEL

Proceso M. Nacino for petitioner.
Nestor P. Mondok for respondent.

D E C I S I O N

BERSAMIN, *J.*:

In a sale with right to repurchase, title and ownership of the property sold are immediately vested in the vendee, subject to the resolutory condition of repurchase by the vendor within the stipulated period.

The Case

Under review at the defendant's instance is the decision promulgated on October 10, 2003,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on December 5, 2001 by the Regional Trial Court (RTC), Branch 61, in Baguio City ordering him to return to the plaintiff the motor vehicle and trailer subject of the complaint, or to pay their value of ₱500,000.00 should the return not be effected, and to pay the plaintiff ₱20,000.00 as litigation expenses, ₱50,000.00 as attorney's fees, and the costs of suit.[2]

Antecedents

Respondent Eduardo C. David (Eduardo) initiated this replevin suit against Roberto R. David (Roberto), his first cousin and former business partner, to recover the possession of one unit of International CO 9670 Truck Tractor and Mi-Bed Trailer.

It appears that on July 7, 1995, Eduardo and his brother Edwin C. David (Edwin), acting on their own and in behalf of their co-heirs, sold their inherited properties to Roberto, specifically: (*a*) a parcel of land with an area of 1,231 square meters, together with all the improvements existing thereon, located in Baguio City and covered by Transfer Certificate of Title No. T-22983 of the Registry of Deeds of Baguio City

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[1] *Rollo*, pp. 26-34; penned by Associate Justice Rodrigo V. Cosico (retired), with Associate Justice Mariano C. Del Castillo (now a Member of the Court) and Associate Justice Rosalinda Asuncion-Vicente (retired) concurring.

[2] *Id.* at 55-59; penned by Judge Antonio C. Reyes.

(Baguio City lot); and (*b*) two units International CO 9670 Truck Tractor with two Mi-Bed Trailers.[3] A deed of sale with assumption of mortgage (deed of sale)[4] embodied the terms of their agreement, stipulating that the consideration for the sale was ₱6,000,000.00, of which ₱2,000,000 was to be paid to Eduardo and Edwin, and the remaining ₱4,000,000.00 to be paid to Development Bank of the Philippines (DBP) in Baguio City to settle the outstanding obligation secured by a mortgage on such properties. The parties further agreed to give Eduardo and Edwin the right to repurchase the properties within a period of three years from the execution of the deed of sale based on the purchase price agreed upon, plus 12% interest *per annum*.

In April 1997, Roberto and Edwin executed a memorandum of agreement (MOA)[5] with the Spouses Marquez and Soledad Go (Spouses Go), by which they agreed to sell the Baguio City lot to the latter for a consideration of ₱10,000,000.00. The MOA stipulated that "in order to save payment of high and multiple taxes considering that the x x x subject matter of this sale is mortgaged with DBP, Baguio City, and sold [to Roberto], Edwin will execute the necessary Deed of Absolute Sale in favor of [the Spouses Go], in lieu of [Roberto]."[6] The Spouses Go then deposited the amount of ₱10,000,000.00 to Roberto's account.[7]

After the execution of the MOA, Roberto gave Eduardo ₱2,800,000.00 and returned to him one of the truck tractors and trailers subject of the deed of sale. Eduardo demanded for the return of the other truck tractor and trailer, but Roberto refused to heed the demand.

Thus, Eduardo initiated this replevin suit against Roberto, alleging that he was exercising the right to repurchase under the

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[3] *Id.* at 11-12.

[4] *Id.* at 63-66.

[5] *Id.* at 60-62.

[6] *Id.* at 61.

[7] *Id.* at 12; 79.

deed of sale; and that he was entitled to the possession of the other motor vehicle and trailer.

In his answer, Roberto denied that Eduardo could repurchase the properties in question; and insisted that the MOA had extinguished their deed of sale by novation.

Judgment of the RTC

On December 5, 2001,[8] the RTC rendered judgment in favor of Eduardo, holding that the stipulation giving Eduardo the right to repurchase had made the deed of sale a conditional sale; that Eduardo had fulfilled the conditions for the exercise of the right to repurchase; that the ownership of the properties in question had reverted to Eduardo; that Roberto's defense of novation had no merit; and that due to Roberto's bad faith in refusing to satisfy Eduardo's claim, Eduardo should be awarded litigation expenses and attorney's fees. The dispositive portion of the judgment reads:

> WHEREFORE, premises considered, judgment is hereby rendered for the plaintiff and against the defendant ORDERING the latter to return to the former the motor vehicle and trailer subject matter of the case or to pay its value in the amount of ₱500,000 in case manual delivery can not be effected; to pay plaintiff the amount of ₱20,000 as litigation expenses; the amount of ₱50,000 as attorney's fees and the costs of this suit.
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> SO ORDERED.[9]

Roberto appealed to the CA.

Ruling of the CA

On October 10, 2003,[10] the CA promulgated its decision affirming the RTC. It opined that although there was no express exercise of the right to repurchase, the sum of all the relevant

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[8] *Supra* note 2.

[9] *Rollo*, pp. 58-59.

[10] *Supra* note 1.

circumstances indicated that there was an exercise of the right to repurchase pursuant to the deed of sale, that the findings of the RTC to the effect that the conditions for the exercise of the right to repurchase had been adequately satisfied by Eduardo, and that no novation as claimed by Roberto had intervened.

On February 16, 2004,[11] the CA denied Roberto's motion for reconsideration.[12]

Hence, this petition for review on *certiorari*.

Issues

Roberto seeks a reversal, claiming that the CA erred:

x x x IN HOLDING THAT THE RESPONDENT HAS EXERCISED THEIR RIGHT TO REPURCHASE;

x x x IN HOLDING THAT THERE WAS NO NOVATION OF THE DEED OF SALE WITH ASSUMPTION OF MORTGAGE WHEN THE PARTIES EXECUTED A MEMORANDUM OF AGREEMENT FOR THE SALE OF THE SUBJECT HOUSE AND LOT AND, THEREAFTER SOLD THE SAID PROPERTY TO THIRD PERSONS;

x x x IN RESOLVING THE INSTANT CASE IN FAVOR OF RESPO[N]DENT.[13]

Ruling of the Court

The petition for review has no merit.

A sale with right to repurchase is governed by Article 1601 of the *Civil Code*, which provides that: "Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon." Conformably with Article 1616,[14] the seller given

[11] *Rollo*, p. 50.

[12] *Id.* at 35-47.

[13] *Id.* at 13.

[14] Article 1616. The vendor cannot avail himself of the right of repurchase without returning to the vendee the price of the sale, and in addition: (1) The

the right to repurchase may exercise his right of redemption by paying the buyer: (*a*) the price of the sale, (*b*) the expenses of the contract, (*c*) legitimate payments made by reason of the sale, and (*d*) the necessary and useful expenses made on the thing sold.

The deed of sale entered into by Eduardo and Roberto contained the following stipulation on the right to repurchase, to wit:

> x x x the Vendors are given the right to repurchase the aforesaid described real property, together with the improvements thereon, and the two (2) motor vehicles, together with their respective trailers from the Vendee within a period of three (3) years from the execution of this document on the purchase price agreed upon by the parties after considering the amount previously paid to the Vendors in the amount of TWO MILLION PESOS (₱2,000,000.00), Philippine Currency, with an interest of twelve percent (12%) per annum and the amount paid with the Development Bank of the Philippines with an interest of twelve percent (12%) per annum.[15]

The CA and the RTC both found and held that Eduardo had complied with the conditions stipulated in the deed of sale and prescribed by Article 1616 of the *Civil Code*. Pertinently, the CA stated:

> It should be noted that the alleged repurchase was exercised within the stipulated period of three (3) years from the time the Deed of Sale with Assumption of Mortgage was executed. The only question now, therefore, which remains to be resolved is whether or not the conditions set forth in the Deed of Sale with Assumption of Mortgage, *i.e*. the tender of the purchase price previously agreed upon, which is Php2.0 Million, plus 12% interest per annum, and the amount paid by the defendant to DBP, had been satisfied.
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> From the testimony of the defendant himself, these preconditions for the exercise of plaintiff's right to repurchase were adequately satisfied by the latter. Thus, as stated, from the Php10 Million purchase

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expenses of the contract, and any other legitimate payments made by reason of the sale; (2) The necessary and useful expenses made on the thing sold.

[15] *Rollo*, p. 65.

price which was directly paid to the defendant, the latter deducted his expenses plus interests and the loan, and the remaining amount he turned over to the plaintiff. This testimony is an unequivocal acknowledgement from defendant that plaintiff and his co-heirs exercised their right to repurchase the property within the agreed period by satisfying all the conditions stipulated in the Deed of Sale with Assumption of Mortgage. Moreover, defendant returned to plaintiff the amount of Php2.8 Million from the total purchase price of Php10.0 Million. This only means that this is the excess amount pertaining to plaintiff and co-heirs after the defendant deducted the repurchase price of Php2.0 Million plus interests and his expenses. Add to that is the fact that defendant returned one of the trucks and trailers subject of the Deed of Sale with Assumption of Mortgage to the plaintiff. This is, at best, a tacit acknowledgement of the defendant that plaintiff and his co-heirs had in fact exercised their right to repurchase.[16] x x x

Considering that the factual findings of the trial court, when affirmed by the CA, are binding on the Court,[17] the Court affirms the judgment of the CA upholding Eduardo's exercise of the right of repurchase. Roberto could no longer assail the factual findings because his petition for review on *certiorari* was limited to the review and determination of questions of law only. A question of law exists when the doubt centers on what the law is on a certain set of undisputed facts, while a question of fact exists when the doubt centers on the truth or falsity of the alleged facts.[18] Whether the conditions for the right to repurchase were complied with, or whether there was a tender of payment, is a question of fact. With both the RTC and the CA finding and holding that Eduardo had fulfilled the conditions for the exercise of the right to repurchase, therefore, we conclude that Eduardo had effectively repurchased the properties subject of the deed of sale.

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[16] *Id.* at. 32-33.

[17] *Narvaez v. Alciso,* G.R. No. 165907, July 27, 2009, 594 SCRA 60, 70, citing *Pagsibigan v. People*, G.R. No. 163868, June 4, 2009, 588 SCRA 249, 257.

[18] *Id.* at. 68.

In *Metropolitan Bank and Trust Company v. Tan*,[19] the Court ruled that a redemption within the period allowed by law is not a matter of intent but of payment or valid tender of the full redemption price within the period. Verily, the tender of payment is the seller's manifestation of his desire to repurchase the property with the offer of immediate performance.[20] As we stated in *Legaspi v. Court of Appeals*,[21] a sincere tender of payment is sufficient to show the exercise of the right to repurchase. Here, Eduardo paid the repurchase price to Roberto by depositing the proceeds of the sale of the Baguio City lot in the latter's account. Such payment was an effective exercise of the right to repurchase.

On the other hand, the Court dismisses as devoid of merit Roberto's insistence that the MOA had extinguished the obligations established under the deed of sale by novation.

The issue of novation involves a question of fact, as it necessarily requires the factual determination of the existence of the various requisites of novation, namely: (*a*) there must be a previous valid obligation; (*b*) the parties concerned must agree to a new contract; (*c*) the old contract must be extinguished; and (*d*) there must be a valid new contract.[22] With both the RTC and the CA concluding that the MOA was consistent with the deed of sale, novation whereby the deed of sale was extinguished did not occur. In that regard, it is worth repeating that the factual findings of the lower courts are binding on the Court.

In sales with the right to repurchase, the title and ownership of the property sold are immediately vested in the vendee, subject

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[19] G. R. No. 178449, October 17, 2008, 569 SCRA 814, 832, citing *BPI Family Savings Bank Inc. v. Veloso*, G.R. No. 141974, August 9, 2004, 436 SCRA 1, 8.

[20] *Narvaez v. Alciso, supra* note 14, at 75.

[21] G.R.No. L-45510, May 27, 1986, 142 SCRA 82, 88.

[22] *Magdiwang Realty Corp. v. The Manila Banking Corp.,* G.R. No. 195592, September 5, 2012, 680 SCRA 251, 263, citing *Country Bankers Insurance Corporation v. Lagman*, G.R. No. 165487, July 13, 2011, 653 SCRA 765, 777.

to the resolutory condition of repurchase by the vendor within the stipulated period.[23] Accordingly, the ownership of the affected properties reverted to Eduardo once he complied with the condition for the repurchase, thereby entitling him to the possession of the other motor vehicle with trailer.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on October 10, 2003; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 163753. January 15, 2014]

DR. ENCARNACION C. LUMANTAS, M.D., *petitioner, vs.* **HANZ CALAPIZ, REPRESENTED BY HIS PARENTS, HILARIO CALAPIZ, JR. and HERLITA CALAPIZ,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; RECKLESS IMPRUDENCE RESULTING IN SERIOUS PHYSICAL INJURIES; ACQUITTAL OF THE ACCUSED DOES NOT MEAN HIS ABSOLUTION FROM CIVIL LIABILITY.— [T]he acquittal of an accused does not prevent a judgment from still being rendered against him on

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[23] *Lumayag v. Heirs of Jacinto Nemeño*, G. R. No. 162112, July 3, 2007, 526 SCRA 315, 324, citing *Vda. De Rigonan v. Derecho,* G.R. No. 159571, July 15, 2005, 463 SCRA 627, 636.

the civil aspect of the criminal case unless the court finds and declares that the fact from which the civil liability might arise did not exist. Although it found the Prosecution's evidence insufficient to sustain a judgment of conviction against the petitioner for the crime charged, the RTC did not err in determining and adjudging his civil liability for the same act complained of based on mere preponderance of evidence. In this connection, the Court reminds that the acquittal for insufficiency of the evidence did not require that the complainant's recovery of civil liability should be through the institution of a separate civil action for that purpose.

2. **ID.; ID.; ID.; WHERE PHYSICAL INTEGRITY OF ONE'S BODY HAD BEEN VIOLATED WHICH RESULTED IN PHYSICAL AND MORAL SUFFERINGS, AWARD OF MORAL DAMAGES IS WARRANTED.—** Every person is entitled to the physical integrity of his body. Although we have long advocated the view that any physical injury, like the loss or diminution of the use of any part of one's body, is not equatable to a pecuniary loss, and is not susceptible of exact monetary estimation, civil damages should be assessed once that integrity has been violated. The assessment is but an imperfect estimation of the true value of one's body. The usual practice is to award moral damages for the physical injuries sustained. In Hanz's case, the undesirable outcome of the circumcision performed by the petitioner forced the young child to endure several other procedures on his penis in order to repair his damaged urethra. Surely, his physical and moral sufferings properly warranted the amount of ₱50,000.00 awarded as moral damages.

3. **ID.; ID.; ID.; ID.; 6% INTEREST *PER ANNUM* RECKONED FROM THE TIME OF FILING THE INFORMATION IS IMPOSED ON THE AWARD OF MORAL DAMAGES.—** Many years have gone by since Hanz suffered the injury. Interest of 6% *per annum* should then be imposed on the award as a sincere means of adjusting the value of the award to a level that is not only reasonable but just and commensurate. Unless we make the adjustment in the permissible manner by prescribing legal interest on the award, his sufferings would be unduly compounded. For that purpose, the reckoning of interest should be from the filing of the criminal information

on April 17, 1997, the making of the judicial demand for the liability of the petitioner.

APPEARANCES OF COUNSEL

Alaric P. Acosta for petitioner.
Anastacio P. Marcelo for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The acquittal of the accused does not necessarily mean his absolution from civil liability.

The Case

In this appeal, an accused desires the reversal of the decision promulgated on February 20, 2003,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on August 6, 1999 by the Regional Trial Court (RTC), Branch 13, in Oroquieta City ordering him to pay moral damages despite his acquittal of the crime of reckless imprudence resulting in serious physical injuries charged against him.[2]

Antecedents

On January 16, 1995, Spouses Hilario Calapiz, Jr. and Herlita Calapiz brought their 8-year-old son, Hanz Calapiz (Hanz), to the Misamis Occidental Provincial Hospital, Oroquieta City, for an emergency appendectomy. Hanz was attended to by the petitioner, who suggested to the parents that Hanz also undergo circumcision at no added cost to spare him the pain. With the parents' consent, the petitioner performed the coronal type of circumcision on Hanz after his appendectomy. On the following

[1] *Rollo*, pp. 25-30; penned by Associate Justice Perlita J. Tria Tirona (retired), with Associate Justice Roberto A. Barrios (retired/deceased) and Associate Justice Edgardo F. Sundiam (retired/deceased) concurring.

[2] *Id.* at 13-20.

day, Hanz complained of pain in his penis, which exhibited blisters. His testicles were swollen. The parents noticed that the child urinated abnormally after the petitioner forcibly removed the catheter, but the petitioner dismissed the abnormality as normal. On January 30, 1995, Hanz was discharged from the hospital over his parents' protestations, and was directed to continue taking antibiotics.

On February 8, 1995, Hanz was confined in a hospital because of the abscess formation between the base and the shaft of his penis. Presuming that the ulceration was brought about by Hanz's appendicitis, the petitioner referred him to Dr. Henry Go, an urologist, who diagnosed the boy to have a damaged urethra. Thus, Hanz underwent cystostomy, and thereafter was operated on three times to repair his damaged urethra.

When his damaged urethra could not be fully repaired and reconstructed, Hanz's parents brought a criminal charge against the petitioner for reckless imprudence resulting to serious physical injuries. On April 17, 1997, the information[3] was filed in the Municipal Trial Court in Cities of Oroquieta City (MTCC), to which the latter pleaded not guilty on May 22, 1998.[4] Under the order of April 30, 1999, the case was transferred to the RTC pursuant to Supreme Court Circular No. 11-99.[5]

At the trial, the Prosecution presented several witnesses, including Dr. Rufino Agudera as an expert witness and as the physician who had operated on Hanz twice to repair the damaged urethra. Dr. Agudera testified that Hanz had been diagnosed to have urethral stricture and cavernosal injury left secondary to trauma that had necessitated the conduct of two operations to strengthen and to lengthen the urethra. Although satisfactorily explaining that the injury to the urethra had been caused by trauma, Dr. Agudera could not determine the kind of trauma that had caused the injury.

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

[4] Records, p. 174.

[5] *Id.* at 413.

In his defense, the petitioner denied the charge. He contended that at the time of his examination of Hanz on January 16, 1995, he had found an accumulation of pus at the vicinity of the appendix two to three inches from the penis that had required immediate surgical operation; that after performing the appendectomy, he had circumcised Hanz with his parents' consent by using a congo instrument, thereby debunking the parents' claim that their child had been cauterized; that he had then cleared Hanz on January 27, 1995 once his fever had subsided; that he had found no complications when Hanz returned for his follow up check-up on February 2, 1995; and that the abscess formation between the base and the shaft of the penis had been brought about by Hanz's burst appendicitis.

Ruling of the RTC

In its decision rendered on August 6, 1999,[6] the RTC acquitted the petitioner of the crime charged for insufficiency of the evidence. It held that the Prosecution's evidence did not show the required standard of care to be observed by other members of the medical profession under similar circumstances. Nonetheless, the RTC ruled that the petitioner was liable for moral damages because there was a preponderance of evidence showing that Hanz had received the injurious trauma from his circumcision by the petitioner. The decision disposed as follows:

> WHEREFORE, for insufficiency of evidence, this court renders judgment acquitting the accused, Dr. Encarnacion Lumantas, of reckless imprudence resulting in serious physical injuries, but ordering him to pay Hanz Calapiz ₱50,000.00 as moral damages. No costs.
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> SO ORDERED.

Ruling of the CA

On appeal, the CA affirmed the RTC,[7] sustaining the award of moral damages. It opined that even if the petitioner had

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[6] *Rollo*, pp. 13-20.

[7] *Id.* at 25-30.

been acquitted of the crime charged, the acquittal did not necessarily mean that he had not incurred civil liability considering that the Prosecution had preponderantly established the sufferings of Hanz as the result of the circumcision.

The petitioner moved for reconsideration, but the CA denied the motion on April 28, 2004.[8]

Hence, this appeal.

Issue

Whether the CA erred in affirming the petitioner's civil liability despite his acquittal of the crime of reckless imprudence resulting in serious physical injuries.

Ruling

The petition for review lacks merit.

It is axiomatic that every person criminally liable for a felony is also civilly liable.[9] Nevertheless, the acquittal of an accused of the crime charged does not necessarily extinguish his civil liability. In *Manantan v. Court of Appeals*,[10] the Court elucidates on the two kinds of acquittal recognized by our law as well as on the different effects of acquittal on the civil liability of the accused, *viz*:

> Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no *delict*, civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the *delict* complained of. This is the situation

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[8] *Id.* at 33.

[9] Article 100, *Revised Penal Code*.

[10] G.R. No. 107125, January 29, 2001, 350 SCRA 387, 397.

contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only.

The *Rules of Court* requires that in case of an acquittal, the judgment 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."[11]

Conformably with the foregoing, therefore, the acquittal of an accused does not prevent a judgment from still being rendered against him on the civil aspect of the criminal case unless the court finds and declares that the fact from which the civil liability might arise did not exist.

Although it found the Prosecution's evidence insufficient to sustain a judgment of conviction against the petitioner for the crime charged, the RTC did not err in determining and adjudging his civil liability for the same act complained of based on mere preponderance of evidence.[12] In this connection, the Court reminds that the acquittal for insufficiency of the evidence did not require that the complainant's recovery of civil liability should be through the institution of a separate civil action for that purpose.[13]

The petitioner's contention that he could not be held civilly liable because there was no proof of his negligence deserves scant consideration. The failure of the Prosecution to prove his criminal negligence with moral certainty did not forbid a finding against him that there was preponderant evidence of his negligence to hold him civilly liable.[14] With the RTC and the CA both

[11] Section 2, Rule 120, *Rules of Court*.

[12] Article 29, *Civil Code*.

[13] *Romero v. People*, G.R. No. 167546, July 17, 2009, 593 SCRA 202, 206.

[14] *Id*.

finding that Hanz had sustained the injurious trauma from the hands of the petitioner on the occasion of or incidental to the circumcision, and that the trauma could have been avoided, the Court must concur with their uniform findings. In that regard, the Court need not analyze and weigh again the evidence considered in the proceedings *a quo*. The Court, by virtue of its not being a trier of facts, should now accord the highest respect to the factual findings of the trial court as affirmed by the CA in the absence of a clear showing by the petitioner that such findings were tainted with arbitrariness, capriciousness or palpable error.

Every person is entitled to the physical integrity of his body. Although we have long advocated the view that any physical injury, like the loss or diminution of the use of any part of one's body, is not equatable to a pecuniary loss, and is not susceptible of exact monetary estimation, civil damages should be assessed once that integrity has been violated. The assessment is but an imperfect estimation of the true value of one's body. The usual practice is to award moral damages for the physical injuries sustained.[15] In Hanz's case, the undesirable outcome of the circumcision performed by the petitioner forced the young child to endure several other procedures on his penis in order to repair his damaged urethra. Surely, his physical and moral sufferings properly warranted the amount of ₱50,000.00 awarded as moral damages.

Many years have gone by since Hanz suffered the injury. Interest of 6% *per annum* should then be imposed on the award as a sincere means of adjusting the value of the award to a level that is not only reasonable but just and commensurate. Unless we make the adjustment in the permissible manner by prescribing legal interest on the award, his sufferings would be unduly compounded. For that purpose, the reckoning of interest should be from the filing of the criminal information on April 17, 1997, the making of the judicial demand for the liability of the petitioner.

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[15] *Ong v. Court of Appeals, et al.*, G.R. No. 117103, January 21, 1999, 301 SCRA 387, 398.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on February 23, 2003, with the modification that legal interest of 6% *per annum* to start from April 17, 1997 is imposed on the award of ₱50,000.00 as moral damages; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 164246. January 15, 2014]

HERMINIA ACBANG, *petitioner, vs.* **HON. JIMMY H.F. LUCZON, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 01, SECOND JUDICIAL REGION, TUGUEGARAO CITY, CAGAYAN, and SPOUSES MAXIMO LOPEZ and HEIDI L. LOPEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; REQUIREMENTS TO STAY THE IMMEDIATE EXECUTION OF A JUDGMENT IN AN EJECTMENT SUIT; NOT COMPLIED WITH IN CASE AT BAR.— [A] judgment in favor of the plaintiff in an ejectment suit is immediately executory, but the defendant, to stay its immediate execution, must: (1) perfect an appeal; (2) file a *supersedeas* bond; and (3) periodically deposit the rentals becoming due during the pendency of the appeal. Although the petitioner correctly states that the Spouses Lopez should file a motion for execution pending appeal before the court may issue an order for the

immediate execution of the judgment, the spouses Lopez are equally correct in pointing out that they were entitled to the immediate execution of the judgment in view of the Acbangs' failure to comply with all of the three abovementioned requisites for staying the immediate execution. The filing of the notice of appeal alone perfected the appeal but did not suffice to stay the immediate execution without the filing of the sufficient *supersedeas* bond and the deposit of the accruing rentals.

2. ID.; ID.; ID.; SUPERVENING DECLARATION OF THE NULLITY OF THE JUDGMENT SOUGHT TO BE EXECUTED RENDERED MOOT AND ACADEMIC THE ISSUE IN AN EJECTMENT SUIT .— [T]he decision of the RTC favored the petitioner because it declared the judgment of the MTC void as far as she was concerned for lack of jurisdiction over her person. The RTC thus directed the MTC to cause the service of the summons on her and to conduct further proceedings without any delay. In effect, the supervening declaration of the nullity of the judgment being sought to be executed against her has rendered moot and academic the issue in this special civil action as far as she was concerned.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Jesus John B. Garma for private respondents.

D E C I S I O N

BERSAMIN, *J.*:

To stay the immediate execution of the judgment in an ejectment case, the defendant must perfect an appeal, file a *supersedeas* bond, and periodically deposit the rentals becoming due during the pendency of the appeal. Otherwise, the writ of execution will issue upon motion of the plaintiff.

The Case

By petition for prohibition, the petitioner, a defendant-appellant in Civil Case No. 6302 of the Regional Trial Court (RTC),

Branch 1, in Tuguegarao City, Cagayan, assails the order issued on March 31, 2004 by respondent Judge Jimmy H.F. Luczon, Jr. (Judge Luczon) granting the motion for execution against her and her co-defendants on the ground that she had not posted any *supersedeas* bond to stay the execution.[1]

Antecedents

Respondent Spouses Maximo and Heidi Lopez (Spouses Lopez) commenced an ejectment suit against the petitioner, her son Benjamin Acbang, Jr. and his wife Jean (Acbangs) in the Municipal Trial Court (MTC) of Alcala, Cagayan (Civil Case No. 64). The defendants did not file their answer. Thus, the MTC rendered its decision on January 12, 2004 in favor of the Spouses Lopez, disposing thusly:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and as against defendants as follows:
>
> a) The plaintiffs are the true and lawful owners of the land covered by Transfer Certificate of Title No. T-139163.
>
> b) The defendants are directed to vacate immediately the land in suit which is covered and described in TCT No. T-139163, copy of the title is marked as Annex "A" of the complaint.
>
> c) The defendants are hereby ordered to pay jointly and severally to the plaintiffs the amount of ₱5,000.00 as attorney's fees.
>
> d) The defendants are ordered to pay the costs.[2]

The petitioner appealed to the RTC.

In the meantime, the Spouses Lopez moved for the execution of the decision pending appeal in the RTC,[3] alleging that the defendants had not filed a *supersedeas* bond to stay the execution. The Acbangs opposed the motion for execution pending appeal,[4]

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[1] *Rollo*, p. 17.

[2] *Id.* at 40.

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

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

insisting that the failure of the Spouses Lopez to move for the execution in the MTC constituted a waiver of their right to the immediate execution; and that, therefore, there was nothing to stay, rendering the filing of the *supersedeas* bond unnecessary.

In his assailed order dated March 31, 2004, Judge Luczon granted the motion for immediate execution, *viz*:

> The Motion for Execution is hereby granted, there being no Motion to Fix *Supersedeas* bond filed by [the Acbangs] as of the date of the filing of the Motion.
>
> The opposition of [the spouses Lopez] on the appeal taken by [the Acbangs] is hereby denied because under the rules the loosing [sic] party may appeal the case even if they did not post their *supercedeas* [sic] bond. [The spouses Lopez] then are given 15 days from today within which to file their memorandum and [the Acbangs] are also given similar period to file their reply on the memorandum of [the spouses Lopez]. Afterwhich (sic) the case shall be submitted for decision with or without the memorandum from the parties.
>
> SO ORDERED.[5]

The petitioner moved for reconsideration,[6] stressing that the filing of the *supersedeas* bond was for the purpose of staying the execution; and that she as a defendant would not be placed in a position to stay the execution by filing a *supersedeas* bond unless she was first notified of the filing of the motion for immediate execution.

The RTC denied the petitioner's motion for reconsideration on April 26, 2004,[7] *viz*:

> The Motion for Reconsideration filed by defendant Herminia Acbang is denied, for the reason that the Court finds no cause or reason to recall the order granting appellees' motion for execution.
>
> There was no *supersedeas* bond filed by [the Acbangs], so the execution of the decision is proper.

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[5] *Id.* at 17.

[6] *Id.* at 18-20.

[7] *Id.* at 31.

As the office of the *supersedeas* bond is to stay the execution of the decision, the same should be filed before the Motion For Writ of Execution is filed.

IT IS SO ORDERED.[8]

The petitioner then brought the petition for prohibition directly in this Court on July 2, 2004, submitting that Judge Luczon thereby committed grave error in granting the motion for immediate execution of the Spouses Lopez without first fixing the *supersedeas* bond as prayed for by the Acbangs.

It appears that the RTC rendered its decision in Civil Case No. 6302 on July 30, 2004,[9] finding that the petitioner had not received the summons, and that the sheriff's return did not show the steps taken by the server to insure the petitioner's receipt of the summons, like the tender of the summons to her; that the non-service of the summons on her resulted in the MTC not acquiring jurisdiction over her; and that the MTC's decision in Civil Case No. 64 dated January 14, 2004 was void as far as she was concerned. Thus, the RTC disposed as follows:

WHEREFORE, in the light of the foregoing, the Court declares that the decision rendered by the Municipal Trial Court of Alcala, Cagayan dated January 14, 2004 is null and void, as far as defendant Herminia Acbang is concerned.

The MTC of Alcala is Ordered to reopen the case and served [sic] the summons to Herminia Acbang and conduct the proceedings without any delay.

It is so adjudged.[10]

In the petition, the petitioner insists that the Spouses Lopez's motion for execution pending appeal should be filed before she posted a *supersedeas* bond. She argues that even if the MTC's decision was immediately executory, it did not mean that a motion for execution was dispensable; and that the Spouses

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[8] *Id.* at 21.

[9] *Id.* at 40-42.

[10] *Id.* at 42.

Lopez waived their right to the immediate execution when they did not file a motion for execution in the MTC.

On the other hand, the Spouses Lopez claim that the issuance of a writ of execution was ministerial because of the defendants' failure to file a *supersedeas* bond prior to or at the time of the filing of their notice of appeal in the MTC.

Ruling

Section 19, Rule 70 of the 1997 Rules of Civil Procedure reads:

Section 19. *Immediate execution of judgment; how to stay same.* — If judgment is rendered against the defendant, execution shall issue immediately upon motion unless an appeal has been perfected and the defendant to stay execution files a sufficient *supersedeas* bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. In the absence of a contract, he shall deposit with the Regional Trial Court the reasonable value of the use and occupation of the premises for the preceding month or period at the rate determined by the judgment of the lower court on or before the tenth day of each succeeding month or period. The *supersedeas* bond shall be transmitted by the Municipal Trial Court, with the papers, to the clerk of the Regional Trial Court to which the action is appealed.

All amounts so paid to the appellate court shall be deposited with said court or authorized government depositary bank, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but

such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.

After the case is decided by the Regional Trial Court, any money paid to the court by the defendant for purposes of the stay of execution shall be disposed of in accordance with the provisions of the judgment of the Regional Trial Court. In any case wherein it appears that the defendant has been deprived of the lawful possession of land or building pending the appeal by virtue of the execution of the judgment of the Municipal Trial Court, damages for such deprivation of possession and restoration of possession and restoration of possession may be allowed the defendant in the judgment of the Regional Trial Court disposing of the appeal.

Here, there was no indication of the date when the petitioner filed her notice of appeal. Her petition stated simply that she had filed a "timely notice of appeal which was given due course without the respondents filing a motion for execution in the Municipal Trial Court of Alcala, the court *a quo*."[11] On the other hand, the Spouses Lopez filed in the RTC their motion for execution pending appeal on February 19, 2004.

The ruling in *Chua v. Court of Appeals*[12] is instructive on the means of staying the immediate execution of a judgment in an ejectment case, to wit:

As a general rule, a judgment in favor of the plaintiff in an ejectment suit is immediately executory, in order to prevent further damage to him arising from the loss of possession of the property in question. To stay the immediate execution of the said judgment while the appeal is pending the foregoing provision requires that the following requisites must concur: (1) the defendant perfects his appeal; (2) he files a *supersedeas* bond; and (3) he periodically deposits the rentals which become due during the pendency of the appeal. The failure of the defendant to comply with *any* of these conditions is a ground for the *outright execution* of the judgment, the duty of the court in this respect being "ministerial and imperative." Hence, if the defendant-appellant perfected the appeal but failed to file a *supersedeas* bond, the immediate execution of the judgment would

[11] *Id.* at 5.

[12] G.R. No. 113886, February 24, 1998, 286 SCRA 437, 444-445.

automatically follow. Conversely, the filing of a *supersedeas* bond will not stay the execution of the judgment if the appeal is not perfected. Necessarily then, the *supersedeas* bond should be filed within the period for the perfection of the appeal.

In short, a judgment in favor of the plaintiff in an ejectment suit is immediately executory, but the defendant, to stay its immediate execution, must: (1) perfect an appeal; (2) file a *supersedeas* bond; and (3) periodically deposit the rentals becoming due during the pendency of the appeal.

Although the petitioner correctly states that the Spouses Lopez should file a motion for execution pending appeal before the court may issue an order for the immediate execution of the judgment, the spouses Lopez are equally correct in pointing out that they were entitled to the immediate execution of the judgment in view of the Acbangs' failure to comply with all of the three abovementioned requisites for staying the immediate execution. The filing of the notice of appeal alone perfected the appeal but did not suffice to stay the immediate execution without the filing of the sufficient *supersedeas* bond and the deposit of the accruing rentals.

The foregoing notwithstanding, the decision of the RTC favored the petitioner because it declared the judgment of the MTC void as far as she was concerned for lack of jurisdiction over her person. The RTC thus directed the MTC to cause the service of the summons on her and to conduct further proceedings without any delay. In effect, the supervening declaration of the nullity of the judgment being sought to be executed against her has rendered moot and academic the issue in this special civil action as far as she was concerned.

WHEREFORE, the Court **DISMISSES** the petition for prohibition for being moot and academic, without pronouncement on costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 164985. January 15, 2014]

FIRST UNITED CONSTRUCTORS CORPORATION and BLUE STAR CONSTRUCTION CORPORATION, *petitioners, vs.* **BAYANIHAN AUTOMOTIVE CORPORATION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; SALES; WHERE THE CLAIM DID NOT ARISE FROM THE SAME TRANSACTION, RECOUPMENT COULD NOT BE VALIDLY RESORTED TO; A SERIES OF PURCHASES CANNOT BE CONSIDERED AS A SINGLE TRANSACTION.—** It was improper for petitioners to set up their claim for repair expenses and other spare parts of the dump truck against their remaining balance on the price of the prime mover and the transit mixer they owed to respondent. Recoupment must arise out of the contract or transaction upon which the plaintiff's claim is founded. To be entitled to recoupment, therefore, the claim must arise from the same transaction, *i.e.,* the purchase of the prime mover and the transit mixer and not to a previous contract involving the purchase of the dump truck. That there was a series of purchases made by petitioners could not be considered as a single transaction, for the records show that the earlier purchase of the six dump trucks was a separate and distinct transaction from the subsequent purchase of the Hino Prime Mover and the Isuzu Transit Mixer. Consequently, the breakdown of one of the dump trucks did not grant to petitioners the right to stop and withhold payment of their remaining balance on the last two purchases.

2. **ID.; ID.; ID.; LEGAL COMPENSATION APPLIED SINCE ALL THE REQUISITES WERE PRESENT.—** Considering that preponderant evidence showing that petitioners had spent the amount of ₱71,350.00 for the repairs and spare parts of the second dump truck within the warranty period of three months supported the finding of the two lower courts, the Court accepts their finding. Verily, factual findings of the trial court,

when affirmed by the CA, are conclusive on the Court when supported by the evidence on record. A debt is liquidated when its existence and amount are determined. Accordingly, an unliquidated claim set up as a counterclaim by a defendant can be set off against the plaintiff's claim from the moment it is liquidated by judgment. Article 1290 of the *Civil Code* provides that when all the requisites mentioned in Article 1279 of the *Civil Code* are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount. With petitioners' expenses for the repair of the dump truck being already established and determined with certainty by the lower courts, it follows that legal compensation could take place because all the requirements were present. Hence, the amount of ₱71,350.00 should be set off against petitioners' unpaid obligation of ₱735,000.00, leaving a balance of ₱663,650.00, the amount petitioners still owed to respondent.

3. ID.; ID.; ID.; LEGAL INTEREST RATE OF 6% *PER ANNUM* SHOULD BE IMPOSED FROM THE TIME OF EXTRAJUDICIAL DEMAND.— We deem it necessary to modify the interest rate imposed by the trial and appellate courts. The legal interest rate to be imposed from February 11, 1993, the time of the extrajudicial demand by respondent, should be 6% *per annum* in the absence of any stipulation in writing in accordance with Article 2209 of the *Civil Code*[.]

APPEARANCES OF COUNSEL

Lamberto T. Tagayuna for petitioners.
Rene J. Españo for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This case concerns the applicability of the legal principles of recoupment and compensation.

The Case

Under review is the decision promulgated on July 26, 2004,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on May 14, 1996 by the Regional Trial Court, Branch 107, in Quezon City adjudging the petitioners (defendants) liable to pay to the respondent (plaintiff) various sums of money and damages.[2]

Antecedents

Petitioner First United Constructors Corporation (FUCC) and petitioner Blue Star Construction Corporation (Blue Star) were associate construction firms sharing financial resources, equipment and technical personnel on a case-to-case basis. From May 27, 1992 to July 8, 1992, they ordered six units of dump trucks from the respondent, a domestic corporation engaged in the business of importing and reconditioning used Japan-made trucks, and of selling the trucks to interested buyers who were mostly engaged in the construction business, to wit:

UNIT	TO WHOM DELIVERED	DATE OF DELIVERY
Isuzu Dump Truck	FUCC	27 May 1992
Isuzu Dump Truck	FUCC	27 May 1992
Isuzu Dump Truck	FUCC	10 June 1992
Isuzu Dump Truck	FUCC	18 June 1992
Isuzu Dump Truck	Blue Star	4 July 1992
Isuzu Cargo Truck	FUCC	8 July 1992

The parties established a good business relationship, with the respondent extending service and repair work to the units

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[1] *Rollo*, pp. 8-20; penned by Associate Justice Rosalinda Asuncion-Vicente (retired), with the concurrence of Associate Justice Eugenio S. Labitoria (retired) and Associate Justice Bienvenido L. Reyes (now a Member of this Court).

[2] *Id.* at 52-69; penned by Presiding Judge Rosalina L. Luna Pison.

purchased by the petitioners. The respondent also practiced liberality towards the petitioners in the latter's manner of payment by later on agreeing to payment on terms for subsequent purchases.

On September 19, 1992, FUCC ordered from the respondent one unit of Hino Prime Mover that the respondent delivered on the same date. On September 29, 1992, FUCC again ordered from the respondent one unit of Isuzu Transit Mixer that was also delivered to the petitioners. For the two purchases, FUCC partially paid in cash, and the balance through post-dated checks, as follows:

BANK/CHECK NO.	DATE	AMOUNT
Pilipinas Bank 18027379	23 November 1992	₱360,000.00
Pilipinas Bank 18027384	1 December 1992	₱375,000.00

Upon presentment of the checks for payment, the respondent learned that FUCC had ordered the payment stopped. The respondent immediately demanded the full settlement of their obligation from the petitioners, but to no avail. Instead, the petitioners informed the respondent that they were withholding payment of the checks due to the breakdown of one of the dump trucks they had earlier purchased from respondent, specifically the second dump truck delivered on May 27, 1992.

Due to the refusal to pay, the respondent commenced this action for collection on April 29, 1993, seeking payment of the unpaid balance in the amount of ₱735,000.00 represented by the two checks.

In their answer, the petitioners averred that they had stopped the payment on the two checks worth ₱735,000.00 because of the respondent's refusal to repair the second dump truck; and that they had informed the respondent of the defects in that unit but the respondent had refused to comply with its warranty, compelling them to incur expenses for the repair and spare parts. They prayed that the respondent return the price of the defective dump truck worth ₱830,000.00 minus the amounts of their two checks worth ₱735,000.00, with 12% *per annum* interest

on the difference of ₱90,000.00 from May 1993 until the same is fully paid; that the respondent should also reimburse them the sum of ₱247,950.00 as their expenses for the repair of the dump truck, with 12% *per annum* interest from December 16, 1992, the date of demand, until fully paid; and that the respondent pay exemplary damages as determined to be just and reasonable but not less than ₱500,000, and attorney's fees of ₱50,000 plus ₱1,000.00 per court appearance and other litigation expenses.

It was the position of the respondent that the petitioners were not legally justified in withholding payment of the unpaid balance of the purchase price of the Hino Prime Mover and the Isuzu Transit Mixer due the alleged defects in second dump truck because the purchase of the two units was an entirely different transaction from the sale of the dump trucks, the warranties for which having long expired.

Judgment of the RTC

On May 14, 1996, the RTC rendered its judgment,[3] finding the petitioners liable to pay for the unpaid balance of the purchase price of the Hino Prime Mover and the Isuzu Transit Mixer totaling ₱735,000.00 with legal interest and attorney's fees; and declaring the respondent liable to pay to the petitioners the sum of ₱71,350.00 as costs of the repairs incurred by the petitioners. The RTC held that the petitioners could not avail themselves of legal compensation because the claims they had set up in the counterclaim were not liquidated and demandable. The *fallo* of the judgment states:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Ordering defendants, jointly and severally to pay plaintiff the sum of ₱360,000.00 and ₱375,000.00 with interest at the legal rate of 12% per annum computed from February 11, 1993, which is the date of the first extrajudicial demand, until fully paid;
> 2. Ordering the defendants, jointly and severally, to pay plaintiff the sum equivalent to 10% of the principal amount due, for attorney's fees;

[3] *Id.* at 52-69.

3. On the counterclaim, ordering plaintiff to pay defendants the sum of ₱71,350.00 with interest at the legal rate of 12% per annum computed from the date of this decision until fully paid;

4. Ordering plaintiff to pay the defendants attorney's fees equivalent to 10% of the amount due;

5. No pronouncement as to costs.

SO ORDERED.[4]

Decision of the CA

The petitioners appealed, stating that they could justifiably stop the payment of the checks in the exercise of their right of recoupment because of the respondent's refusal to settle their claim for breach of warranty as to the purchase of the second dump truck.

In its decision promulgated on July 26, 2004,[5] however, the CA affirmed the judgment of the RTC. It held that the remedy of recoupment could not be properly invoked by the petitioners because the transactions were different; that the expenses incurred for the repair and spare parts of the second dump truck were not a proper subject of recoupment because they did not arise out of the purchase of the Hino Prime Mover and the Isuzu Transit Mixer; and that the petitioners' claim could not also be the subject of legal compensation or set-off, because the debts in a set-off should be liquidated and demandable.

Issues

The petitioners are now before the Court asserting in their petition for review on *certiorari* that the CA erred in:

I

x x x NOT UPHOLDING THE RIGHT OF PETITIONER[S] TO RECOUPMENT UNDER PAR. (1) OF ART. 1599 OF THE CIVIL

[4] *Id.* at 52-69.

[5] *Id.* at 8-20.

CODE, WHICH PROVIDES [FOR] THE RIGHTS AND REMEDIES AVAILABLE TO A BUYER AGAINST A SELLER'S BREACH OF WARRANTY.

II

x x x RULING THAT PETITIONERS CANNOT AVAIL OF COMPENSATION ALLEGEDLY BECAUSE THEIR CLAIMS AGAINST RESPONDENT ARE NOT LIQUIDATED AND DEMANDABLE.

III

x x x NOT HOLDING RESPONDENT LIABLE TO PETITIONERS FOR LEGAL INTEREST COMPUTED FROM THE FIRST EXTRAJUDICIAL DEMAND, AND FOR ACTUAL EXEMPLARY DAMAGES.[6]

The petitioners submit that they were justified in stopping the payment of the two checks due to the respondent's breach of warranty by refusing to repair or replace the defective second dump truck earlier purchased; that the withholding of payments was an effective exercise of their right of recoupment as allowed by Article 1599(1) of the *Civil Code*; due to the seller's breach of warranty that the CA's interpretation (that recoupment in diminution or extinction of price in case of breach of warranty by the seller should refer to the reduction or extinction of the price of the same item or unit sold and not to a different transaction or contract of sale) was not supported by jurisprudence; that recoupment should not be restrictively interpreted but should include the concept of compensation or set-off between two parties who had claims arising from different transactions; and that the series of purchases and the obligations arising therefrom, being inter-related, could be considered as a single and ongoing transaction for all intents and purposes.

The respondent counters that the petitioners could not refuse to pay the balance of the purchase price of the Hino Prime Mover and the Isuzu Transit Mixer on the basis of the right of recoupment under Article 1599 of the *Civil Code*; that the buyer's

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[6] *Id.* at 26-27.

remedy of recoupment related only to the same transaction; and that compensation was not proper because the claims of the petitioners as alleged in their counterclaim were not liquidated and demandable.

There is no longer any question that the petitioners were liable to the respondent for the unpaid balance of the purchase price of the Hino Prime Mover and the Isuzu Transit Mixer. What remain to be resolved are strictly legal, namely: one, whether or not the petitioners validly exercised the right of recoupment through the withholding of payment of the unpaid balance of the purchase price of the Hino Prime Mover and the Isuzu Transit Mixer; and, two, whether or not the costs of the repairs and spare parts for the second dump truck delivered to FUCC on May 27, 1992 could be offset for the petitioners' obligations to the respondent.

Ruling

We affirm the decision of the CA with modification.

1.
Petitioners could not validly resort to recoupment against respondent

Recoupment (*reconvencion*) is the act of rebating or recouping a part of a claim upon which one is sued by means of a legal or equitable right resulting from a counterclaim arising out of the same transaction.[7] It is the setting up of a demand arising from the same transaction as the plaintiff's claim, to abate or reduce that claim.

The legal basis for recoupment by the buyer is the first paragraph of Article 1599 of the *Civil Code*, *viz*:

Article 1599. Where there is a breach of warranty by the seller, the buyer may, at his election:

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[7] *Lopez v. Gloria and Sheriff of Leyte*, 40 Phil. 26, 31 (1919).

(1) Accept or keep the goods and set up against the seller, the breach of warranty by way of recoupment in diminution or extinction of the price;

(2) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(3) Refuse to accept the goods, and maintain an action against the seller for damages for the breach of warranty;

(4) Rescind the contract of sale and refuse to receive the goods or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

When the buyer has claimed and been granted a remedy in anyone of these ways, no other remedy can thereafter be granted, without prejudice to the provisions of the second paragraph of Article 1191. (Emphasis supplied)

x x x x x x x x x

In its decision, the CA applied the first paragraph of Article 1599 of the *Civil Code* to this case, explaining thusly:

Paragraph (1) of Article 1599 of the Civil Code which provides for the remedy of recoupment in diminution or extinction of price in case of breach of warranty by the seller should therefore be interpreted as referring to the reduction or extinction of the price of the same item or unit sold and not to a different transaction or contract of sale. This is more logical interpretation of the said article considering that it talks of breach of warranty with respect to a particular item sold by the seller. Necessarily, therefore, the buyer's remedy should relate to the same transaction and not to another.

Defendants-appellants' act of ordering the payment on the prime mover and transit mixer stopped was improper considering that the said sale was a different contract from that of the dump trucks earlier purchased by defendants-appellants.

The claim of defendants-appellants for breach of warranty, *i.e.* the expenses paid for the repair and spare parts of dump truck no. 2 is therefore not a proper subject of recoupment since it does not arise out of the contract or transaction sued on or the claim of

plaintiff-appellee for unpaid balances on the last two (2) purchases, *i. e*. the prime mover and the transit mixer.[8]

The CA was correct. It was improper for petitioners to set up their claim for repair expenses and other spare parts of the dump truck against their remaining balance on the price of the prime mover and the transit mixer they owed to respondent. Recoupment must arise out of the contract or transaction upon which the plaintiff's claim is founded.[9] To be entitled to recoupment, therefore, the claim must arise from the same transaction, *i.e.,* the purchase of the prime mover and the transit mixer and not to a previous contract involving the purchase of the dump truck. That there was a series of purchases made by petitioners could not be considered as a single transaction, for the records show that the earlier purchase of the six dump trucks was a separate and distinct transaction from the subsequent purchase of the Hino Prime Mover and the Isuzu Transit Mixer. Consequently, the breakdown of one of the dump trucks did not grant to petitioners the right to stop and withhold payment of their remaining balance on the last two purchases.

2.
Legal compensation was permissible

Legal compensation takes place when the requirements set forth in Article 1278 and Article 1279 of the *Civil Code* are present, to wit:

Article 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other."

Article 1279. In order that compensation may be proper, it is necessary:

(1) That each of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

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[8] *Rollo,* pp. 48-49.

[9] *Korea Exchange Bank v. Gonzales*, G.R. Nos. 142286-87, April 15, 2005, 456 SCRA 224, 239.

(2) That both debts consists in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

As to whether petitioners could avail themselves of compensation, both the RTC and CA ruled that they could not because the claims of petitioners against respondent were not liquidated and demandable.

The Court cannot uphold the CA and the RTC.

The RTC already found that petitioners were entitled to the amount of ₱71,350.00 stated in their counterclaim, and the CA concurred in the finding, stating thusly:

It is noteworthy that in the letter of December 16, 1992 (Exh. "1") defendants were charging plaintiff only for the following items of repair:

1. Cost of repair and spare parts - ₱46,800.00
2. Cost of repair and spare parts - 24,550.00

₱71,350.00

Said amounts may be considered to have been spent for repairs covered by the warranty period of three (3) months. While the invoices (Exhs. "2-B" and "3-A") dated September 26, 1992 and September 18, 1992, this delay in repairs is attributable to the fact that when defects were brought to the attention of the plaintiff in the letter of August 14, 1992 (Exh. "8") which was within the warranty period, the plaintiff did not respond with the required repairs and actual repairs were undertaken by defendants. Thereafter, the spare parts covered by Exhibits "2-B" and "3-A" pertain to the engine, which was covered by the warranty.

x x x. Defendants in their letter of August 14, 1992 (Exh. "8") demanded correction of defects. In their letter of August 22, 1992 (Exh. "9") they demanded replacement. In their letter of August 27,

1992 (Exh. "10"), they demanded 'replacement/repair.' In September, 1992, they undertook repairs themselves (Exhs. "2-B" and "3-A") and demanded payment for the expenses in their letter of December 16, 1992 (Exh. "1"). All other items of expenses connected with subsequent breakdowns are no longer chargeable to plaintiff which granted only a 3-month warranty. x x x[10]

Considering that preponderant evidence showing that petitioners had spent the amount of ₱71,350.00 for the repairs and spare parts of the second dump truck within the warranty period of three months supported the finding of the two lower courts, the Court accepts their finding. Verily, factual findings of the trial court, when affirmed by the CA, are conclusive on the Court when supported by the evidence on record.[11]

A debt is liquidated when its existence and amount are determined.[12] Accordingly, an unliquidated claim set up as a counterclaim by a defendant can be set off against the plaintiff's claim from the moment it is liquidated by judgment.[13] Article 1290 of the *Civil Code* provides that when all the requisites mentioned in Article 1279 of the *Civil Code* are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount. With petitioners' expenses for the repair of the dump truck being already established and determined with certainty by the lower courts, it follows that legal compensation could take place because all the requirements were present. Hence, the amount of ₱71,350.00 should be set off against petitioners' unpaid obligation of ₱735,000.00, leaving a balance of ₱663,650.00, the amount petitioners still owed to respondent.

We deem it necessary to modify the interest rate imposed by the trial and appellate courts. The legal interest rate to be imposed from February 11, 1993, the time of the extrajudicial demand by respondent, should be 6% *per annum* in the absence of any

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[10] *Rollo*, pp. 65-66.

[11] *Dimaranan v. Heirs of Spouses Hermogenes Arayata and Flaviana Arayata*, G.R. No. 184193, March 29, 2010, 617 SCRA 101.

stipulation in writing in accordance with Article 2209 of the *Civil Code*, which provides:

> Article 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent *per annum*.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on July 26, 2004 in all respects subject to the **MODIFICATION** that petitioners are ordered, jointly and severally, to pay to respondent the sum of ₱663,650.00, plus interest of 6% *per annum* computed from February 11, 1993, the date of the first extrajudicial demand, until fully paid; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Perlas-Bernabe,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 172551. January 15, 2014]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **YATCO AGRICULTURAL ENTERPRISES,** *respondent.*

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[12] Tolentino, *Civil Code of the Philippines*, Vol. IV, 2002 Ed., p. 371, cited in *Montemayor v. Millora*, G.R. No. 168251, July 27, 2011, 654 SCRA 580, 589.

[13] *Lao v. Special Plans, Inc.,* G.R. No. 164791, June 29, 2010, 622 SCRA 27, 36.

[*] Vice Associate Justice Bienvenido L. Reyes, who took part in the Court of Appeals, per the raffle of December 9, 2013.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RULE 45 PETITION IS LIMITED TO THE REVIEW OF PURE QUESTIONS OF LAW; TEST TO DETERMINE WHETHER A QUESTION IS ONE OF FACT OR OF LAW.—** As a general rule, the Court's jurisdiction in a Rule 45 petition is limited to the review of pure questions of law. A question of law arises when the doubt or difference exists as to what the law is on a certain state of facts. Negatively put, Rule 45 does not allow the review of questions of fact. A question of fact exists when the doubt or difference arises as to the truth or falsity of the alleged facts. The test in determining whether a question is one of law or of fact is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law[.]" Any question that invites calibration of the whole evidence, as well as their relation to each other and to the whole, is a question of fact and thus proscribed in a Rule 45 petition.

2. **ID.; ID.; ID.; ID.; THE ISSUE OF WHETHER THE DETERMINATION OF JUST COMPENSATION IS IN ACCORDANCE WITH LAW IS CLEARLY A QUESTION OF LAW.—** The LBP essentially questions in the present petition the RTC-SAC's adoption of the valuation made by Branch 36 in fixing the just compensation for the property. The LBP asks the question: was the just compensation fixed by the RTC-SAC for the property, which was based solely on Branch 36's valuation, determined in accordance with law? We find the presented issue clearly one of law. Resolution of this question can be made by mere inquiry into the law and jurisprudence on the matter, and does not require a review of the parties' evidence. We, therefore, disagree with Yatco on this point as we find the present petition compliant with the Rule 45 requirement.

3. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. 6657); JUST COMPENSATION; THE DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION THAT MUST BE MADE IN ACCORDANCE WITH THE FACTORS LAID DOWN UNDER R.A. 6657 AND THE FORMULA PROVIDED IN DAR A.O. 5-98.—** The

determination of just compensation is fundamentally a judicial function. Section 57 of R.A. No. 6657 explicitly vests the RTC-SAC the original and exclusive power to determine just compensation for lands under CARP coverage. To guide the RTC-SAC in the exercise of its function, Section 17 of R.A. No. 6657 enumerates the factors required to be taken into account to correctly determine just compensation. The law (under Section 49 of R.A. No. 6657) likewise empowers the DAR to issue rules for its implementation. The DAR thus issued DAR AO 5-98 incorporating the law's listed factors in determining just compensation into a basic formula that contains the details that take these factors into account. That the RTC-SAC must consider the factors mentioned by the law (and consequently the DAR's implementing formula) is not a novel concept. In *Land Bank of the Philippines v. Sps. Banal,* we said that the RTC-SAC must consider the factors enumerated under Section 17 of R.A. No. 6657, as translated into a basic formula by the DAR, in determining just compensation. x x x In other words, in the exercise of the Court's essentially judicial function of determining just compensation, the RTC-SACs are not granted unlimited discretion and must consider and apply the R.A. No. 6657-enumerated factors and the DAR formula that reflect these factors. These factors and formula provide the uniform framework or structure for the computation of the just compensation for a property subject to agrarian reform. This uniform system will ensure that they do not arbitrarily fix an amount that is absurd, baseless and even contradictory to the objectives of our agrarian reform laws as just compensation. This system will likewise ensure that the just compensation fixed represents, at the very least, a close approximation of the full and real value of the property taken that is fair and equitable for both the farmer-beneficiaries and the landowner.

4. ID.; ID.; ID.; ID.; WHERE THE AGRARIAN COURT FULLY DISREGARDED THESE FACTORS AND FORMULA BUT MERELY RELIED ON THE UNVERIFIED VALUATION OF ANOTHER COURT, IT ACTED OUTSIDE THE CONTEMPLATION OF THE LAW.— After considering these factors and formula, we are convinced that the RTC-SAC completely disregarded them and simply relied on Branch 36's

valuation. For one, the RTC-SAC did not point to any specific evidence or cite the values and amounts it used in arriving at the ₱200.00 per square meter valuation. It did not even consider the property's market value based on the current tax declaration that Yatco insists the RTC-SAC considered in addition to Branch 36's valuation. Assuming that the RTC-SAC considered the property's market value (which, again, we find that it did not), this alone will not suffice as basis, unless justified under Item II.A.3 of DAR AO 5-98 (as provided above). Then too, it did not indicate the formula that it used in arriving at its valuation or which led it to believe that Branch 36's valuation was applicable to this case. Lastly, the RTC-SAC did not conduct an independent assessment and computation using the considerations required by the law and the rules. To be exact, the RTC-SAC merely relied on Branch 36's valuation as it found the LBP's evidence on the matter of just compensation inadequate. While indeed we agree that the evidence presented by the LBP was inadequate and did not also consider the legally prescribed factors and formula, the RTC-SAC still legally erred in solely relying on Yatco's evidence which we find equally irrelevant and off-tangent to the factors enumerated in Section 17 of R.A. No. 6657.

5. ID.; ID.; ID.; ID.; FINAL DETERMINATION OF JUST COMPENSATION IS PREMATURE WHERE BOTH PARTIES FAILED TO ADDUCE SATISFACTORY EVIDENCE OF THE PROPERTY'S VALUE AT THE TIME OF TAKING; REMAND OF THE CASE TO THE AGRARIAN COURT IS PROPER.— Considering that both parties failed to adduce satisfactory evidence of the property's value at the time of taking, we deem it premature to make a final determination of the matter in controversy. We are not a trier of facts and we cannot receive new evidence from the parties to aid them in the prompt resolution of this case. We are thus compelled to remand the case to the RTC-SAC for the reception of evidence and the determination of just compensation, with a cautionary reminder for the proper observance of the factors under Section 17 of R.A. No. 6657 and the applicable DAR regulations. In its determination, the RTC-SAC may exercise the authority granted to it by Section 58 of R.A. No. 6657.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Harry Z. Pajares for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the Land Bank of the Philippines' *(LBP*'s*)* Rule 45 petition for review on *certiorari*[1] challenging the decision[2] dated January 26, 2006 and the resolution[3] dated May 3, 2006 of the Court of Appeals (*CA*) in CA-G.R. SP No. 87530. This CA decision affirmed the decision[4] dated July 30, 2004 of the Regional Trial Court, Branch 30, San Pablo City, acting as a Special Agrarian Court *(RTC-SAC)*, in Agrarian Case No. SP-064(02).

The Factual Antecedents

Respondent Yatco Agricultural Enterprises *(Yatco)* was the registered owner of a 27.5730-hectare parcel of agricultural land *(property)* in Barangay Mabato, Calamba, Laguna, covered by Transfer Certificate of Title No. T-49465.[5] On April 30, 1999,[6] the government placed the property under the coverage of its Comprehensive Agrarian Reform Program *(CARP)*.

Pursuant to Executive Order *(E.O.)* No. 405,[7] the LBP valued the property at ₱1,126,132.89.[8] Yatco did not find this valuation

[1] Dated June 20, 2006 and filed on June 22, 2006; *rollo*, pp. 23-61.

[2] Penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justices Jose C. Mendoza and Arturo G. Tayag; *id.* at 62-71.

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

[4] Penned by Judge Gregorio T. Villanueva; *id.* at 488-500.

[5] *Id.* at 244.

[6] Through a Second Notice of Coverage dated April 30, 1999; *id.* at 243. Yatco denies receiving this Second Notice of Coverage; *id.* at 63.

[7] Approved on June 14, 1990, entitled "VESTING IN THE LAND BANK OF THE PHILIPPINES THE PRIMARY RESPONSIBILITY TO DETERMINE

acceptable and thus elevated the matter to the Department of Agrarian Reform (*DAR*) Provincial Agrarian Reform Adjudicator *(PARAD)* of San Pablo City, which then conducted summary administrative proceedings for the determination of just compensation.[9]

The PARAD computed the value of the property at ₱16,543,800.00;[10] it used the property's current market value (as shown in the tax declaration[11] that Yatco submitted) and applied the formula *"MV x 2."* The PARAD noted that the LBP did not present any verified or authentic document to back up its computation; hence, it brushed aside the LBP's valuation.

The LBP did not move to reconsider the PARAD's ruling. Instead, it filed with the RTC-SAC a petition for the judicial determination of just compensation.[12]

The RTC-SAC's Decision

The RTC-SAC fixed the just compensation for the property at **₱200.00 per square meter**.[13] The RTC-SAC arrived at this

THE LAND VALUATION AND COMPENSATION FOR ALL LANDS COVERED UNDER REPUBLIC ACT NO. 6657, KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988." Its Section 1 provides:

Section 1. The Land Bank of the Philippines shall be primarily responsible for the determination of the land valuation and compensation for all private lands suitable for agriculture under either the Voluntary Offer to Sell (VOS) or Compulsory Acquisition (CA) arrangement as governed by Republic Act No. 6657. The Department of Agrarian Reform shall make use of the determination of the land valuation and compensation by the Land Bank of the Philippines, in the performance of its functions.

[8] Claims Valuation and Processing Form approved on September 4, 2000; *rollo*, pp. 274-278. The LBP claimed that it used the guidelines and procedure set out under DAR Administrative Order No. 6, Series of 1992 *(DAR AO 6-92)*, No. 11, Series of 1994 and No. 5, Series of 1998.

[9] DARAB Case No. V-0403-0006-01.

[10] Decision dated December 28, 2001, penned by Provincial Adjudicator Virgilio M. Sorita; *rollo*, pp. 486-487.

[11] *Id.* at 208.

[12] On February 6, 2002; *id.* at 171-173.

[13] *Supra* note 4.

valuation by adopting the valuation set by the RTC of Calamba City, **Branch 35** (*Branch 35*) in Civil Case No. 2326-96-C,[14] which, in turn, adopted the valuation that the RTC of Calamba City, **Branch 36** (*Branch 36*) arrived at in Civil Case No. 2259-95-C[15] (collectively, *civil cases*). The RTC-SAC did not give weight to the LBP's evidence in justifying its valuation, pointing out that the LBP failed to prove that it complied with the prescribed procedure and likewise failed to consider the valuation factors provided in Section 17 of the Comprehensive Agrarian Reform Law of 1988 *(CARL).*[16]

The RTC-SAC subsequently denied the LBP's motion for reconsideration.[17] The LBP appealed to the CA.[18]

The CA's Ruling

The CA dismissed the LBP's appeal.[19] Significantly, it did not find the LBP's assigned errors – the RTC-SAC's reliance on the valuation made by Branches 35 and 36 in the civil cases – to be persuasive. *First,* according to the CA, the parcels of land in the civil cases were the very same properties in the appealed agrarian case. *Second,* Branch 36's valuation was based on the report of the duly appointed commissioners and was arrived at after proper land inspection. As the determination of just compensation is essentially a judicial function, the CA thus affirmed the RTC-SAC's valuation which was founded on factual and legal bases.

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[14] Order dated August 29, 2001, penned by Judge Romeo C. de Leon; *rollo*, pp. 291-292.

[15] Judgment dated July 23, 1997, penned by Judge Norberto Y. Geraldez; *id.* at 293-295.

[16] Republic Act *(R.A.)* No. 6657 which took effect on June 15, 1988.

[17] *Rollo,* pp. 151-156; Order dated October 26, 2004, pp. 149-150

[18] Filed under Rule 42 of the Rules of Court; *id.* at 98-135.

[19] *Supra* note 2.

The LBP filed the present petition after the CA denied its motion for reconsideration[20] in the CA's May 3, 2006 resolution.[21]

The Petition

The LBP argues in the present petition that the CA erred when it affirmed the RTC-SAC's ruling that fixed the just compensation for the property based on the valuation set by Branches 35 and 36.[22] The LBP pointed out that the property in the present case was expropriated pursuant to its agrarian reform program; in contrast, the land subject of the civil cases was expropriated by the National Power Corporation (*NAPOCOR*) for industrial purposes.

The LBP added that in adopting the valuation fixed by Branches 35 and 36, the RTC-SAC completely disregarded the factors enumerated in Section 17 of R.A. No. 6657 and the guidelines and procedure laid out in DAR AO 5-98.

Finally, the LBP maintains that it did not encroach on the RTC-SAC's prerogative when it fixed the valuation for the property as it only followed Section 17 of R.A. No. 6657 and DAR AO 5-98, and merely discharged its mandate under E.O. No. 405.

The Case for the Respondent

Yatco argues that the RTC-SAC correctly fixed the just compensation for its property at ₱200.00 per square meter.[23] It points to several reasons for its position. *First,* the RTC-SAC's valuation was not only based on the valuation fixed by Branch 36 (as adopted by Branch 35); it was also based on the property's market value as stated in the current tax declaration that it presented in evidence before the RTC-SAC. *Second*, the RTC-SAC considered the evidence of both parties; unfortunately for the LBP, the RTC-SAC found its evidence wanting and in

[20] *Rollo,* pp. 373-382.

[21] *Supra* note 3.

[22] *Supra* note 1.

[23] *Rollo,* pp. 400-410.

total disregard of the factors enumerated in Section 17 of R.A. No. 6657. And *third*, the RTC-SAC considered all of the factors enumerated in Section 17 when it set the property's value at ₱200.00 per square meter.

Procedurally, Yatco claims that the present petition's issues and arguments are purely factual and they are not allowed in a petition for review on *certiorari* and the LBP did not point to any specific error that the CA committed when it affirmed the RTC-SAC's decision.

The Issue

Based on the parties' submissions, only a single issue is before us, *i.e.,* the question of whether the RTC-SAC's determination of just compensation for the property was proper.

The Court's Ruling

Preliminary considerations: factual-issue-bar rule; issues raised are not factual

As a general rule, the Court's jurisdiction in a Rule 45 petition is limited to the review of pure questions of law.[24] A question of law arises when the doubt or difference exists as to what the law is on a certain state of facts. Negatively put, Rule 45 does not allow the review of questions of fact. A question of fact exists when the doubt or difference arises as to the truth or falsity of the alleged facts.

The test in determining whether a question is one of law or of fact is "whether the appellate court can determine the issue

[24] Section 1, Rule 45 of the Rules of Court provides:

Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth. [italics supplied]

raised without reviewing or evaluating the evidence, in which case, it is a question of law[.]"[25] Any question that invites calibration of the whole evidence, as well as their relation to each other and to the whole, is a question of fact and thus proscribed in a Rule 45 petition.

The LBP essentially questions in the present petition the RTC-SAC's adoption of the valuation made by Branch 36 in fixing the just compensation for the property. The LBP asks the question: was the just compensation fixed by the RTC-SAC for the property, which was based solely on Branch 36's valuation, determined in accordance with law?

We find the presented issue clearly one of law. Resolution of this question can be made by mere inquiry into the law and jurisprudence on the matter, and does not require a review of the parties' evidence. We, therefore, disagree with Yatco on this point as we find the present petition compliant with the Rule 45 requirement.

The determination of just compensation is essentially a judicial function that the Judiciary exercises within the parameters of the law.

The determination of just compensation is fundamentally a judicial function.[26] Section 57 of R.A. No. 6657[27] explicitly vests

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[25] *Tongonan Holdings and Development Corporation v. Escaño, Jr.,* G.R. No. 190994, September 7, 2011, 657 SCRA 306, 314, citing *Republic of the Philippines v. Malabanan,* G.R. No. 169067, October 6, 2010, 632 SCRA 338; and *Cando v. Sps. Olazo,* 547 Phil. 630, 636 (2007).

[26] *Landbank of the Philippines v. Celada,* 515 Phil. 467, 477 (2006); *Land Bank of the Philippines v. Escandor,* G.R. No. 171685, October 11, 2010, 632 SCRA 504, 512; and *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, G.R. No. 166461, April 30, 2010, 619 SCRA 609, 625-629.

[27] The pertinent portion of Section 57 of R.A. No. 6657 reads:

Section 57. *Special Jurisdiction.* — The **Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the**

the RTC-SAC the original and exclusive power to determine just compensation for lands under CARP coverage.

To guide the RTC-SAC in the exercise of its function, Section 17 of R.A. No. 6657 enumerates the factors required to be taken into account to correctly determine just compensation. The law (under Section 49 of R.A. No. 6657[28]) likewise empowers the DAR to issue rules for its implementation. The DAR thus issued DAR AO 5-98 incorporating the law's listed factors in determining just compensation into a basic formula that contains the details that take these factors into account.

That the RTC-SAC must consider the factors mentioned by the law (and consequently the DAR's implementing formula) is not a novel concept.[29] In *Land Bank of the Philippines v. Sps. Banal,*[30] we said that the RTC-SAC must consider the factors enumerated under Section 17 of R.A. No. 6657, as translated into a basic formula by the DAR, in determining just compensation.

We stressed the RTC-SAC's duty to apply the DAR formula in determining just compensation in *Landbank of the Philippines v. Celada*[31] and reiterated this same ruling in *Land Bank of the Philippines v. Lim,*[32] *Land Bank of the Philippines v. Luciano,*[33]

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determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. [emphasis ours, italics supplied]

[28] Section 49 of R.A. No. 6657 reads:

Section 49. *Rules and Regulations*. — The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation. [italics supplied]

[29] See *Landbank of the Philippines v. Celada, supra* note 26, at 479.

[30] 478 Phil. 701, 709-710 (2004).

[31] *Supra* note 26, at 479; italics ours.

[32] G.R. No. 171941, August 2, 2007, 529 SCRA 129, 134-136.

[33] G.R. No. 165428, November 25, 2009, 605 SCRA 426, 434-436.

and *Land Bank of the Philippines v. Colarina,*[34] to name a few.

In the recent case of *Land Bank of the Philippines v. Honeycomb Farms Corporation,*[35] we again affirmed the need to apply Section 17 of R.A. No. 6657 and DAR AO 5-98 in just compensation cases. There, we considered the CA and the RTC in grave error when they opted to come up with their own basis for valuation and completely disregarded the DAR formula. The need to apply the parameters required by the law cannot be doubted; the DAR's administrative issuances, on the other hand, partake of the nature of statutes and have in their favor a presumption of legality.[36] Unless administrative orders are declared invalid or unless the cases before them involve situations these administrative issuances do not cover, the courts must apply them.[37]

In other words, in the exercise of the Court's essentially judicial function of determining just compensation, the RTC-SACs are not granted unlimited discretion and must consider and apply the R.A. No. 6657-enumerated factors and the DAR formula that reflect these factors. These factors and formula provide the uniform framework or structure for the computation of the just compensation for a property subject to agrarian reform. This uniform system will ensure that they do not arbitrarily fix an amount that is absurd, baseless and even contradictory to the objectives of our agrarian reform laws as just compensation. This system will likewise ensure that the just compensation fixed represents, at the very least, a close approximation of the full and real value of the property taken that is fair and equitable for both the farmer-beneficiaries and the landowner.

When acting within the parameters set by the law itself, the RTC-SACs, however, are not strictly bound to apply the DAR

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[34] G.R. No. 176410, September 1, 2010, 629 SCRA 614, 624-632.

[35] G.R. No. 169903, February 29, 2012, 667 SCRA 255, 268-271.

[36] *Landbank of the Philippines v. Celada, supra* note 26, at 479.

[37] *Ibid.*

formula to its minute detail, particularly when faced with situations that do not warrant the formula's strict application; they may, in the exercise of their discretion, relax the formula's application to fit[38] the factual situations before them.[39] They must, however, clearly explain the reason for any deviation from the factors and formula that the law and the rules have provided.[40]

The situation where a deviation is made in the exercise of judicial discretion should at all times be distinguished from a situation where there is utter and blatant disregard of the factors spelled out by law and by the implementing rules. For in such a case, the RTC-SAC's action already amounts to grave abuse of discretion for having been taken outside of the contemplation of the law.[41]

Gonzales v. Solid Cement Corporation[42] teaches us that the use of the wrong considerations by the ruling tribunal in deciding the case or a particular matter in issue amounts to grave abuse

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[38] See *Land Bank of the Philippines v. Heirs of Maximo Puyat,* G.R. No. 175055, June 27, 2012, 675 SCRA 233, 250; and *Land Bank of the Philippines v. Bienvenido Castro,* G.R. No. 189125, August 28, 2013.

[39] This view is shared by and enunciated in *Land Bank of the Philippines v. Bienvenido Castro, supra,* citing *Land Bank of the Philippines v. Chico*, G.R. No. 168453, March 13, 2009, 581 SCRA 226, 243; *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, December 19, 2007, 541 SCRA 117, 131-132.

[40] See *Land Bank of the Philippines v. Bienvenido Castro, supra* note 38, wherein the Court found the RTC-SAC in reversible error because of, among other things, the "unexplained disregard for the guide administrative formula, neglecting such factors as capitalized net income, comparable sales, and market value per tax declaration."

[41] *Aldovino, Jr. v. Commission on Elections,* G.R. No. 184836, December 23, 2009, 609 SCRA 234; *Gonzales v. Solid Cement Corporation,* G.R. No. 198423, October 23, 2012, 684 SCRA 344; and *Pecson v. Commission on Elections,* G.R. No. 182865, December 24, 2008, 575 SCRA 634. See also *Land Bank of the Philippines v. Escandor, supra* note 26, at 515, citing *Land Bank of the Philippines v. Barrido,* G.R. No. 183688, August 18, 2010, 628 SCRA 454. *Republic v. Sandiganbayan (Fourth Division),* G.R. No. 152375, December 13, 2011, 662 SCRA 152.

[42] *Supra*.

of discretion. In *Gonzales,* the CA reversed the NLRC's ruling that ordered the payment of interest on the total monetary award. In reversing this CA ruling and reinstating the NLRC's award of interest, the Court pointed out that the CA relied solely on the doctrine of immutability of judgments, a consideration that was completely erroneous particularly in light of the other attendant and relevant factors, *i.e.,* the law on the legal interests that final orders and rulings on forbearance of money should bear, which the CA utterly ignored. Accordingly, the Court considered the CA in grave abuse of discretion as it used the wrong considerations and thereby acted outside the contemplation of the law.

This use of considerations that were completely outside the contemplation of the law is the precise situation we find in the present case, as fully explained below.

The rules allow the courts to take judicial notice of certain facts; the RTC-SAC's valuation is erroneous

The taking of judicial notice is a matter of expediency and convenience for it fulfills the purpose that the evidence is intended to achieve, and in this sense, it is equivalent to proof.[43] Generally, courts are not authorized to "take judicial notice of the contents of the records of other cases even when said cases have been tried or are pending in the same court or before the same judge."[44] They may, however, take judicial notice of a decision or the facts prevailing in another case sitting in the same court if: (1) the parties present them in evidence, absent any opposition from the other party; or (2) the court, in its discretion, resolves to do so.[45] In either case, the courts must observe the clear boundary provided by Section 3, Rule 129 of the Rules of Court.

[43] *Lee v. Land Bank of the Philippines,* G.R. No. 170422, March 7, 2008, 548 SCRA 52, 58.

[44] *Land Bank of the Philippines v. Sps. Banal, supra* note 30*,* at 713.

[45] *Lee v. Land Bank of the Philippines*, *supra* note 43, at 58, citing *T'Boli Agro–Industrial Development, Inc. v. Solipapsi*, 442 Phil. 499, 513 (2002); and *Land Bank of the Philippines v. Sps. Banal, supra* note 30, at 713.

We note that Yatco offered in evidence copies of the decisions in the civil cases,[46] which offer the LBP opposed.[47] These were duly noted by the court.[48] Even assuming, however, that the April 21, 2004 order[49] of the RTC-SAC (that noted Yatco's offer in evidence and the LBP's opposition to it) constitutes sufficient compliance with the requirement of Section 3, Rule 129 of the Rules of Court, still we find the RTC-SAC's valuation – based on Branch 36's previous ruling – to be legally erroneous.

1. The RTC-SAC fully disregarded Section 17 of R.A. No. 6657 and DAR AO 5-98 and thus acted outside the contemplation of the law.

Section 17 of R.A. No. 6657 reads:

Section 17. *Determination of Just Compensation.* – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

While DAR AO 5-98[50] pertinently provides:

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[46] Yatco's Formal Offer of Evidence dated March 24, 2004; *rollo,* pp. 283-286.

[47] LBP's Opposition/Comments to the Formal Offer of Evidence of Respondent Yatco Agricultural Enterprises, Inc. dated April 12, 2004 to Yatco's Formal Offer of Evidence; *id.* at 297-299.

[48] *Id.* at 300.

[49] *Id.* at 300.

[50] The following portions of Item II. of DAR AO 5-98 provides the formula for computing the factors "Capitalized Net Income (CNI)," "Comparable Sales (CS)" and "Market Value per Tax Declaration (MV)," namely:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

"B. Capitalized Net Income (CNI) — This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) - CO}{.12}$$

Where:

$$CNI = \frac{(AGP \times SP) - CO}{.12}$$

AGP= Average Gross Production corresponding to the latest available 12 months' gross production immediately preceding the date of FI (field investigation)

SP= Selling Price (the average of the latest available 12 months selling prices prior to the date of receipt of the CF (claimfolder) by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered for the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations

Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of FI shall continue to use the assumed NIR of 70 %. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

0.12 = Capitalization rate

x x x x x x x x x

C. CS shall refer to any one or the average of all the applicable sub-factors, namely, ST, AC and MVM:

Where:

ST = Sales Transactions as defined under Item C.2

AC = Acquisition Cost as defined under Item C.3

MVM= Market Value Based on Mortgage as defined under Item C.4

x x x x x x x x x

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where:

LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant, and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.

After considering these factors and formula, we are convinced that the RTC-SAC completely disregarded them and simply relied on Branch 36's valuation. For one, the RTC-SAC did not point to any specific evidence or cite the values and amounts it used in arriving at the ₱200.00 per square meter valuation. It did not even consider the property's market value based on

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D. In the computation of Market Value per Tax Declaration (MV), the most recent Tax Declaration (TD) and Schedule of Unit Market Value (SMV) issued prior to receipt of claimfolder by LBP shall be considered. The Unit Market Value (UMV) shall be grossed up from the date of its effectivity up to the date of receipt of claimfolder by LBP from DAR for processing, in accordance with item II.A.A.6.

the current tax declaration that Yatco insists the RTC-SAC considered in addition to Branch 36's valuation. Assuming that the RTC-SAC considered the property's market value (which, again, we find that it did not), this alone will not suffice as basis, unless justified under Item II.A.3 of DAR AO 5-98 (as provided above). Then too, it did not indicate the formula that it used in arriving at its valuation or which led it to believe that Branch 36's valuation was applicable to this case. Lastly, the RTC-SAC did not conduct an independent assessment and computation using the considerations required by the law and the rules.

To be exact, the RTC-SAC merely relied on Branch 36's valuation as it found the LBP's evidence on the matter of just compensation inadequate. While indeed we agree that the evidence presented by the LBP was inadequate and did not also consider the legally prescribed factors and formula, the RTC-SAC still legally erred in solely relying on Yatco's evidence[51] which we find equally irrelevant and off-tangent to the factors enumerated in Section 17 of R.A. No. 6657.

2. The valuation fixed by Branches 35 and 36 was inapplicable to the property

Civil Case No. 2326-96-C,[52] decided by Branch 35, and Civil Case No. 2259-95-C,[53] decided by Branch 36, were both eminent

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[51] Yatco's evidence consisted of: (1) the Secretary's Certificate authorizing Mr. Albert Yatco Garcia to represent Yatco in the case before the RTC-SAC; (2) LBP's Certification showing the LBP's deposit of the sum of ₱946,119.22 and in agrarian reform bonds as compensation for the subject property; (3) copy of the DARAB December 28, 2001 decision in DARAB Case No. V-0403-0006-01; (4) Tax Declaration for the subject property for the year 2000; (5) copy of the order dated August 29, 2001 in Civil Case No. 2326-96-C; and (6) copy of the judgment and order dated July 23, 1997 and September 24, 1997, respectively, in Civil Case No. 2259-95-C; *rollo,* pp. 283-296.

[52] *Supra* note 14.

[53] *Supra* note 15.

domain cases initiated by the NAPOCOR under the power granted to it by Commonwealth Act *(C.A.)* No. 120,[54] as amended by R.A. No. 6395,[55] *i.e.,* to acquire property or easement of right of way.

Under these laws, the NAPOCOR was tasked to carry out the state policy of providing electricity throughout the Philippines, specifically, "to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis[.]"[56]

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[54] COMMONWEALTH ACT NO. 120 – AN ACT CREATING THE "NATIONAL POWER CORPORATION," PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR, AND RESERVING THE UNAPPROPRIATED PUBLIC WATERS FOR ITS USE. Approved on November 3, 1936.

[55] AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION. (Approved on September 10, 1971) The pertinent provision reads:

x x x x x x x x x

Sec. 3. *Powers and General Functions of the Corporation*. – The powers, functions, rights and activities of the Corporation shall be the following:

x x x x x x x x x

(h) **To acquire**, promote, hold, transfer, sell, lease, rent, mortgage, encumber and otherwise dispose of **property incident to, or necessary, convenient or proper to carry out the purposes for which the Corporation was created**: *Provided,* That **in case a right of way is necessary for its transmission lines, easement of right of way shall only be sought: *Provided, however,* That in case the property itself shall be acquired by purchase, the cost thereof shall be the fair market value at the time of the taking of such property**;

x x x x x x x x x

(j) To **exercise the right of eminent domain for the purpose of this Act in the manner provided by law** for instituting condemnation proceedings by the national, provincial and municipal governments[.] [emphases ours, italics supplied]

[56] See Sections 1 and 2 of R.A. No. 6395; partly, they read:

Section 1. Declaration of Policy. – Congress hereby declares that (1) the comprehensive development, utilization and conservation of Philippine water resources for all beneficial uses, including power generation, and **(2) the**

In its decision in Civil Case No. 2259-95-C, Branch 36 accordingly recognized the NAPOCOR's authority to enter the property of the defendant GP Development Corporation and to acquire the "easement of right of way" in the exercise of its powers. Thus, in disposing of the case, Branch 36 adopted the recommendation of the appointed commissioners and ordered the NAPOCOR to pay easement fee of **₱20.00 per square meter**. Similarly recognizing this authority of NAPOCOR, Branch 35 in Civil Case No. 2326-96-C likewise ordered NAPOCOR to pay easement fee of **₱20.00 per square meter**.

Evidently, the civil cases were not made under the provisions of the CARL nor for agrarian reform purposes, as enunciated under R.A. No. 6657.[57] In exercising the power vested in it by

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total electrification of the Philippines through the development of power from all sources to meet the needs of industrial development and dispersal and the needs of rural electrification are primary objectives of the nation which shall be pursued coordinately and supported by all instrumentalities and agencies of the government, including its financial institutions.

Section 2. The National Power Corporation; Its Corporate Life; "Corporation" and "Board" Defined. – **To carry out the above-stated policy, specifically to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis,** the public corporation created under Commonwealth Act Numbered One hundred twenty and know[n] as the "National Power Corporation" shall continue to exist for fifty years from and after the expiration of its present corporate existence. [emphases ours]

[57] Section 2 of R.A. No. 6657 reads in part:

Section 2. Declaration of Principles and Policies. — **It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP).** The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture

To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, **shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.**

the provisions of C.A. No. 120 (as amended), the NAPOCOR did not seek to acquire and distribute lands to farmers and regular farmworkers; the NAPOCOR sought easement of right of way to transmit electric power as it was tasked to.

We need not delve into the factors that Branches 35 and 36 considered in the civil cases. By simply looking at the expropriating body (NAPOCOR) and the law governing the expropriations made, we are convinced that the valuation fixed by Branch 36 is inapplicable to the present case. A comparison of the required parameters and guidelines used alone demonstrates the disparity.

Also, we point out that the RTC-SAC adopted Branch 36's valuation without any qualification or condition. Yet, in disposing of the present case, the just compensation that it fixed for the property largely differed from the former. Note that Branch 36 fixed a valuation of ₱20.00 per square meter;[58] while the RTC-SAC, in the present case, valued the property at ₱200.00 per square meter.[59] Strangely, the RTC-SAC did not offer any explanation nor point to any evidence, fact or particular that justified the obvious discrepancy between these amounts.

Lastly, in ascertaining just compensation, the fair market value of the expropriated property is determined as of **the time of taking**.[60] The **"time of taking" refers to that time when the State deprived the landowner of the use and benefit of**

The agrarian reform program is founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to the priorities and retention limits set forth in this Act, having taken into account ecological, developmental, and equity considerations, **and subject to the payment of just compensation.** The State shall respect the right of small landowners, and shall provide incentives for voluntary land-sharing. [emphases ours]

[58] *Rollo,* p. 295.

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

[60] *Land Bank of the Philippines v. Livioco,* G.R. No. 170685, September 22, 2010, 631 SCRA 86, 112-113.

his property, as when the State acquires title to the property[61] or as of the filing of the complaint, per Section 4, Rule 67 of the Rules of Court.[62]

The decision in Civil Case No. 2259-95-C, which pegged the valuation at ₱20.00 per square meter, was made in 1997. The record did not disclose when title to the land subject of that case was transferred to the State. We can safely assume, however, that the "taking" was made in 1997 (the date Branch 36 issued its decision) or at the time of the filing of the complaint, which logically was prior to 1997.

The RTC-SAC, in the present case, rendered its decision in 2004; the LBP filed the petition for judicial determination of just compensation in 2002. Obviously, the "taking" of the property could not have been made any earlier than 2002; otherwise, the parties would have pointed these out. Between 1997 in Civil Case No. 2259-95-C and the earliest taking in 2002 in this case is a difference of 5 years – a significant gap in the matter of valuation since the lands involved are not in the hinterlands, but in the rapidly industrializing Calamba, Laguna.

Under these circumstances – *i.e.,* the insufficiency of the evidence presented by both the LBP and Yatco on the issue of just compensation - the more judicious approach that the RTC-SAC could have taken was to exercise the authority granted to it by Section 58 of R.A. No. 6657, rather than simply adopt

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[61] *Ibid.*, citing *Ansaldo v. Tantuico, Jr.,* G.R. No. 50147, August 3, 1990, 188 SCRA 300, in *Eusebio v. Luis,* G.R. No. 162474, October 13, 2009, 603 SCRA 576, 586-587.

[62] Section 4, Rule 67 of the Rules of Court reads:

Section 4. Order of expropriation. — If the objections to and the defenses against the right of the plaintiff to expropriate the property are overruled, or when no party appears to defend as required by this Rule, the court may issue an order of expropriation declaring that the plaintiff has a lawful right to take the property sought to be expropriated, for the public use or purpose described in the complaint, upon the **payment of just compensation to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first.** [emphasis ours]

Branch 36's valuation. Under Section 58[63] of R.A. No. 6657, the RTC-SAC may appoint one or more Commissioners to ascertain and report to it the facts necessary for the determination of the just compensation for the property. Unfortunately, the RTC-SAC did not avail of this opportunity, with disastrous results for the parties in light of the time gap between now and the time the RTC-SAC decision was made in 2004.

We cannot help but highlight the attendant delay as the RTC-SAC obviously erred in a manner that we cannot now remedy at our level. The RTC-SAC erred and effectively abused its discretion by fixing the just compensation for the property based solely on the valuation fixed by Branches 35 and 36 – considerations that we find were completely irrelevant and misplaced. This is an error that now requires fresh determination of just compensation again at the RTC-SAC level.

As a final note and clarificatory reminder, we agree that the LBP is primarily charged with determining land valuation and compensation for all private lands acquired for agrarian reform purposes.[64] But this determination is only preliminary. The landowner may still take the matter of just compensation to the court for final adjudication.[65] Thus, we clarify and reiterate: the original and exclusive jurisdiction over all petitions for the determination of just compensation under R.A. No. 6657 rests with the RTC-SAC.[66] **But, in its determination, the RTC-**

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[63] Section 58 of R.A. No. 6657 reads:

Section 58. *Appointment of Commissioners*.—The Special Agrarian Courts, upon their own initiative or at the instance of any of the parties, may appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute[,] including the valuation of properties, and to file a written report thereof with the court.

[64] *Land Bank of the Philippines v. Sps. Banal, supra* note 30, at 708.

[65] See *Land Bank of the Philippines v. Livioco*, *supra* note 60, at 110; and *Land Bank of the Philippines v. Sps. Banal, supra* note 30, at 709.

See also Section 57 of R.A. No. 6657.

[66] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines, supra* note 26, at 625-628, citing *Land Bank of the Philippines v. Belista,*

SAC must take into consideration the factors laid down by law and the pertinent DAR regulations.

Remand of the case

Considering that both parties failed to adduce satisfactory evidence of the property's value at the time of taking, we deem it premature to make a final determination of the matter in controversy. We are not a trier of facts and we cannot receive new evidence from the parties to aid them in the prompt resolution of this case. We are thus compelled to remand the case to the RTC-SAC for the reception of evidence and the determination of just compensation, with a cautionary reminder for the proper observance of the factors under Section 17 of R.A. No. 6657 and the applicable DAR regulations. In its determination, the RTC-SAC may exercise the authority granted to it by Section 58 of R.A. No. 6657.

WHEREFORE, in view of these considerations, we hereby **GRANT** the petition. Accordingly, we **REVERSE** and **SET ASIDE** the decision dated January 26, 2006 and the resolution dated May 3, 2006 of the Court of Appeals in CA-G.R. SP No. 87530, and **REMAND** Agrarian Case No. SP-064(02) to the Regional Trial Court of San Pablo City, Branch 30, for its determination of just compensation under the terms of Section 17 of Republic Act No. 6657 and Department of Agrarian Reform Administrative Order No. 5, series of 1998, as amended.

No costs.

SO ORDERED.

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

G.R. No. 164631, June 26, 2009, 591 SCRA 137, 143-147; *Land Bank of the Philippines v. Escandor, supra* note 26, at 512; and *Land Bank of the Philippines v. Montalvan,* G.R. No. 190336, June 27, 2012, 675 SCRA 380, 389-390.

SECOND DIVISION

[G.R. No. 173188. January 15, 2014]

THE CONJUGAL PARTNERSHIP OF THE SPOUSES VICENTE CADAVEDO and BENITA ARCOY-CADAVEDO (both deceased), substituted by their heirs, namely: HERMINIA, PASTORA, Heirs of FRUCTUOSA, Heirs of RAQUEL, EVANGELINE, VICENTE, JR., and ARMANDO, all surnamed CADAVEDO, *petitioners, vs.* **VICTORINO (VIC) T. LACAYA, married to Rosa Legados,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; WRITTEN AGREEMENT ON ATTORNEY'S FEES PREVAILS OVER ORAL AGREEMENT.— The spouses Cadavedo and Atty. Lacaya agreed on a contingent fee of ₱2,000.00 and not, as asserted by the latter, one-half of the subject lot. The stipulation contained in the amended complaint filed by Atty. Lacaya clearly stated that the spouses Cadavedo hired the former on a contingency basis; the Spouses Cadavedo undertook to pay their lawyer ₱2,000.00 as attorney's fees should the case be decided in their favor. x x x [W]e highlight that as observed by both the RTC and the CA and agreed as well by both parties, the alleged contingent fee agreement consisting of one-half of the subject lot was not reduced to writing prior to or, at most, at the start of Atty. Lacaya's engagement as the spouses Cadavedo's counsel in *Civil Case No. 1721.* An agreement between the lawyer and his client, providing for the former's compensation, is subject to the ordinary rules governing contracts in general. As the rules stand, controversies involving written and oral agreements on attorney's fees shall be resolved in favor of the former. Hence, the contingency fee of ₱2,000.00 stipulated in the amended complaint prevails over the alleged oral contingency fee agreement of one-half of the subject lot.

2. ID.; ID.; ID.; A CONTINGENT FEE AGREEMENT CONSISTING OF ONE-HALF OF THE SUBJECT

PROPERTY IS CHAMPERTOUS AND IS CONTRARY TO PUBLIC POLICY; DOCTRINE OF CHAMPERTY, EXPLAINED.— [T]he respondents insist that Atty. Lacaya agreed to represent the spouses Cadavedo in *Civil Case No. 1721* and assumed the litigation expenses, without providing for reimbursement, in exchange for a contingency fee consisting of one-half of the subject lot. This agreement is champertous and is contrary to public policy. Champerty, along with maintenance (of which champerty is an aggravated form), is a common law doctrine that traces its origin to the medieval period. The doctrine of maintenance was directed "against wanton and inofficious intermeddling in the disputes of others in which the intermeddler has no interest whatever, and where the assistance rendered is without justification or excuse." Champerty, on the other hand, is characterized by "the receipt of a share of the proceeds of the litigation by the intermeddler." Some common law court decisions, however, add a second factor in determining champertous contracts, namely, that the lawyer must also, "at his own expense maintain, and take all the risks of, the litigation." The doctrines of champerty and maintenance were created in response "to medieval practice of assigning doubtful or fraudulent claims to persons of wealth and influence in the expectation that such individuals would enjoy greater success in prosecuting those claims in court, in exchange for which they would receive an entitlement to the spoils of the litigation." "In order to safeguard the administration of justice, instances of champerty and maintenance were made subject to criminal and tortuous liability and a common law rule was developed, striking down champertous agreements and contracts of maintenance as being unenforceable on the grounds of public policy." In this jurisdiction, we maintain the rules on champerty, as adopted from American decisions, for public policy considerations. As matters currently stand, any agreement by a lawyer to "conduct the litigation in his own account, to pay the expenses thereof or to save his client therefrom and to receive as his fee a portion of the proceeds of the judgment is obnoxious to the law." The rule of the profession that forbids a lawyer from contracting with his client for part of the thing in litigation in exchange for conducting the case at the lawyer's expense is *designed to prevent the lawyer from acquiring an interest between him and his client*. To permit these arrangements is to enable the lawyer to "acquire

additional stake in the outcome of the action which might lead him to consider his own recovery rather than that of his client or to accept a settlement which might take care of his interest in the verdict to the sacrifice of that of his client in violation of his duty of undivided fidelity to his client's cause."

3. ID.; ID.; ID.; ATTORNEY'S FEES CONSISTING OF ONE-HALF OF THE SUBJECT LOT IS EXCESSIVE AND UNCONSCIONABLE.— We likewise strike down the questioned attorney's fee and declare it void for being excessive and unconscionable. The contingent fee of one-half of the subject lot was allegedly agreed to secure the services of Atty. Lacaya in *Civil Case No. 1721.* Plainly, it was intended for only one action as the two other civil cases had not yet been instituted at that time. While *Civil Case No. 1721* took twelve years to be finally resolved, that period of time, as matters then stood, was not a sufficient reason to justify a large fee in the absence of any showing that special skills and additional work had been involved. The issue involved in that case, as observed by the RTC (and with which we agree), was simple and did not require of Atty. Lacaya extensive skill, effort and research. The issue simply dealt with the prohibition against the sale of a homestead lot within five years from its acquisition. That Atty. Lacaya also served as the spouses Cadavedo's counsel in the two subsequent cases did not and could not otherwise justify an attorney's fee of one-half of the subject lot. As asserted by the petitioners, the spouses Cadavedo and Atty. Lacaya made separate arrangements for the costs and expenses for each of these two cases. Thus, the expenses for the two subsequent cases had been considered and taken cared of.

4. ID.; ID.; ID.; LAWYER'S ACQUISITION OF ONE-HALF PORTION OF THE PROPERTY SUBJECT OF LITIGATION CONTRAVENES ARTICLE 1491(5) OF THE CIVIL CODE.— Article 1491 (5) of the Civil Code forbids lawyers from acquiring, by purchase or assignment, the property that has been the subject of litigation in which they have taken part by virtue of their profession. The same proscription is provided under Rule 10 of the Canons of Professional Ethics. x x x In the present case, we reiterate that *the transfer or assignment of the disputed one-half portion to Atty. Lacaya took place while the subject lot was still under litigation and the lawyer-client relationship still existed between him*

and the spouses Cadavedo. Thus, the general prohibition provided under Article 1491 of the Civil Code, rather than the exception provided in jurisprudence, applies. The CA seriously erred in upholding the compromise agreement on the basis of the unproved oral contingent fee agreement. Notably, Atty. Lacaya, in undertaking the spouses Cadavedo's cause pursuant to the terms of the alleged oral contingent fee agreement, in effect, became a co-proprietor having an equal, if not more, stake as the spouses Cadavedo. Again, this is void by reason of public policy; it undermines the fiduciary relationship between him and his clients.

5. ID.; ID.; ID.; A COMPROMISE AGREEMENT COULD NEITHER VALIDATE A VOID ORAL CONTINGENT FEE AGREEMENT NOR SUPERSEDE A WRITTEN CONTINGENT FEE AGREEMENT.— The compromise agreement entered into between Vicente and Atty. Lacaya in Civil Case No. 215 (ejectment case) was intended to ratify and confirm Atty. Lacaya's acquisition and possession of the disputed one-half portion which were made in violation of Article 1491 (5) of the Civil Code. As earlier discussed, such acquisition is void; the compromise agreement, which had for its object a void transaction, should be void. A contract whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy is inexistent and void from the beginning. It can never be ratified nor the action or defense for the declaration of the inexistence of the contract prescribe; and any contract directly resulting from such illegal contract is likewise void and inexistent. Consequently, the compromise agreement did not supersede the written contingent fee agreement providing for attorney's fee of ₱2,000.00; neither did it preclude the petitioners from questioning its validity[.]

6. ID.; ID.; ID.; ATTORNEY'S FEES BASED ON *QUANTUM MERUIT* IS PROPER IN CASE AT BAR; ONE-TENTH OF THE SUBJECT LOT WAS HELD AS FAIR AND EQUITABLE ATTORNEY'S FEES.— In view of their respective assertions and defenses, the parties, in effect, impliedly set aside any express stipulation on the attorney's fees, and the petitioners, by express contention, submit the reasonableness of such fees to the court's discretion. We thus have to fix the attorney's fees on a *quantum meruit* basis. x x x Under Section 24, Rule 138 of the Rules of Court and Canon

> 20 of the Code of Professional Responsibility, factors such as the importance of the subject matter of the controversy, the time spent and the extent of the services rendered, the customary charges for similar services, the amount involved in the controversy and the benefits resulting to the client from the service, to name a few, are considered in determining the reasonableness of the fees to which a lawyer is entitled. x x x All things considered, we hold as fair and equitable the RTC's considerations in appreciating the character of the services that Atty. Lacaya rendered in the three cases, subject to modification on valuation. We believe and so hold that the respondents are entitled to two (2) hectares (or approximately one-tenth [1/10] of the subject lot), with the fruits previously received from the disputed one-half portion, as attorney's fees. They shall return to the petitioners the remainder of the disputed one-half portion.

APPEARANCES OF COUNSEL

Pacatang Law Office for petitioners.
Lacaya & Tabiliran Law Office for respondent.

D E C I S I O N

BRION, *J.*:

We resolve in this Rule 45 petition for review on *certiorari*[1] the challenge to the October 11, 2005 decision[2] and the May 9, 2006 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CV No. 56948. The CA reversed and set aside the September 17, 1996 decision[4] of the Regional Trial Court *(RTC),* Branch 10, of Dipolog City in **Civil Case No. 4038,** granting in part the

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[1] *Rollo*, pp. 15-41.

[2] Penned by Associate Justice Teresita Dy-Liacco Flores, and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ramon R. Garcia; *id.* at 45-60.

[3] *Id.* at 71.

[4] Penned by Judge Wilfredo C. Martinez; *id.* at 82-97.

complaint for recovery of possession of property filed by the petitioners, the Conjugal Partnership of the Spouses Vicente Cadavedo and Benita Arcoy-Cadavedo against Atty. Victorino (Vic) T. Lacaya, married to Rosa Legados (collectively, the *respondents*).

The Factual Antecedents

The Spouses Vicente Cadavedo and Benita Arcoy-Cadavedo *(*collectively*, the spouses Cadavedo)* acquired a homestead grant over a 230,765-square meter parcel of land known as Lot 5415 *(subject lot)* located in Gumay, Piñan, Zamboanga del Norte. They were issued Homestead Patent No. V-15414 on March 13, 1953 and Original Certificate of Title No. P-376 on July 2, 1953. On April 30, 1955, the spouses Cadavedo sold the subject lot to the spouses Vicente Ames and Martha Fernandez *(the spouses Ames)*. Transfer Certificate of Title *(TCT)* No. T-4792 was subsequently issued in the name of the spouses Ames.

The present controversy arose when the spouses Cadavedo filed an action[5] before the RTC (then Court of First Instance) of Zamboanga City against the spouses Ames **for sum of money and/or voiding of contract of sale of homestead** after the latter failed to pay the balance of the purchase price. The spouses Cadavedo initially engaged the services of Atty. Rosendo Bandal who, for health reasons, later withdrew from the case; he was substituted by Atty. Lacaya.

On February 24, 1969, Atty. Lacaya amended the complaint to assert the nullity of the sale and the issuance of TCT No. T-4792 in the names of the spouses Ames as gross violation of the public land law. The amended complaint stated that the spouses Cadavedo hired Atty. Lacaya on a contingency fee basis. The contingency fee stipulation specifically reads:

10. That due to the above circumstances, the **plaintiffs were forced to hire a lawyer on contingent basis and if they become the**

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[5] Docketed as **Civil Case No. 1721** *(Cadavedo v. Ames)*.

prevailing parties in the case at bar, **they will pay the sum of ₱2,000.00 for attorney's fees**[.][6]

In a decision dated February 1, 1972, the RTC upheld the sale of the subject lot to the spouses Ames. The spouses Cadavedo, thru Atty. Lacaya, appealed the case to the CA.

On September 18, 1975, and while the appeal before the CA in *Civil Case No. 1721* was pending, the spouses Ames sold the subject lot to their children. The spouses Ames' TCT No. T-4792 was subsequently cancelled and **TCT No. T-25984** was issued in their children's names. On October 11, 1976, the spouses Ames mortgaged the subject lot with the Development Bank of the Philippines *(DBP)* in the names of their children.

On August 13, 1980, the CA issued its decision in *Civil Case No. 1721,* reversing the decision of the RTC and declaring the deed of sale, transfer of rights, claims and interest to the spouses Ames null and void *ab initio.* It directed the spouses Cadavedo to return the initial payment and ordered the Register of Deeds to cancel the spouses Ames' TCT No. T-4792 and to reissue another title in the name of the spouses Cadavedo. The case eventually reached this Court *via* the spouses Ames' petition for review on *certiorari* which this Court dismissed for lack of merit.

Meanwhile, the spouses Ames defaulted in their obligation with the DBP. Thus, the DBP caused the publication of a notice of foreclosure sale of the subject lot as covered by TCT No. T-25984 (under the name of the spouses Ames' children). Atty. Lacaya immediately informed the spouses Cadavedo of the foreclosure sale and filed an Affidavit of Third Party Claim with the Office of the Provincial Sheriff on September 14, 1981.

With the finality of the judgment in *Civil Case No. 1721,* Atty. Lacaya filed on September 21, 1981 a motion for the issuance of a writ of execution.

On September 23, 1981, and pending the RTC's resolution of the motion for the issuance of a writ of execution, the spouses

[6] *Rollo,* p. 47; emphasis ours.

Ames filed a complaint[7] before the RTC against the spouses Cadavedo for **Quieting of Title or Enforcement of Civil Rights due Planters in Good Faith with prayer for Preliminary Injunction.** The spouses Cadavedo, thru Atty. Lacaya, filed a motion to dismiss on the ground of *res judicata* and to cancel TCT No. T-25984 (under the name of the spouses Ames' children).

On October 16, 1981, the RTC granted the motion for the issuance of a writ of execution in *Civil Case No. 1721*, and the spouses Cadavedo were placed in possession of the subject lot on October 24, 1981. Atty. Lacaya asked for one-half of the subject lot as attorney's fees. He caused the subdivision of the subject lot into two equal portions, based on area, and selected the more valuable and productive half for himself; and assigned the other half to the spouses Cadavedo.

Unsatisfied with the division, Vicente and his sons-in-law entered the portion assigned to the respondents and ejected them. The latter responded by filing a counter-suit for forcible entry before the Municipal Trial Court (*MTC*); the ejectment case was docketed as Civil Case No. 215. This incident occurred while *Civil Case No. 3352* was pending.

On May 13, 1982, Vicente and Atty. Lacaya entered into an amicable settlement *(compromise agreement)*[8] in Civil Case

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[7] Docketed as **Civil Case No. 3352** *(Ames v. Cadavedo)*.

[8] *Id.* at 89-90. The compromise agreement, in part, reads:

I.

That **defendants recognize the possession of plaintiff Vic T. Lacaya, Sr. over the northern half of Lot 5415 to be designated as Lot 5415-A, being his share as payment of attorney's fees on contingent basis** originally covered by O.C.T. No. P0376 and now covered by T.C.T. No. T-25984 in the name of Rosario Ames, *et al*., situated at Lower Gumay, Piñan, Zamboanga del Norte;

x x x x x x x x x

III.

That the parties shall cause these portions to be surveyed and segregated from each other by a licensed surveyor and the portion of Vic T. Lacaya, Sr. shall be identified as Lot 5415-A; that of Vicente Cadavedo as Lot 5415-B;

No. 215 (the ejectment case), re-adjusting the area and portion obtained by each. Atty. Lacaya acquired 10.5383 hectares pursuant to the agreement. The MTC approved the compromise agreement in a decision dated June 10, 1982.

Meanwhile, on May 21, 1982, the spouses Cadavedo filed before the RTC an action against the DBP for Injunction; it was docketed as **Civil Case No. 3443** *(Cadavedo v. DBP)*. The RTC subsequently denied the petition, prompting the spouses Cadavedo to elevate the case to the CA *via* a petition for *certiorari*. The CA dismissed the petition in its decision of January 31, 1984.

The records do not clearly disclose the proceedings subsequent to the CA decision in *Civil Case No. 3443*. However, on August 18, 1988, **TCT No. 41051** was issued in the name of the spouses Cadavedo concerning the subject lot.

On August 9, 1988, the spouses Cadavedo filed before the RTC an action[9] against the respondents, assailing the MTC-approved compromise agreement. The case was docketed as **Civil Case No. 4038** and is the root of the present case. The spouses Cadavedo prayed, among others, that the respondents be ejected from their one-half portion of the subject lot; that they be ordered to render an accounting of the produce of this one-half portion from 1981; and that the RTC fix the attorney's fees on a *quantum meruit* basis, with due consideration of the expenses that Atty. Lacaya incurred while handling the civil cases.

During the pendency of **Civil Case No. 4038**, the spouses Cadavedo executed a Deed of Partition of Estate in favor of

x x x x x x x x x

IV.

That the defendants shall vacate the premises of the portions belonging to the plaintiffs and, in fact, have already vacated the premises in question and restored the plaintiffs in their respective peaceful possession thereof since March 5, 1982[.] [emphasis ours]

[9] Action for "Judicial Determination of Attorney's Fees, Recovery of Possession, Accounting of Products, Ejectment and Damages with Prayer for Receivership and Preliminary Mandatory/Prohibitory Injunction."

their eight children. Consequently, TCT No. 41051 was cancelled and TCT No. 41690 was issued in the names of the latter. The records are not clear on the proceedings and status of *Civil Case No. 3352*.

The Ruling of the RTC

In the September 17, 1996 decision[10] in **Civil Case No. 4038**, the RTC declared the contingent fee of 10.5383 hectares as excessive and unconscionable. The RTC reduced the land area to 5.2691 hectares and ordered the respondents to vacate and restore the remaining 5.2692 hectares to the spouses Cadavedo.

The RTC noted that, as stated in the amended complaint filed by Atty. Lacaya, the agreed attorney's fee on contingent basis was ₱2,000.00. Nevertheless, the RTC also pointed out that the parties novated this agreement when they executed the compromise agreement in Civil Case No. 215 (ejectment case), thereby giving Atty. Lacaya one-half of the subject lot. The RTC added that Vicente's decision to give Atty. Lacaya one-half of the subject lot, *sans* approval of Benita, was a valid act of administration and binds the conjugal partnership. The RTC reasoned out that the disposition redounded to the benefit of the conjugal partnership as it was done precisely to remunerate Atty. Lacaya for his services to recover the property itself.

These considerations notwithstanding, the RTC considered the one-half portion of the subject lot, as Atty. Lacaya's contingent fee, excessive, unreasonable and unconscionable. The RTC was convinced that the issues involved in *Civil Case No. 1721* were not sufficiently difficult and complicated to command such an excessive award; neither did it require Atty. Lacaya to devote much of his time or skill, or to perform extensive research.

Finally, the RTC deemed the respondents' possession, prior to the judgment, of the excess portion of their share in the subject lot to be in good faith. The respondents were thus entitled to receive its fruits.

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[10] *Supra* note 4.

On the spouses Cadavedo's motion for reconsideration, the RTC modified the decision in its resolution[11] dated December 27, 1996. The RTC ordered the respondents to account for and deliver the produce and income, valued at ₱7,500.00 per annum, of the 5.2692 hectares that the RTC ordered the spouses Ames to restore to the spouses Cadavedo, from October 10, 1988 until final restoration of the premises.

The respondents appealed the case before the CA.

The Ruling of the CA

In its decision[12] dated October 11, 2005, the CA reversed and set aside the RTC's September 17, 1996 decision and maintained the partition and distribution of the subject lot under the compromise agreement. In so ruling, the CA noted the following facts: (1) Atty. Lacaya served as the spouses Cadavedo's counsel from 1969 until 1988, when the latter filed the present case against Atty. Lacaya; (2) during the nineteen (19) years of their attorney-client relationship, Atty. Lacaya represented the spouses Cadavedo in three civil cases – Civil Case No. 1721, Civil Case No. 3352, and Civil Case No. 3443; (3) the first civil case lasted for twelve years and even reached this Court, the second civil case lasted for seven years, while the third civil case lasted for six years and went all the way to the CA; (4) the spouses Cadavedo and Atty. Lacaya entered into a compromise agreement concerning the division of the subject lot where Atty. Lacaya ultimately agreed to acquire a smaller portion; (5) the MTC approved the compromise agreement; (6) Atty. Lacaya defrayed all of the litigation expenses in Civil Case No. 1721; and (7) the spouses Cadavedo expressly recognized that Atty. Lacaya served them in several cases.

Considering these established facts and consistent with Canon 20.01 of the Code of Professional Responsibility (enumerating the factors that should guide the determination of the lawyer's

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[11] *Rollo*, pp. 98-100.

[12] *Supra* note 2.

fees), the CA ruled that the time spent and the extent of the services Atty. Lacaya rendered for the spouses Cadavedo in the three cases, the probability of him losing other employment resulting from his engagement, the benefits resulting to the spouses Cadavedo, and the contingency of his fees justified the compromise agreement and rendered the agreed fee under the compromise agreement reasonable.

The Petition

In the present petition, the petitioners essentially argue that the CA erred in: (1) granting the attorney's fee consisting of one-half or 10.5383 hectares of the subject lot to Atty. Lacaya, instead of confirming the agreed contingent attorney's fees of ₱2,000.00; (2) not holding the respondents accountable for the produce, harvests and income of the 10.5383-hectare portion (that they obtained from the spouses Cadavedo) from 1988 up to the present; and (3) upholding the validity of the purported oral contract between the spouses Cadavedo and Atty. Lacaya when it was champertous and dealt with property then still subject of *Civil Case No. 1721*.[13]

The petitioners argue that stipulations on a lawyer's compensation for professional services, especially those contained in the pleadings filed in courts, control the amount of the attorney's fees to which the lawyer shall be entitled and should prevail over oral agreements. In this case, the spouses Cadavedo and Atty. Lacaya agreed that the latter's contingent attorney's fee was ₱2,000.00 in cash, not one-half of the subject lot. This agreement was clearly stipulated in the amended complaint filed in *Civil Case No. 1721*. Thus, Atty. Lacaya is bound by the expressly stipulated fee and cannot insist on unilaterally changing its terms without violating their contract.

The petitioners add that the one-half portion of the subject lot as Atty. Lacaya's contingent attorney's fee is excessive and

[13] See also the Petitioners' Memorandum dated September 26, 2007, *rollo,* pp. 157-196; Reply to the respondents' comment to the petition dated May 8, 2007 (*id.* at 138-140), and Reply to the Respondents' Memorandum dated November 12, 2007 (*id.* at 242-250).

unreasonable. They highlight the RTC's observations and argue that the issues involved in *Civil Case No. 1721,* pursuant to which the alleged contingent fee of one-half of the subject lot was agreed by the parties, were not novel and did not involve difficult questions of law; neither did the case require much of Atty. Lacaya's time, skill and effort in research. They point out that the two subsequent civil cases should not be considered in determining the reasonable contingent fee to which Atty. Lacaya should be entitled for his services in *Civil Case No. 1721,* as those cases had not yet been instituted at that time. Thus, these cases should not be considered in fixing the attorney's fees. The petitioners also claim that the spouses Cadavedo concluded separate agreements on the expenses and costs for each of these subsequent cases, and that Atty. Lacaya did not even record any attorney's lien in the spouses Cadavedo's TCT covering the subject lot.

The petitioners further direct the Court's attention to the fact that Atty. Lacaya, in taking over the case from Atty. Bandal, agreed to defray all of the litigation expenses in exchange for one-half of the subject lot should they win the case. They insist that this agreement is a champertous contract that is contrary to public policy, prohibited by law for violation of the fiduciary relationship between a lawyer and a client.

Finally, the petitioners maintain that the compromise agreement in Civil Case No. 215 (ejectment case) did not novate their original stipulated agreement on the attorney's fees. They reason that Civil Case No. 215 did not decide the issue of attorney's fees between the spouses Cadavedo and Atty. Lacaya for the latter's services in *Civil Case No. 1721.*

The Case for the Respondents

In their defense,[14] the respondents counter that the attorney's fee stipulated in the amended complaint was not the agreed fee

[14] Comment to the Petition dated November 17, 2006 (*id.* at 116-135). See also the respondents' Memorandum dated October 24, 2007 (*id.* at 212-239).

of Atty. Lacaya for his legal services. They argue that the questioned stipulation for attorney's fees was in the nature of a penalty that, if granted, would inure to the spouses Cadavedo and not to Atty. Lacaya.

The respondents point out that: (1) both Vicente and Atty. Lacaya caused the survey and subdivision of the subject lot immediately after the spouses Cadavedo reacquired its possession with the RTC's approval of their motion for execution of judgment in *Civil Case No. 1721*; (2) Vicente expressly ratified and confirmed the agreement on the contingent attorney's fee consisting of one-half of the subject lot; (3) the MTC in Civil Case No. 215 (ejectment case) approved the compromise agreement; (4) Vicente is the legally designated administrator of the conjugal partnership, hence the compromise agreement ratifying the transfer bound the partnership and could not have been invalidated by the absence of Benita's acquiescence; and (5) the compromise agreement merely inscribed and ratified the earlier oral agreement between the spouses Cadavedo and Atty. Lacaya which is not contrary to law, morals, good customs, public order and public policy.

While the case is pending before this Court, Atty. Lacaya died.[15] He was substituted by his wife - Rosa - and their children – Victoriano D.L. Lacaya, Jr., Rosevic Lacaya-Ocampo, Reymar L. Lacaya, Marcelito L. Lacaya, Raymundito L. Lacaya, Laila Lacaya-Matabalan, Marivic Lacaya-Barba, Rosalie L. Lacaya and Ma. Vic-Vic Lacaya-Camaongay.[16]

The Court's Ruling

We resolve to ***GRANT*** the petition.

The subject lot was the core of four successive and overlapping cases prior to the present controversy. In three of these cases,

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[15] Copy of the Death Certificate indicated the date of death as September 18, 2007; *id.* at 205.

[16] Formal Notice of Death and Substitution of Parties dated October 3, 2007; *id.* at 200-204.

Atty. Lacaya stood as the spouses Cadavedo's counsel. For ease of discussion, we summarize these cases (including the dates and proceedings pertinent to each) as follows:

Civil Case No. 1721 – **Cadavedo v. Ames** (Sum of money and/or voiding of contract of sale of homestead), filed on January 10, 1967. The writ of execution was granted on October 16, 1981.

Civil Case No. 3352 – **Ames v. Cadavedo** (Quieting of Title and/or Enforcement of Civil Rights due Planters in Good Faith with Application for Preliminary injunction), filed on September 23, 1981.

Civil Case No. 3443 – **Cadavedo v. DBP** (Action for Injunction with Preliminary Injunction), filed on May 21, 1982.

Civil Case No. 215 – **Atty. Lacaya v. Vicente Cadavedo, *et. al***. (Ejectment Case), filed between the latter part of 1981 and early part of 1982. The parties executed the compromise agreement on May 13, 1982.

Civil Case No. 4038 – petitioners v. respondents (the present case).

The agreement on attorney's fee consisting of one-half of the subject lot is void; the petitioners are entitled to recover possession

The core issue for our resolution is whether the attorney's fee consisting of one-half of the subject lot is valid and reasonable, and binds the petitioners. We rule in the ***NEGATIVE*** for the reasons discussed below.

A. The written agreement providing for a contingent fee of ₱2,000.00 should prevail over the oral agreement providing for one-half of the subject lot

The spouses Cadavedo and Atty. Lacaya agreed on a contingent fee of ₱2,000.00 and not, as asserted by the latter, one-half of the subject lot. The stipulation contained in the amended complaint filed by Atty. Lacaya clearly stated that the spouses Cadavedo hired the former on a contingency basis; the Spouses Cadavedo

undertook to pay their lawyer ₱2,000.00 as attorney's fees should the case be decided in their favor.

Contrary to the respondents' contention, this stipulation is not in the nature of a penalty that the court would award the winning party, to be paid by the losing party. The stipulation is a representation to the court concerning the agreement between the spouses Cadavedo and Atty. Lacaya, on the latter's compensation for his services in the case; it is not the attorney's fees in the nature of damages which the former prays from the court as an incident to the main action.

At this point, we highlight that as observed by both the RTC and the CA and agreed as well by both parties, the alleged contingent fee agreement consisting of one-half of the subject lot was not reduced to writing prior to or, at most, at the start of Atty. Lacaya's engagement as the spouses Cadavedo's counsel in *Civil Case No. 1721*. An agreement between the lawyer and his client, providing for the former's compensation, is subject to the ordinary rules governing contracts in general. As the rules stand, controversies involving written and oral agreements on attorney's fees shall be resolved in favor of the former.[17] Hence, the contingency fee of ₱2,000.00 stipulated in the amended complaint prevails over the alleged oral contingency fee agreement of one-half of the subject lot.

B. The contingent fee agreement between the spouses Cadavedo and Atty. Lacaya, awarding the latter one-half of the subject lot, is champertous

Granting *arguendo* that the spouses Cadavedo and Atty. Lacaya indeed entered into an oral contingent fee agreement securing to the latter one-half of the subject lot, the agreement is nevertheless void.

In their account, the respondents insist that Atty. Lacaya agreed to represent the spouses Cadavedo in *Civil Case No. 1721*

[17] RULES OF COURT, Rule 138, Section 24.

and assumed the litigation expenses, without providing for reimbursement, in exchange for a contingency fee consisting of one-half of the subject lot. This agreement is champertous and is contrary to public policy.[18]

Champerty, along with maintenance (of which champerty is an aggravated form), is a common law doctrine that traces its origin to the medieval period.[19] The doctrine of maintenance was directed "against wanton and inofficious intermeddling in the disputes of others in which the intermeddler has no interest whatever, and where the assistance rendered is without justification or excuse."[20] Champerty, on the other hand, is characterized by "the receipt of a share of the proceeds of the litigation by the intermeddler."[21] Some common law court decisions, however, add a second factor in determining champertous contracts, namely, that the lawyer must also, "at his own expense maintain, and take all the risks of, the litigation."[22]

The doctrines of champerty and maintenance were created in response "to medieval practice of assigning doubtful or

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[18] *Bautista v. Atty. Gonzales*, 261 Phil. 266, 281 (1990).

[19] *The Role of the Doctrines of Champerty and Maintenance in Arbitration* by Jern-Fei Ng, www.essexcourt.net/uploads/JERN-FEI%20NG.pdf. See also Contracts, Champerty, Common Law Rule Modified by Modern Statutes and Decisions, California Law Review, Vol. 1, No. 2, January 1913, pp. 178-180, 179, www.jstor.org/stable/3474485?seq=2; and www.danielnelson.ca/pdfs/Fundraising%20for%20Litigation.pdf.

[20] *The Role of the Doctrines of Champerty and Maintenance in Arbitration* by Jern-Fei Ng, www.essexcourt.net/uploads/JERN-FEI%20NG.pdf, citing *British Cash and Parcel Conveyors Ltd. v. Lamson Store Service Co. Ltd.* (1908) 1 K.B. 1006 at 1014, per Fletcher Moulton L.J.

[21] *The Role of the Doctrines of Champerty and Maintenance in Arbitration* by Jern-Fei Ng, www.essexcourt.net/uploads/JERN-FEI%20NG.pdf, citing *Giles v Thompson* (1994) 1 A.C. 142; (1993) 2 W.L.R. 908; (1993) 3 All E.R. 321 at 328, per Steyn L.J. See also Contracts, Champerty, Common Law Rule Modified by Modern Statutes and Decisions, California Law Review, Vol. 1, No. 2, January 1913, pp. 178-180, 179, www.jstor.org/stable/3474485?seq=2.

[22] Contracts, Champerty, Common Law Rule Modified by Modern Statutes and Decisions, California Law Review, Vol. 1, No. 2, January 1913, pp. 178-180, 179, www.jstor.org/stable/3474485?seq=2.

fraudulent claims to persons of wealth and influence in the expectation that such individuals would enjoy greater success in prosecuting those claims in court, in exchange for which they would receive an entitlement to the spoils of the litigation."[23] "In order to safeguard the administration of justice, instances of champerty and maintenance were made subject to criminal and tortuous liability and a common law rule was developed, striking down champertous agreements and contracts of maintenance as being unenforceable on the grounds of public policy."[24]

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[23] *The Role of the Doctrines of Champerty and Maintenance in Arbitration* by Jern-Fei Ng, www.essexcourt.net/uploads/JERN-FEI%20NG.pdf.

[24] *The Role of the Doctrines of Champerty and Maintenance in Arbitration* by Jern-Fei Ng, www.essexcourt.net/uploads/JERN-FEI%20NG.pdf. See also Contracts, Champerty, Common Law Rule Modified by Modern Statutes and Decisions, California Law Review, Vol. 1, No. 2, January 1913, pp. 178-180, 179, www.jstor.org/stable/3474485?seq=2.

Recent foreign legal developments vary at their treatment of champertous contracts. Several jurisdictions have abolished criminal and tortuous liability for champerty (and maintenance). To name a few: Australia – abolished by the Maintenance, Champerty and Barratry Abolition Act of 1993 for New South Wales and the Wrongs Act 1958 and Crimes Act 1958 for Victoria; England and Wales - by the Criminal Law Act 1967. (en.wikipedia.org/wiki/Champerty_and_maintenance) and www.essexcourt.net/uploads/JERN-FEI%20NG.pdf. Other jurisdictions, particularly some states in the United States of America, have relaxed the application of this common law doctrine or have adopted it in a modified form as the peculiar conditions of the society that gave rise to this doctrine have changed (Contracts, Champerty, Common Law Rule Modified by Modern Statutes and Decisions, California Law Review, Vol. 1, No. 2, January 1913, pp. 178-180, 180, www.jstor.org/stable/3474485?seq=2). Other American states have completely repudiated it unless a statute specifically treats a contract as champertous. These states include: Arkansas, California, Connecticut, Delaware, Idaho, Maryland, Michigan, New Jersey, New York, Texas and West Virginia (Contracts, Champerty, Common Law Rule Modified by Modern Statutes and Decisions, California Law Review, Vol. 1, No. 2, January 1913, pp. 178-180, 180, www.jstor.org/stable/3474485?seq=2). Other jurisdictions, like Canada for one, have retained the rule against champerty on public policy considerations, the purpose being to prevent one party from inciting another to initiate or defend litigation that would never have been brought or defended; or to prevent increase in lawsuits, harassment of defendants, and suppression or manufacturing of evidence and subornation of witness (www.danielnelson.ca/pdfs/Fundraising%20for%20Litigation.pdf).

In this jurisdiction, we maintain the rules on champerty, as adopted from American decisions, for public policy considerations.[25] As matters currently stand, any agreement by a lawyer to "conduct the litigation in his own account, to pay the expenses thereof or to save his client therefrom and to receive as his fee a portion of the proceeds of the judgment is obnoxious to the law."[26] The rule of the profession that forbids a lawyer from contracting with his client for part of the thing in litigation in exchange for conducting the case at the lawyer's expense is *designed to prevent the lawyer from acquiring an interest between him and his client*. To permit these arrangements is to enable the lawyer to "acquire additional stake in the outcome of the action which might lead him to consider his own recovery rather than that of his client or to accept a settlement which might take care of his interest in the verdict to the sacrifice of that of his client in violation of his duty of undivided fidelity to his client's cause."[27]

In *Bautista v. Atty. Gonzales*,[28] the Court struck down the contingent fee agreement between therein respondent Atty. Ramon A. Gonzales and his client for being contrary to public policy. There, the Court held that an agreement between a lawyer and his client that does not provide for reimbursement of litigation expenses paid by the former is against public policy, especially if the lawyer has agreed to carry on the action at his expense in consideration of some bargain to have a part of the thing in dispute. It violates the fiduciary relationship between the lawyer and his client.[29]

In addition to its champertous character, the contingent fee arrangement in this case expressly transgresses the Canons of

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[25] See *Bautista v. Atty. Gonzales, supra* note 18, citing *JBP Holding Corp. v. U.S.*, 166 F. Supp. 324 (1958); and *Sampliner v. Motion Pictures Patents Co., et al.*, 255 F. 242 (1918).

[26] Agpalo, *Legal and Judicial Ethics* (2002), Seventh Edition, p. 392.

[27] Agpalo, *Legal and Judicial Ethics* (2002), Seventh Edition, p. 392, citing A.B.A. Op. 288 (Oct. 11, 1954); *Low v. Hutchinson*, 37 Mel 96 (1853).

[28] *Supra* note 18.

[29] *Id.* at 281.

Professional Ethics and, impliedly, the Code of Professional Responsibility.[30] Under Rule 42 of the Canons of Professional Ethics, a lawyer may not properly agree with a client that the lawyer shall pay or beat the expense of litigation.[31] The same reasons discussed above underlie this rule.

C. The attorney's fee consisting of one-half of the subject lot is excessive and unconscionable

We likewise strike down the questioned attorney's fee and declare it void for being excessive and unconscionable. The contingent fee of one-half of the subject lot was allegedly agreed to secure the services of Atty. Lacaya in *Civil Case No. 1721*. Plainly, it was intended for only one action as the two other civil cases had not yet been instituted at that time. While *Civil Case No. 1721* took twelve years to be finally resolved, that period of time, as matters then stood, was not a sufficient reason to justify a large fee in the absence of any showing that special skills and additional work had been involved. The issue involved in that case, as observed by the RTC (and with which we agree), was simple and did not require of Atty. Lacaya extensive skill, effort and research. The issue simply dealt with the prohibition against the sale of a homestead lot within five years from its acquisition.

That Atty. Lacaya also served as the spouses Cadavedo's counsel in the two subsequent cases did not and could not otherwise justify an attorney's fee of one-half of the subject lot. As asserted

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[30] See CANON 16, specifically Rule 16.04, of the Code of Professional Responsibility. The pertinent portion of Rule 16.04 reads:

"Rule 16.04 - x x x Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client."

[31] Rule 42 of the Canons of Professional Ethics reads in full:

"42. Expenses.

A **lawyer may not properly agree with a client that the lawyer shall pay or beat the expense of litigation**; he may in good faith advance expenses as a matter of convenience, but subject to reimbursement." (emphasis ours)

by the petitioners, the spouses Cadavedo and Atty. Lacaya made separate arrangements for the costs and expenses for each of these two cases. Thus, the expenses for the two subsequent cases had been considered and taken cared of.

Based on these considerations, we therefore find one-half of the subject lot as attorney's fee excessive and unreasonable.

D. Atty. Lacaya's acquisition of the one-half portion contravenes Article 1491 (5) of the Civil Code

Article 1491 (5) of the Civil Code forbids lawyers from acquiring, by purchase or assignment, the property that has been the subject of litigation in which they have taken part by virtue of their profession.[32] The same proscription is provided under Rule 10 of the Canons of Professional Ethics.[33]

A thing is in litigation if there is a contest or litigation over it in court or when it is subject of the judicial action.[34] Following

[32] The pertinent provision of Article 1491 reads:

"Art. 1491. **The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another**:

x x x x x x x x x

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; **this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession**[.] [Emphases ours]

[33] Rule 10 of the Canons of Professional Ethics provides:

"10. Acquiring interest in litigation.

The lawyer should not purchase any interest in the subject matter of the litigation which he is conducting."

See also *Pabugais v. Sahijwani,* 467 Phil. 1111, 1120 (2004); *Valencia v. Atty. Cabanting,* 273 Phil. 534, 543 (1991); and *Ordonio v. Eduarte,* Adm. Mat. No. 3216, March 16, 1992, 207 SCRA 229, 232.

[34] *Vda. de Gurrea v. Suplico*, 522 Phil. 295, 308-309 (2006); and *Valencia v. Atty. Cabanting, supra* at 542.

this definition, we find that the subject lot was still in litigation when Atty. Lacaya acquired the disputed one-half portion. We note in this regard the following established facts: (1) on September 21, 1981, Atty. Lacaya filed a motion for the issuance of a writ of execution in *Civil Case No. 1721*; (2) on September 23, 1981, the spouses Ames filed *Civil Case No. 3352* against the spouses Cadavedo; (3) on October 16, 1981, the RTC granted the motion filed for the issuance of a writ of execution in *Civil Case No. 1721* and the spouses Cadavedo took possession of the subject lot on October 24, 1981; (4) soon after, the subject lot was surveyed and subdivided into two equal portions, and Atty. Lacaya took possession of one of the subdivided portions; and (5) on May 13, 1982, Vicente and Atty. Lacaya executed the compromise agreement.

From these timelines, whether by virtue of the alleged oral contingent fee agreement or an agreement subsequently entered into, Atty. Lacaya acquired the disputed one-half portion (which was after October 24, 1981) while *Civil Case No. 3352* and the motion for the issuance of a writ of execution in *Civil Case No. 1721* were already pending before the lower courts. Similarly, the compromise agreement, including the subsequent judicial approval, was effected during the pendency of *Civil Case No. 3352*. In all of these, the relationship of a lawyer and a client still existed between Atty. Lacaya and the spouses Cadavedo.

Thus, whether we consider these transactions – the transfer of the disputed one-half portion and the compromise agreement – independently of each other or resulting from one another, we find them to be prohibited and void[35] by reason of public policy.[36] Under Article 1409 of the Civil Code, contracts which are contrary to public policy and those expressly prohibited or

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[35] *Vda. de Gurrea v. Suplico, supra*, at 310. See also *Pabugais v. Sahijwani, supra* note 33, at 1121.

[36] See *Fornilda v. The Br. 164, RTC IVth Judicial Region, Pasig,* 248 Phil. 523, 531 (1988); and *Valencia v. Atty. Cabanting, supra* note 33, at 542.

declared void by law are considered inexistent and void from the beginning.[37]

What did not escape this Court's attention is the CA's failure to note that the transfer violated the provisions of Article 1491 (5) of the Civil Code, although it recognized the concurrence of the transfer and the execution of the compromise agreement with the pendency of the two civil cases subsequent to *Civil Case No. 1721*.[38] In reversing the RTC ruling, the CA gave weight to the compromise agreement and in so doing, found justification in the unproved oral contingent fee agreement.

While contingent fee agreements are indeed recognized in this jurisdiction as a valid exception to the prohibitions under Article 1491 (5) of the Civil Code,[39] contrary to the CA's position, however, this recognition does not apply to the present case. A contingent fee contract is an agreement in writing where the fee, often a fixed percentage of what may be recovered in the action, is made to depend upon the success of the litigation.[40] The payment of the contingent fee is not made during the pendency of the litigation involving the client's property but only after the judgment has been rendered in the case handled by the lawyer.[41]

In the present case, we reiterate that *the transfer or assignment of the disputed one-half portion to Atty. Lacaya took place while the subject lot was still under litigation and the lawyer-client relationship still existed between him and the spouses Cadavedo*. Thus, the general prohibition provided under Article 1491 of the Civil Code, rather than the exception provided

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[37] See paragraphs 1 and 7, Article 1409 of the Civil Code. See also *Vda. de Gurrea v. Suplico, supra* note 34, at. 310.

[38] *Rollo,* p. 58.

[39] See *Fabillo v. Intermediate Appellate Court,* G.R. No. 68838, March 11, 1991, 195 SCRA 28, 35; and *Director of Lands v. Larrazabal,* 177 Phil. 467, 479 (1979).

[40] See *Director of Lands v. Larrazabal, supra*, at 475.

[41] See *Biascan v. Atty. Lopez*, 456 Phil. 173, 180 (2003); and *Fabillo v. Intermediate Appellate Court, supra* note 39, at 39.

in jurisprudence, applies. The CA seriously erred in upholding the compromise agreement on the basis of the unproved oral contingent fee agreement.

Notably, Atty. Lacaya, in undertaking the spouses Cadavedo's cause pursuant to the terms of the alleged oral contingent fee agreement, in effect, became a co-proprietor having an equal, if not more, stake as the spouses Cadavedo. Again, this is void by reason of public policy; it undermines the fiduciary relationship between him and his clients.[42]

E. The compromise agreement could not validate the void oral contingent fee agreement; neither did it supersede the written contingent fee agreement

The compromise agreement entered into between Vicente and Atty. Lacaya in Civil Case No. 215 (ejectment case) was intended to ratify and confirm Atty. Lacaya's acquisition and possession of the disputed one-half portion which were made in violation of Article 1491 (5) of the Civil Code. As earlier discussed, such acquisition is void; the compromise agreement, which had for its object a void transaction, should be void.

A contract whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy is inexistent and void from the beginning.[43] It can never be ratified[44] nor the action or defense for the declaration of the inexistence of the contract prescribe;[45] and any contract directly resulting from such illegal contract is likewise void and inexistent.[46]

Consequently, the compromise agreement did not supersede the written contingent fee agreement providing for attorney's

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[42] See *Valencia v. Atty. Cabanting, supra* note 33, at 542; and *Bautista v. Atty. Gonzales, supra* note 18, at 281.

[43] CIVIL CODE OF THE PHILIPPINES, Article 1409 (1).

[44] *Id.*, last paragraph.

[45] *Id.*, Article 1410.

[46] *Id.*, Article 1422.

fee of ₱2,000.00; neither did it preclude the petitioners from questioning its validity even though Vicente might have knowingly and voluntarily acquiesced thereto and although the MTC approved it in its June 10, 1982 decision in the ejectment case. The MTC could not have acquired jurisdiction over the subject matter of the void compromise agreement; its judgment in the ejectment case could not have attained finality and can thus be attacked at any time. Moreover, an ejectment case concerns itself only with the issue of possession *de facto;* it will not preclude the filing of a separate action for recovery of possession founded on ownership. Hence, contrary to the CA's position, the petitioners – in filing the present action and praying for, among others, the recovery of possession of the disputed one-half portion and for judicial determination of the reasonable fees due Atty. Lacaya for his services – were not barred by the compromise agreement.

Atty. Lacaya is entitled to receive attorney's fees on a quantum meruit basis

In view of their respective assertions and defenses, the parties, in effect, impliedly set aside any express stipulation on the attorney's fees, and the petitioners, by express contention, submit the reasonableness of such fees to the court's discretion. We thus have to fix the attorney's fees on a *quantum meruit* basis.

"Quantum meruit — meaning 'as much as he deserves' — is used as basis for determining a lawyer's professional fees in the absence of a contract x x x taking into account certain factors in fixing the amount of legal fees."[47] "Its essential requisite is the acceptance of the benefits by one sought to be charged for the services rendered under circumstances as reasonably to notify him that the lawyer performing the task was expecting to be paid compensation"[48] for it. *The doctrine of quantum meruit is a device to prevent undue enrichment based on the equitable*

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[47] *Spouses Garcia v. Atty. Bala*, 512 Phil. 486, 494 (2005); citation omitted.

[48] Agpalo, *Legal and Judicial Ethics* (2002), Seventh Edition, p. 395, citing *Dallas Joint Stock Land Bank v. Colbert,* 127 SW2d 1004.

postulate that it is unjust for a person to retain benefit without paying for it.[49]

Under Section 24, Rule 138 of the Rules of Court[50] and Canon 20 of the Code of Professional Responsibility,[51] factors such as the importance of the subject matter of the controversy, the time spent and the extent of the services rendered, the customary charges for similar services, the amount involved in the controversy and the benefits resulting to the client from the service, to name a few, are considered in determining the reasonableness of the fees to which a lawyer is entitled.

[49] Agpalo, *Legal and Judicial Ethics* (2002), Seventh Edition, p. 395, citing *Traders Royal Bank Employees Union-Independent v. NLRC,* 269 SCRA 733 (1997).

[50] Section 24, Rule 138 of the Rules of Court, in part, reads:

"SEC. 24. *Compensation of attorneys; agreement as to fees.* – An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. x x x A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable."

[51] The pertinent provision of Canon 20 of the Code of Professional Responsibility reads:

"CANON 20 – x x x x x x x x x

Rule 20.01 – A lawyer shall be guided by the following factors in determining his fees:

a) The time spent and the extent of the services rendered or required;

b) The novelty and difficulty of the questions involved;

c) The importance of the subject matter;

d) The skill demanded;

e) The probability of losing other employment as a result of the acceptance of the proffered case;

f) The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;

g) The amount involved in the controversy and the benefits resulting to the client from the service; the contingency or certainty of compensation; the character of the employment, whether occasional or established; and

h) The professional standing of the lawyer."

In the present case, the following considerations guide this Court in considering and setting Atty. Lacaya's fees based on *quantum meruit:* (1) the questions involved in these civil cases were not novel and did not require of Atty. Lacaya considerable effort in terms of time, skill or the performance of extensive research; (2) Atty. Lacaya rendered legal services for the Spouses Cadavedo in three civil cases beginning in 1969 until 1988 when the petitioners filed the instant case; (3) the first of these civil cases (Cadavedo v. Ames) lasted for twelve years and reaching up to this Court; the second (*Ames v. Cadavedo*) lasted for seven years; and the third (Cadavedo and Lacaya v. DBP) lasted for six years, reaching up to the CA; and (4) the property subject of these civil cases is of a considerable size of 230,765 square meters or 23.0765 hectares.

All things considered, we hold as fair and equitable the RTC's considerations in appreciating the character of the services that Atty. Lacaya rendered in the three cases, subject to modification on valuation. We believe and so hold that the respondents are entitled to two (2) hectares (or approximately one-tenth [1/10] of the subject lot), with the fruits previously received from the disputed one-half portion, as attorney's fees. They shall return to the petitioners the remainder of the disputed one-half portion.

The allotted portion of the subject lot properly recognizes that litigation should be for the benefit of the client, not the lawyer, particularly in a legal situation when the law itself holds clear and express protection to the rights of the client to the disputed property (a homestead lot). Premium consideration, in other words, is on the rights of the owner, not on the lawyer who only helped the owner protect his rights. Matters cannot be the other way around; otherwise, the lawyer does indeed effectively acquire a property right over the disputed property. If at all, due recognition of parity between a lawyer and a client should be on the fruits of the disputed property, which in this case, the Court properly accords.

WHEREFORE, in view of these considerations, we hereby **GRANT** the petition. We **AFFIRM** the decision dated September 17, 1996 and the resolution dated December 27, 1996 of the

Regional Trial Court of Dipolog City, Branch 10, in Civil Case No. 4038, with the **MODIFICATION** that the respondents, the spouses Victorino (Vic) T. Lacaya and Rosa Legados, are entitled to two (2) hectares (or approximately one-tenth [1/10] of the subject lot) as attorney's fees. The fruits that the respondents previously received from the disputed one-half portion shall also form part of the attorney's fees. We hereby **ORDER** the respondents to return to the petitioners the remainder of the 10.5383-hectare portion of the subject lot that Atty. Vicente Lacaya acquired pursuant to the compromise agreement.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176043. January 15, 2014]

SPOUSES BERNADETTE and RODULFO VILBAR, *petitioners, vs.* **ANGELITO L. OPINION,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; A THIRD PARTY PURCHASER IN A PUBLIC AUCTION WHO RELIED ON THE FACE OF THE DULY ISSUED TITLES IS CONSIDERED AN INNOCENT PURCHASER ABSENT PROOF TO THE CONTRARY.— The spouses Vilbar contend that Gorospe, Sr. acted in bad faith when he levied on the disputed properties and bought them at public auction. However, this Court cannot treat as significant the alleged fact that Gorospe, Sr. was the Chief Executive Officer and Chairman of the Board of Directors of Dulos Realty at the time the transactions with

the spouses Vilbar were entered into by the company. Evidence on record shows that the Deed of Absolute Sale dated June 1, 1981 covering Lot 20, as well as the Contract to Sell over Lot 21, was signed by Juan as President of Dulos Realty. Simply, spouses Vilbar cannot ascribe bad faith on the part of Gorospe, Sr. absent clear and convincing proof that he had knowledge of the said spouses' transactions with the company. As far as the Court is concerned, the evidence presented shows that Gorospe, Sr. had no knowledge of the transactions between Dulos Realty and the spouses Vilbar because it was Juan who executed and signed the documents. More importantly, the aforementioned Deed of Absolute Sale and Contract to Sell were not registered and annotated on the original titles in the name of Dulos Realty. Under land registration laws, the said properties were not encumbered then, and third parties need only to rely on the face of the duly issued titles. Consequently, the Court finds no bad faith on Gorospe, Sr.'s part when he bought the properties at public auction free from liens and encumbrances. It is worth stressing at this point that bad faith cannot be presumed. "It is a question of fact that must be proven" by clear and convincing evidence. "[T]he burden of proving bad faith rests on the one alleging it." Sadly, spouses Vilbar failed to adduce the necessary evidence. Thus, this Court finds no error on the part of the CA when it did not find bad faith on the part of Gorospe, Sr.

2. ID.; ID.; ID.; WHERE A BUYER IS CONSIDERED IN GOOD FAITH; A BUYER NEED NOT GO BEYOND THE TORRENS TITLE WHEN DEALING WITH THE REGISTERED OWNER OF THE PROPERTIES.— This Court also treats Opinion as a buyer in good faith. Admittedly, Opinion stated that prior to the execution of the mortgage, he only went to Lots 20 and 21 once and saw that the properties had occupants. He likewise admitted that he never talked to the spouses Vilbar and Guingon to determine the nature of their possession of the properties, but merely relied on the representation of Gorospe, Sr. that the occupants were mere tenants. He never bothered to request for any kind of proof, documentary or otherwise, to confirm this claim. Nevertheless, this Court agrees with the CA that Opinion is not required to go beyond the Torrens title[.] x x x Opinion acted in good faith in dealing with the registered owners of the properties. He

relied on the titles presented to him, which were confirmed by the Registry of Deeds to be authentic, issued in accordance with the law, and without any liens or encumbrances.

3. **ID.; PROPERTY; OWNERSHIP; WHERE DEED OF SALE, RECEIPTS OF PAYMENTS, AND ACTUAL POSSESSION OF THE PROPERTY ARE CONSIDERED INSUFFICIENT PROOFS OF OWNERSHIP; FAILURE TO ANNOTATE SUCH SALE IN THE ORIGINAL TITLE OR TO TRANSFER THE TITLE IN THEIR NAME IS FATAL.—** With regard to Lot 20, spouses Vilbar brag of a Deed of Absolute Sale executed by Dulos Realty in their favor and aver that they have the owner's copy of TCT No. S-39849 and are presently enjoying actual possession of said property. However, these are not sufficient proofs of ownership. For some unknown reasons, the spouses Vilbar did not cause the transfer of the certificate title in their name, or at the very least, annotate or register such sale in the original title in the name of Dulos Realty. This, sadly, proved fatal to their cause. Time and time again, this Court has ruled that "a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein." Having no certificate of title issued in their names, spouses Vilbar have no indefeasible and incontrovertible title over Lot 20 to support their claim. Further, it is an established rule that "registration is the operative act which gives validity to the transfer or creates a lien upon the land." "Any buyer or mortgagee of realty covered by a Torrens certificate of title x x x is charged with notice only of such burdens and claims as are annotated on the title." Failing to annotate the deed for the eventual transfer of title over Lot 20 in their names, the spouses Vilbar cannot claim a greater right over Opinion, who acquired the property with clean title in good faith and registered the same in his name by going through the legally required procedure. Spouses Vilbar's possession of the owner's copy of TCT No. 39849 is of no moment. It neither cast doubt on Gorospe Sr.'s TCT No. 117331 from which Opinion's TCT No. T-59011 covering Lot 20 emanated nor bar Gorospe Sr. from transferring the title over Lot 20 to his name. It should be recalled that Gorospe Sr. acquired Lots 20 and 21 thru forced sale. Under Section 107 of Presidential Decree No. 1529, Gorospe Sr. could have the TCTs of said lots cancelled and transferred to his name even if the previous

registered owner (Dulos Realty) refused or neglected to surrender the owner's copy thereof. x x x Here, it is clear that Gorospe Sr. was able to secure TCT No. 117331, which was marked as Exhibit "N." Said title explicitly provides that it cancelled TCT No. 39849. Hence, having been superseded by TCT No. 117331, spouses Vilbar's possession of TCT No. 39849 is of no consequence.

4. ID.; ID.; ID.; A CERTIFICATE OF TITLE ISSUED WITHOUT PROOF OF CONVEYANCE CANNOT BE DEEMED TO HAVE BEEN VALIDLY ISSUED TO PROVE OWNERSHIP.— With respect to Lot 21, the Court is likewise puzzled as to why spouses Vilbar's TCT No. 36777 does not indicate where it came from. The issuance of the said title also becomes suspect in light of the fact that no Deed of Absolute Sale was ever presented as basis for the transfer of the title from Dulos Realty. In fact, the spouses Vilbar do not even know if a Deed of Absolute Sale over Lot 21 was executed in their favor. As the evidence extant on record stands, only a Contract to Sell which is legally insufficient to serve as basis for the transfer of title over the property is available. At most, it affords spouses Vilbar an inchoate right over the property. Absent that important deed of conveyance over Lot 21 executed between Dulos Realty and the spouses Vilbar, TCT No. 36777 issued in the name of Bernadette Vilbar cannot be deemed to have been issued in accordance with the processes required by law. In the same manner, absent the corresponding inscription or annotation of the required transfer document in the original title issued in the name of Dulos Realty, third parties are not charged with notice of said burden and/or claim over the property. The aforementioned flaws in the title (TCT No. 36777) of spouses Vilbar is aggravated by the 2nd Indorsement dated May 11, 1988 of the Registry of Deeds of Pasay City which provides that TCT No. 36777 is presumed not to have been validly issued considering that no inscription or annotation exists at the back of the original title (TCT No. S-39850) showing that a deed of sale between Dulos Realty and spouses Vilbar had been registered, coupled with the established material discrepancies in the certificate of title in the custody of the Registry of Deeds of Las Piñas City and the title presented by the spouses Vilbar. Simply, the spouses Vilbar were not able to present material

evidence to prove that TCT No. 36777 was issued in accordance with the land registration rules.

5. ID.; ID.; ID.; REAL ESTATE MORTGAGE AND TAX DECLARATIONS ARE NOT CONCLUSIVE PROOFS OF OWNERSHIP.— [T]he real estate mortgage entered into by the spouses Vilbar with the DBP does not, by itself, result in a conclusive presumption that they have a valid title to Lot 21. The basic fact remains that there is no proof of conveyance showing how they acquired ownership over Lot 21 justifying the issuance of the certificate of title in their name. With respect to the tax declarations, the trial court aptly declared, thus: As to the tax declarations and real property tax payments made by the defendants Sps. Vilbar for Lot 21 the same are of no moment. It has been held that tax declarations are not conclusive proofs of ownership[.]

APPEARANCES OF COUNSEL

R.R. Barrales and Associates for petitioners.
Galarrita & Arboleda for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

"[R]egistration is the operative act which gives validity to the transfer or creates a lien upon the land."[1]

Before this Court is a Petition for Review on *Certiorari*[2] of the May 26, 2006 Decision[3] of the Court of Appeals (CA) in CA-G.R. CV No. 84409 which affirmed the January 31, 2005 Decision[4] of the Regional Trial Court (RTC), Branch 255, Las

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[1] *Valdevieso v. Damalerio*, 492 Phil. 51, 58 (2005).

[2] *Rollo*, pp. 21-63.

[3] CA *rollo*, pp. 121-140; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Amelita G. Tolentino and Fernanda Lampas Peralta.

[4] Records, pp. 611-626; penned by Judge Raul Bautista Villanueva.

Piñas City in Civil Case No. 98-0302, an *accion reinvindicatoria* case filed by respondent Angelito L. Opinion (Opinion) against petitioner-spouses Bernadette and Rodulfo Vilbar (spouses Vilbar) and others.

Also assailed is the CA's December 22, 2006 Resolution[5] which denied spouses Vilbar's Motion for Reconsideration.[6]

Factual Antecedents

Spouses Vilbar claimed that on July 10, 1979, they and Dulos Realty and Development Corporation (Dulos Realty), entered into a Contract to Sell[7] involving a 108-square meter lot designated as Lot 20-B located in Airmen's Village, Las Piñas City and covered by Transfer Certificate of Title (TCT) No. S-39849 for ₱19,440.00. Lot 20-A which is also covered and embraced by the same certificate of title is the subject of another Contract to Sell between Elena Guingon (Elena) and Dulos Realty. Sometime in August 1979, spouses Vilbar took possession of Lot 20-B in the concept of owners and exercised acts of ownership thereon with the permission of Dulos Realty after making some advance payment.[8]

Upon full payment of the purchase price for Lot 20, or on June 1, 1981, Dulos Realty executed a duly notarized Deed of Absolute Sale[9] in favor of spouses Vilbar and their co-purchaser Elena. Dulos Realty also surrendered and delivered the owner's duplicate copy of TCT No. S-39849 covering Lot 20 to the buyers and new owners of the property. However, spouses Vilbar and Elena were not able to register and transfer the title in their names because Dulos Realty allegedly failed to have the lot formally subdivided despite its commitment to do so,

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[5] CA *rollo*, p. 174.

[6] *Id.* at 143-160.

[7] Records, pp. 458-459.

[8] *Id.* at 458; TSN dated April 14, 2003, pp. 29-30.

[9] *Id.* at 448-449.

until its President, Juan B. Dulos (Juan), died without the subdivision being accomplished.[10]

Spouses Vilbar and Dulos Realty also executed a Contract to Sell[11] dated July 10, 1979 covering Lot 21, Block 4 of Airmen's Village, with an area of 216 square meters and covered by TCT No. S-39850 amounting to ₱128,880.00. To pay for the balance of the purchase price amounting to ₱99,216.00, spouses Vilbar obtained a housing loan from the Development Bank of the Philippines (DBP) secured by a real estate mortgage[12] over the said lot. Dulos Realty facilitated the approval of the loan, the proceeds of which were immediately paid to it as full payment of the purchase price.[13]

In 1991, the spouses Vilbar were able to pay the loan in full and DBP issued the requisite Cancellation of Mortgage[14] on March 25, 1991. Thereafter, DBP surrendered TCT No. 36777 / T-17725-A issued by the Registry of Deeds of Pasay City in the name of Bernadette Vilbar to the spouses Vilbar.[15] The spouses Vilbar have been in actual, open and peaceful possession of Lot 21 and occupy the same as absolute owners since 1981.

In contrast, Opinion claimed that he legally acquired Lots 20 and 21 through extra-judicial foreclosure of mortgage constituted over the said properties by Otilio Gorospe, Sr. and Otilio "Lito" Gorospe, Jr. (Gorospes) in his favor. Opinion alleged that on January 12, 1995, the Gorospes borrowed ₱440,000.00 and, to secure the loan, executed a Deed of Real Estate Mortgage[16] over the subject lots covered by TCT Nos. T-44796 (Lot 21)[17]

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[10] TSN dated April 14, 2003, p. 21.

[11] Records, pp. 489-499.

[12] *Id.* at 445.

[13] TSN dated April 14, 2003, pp. 21, 28, 58-61, 63-64; TSN dated June 5, 2003, pp. 12-13.

[14] Records, p. 447.

[15] TSN dated April 14, 2003, p. 65; TSN dated June 5, 2003, p. 19.

[16] Records, pp. 234-235.

[17] *Id.* at 240-241.

and T-44797 (Lot 20).[18] The Gorospes defaulted, prompting Opinion to file a Petition for Extra-Judicial Foreclosure of Real Estate Mortgage[19] dated October 17, 1995 with the Office of the Notary Public of Las Piñas City. Subsequently, the subject properties were sold at a public auction where Opinion emerged as the highest bidder. A Certificate of Sale[20] was issued in his favor on December 18, 1995 and subsequently annotated on the TCTs of the properties. The Gorospes failed to redeem the properties within the reglementary period resulting in the eventual cancellation of their titles. Thus, TCT No. T-59010 (Lot 21)[21] and TCT No. T-59011 (Lot 20)[22] in the name of Opinion were issued on January 22, 1997 by the Registry of Deeds of Las Piñas City.

On February 13, 1997, Opinion filed a Petition for Issuance of a Writ of Possession[23] against the Gorospes with the RTC of Las Piñas City, Branch 253, docketed as LRC Case No. LP-162. Branch 253 initially issued a Writ of Possession and spouses Vilbar and Elena were served with a notice to vacate the premises. However, the writ was quashed when spouses Vilbar filed an urgent motion for the quashal of the writ and presented their title to Lot 21, while Elena presented the Deed of Absolute Sale executed by Dulos Realty covering Lot 20. Consequently, Opinion filed a Complaint for *Accion Reinvindicatoria* with Damages[24] docketed as Civil Case No. 98-0302 and raffled to Branch 255 of the RTC of Las Piñas City for him to be declared as the lawful owner and possessor of the subject properties and for his titles to be declared as authentic. He likewise prayed for the cancellation of the titles of spouses Vilbar and Elena.[25]

[18] *Id.* at 242-243.

[19] *Id.* at 236-237.

[20] *Id.* at 238-239.

[21] *Id.* at 232.

[22] *Id.* at 233.

[23] *Id.* at 309-312.

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

[25] *Id.* at 5.

During trial, spouses Vilbar presented the Absolute Deed of Sale[26] executed by Dulos Realty in their favor and the owner's duplicate copy of TCT No. S-39849[27] covering Lot 20. With respect to Lot 21, spouses Vilbar presented the real estate mortgage[28] they executed in favor of DBP; the official receipts[29] issued by DBP showing that they had paid the amortizations for the housing loan; the Cancellation of Mortgage[30] issued by DBP as proof that they have fully paid the loan; tax declarations[31] and receipts[32] to show that the property's tax declaration under the name of Dulos Realty had been cancelled and a new one had been issued in their name in 1987 and that they have been paying the real property taxes on the property since 1980. The spouses Vilbar also presented TCT No. 36777/T-17725-A[33] issued by the Registry of Deeds of Pasay City on May 22, 1981, as proof of their ownership of Lot 21.

Opinion, on the other hand, justified the legality of his claim over the properties by tacking his rights on the rights passed on to him by the Gorospes. He traced his rights over the properties by claiming that Gorospe, Sr. was the former chairman of the Board of Directors and Chief Executive Officer (CEO) of Dulos Realty. He was offered substantial benefits and privileges by Dulos Realty as compensation for the positions he held, including a residential house and lot in Airmen's Village, Las Piñas City valued at ₱180,000.00 and various allowances. However, Dulos Realty was not able to give to Gorospe, Sr. the promised allowances despite repeated demands. Thus, Gorospe, Sr. was

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[26] *Id.* at 448-449.

[27] *Id.* at 444.

[28] *Id.* at 445-446.

[29] *Id.* at 491-543, 514-518, 526-548. (Note: page numbers as per Records of the RTC reverted to page no. 514 after page 543).

[30] *Id.* at 447

[31] *Id.* at 450-451.

[32] *Id.* at 453-457.

[33] *Id.* at 443.

constrained to file a Complaint for Sum of Money, Specific Performance and Damages[34] dated May 12, 1981 with the then Court of First Instance (CFI) of Manila. Subsequently, Juan signed a compromise agreement and based thereon the trial court rendered a Decision[35] dated April 1, 1982 ordering Dulos Realty to pay Gorospe, Sr. the total amount of ₱578,000.00. A Writ of Execution and *Alias* Writ of Execution were issued by the trial court in its Orders[36] dated May 7, 1982 and September 30, 1983, respectively. Dulos Realty filed several cases challenging the validity of the compromise agreement and seeking to nullify the writs of execution, as well as the consequent levy and public auction sale of its properties.[37] One of the cases it filed was Civil Case No. 88-2800[38] seeking the nullification, cancellation and reconveyance of title on the ground, among others, that during the auction sale its properties were undervalued. All of its efforts, however, proved futile. Meanwhile, real properties of Dulos Realty were levied on October 31, 1984, which included Lots 20 and 21 covered by TCT Nos. S-39849 and S-39850, respectively.[39] The disputed properties were eventually sold at public auction on June 24, 1985 where Gorospe, Sr. emerged as the highest bidder.[40] On June 2, 1987, the Registry of Deeds of Pasay City issued TCT Nos. 117331 (Lot 20)[41] and 117330 (Lot 21)[42] in the name of Gorospe, Sr. and his wife. Upon the

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[34] *Id.* at 248-255.

[35] *Id.* at 245-247.

[36] *Id.* at 259, 263-264.

[37] Decision, CA-G.R. SP No. 14256 dated September 3, 1982, *id.* at 286-291; Resolution, G.R. No. 63663 dated June 20, 1983, *id.* at 282; Decision, CA-G.R. SP No. 04940 dated May 15, 1985, *id.* at 276-281; Entry of Judgment, G.R. No. 71721, *id.* at 294; Resolution, G.R. No. 71721 dated May 14, 1986, *id.* at 293; Resolution, G.R. No. 71721 dated October 27, 1986, *id.* at 292.

[38] See Amended Complaint dated January 4, 1990, *id.* at 296-307.

[39] *Id.* at 266.

[40] *Id.* at 267-270.

[41] *Id.* at 271-272.

[42] *Id.* at 273-274.

death of Gorospe, Sr.'s wife, the Gorospes transferred the titles in their names resulting in the issuance of TCT Nos. T-44797 (Lot 20)[43] and T-44796 (Lot 21)[44] by the Registry of Deeds of Las Piñas City.

During the course of the trial, Opinion likewise stated under oath that prior to the execution of the real estate mortgage between him and the Gorospes, he was given copies of the titles to the properties which he verified with the Registry of Deeds to be authentic[45] and that he inspected the subject properties and learned that there were occupants.[46] Opinion stated that he was informed by the Gorospes that the occupants, spouses Vilbar and Elena, were mere tenants renting from them.[47] Opinion admitted that he neither talked to the occupants nor made any inquiries as to the nature of their occupation over the subject properties;[48] he did not inquire further to determine whether there was a pending controversy;[49] and, that he merely relied on the statements of Gorospe, Sr. regarding the tenancy of the occupants without having been shown any contract of lease, proof of rental payments, or even an electric bill statement.[50] It was only after his Writ of Possession was quashed when he learned that spouses Vilbar and Elena are also claiming ownership over the properties, prompting him to make a more thorough investigation.[51] Opinion stated that despite the discovery of the adverse claims over the properties mortgaged to him, he did not ask Gorospe, Sr. why there are other claimants to the subject

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[43] *Id.* at 242-243.

[44] *Id.* at 240-241.

[45] TSN dated September 15, 2002, p. 12.

[46] *Id.* at 9, 11.

[47] *Id.* at 9.

[48] *Id.* at 10-12.

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

[50] *Id.* at 17-18, 22.

[51] *Id.* at 16, 23; TSN dated January 12, 2001, p. 31.

properties.[52] When asked about what he learned after investigating said claims, he declared that the titles of the spouses Vilbar are spurious because they contain discrepancies with the originals on file with the Registry of Deeds. According to Opinion, spouses Vilbar's titles do not have entries indicating the titles from which they were derived.[53] To bolster his claim, Opinion also presented a 2nd Indorsement[54] dated May 11, 1988 issued by the Registry of Deeds of Pasay City which states that TCT No. 36777 of the spouses Vilbar is presumed to be not validly issued.[55] Upon clarification, however, Opinion admitted that he made no further follow-up with the Registry of Deeds to determine the final outcome of the investigation on the title of the spouses Vilbar.[56]

Ruling of the Regional Trial Court

On January 31, 2005, the trial court rendered its Decision[57] in favor of Opinion declaring that he lawfully acquired the disputed properties and that his titles are valid, the sources of which having been duly established.[58] The dispositive portion of the Decision reads:

WHEREFORE, the foregoing considered, judgment is hereby rendered in favor of plaintiff Angelito L. Opinion, and against defendants Sps. Bernadette and Rodulfo Vilbar, including defendants Otilio Gorospe, Sr., Otilio Gorospe, Jr. and Elena Guingon, ordering the said defendants to immediately turn over possession of Lots 20 and 21, both of Block 4, located at Airmen's Village, Las Piñas City, to the herein plaintiff being the registered owner thereof per TCT Nos. T-59010 and T-59011 issued in his name.

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[52] TSN dated September 15, 2002, p. 24; TSN dated January 12, 2001, pp. 32-33.

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

[54] Records, pp. 314-315.

[55] *Id.*

[56] TSN dated January 12, 2001, pp. 43-45.

[57] Records, pp. 611-626.

[58] *Id.* at 621.

Likewise, the above defendants are hereby directed to pay to the herein plaintiff the sum of ₱100,00.00 as and by way of attorney's fees, including the cost of suit.

SO ORDERED.[59]

The trial court, in ruling for Opinion, ratiocinated that there was no doubt that Opinion's predecessors-in-interest likewise acquired title to the properties through lawful means.[60] Titles originally in the name of Dulos Realty were cancelled after implementation and execution of the April 1, 1982 Decision of the CFI in favor of Gorospe, Sr. and new titles were issued in his name.[61] The trial court noted that when a new title for Lot 21 was issued in the name of Gorospe, Sr. on June 2, 1987, there was no indication that the title of Dulos Realty was already cancelled by Bernadette Vilbar's TCT No. 36777 purporting to have been issued on May 22, 1981.[62] As to Lot 20, the trial court noted that the supposed Deed of Absolute Sale dated June 1, 1981 in favor of defendants Bernadette Vilbar and Guingon was not annotated on TCT No. 39849. Thus, when this was cancelled by the subsequent titles, the property was not subject to any lien or encumbrance whatsoever pertaining to said purported Deed of Absolute Sale.[63] The trial court also opined that the efforts of Dulos Realty to question and annul the earlier rulings of the then Intermediate Appellate Court and Supreme Court did not prosper thereby strengthening the validity of the title of the Gorospes.[64] Further, the trial court found the mortgage in favor of Opinion, and the subsequent extrajudicial foreclosure thereof to be in order.[65]

As to spouses Vilbars' evidence, the trial court found their title to Lot 21 questionable as there was no showing that it

[59] *Id.* at 625-626.

[60] *Id.* at 621.

[61] *Id.*

[62] *Id.* at 621-622.

[63] *Id.* at 622.

[64] *Id.*

[65] *Id.*

came from TCT No. 39850 issued in the name of Dulos Realty.[66] As to the Contract to Sell of the spouses Vilbar, the trial court held that it hardly served as basis for the transfer of Lot 21 in their favor. Besides, the same was not even annotated on the title of Dulos Realty.[67] The trial court also found the issuance of TCT No. 36777 questionable because there was no proof that the purchase price was already paid considering that only a Contract to Sell was available. As a result, spouses Vilbar only had an inchoate right over the property.[68] The trial court went on to state:

> Definitely, defendants Sps. Vilbar cannot readily claim that they acquired Lot 21 in good faith and for value. Based on the documents they presented, they cannot assert ignorance or allege that they were not aware that the purchase price for Lot 21, including any interest they may have in Lot 20, has not been duly settled at the time TCT No. 36777 for Lot 21 was issued in their favor or even when the Deed of Absolute Sale dated 01 June 1981 for Lot 20 was executed.
>
> The payments supposedly made by the defendants Sps. Vilbar to the DBP only establishes the fact that they have not complied with what they obligated themselves with insofar as the above contracts to sell are concerned. More importantly, there is nothing in the records which would show that these contracts have been superseded by another deed to justify the transfer, among others, of TCT No. 39850 registered in the name of the defendant Dulos Realty to the defendants Sps. Vilbar, or the execution of a deed of sale involving Lot 20 covered by TCT No. 39849.
>
> Needless to state, the fact that a mortgage contract was allegedly entered into by the defendants Sps. Vilbar with the DBP does not, by itself, result in a conclusive presumption that they have a valid title to Lot 21. Instead, this begs more questions than answers since the said mortgage was entered into on 21 May 1981, or a day after TCT No. 36777 was issued in favor of the defendants Sps. Vilbar. Added to this, the herein defendants failed to establish the basis for the issuance of their said title even when their contracts to sell indicate that the purchase price for Lot 21 would be paid on installments over a long period of time.

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[66] *Id.*

[67] *Id.*

[68] *Id.* at 623.

As to the tax declarations and real property tax payments made by the defendants Sps. Vilbar for Lot 21 the same are of no moment. It has been held that tax declarations are not conclusive proofs of ownership, let alone of the private character of the land – at best, they are merely 'indicia of a claim of ownership.' (Seville v. National Development Company, 351 SCRA 112) However, and with the plaintiff presenting convincing evidence of the basis and validity of his acquisition of the subject lots, such "indicia" in favor of the defendants Sps. Vilbar had been effectively impugned or refuted.

Moreso, the possession of the alleged original owner's copy of TCT No. 39849 for Lot 20 by the defendants Sps. Vilbar or the execution of a deed of sale in favor of defendants Bernadette Vilbar and Guingon over the same cannot ripen into ownership thereof. It must be stressed that no subsequent title was issued in favor of the said defendants even when they have the above documents with them. On the other hand, the plaintiff eventually secured a title over Lot 20 after consolidating his ownership with respect thereto.

The fact that the defendants Sps. Vilbar are in possession of the subject lots cannot persuade the Court to rule in their favor. This is more settled insofar as Lot 20 is concerned. Having a valid title thereto, the claim of the plaintiff cannot just be ignored. It is a fundamental principle in land registration that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. (Vda. De Retuerto vs. Barz, 372 SCRA 712)[69]

Further, the trial court gave much credence to the 2nd Indorsement dated May 11, 1988 from the Registry of Deeds of Pasay City which provided that TCT No. 36777 is presumed not to be validly issued considering that no inscription exists at the back of the original title (TCT No. S-39850) showing that a Deed of Sale between Dulos Realty and spouses Vilbar had been registered. The discrepancy in the entries, or lack of it, in the TCTs in the custody of the spouses Vilbar and the Registry of Deeds of Las Piñas City[70] also tilted the balance against the said spouses.

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[69] *Id.* at 623-624.

[70] *Id.* at 624.

Aggrieved, the spouses Vilbar appealed to the CA on February 22, 2005.[71]

Ruling of the Court of Appeals

On May 26, 2006, the CA promulgated its Decision[72] affirming the Decision of the RTC. The CA agreed with the trial court's ruling that Opinion validly acquired title over Lots 20 and 21 through a valid mortgage, extrajudicial foreclosure, and eventual consolidation proceedings instituted over the said properties.[73] The CA went on to state that there was no doubt as to the validity of the title of Opinion's predecessors-in-interest, the Gorospes, because the same was affirmed by the Supreme Court in a case involving the said properties.[74] In contrast, spouses Vilbar's TCT No. 36777 does not state the title from which it was derived.[75] Spouses Vilbar's title becomes even more dubious in light of the aforementioned 2nd Indorsement issued by the Registry of Deeds of Pasay City, which they failed to refute.[76] The CA further stated that acquisitive prescription will not set in because spouses Vilbar lacked the prerequisite just title, while the tax declaration is not a conclusive evidence of ownership.[77] As to Lot 20, the CA ratiocinated that the spouses Vilbar never registered the property in their names despite the lapse of several years, while Opinion was able to register the same property in his name. Being the registered owner, Opinion's title thus takes precedence over the unregistered claim of ownership of spouses Vilbar.[78]

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[71] *Id.* at 631.

[72] CA *rollo*, pp. 121-140.

[73] *Id.* at 131.

[74] *Id.* at 132.

[75] *Id.*

[76] *Id.* at 132-133.

[77] *Id.* at 135.

[78] *Id.* at 136.

Lastly, the CA opined that it is the registration that binds the whole world and that mere possession of the properties in question cannot defeat the right of Opinion as registered owner of the property. Since the sale claimed by the spouses Vilbar was never registered, it cannot bind Opinion.[79]

The spouses Vilbar moved for reconsideration of the CA Decision which was denied in a Resolution dated December 22, 2006. Hence, this Petition.

Issues

Petitioners raise the following issues:

A.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT THE RESPONDENT ANGELITO OPINION HAS A BETTER TITLE AND/OR HAS PREFERENCE OVER THE SUBJECT PROPERTIES IDENTIFIED AS LOTS 20 AND 21.

B.

THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT OVERLOOKED THE FACT THAT OTILIO GOROSPE, AS STOCKHOLDER AND CHAIRMAN OF THE BOARD AND CHIEF EXECUTIVE OFFICER OF DULOS REALTY AND RESPONDENT OPINION'S PREDECESSOR-IN-INTEREST, ACTED IN BAD FAITH WHEN HE LEVIED ON EXECUTION AND WHEN HE PURCHASED IN AN AUCTION SALE THE TWO LOTS SUBJECT OF THE INSTANT CASE ALREADY SOLD AND DELIVERED TO THE PETITIONERS BY DULOS REALTY.

C.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT OVERLOOKED THE FACT THAT X X X RESPONDENT OPINION WAS LIKEWISE A PURCHASER IN BAD FAITH.

D.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT OVERLOOKED THAT THE PETITIONERS SPOUSES

[79] *Id.* at 137.

VILBAR ARE THE OWNERS OF LOT[S] 21 AND 20 UPON DELIVERY THEREOF.

E.

THE COURT OF APPEALS ERRED IN ASSUMING THAT TCT NO. 36777 WAS NOT VALIDLY ISSUED IN FAVOR OF THE PETITIONERS.[80]

The pivotal issue to be resolved is: who between the parties has a better right over Lots 20 and 21?

Petitioners contend that they are the rightful owners and possessors of the contested properties through a valid sale perfected in 1981. They maintain that Gorospe, Sr., the predecessor-in-interest of Opinion, did not acquire ownership over Lots 20 and 21 because at the time of the levy and execution, said properties were no longer owned by Dulos Realty. Gorospe, Sr. could not, therefore, validly pass any rights to Opinion which the former did not have in the first place.[81]

Our Ruling

The Court finds no merit in the Petition.

Respondent Opinion's predecessor-in-interest is an innocent third party purchaser in the public auction sale, absent proof to the contrary.

This Court notes that Dulos Realty, the former owner and common predecessor of the parties herein, contracted with the spouses Vilbar for the sale and transfer of Lots 20 and 21 on July 10, 1979. As early as August 1979, the spouses Vilbar were already in peaceful and actual possession of the subject properties and have been exercising acts of ownership and dominion over their portion of Lot 20 and the entire Lot 21 despite the fact that the purchase price of the lots have not yet

[80] *Rollo,* p. 35.

[81] *Id.* at 41-44.

been paid in full. Admittedly, all these took place before Gorospe, Sr. filed his Complaint for Sum of Money, Specific Performance and Damages against Dulos Realty on May 12, 1981; prior to the issuance of the Writ of Execution and *Alias* Writ of Execution by the trial court on May 7, 1982 and September 30, 1983, respectively;[82] prior to the levy of the properties of Dulos Realty on October 31, 1984 to answer for the judgment favorable to Gorospe, Sr. in said collection/specific performance case; and prior to the public auction sale held on June 24, 1985. However, the Court also notes that the sale of Lot 20 was not annotated on the original title in the name of Dulos Realty, while only a Contract to Sell was executed between the spouses Vilbar and Dulos Realty as regards Lot 21 which makes the issuance of the title in the name of Bernadette Vilbar questionable. What makes spouses Vilbar's title over Lot 21 even more doubtful is the 2nd Indorsement issued by the Registry of Deeds of Pasay City which states that Bernadette Vilbar's title over said lot is presumed to be not validly issued.

The spouses Vilbar contend that Gorospe, Sr. acted in bad faith when he levied on the disputed properties and bought them at public auction. However, this Court cannot treat as significant the alleged fact that Gorospe, Sr. was the Chief Executive Officer and Chairman of the Board of Directors of Dulos Realty at the time the transactions with the spouses Vilbar were entered into by the company. Evidence on record shows that the Deed of Absolute Sale dated June 1, 1981 covering Lot 20, as well as the Contract to Sell over Lot 21, was signed by Juan as President of Dulos Realty. Simply, spouses Vilbar cannot ascribe bad faith on the part of Gorospe, Sr. absent clear and convincing proof that he had knowledge of the said spouses' transactions with the company. As far as the Court is concerned, the evidence presented shows that Gorospe, Sr. had no knowledge of the transactions between Dulos Realty and the spouses Vilbar because it was Juan who executed and signed the documents. More importantly, the aforementioned Deed of Absolute Sale and Contract to Sell were not registered and

[82] Records, pp. 259, 263-264.

annotated on the original titles in the name of Dulos Realty. Under land registration laws, the said properties were not encumbered then, and third parties need only to rely on the face of the duly issued titles. Consequently, the Court finds no bad faith on Gorospe, Sr.'s part when he bought the properties at public auction free from liens and encumbrances.

It is worth stressing at this point that bad faith cannot be presumed. "It is a question of fact that must be proven"[83] by clear and convincing evidence. "[T]he burden of proving bad faith rests on the one alleging it."[84] Sadly, spouses Vilbar failed to adduce the necessary evidence. Thus, this Court finds no error on the part of the CA when it did not find bad faith on the part of Gorospe, Sr.

Furthermore, the Court recognizes "[t]he settled rule that levy on attachment, duly registered, takes preference over a prior unregistered sale. This result is a necessary consequence of the fact that the [properties] involved [were] duly covered by the Torrens system which works under the fundamental principle that registration is the operative act which gives validity to the transfer or creates a lien upon the land."[85] As aptly observed by the trial court:

> To say the least, there is no reason to doubt that the predecessors-in-interest of the plaintiff (Opinion) with respect to the said properties, the defendants Gorospes, likewise acquired the same through lawful means. Indeed, and as acknowledged by both plaintiff Opinion and defendants Sps. Vilbar, the defendant Dulos Realty previously owned the above parcels of land under TCT Nos. 39849 and 39850. However, the said titles were cancelled after the Decision dated 01 April 1982 rendered in favor of defendant Otilio Gorospe, Sr. was implemented or executed. Consequently, TCT Nos. 117330 and 117331 were issued in the name of defendant Otilio Gorospe, Sr. Later on, the foregoing titles were cancelled owing to the death of the wife of defendant Otilio Gorospe, Sr., the late Leonor Gorospe,

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[83] *Bermudez v. Gonzales,* 401 Phil. 38, 47 (2000).

[84] *Id.*

[85] *Valdevieso v. Damalerio*, *supra* note 1.

and TCT Nos. 44796 and 44797 were issued to defendants Gorospes as surviving heirs. These two titles then became the subject of the mortgage agreement that defendants Gorospes executed in favor of plaintiff Opinion on 12 January 1995.

The Court notes that when TCT No. 117330 dated 02 June 1987 for Lot 21 in the name of defendant Otilio Gorospe, Sr. was issued to cancel TCT No. 39850 for the same lot registered in favor of the defendant Dulos Realty there was no mention whatsoever that the latter title was already cancelled by TCT No. 36777 supposedly issued on 22 May 1981 to defendant Bernadette Vilbar. This being so, the subsequent cancellation of TCT No. 117330 by TCT No. 44796 dated 09 January 1995 for Lot 21 could not be affected by the supposed existence of the title of defendants Spouses Vilbar.

As to Lot 20, it is also noteworthy that the supposed Deed of Absolute Sale dated 01 June 1981 in favor of defendants Bernadette Vilbar and Guingon was not annotated on TCT No. 39849. Thus, when this was cancelled by TCT No. 117331 and, later on, by TCT No. 44797 also dated 09 January 1995, it was not subject to any lien or encumbrance whatsoever pertaining to the claim of the above defendants over the same.[86] (Emphasis supplied)

In effect, Gorospe, Sr. acquired through lawful means a valid right to the properties, and he and his son had a legal right to mortgage the same to Opinion. As a consequence, the Goropes transmitted property rights to Opinion, who, in turn, acquired valid rights from the Gorospes.

Respondent Opinion is a Buyer in Good Faith.

This Court also treats Opinion as a buyer in good faith. Admittedly, Opinion stated that prior to the execution of the mortgage, he only went to Lots 20 and 21 once and saw that the properties had occupants. He likewise admitted that he never talked to the spouses Vilbar and Guingon to determine the nature of their possession of the properties, but merely relied on the representation of Gorospe, Sr. that the occupants were mere tenants. He never bothered to request for any kind of proof,

[86] Records, pp. 621-622.

documentary or otherwise, to confirm this claim. Nevertheless, this Court agrees with the CA that Opinion is not required to go beyond the Torrens title, *viz*:

> Contrary to the [Spouses Vilbar's] claim, [Opinion] was never remiss in his duty of ensuring that the Gorospes had clean title over the property. [Opinion] had even conducted an investigation. He had, in this regard, no reason not to believe in the assurance of the Gorospes, more so that the claimed right of [Spouses Vilbar] was never annotated on the certificate of title covering lot 20, because it is settled that a party dealing with a registered land does not have to inquire beyond the Certificate of Title in determining the true owner thereof, and in guarding or protecting his interest, for all that he has to look into and rely on are the entries in the Certificate of Title.[87]

Inarguably, Opinion acted in good faith in dealing with the registered owners of the properties. He relied on the titles presented to him, which were confirmed by the Registry of Deeds to be authentic, issued in accordance with the law, and without any liens or encumbrances.[88]

Besides, assuming *arguendo* that the Gorospes' titles to the subject properties happened to be fraudulent, public policy considers Opinion to still have acquired legal title as a mortgagee in good faith. As held in *Cavite Development Bank v. Spouses Lim:*[89]

> There is, however, a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy. This is the doctrine of 'the mortgagee in good faith' based on the rule that all persons dealing with property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. The public interest in upholding the indefeasibility of a certificate of title, as evidence of the lawful ownership of the land or of any encumbrance thereon, protects a

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[87] CA *rollo*, pp. 138-139.

[88] *Clemente v. Razo,* 493 Phil. 119,127- 128 (2005).

[89] 381 Phil. 355 (2000).

buyer or mortgagee who, in good faith, relied upon what appears on the face of the certificate of title.[90]

Respondent Opinion was proven to be in good faith when he dealt with the Gorospes and relied on the titles presented to him. Spouses Vilbar, on the other hand, failed to present substantial evidence to prove otherwise.

Proofs of ownership of spouses Vilbar over Lots 20 and 21 are insufficient to conclude real ownership, thus, they cannot be considered as owners of subject lots.

In support of their claim of ownership, spouses Vilbar presented the following documentary evidence: (1) Contracts to Sell; (2) Deed of Absolute Sale over Lot 20; (3) Real Estate Mortgage Agreement with DBP over Lot 21 with reference to the spouses Vilbar as owners of the said property covered by TCT No. 36777; (4) Cancellation of Mortgage issued by the DBP in favor of the spouses Vilbar in connection with Lot 21; (5) various original Official Receipts issued by Dulos Realty in favor of the spouses Vilbar for installment payments of the purchase price of the lots in question; (6) various original Official Receipts issued by the DBP in favor of the spouses Vilbar for payment of loan amortizations; (7) owner's duplicate copy of TCT No. 36777 in the name of Bernadette Vilbar; (8) owner's duplicate copy of TCT No. S-39849 in the custody of the spouses Vilbar; and, (9) tax declarations and receipts.

A review of these documents leads the Court to the same inescapable conclusion reached by the trial court. With regard to Lot 20, spouses Vilbar brag of a Deed of Absolute Sale executed by Dulos Realty in their favor and aver that they have the owner's copy of TCT No. S-39849 and are presently enjoying actual possession of said property. However, these are not sufficient proofs of ownership. For some unknown reasons, the spouses Vilbar did not cause the transfer of the certificate

[90] *Id.* at 368.

title in their name, or at the very least, annotate or register such sale in the original title in the name of Dulos Realty. This, sadly, proved fatal to their cause. Time and time again, this Court has ruled that "a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein."[91] Having no certificate of title issued in their names, spouses Vilbar have no indefeasible and incontrovertible title over Lot 20 to support their claim. Further, it is an established rule that "registration is the operative act which gives validity to the transfer or creates a lien upon the land."[92] "Any buyer or mortgagee of realty covered by a Torrens certificate of title x x x is charged with notice only of such burdens and claims as are annotated on the title."[93] Failing to annotate the deed for the eventual transfer of title over Lot 20 in their names, the spouses Vilbar cannot claim a greater right over Opinion, who acquired the property with clean title in good faith and registered the same in his name by going through the legally required procedure.

Spouses Vilbar's possession of the owner's copy of TCT No. 39849 is of no moment. It neither cast doubt on Gorospe Sr.'s TCT No. 117331 from which Opinion's TCT No. T-59011 covering Lot 20 emanated nor bar Gorospe Sr. from transferring the title over Lot 20 to his name. It should be recalled that Gorospe Sr. acquired Lots 20 and 21 thru forced sale. Under Section 107[94] of Presidential Decree No. 1529,[95] Gorospe Sr.

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[91] *Vda. de Retuerto v. Barz*, 423 Phil. 1008, 1016 (2001).

[92] *Valdevieso v. Damalerio*, *supra* note 1.

[93] *Clemente v. Razo*, *supra* note 88 at 128.

[94] SEC. 107. *Surrender of withheld duplicate certificates.* – Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title, the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such

could have the TCTs of said lots cancelled and transferred to his name even if the previous registered owner (Dulos Realty) refused or neglected to surrender the owner's copy thereof. In *Valbuena v. Reyes*,[96] it was held that:

> [W]here one acquires a valid deed or title to a property as a result of execution sale, tax sale, or any sale to enforce a lien, after the expiration of the period, if any, allowed by law for redemption, when said new owner goes to court and the office of the register of deeds to have his deed recorded and have a new certificate of title issued in his name, it is sufficient for purposes of notifying the former owner to surrender his certificate of title and show cause why it should not be cancelled, that the notification is effected by mail or by publication as the court may order; and if despite such notification by mail or by publication, he fails to appear and surrender his certificate of title, the court may validly order the cancellation of that certificate of title and the issuance of a new one in favor of the new owner.[97]

Here, it is clear that Gorospe Sr. was able to secure TCT No. 117331,[98] which was marked as Exhibit "N." Said title explicitly provides that it cancelled TCT No. 39849. Hence, having been superseded by TCT No. 117331, spouses Vilbar's possession of TCT No. 39849 is of no consequence. It may not be amiss to state at this point that spouses Vilbar's claim that Dulos Realty conveyed to them Lot 20 on June 1, 1981 is incongruous with Dulos Realty's filing of a complaint for reconveyance against Gorospe Sr. on January 4, 1990. We simply find it difficult to understand why Dulos Realty would seek

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surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if for any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate.

[95] PROPERTY REGISTRATION DECREE.

[96] 84 Phil. 676 (1949).

[97] *Id.* at 686.

[98] Records, pp. 271-272.

recovenyance of Lot 20 from Gorospe Sr. if, indeed, it had already sold the same almost a decade earlier to spouses Vilbar as evidenced by the latter's Deed of Absolute Sale[99] dated June 1, 1981. (This complaint docketed as Civil Case No. 88-2800 though was dismissed for failure to prosecute.)[100]

With respect to Lot 21, the Court is likewise puzzled as to why spouses Vilbar's TCT No. 36777 does not indicate where it came from. The issuance of the said title also becomes suspect in light of the fact that no Deed of Absolute Sale was ever presented as basis for the transfer of the title from Dulos Realty. In fact, the spouses Vilbar do not even know if a Deed of Absolute Sale over Lot 21 was executed in their favor. As the evidence extant on record stands, only a Contract to Sell which is legally insufficient to serve as basis for the transfer of title over the property is available. At most, it affords spouses Vilbar an inchoate right over the property. Absent that important deed of conveyance over Lot 21 executed between Dulos Realty and the spouses Vilbar, TCT No. 36777 issued in the name of Bernadette Vilbar cannot be deemed to have been issued in accordance with the processes required by law. In the same manner, absent the corresponding inscription or annotation of the required transfer document in the original title issued in the name of Dulos Realty, third parties are not charged with notice of said burden and/or claim over the property. The aforementioned flaws in the title (TCT No. 36777) of spouses Vilbar is aggravated by the 2nd Indorsement dated May 11, 1988 of the Registry of Deeds of Pasay City which provides that TCT No. 36777 is presumed not to have been validly issued considering that no inscription or annotation exists at the back of the original title (TCT No. S-39850) showing that a deed of sale between Dulos Realty and spouses Vilbar had been registered, coupled with the established material discrepancies in the certificate of title in the custody of the Registry of Deeds of Las Piñas City and the title presented by the spouses Vilbar.

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[99] *Id.* at 448-449.

[100] See Order dated October 1, 1992 issued b RTC, Branch 275, Las Piñas, *id.* at 308.

Simply, the spouses Vilbar were not able to present material evidence to prove that TCT No. 36777 was issued in accordance with the land registration rules.

In addition, the real estate mortgage entered into by the spouses Vilbar with the DBP does not, by itself, result in a conclusive presumption that they have a valid title to Lot 21. The basic fact remains that there is no proof of conveyance showing how they acquired ownership over Lot 21 justifying the issuance of the certificate of title in their name.

With respect to the tax declarations, the trial court aptly declared, thus:

> As to the tax declarations and real property tax payments made by the defendants Sps. Vilbar for Lot 21 the same are of no moment. It has been held that tax declarations are not conclusive proofs of ownership, let alone of the private character of the land – at best, they are merely 'indicia of a claim of ownership.' (*Seville v. National Development Company*, 351 SCRA 112) However, and with the plaintiff presenting convincing evidence of the basis and validity of his acquisition of the subject lots, such "indicia" in favor of the defendant Sps. Vilbar had been effectively impugned or refuted.[101]

WHEREFORE, the instant Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated May 26, 2006 of the Court of Appeals in CA-G.R. CV No. 84409 affirming the Decision dated January 31, 2005 of the Regional Trial Court, Branch 255, Las Piñas City in Civil Case No. 98-0302 is hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

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

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[101] *Id.* at 623.

SECOND DIVISION

[G.R. No. 176439. January 15, 2014]

THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, *petitioner, vs.* **BTL CONSTRUCTION CORPORATION,** *respondent.*

[G.R. No. 176718. January 15, 2014]

BTL CONSTRUCTION CORPORATION, *petitioner, vs.* **THE PRESIDENT OF THE MANILA MISSION OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS and BPI-MS INSURANCE CORPORATION,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; RETENTION MONEY IS A PORTION OF THE CONTRACT PRICE AND SHOULD NOT BE TREATED AS A SEPARATE AND DISTINCT LIABILITY.—** A reading of the foregoing contractual provisions would reveal that the nature of the 10% retention money under the parties' Contract is no different from the description laid down by jurisprudence – that it is **a portion of the contract price** withheld from the contractor **to function as a security** for any corrective work to be performed on the infrastructure covered by a construction contract. As such, the 10% retention money **should not be treated as a separate and distinct liability** of COJCOLDS to BTL as it merely forms part of the contract price. While COJCOLDS is bound to eventually return to BTL the amount of ₱1,248,179.87 as retention money, the said amount should be automatically deducted from BTL's outstanding billings. Ultimately, COJCOLDS's total liability to BTL should only be pegged at **₱1,612,017.74**, representing the unpaid balance of 98% of the contract price, **inclusive** of the 10% retention money.

2. **ID.; ID.; REQUISITES FOR RECOVERY OF COSTS OF ADDITIONAL WORKS IN CONTRACTS; NOT COMPLIED WITH IN CASE AT BAR.—** Article 1724 of

the Civil Code governs the recovery of additional costs in contracts for a stipulated price (such as fixed lump-sum contracts), as well as the increase in price for any additional work due to a subsequent change in the original plans and specifications. Based on the same provision, such added costs can only be allowed upon the: (*a*) written authority from the developer or project owner ordering or allowing the written changes in work; **and** (*b*) written agreement of parties with regard to the increase in price or cost due to the change in work or design modification. Case law instructs that compliance with these two (2) requisites is **a condition precedent for recovery**. The absence of one or the other condition thus bars the claim of additional costs. Notably, neither the authority for the changes made nor the additional price to be paid therefor may be proved by any evidence other than the written authority and agreement as above-mentioned. In these cases, records reveal that there is neither a written authorization nor agreement covering the additional price to be paid for the concrete retaining wall. This confirms the CA's finding that the construction of the perimeter wall of the Medina Project, which is included in the **original** plans and specifications for the same, **already subsumes** the construction of the concrete retaining wall. Accordingly, COJCOLDS should not pay the amount of ₱804,460.89 claimed by BTL as additional cost for the same. In similar regard, the COJCOLDS should not be held liable for the costs of the additional works taken under Change Order Nos. 8 to 12 amounting to ₱344,360.16 as claimed by BTL. As correctly observed by the CA, BTL had, in fact, requested COJCOLDS to make the payments therefor directly to its suppliers in view of its financial losses in another project. Hence, considering that COJCOLDS's payment to BTL's suppliers **already covered** the costs of said additional works upon its own request and to its own credit, BTL maintains no right to pursue such claim.

3. ID.; DAMAGES; LIQUIDATED DAMAGES DUE TO DELAY IN COMPLETING THE PROJECT, AWARDED.— BTL's liability to COJCOLDS for liquidated damages is a result of its delay in the performance of its obligations under the Contract. While the fact of BTL's delay has not been seriously disputed in these cases, the Court must, however, resolve the extent of such delay in view of the conflicting findings of the CIAC and

the CA on the matter. In these cases, records reveal that BTL sought for a 304-day extension of the original completion deadline of September 15, 2000[.] x x x However, the architect only recommended that COJCOLDS should only grant BTL extensions of 160 days for the works to be done under Change Order Nos. 1 to 6 and 30 days for Change Order Nos. 8 to 12, or a total of 190 days. Since Article 21.04 of the General Conditions **expressly recognizes that the architect's recommendations regarding extensions of time should be controlling**, the Court upholds the CA's finding that BTL was only granted a 190-day extension (from the original completion deadline) to finish the Medina Project, or until March 24, 2001. Despite such extension, BTL nevertheless failed to complete the same. In fact, as the parties themselves admitted, the Medina Project was only 98% complete when the Contract was terminated. Based on the foregoing, the Court thus finds that BTL's delay should be reckoned from March 25, 2001 (or the day after the above-stated 190-day extension) up until August 17, 2001 (or the day when the Contract was terminated), or a total of **146 days** (length of delay). Applying Article 3(B) of the Contract and Article 29.04 of the General Conditions, BTL is therefore liable to pay COJCOLDS liquidated damages in the amount of ₱12,680.00 multiplied by the length of delay, resulting in a total of **₱1,851,280.00**.

4. ID.; ID.; REIMBURSEMENT OF COST OVERRUN FOR FAILURE TO COMPLETE THE PROJECT ON TIME, PROPER.— Due to BTL's delay which impelled COJCOLDS to terminate the Contract and subsequently hire the services of another contractor, *i.e.,* Vigor, to finish the Medina Project, the Court equally agrees with the CA's finding that COJCOLDS incurred a cost overrun of **₱526,400.00.** Conformably with Article 3(E) of the Contract and Article 29.04 of the General Conditions, BTL should therefore reimburse COJCOLDS the said cost which the latter incurred essentially because of BTL's failure to complete the project as agreed upon.

5. ID.; ID.; ATTORNEY'S FEES CANNOT BE AWARDED WHERE NEITHER PARTY WAS SHOWN TO HAVE ACTED IN BAD FAITH IN PURSUING THEIR RESPECTIVE CLAIMS.— The general rule is that attorney's

fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still **attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause**. In these cases, the Court observes that neither party was shown to have acted in bad faith in pursuing their respective claims against each other. The existence of bad faith is negated by the fact that the CIAC, the CA, and the Court have all found the parties' original claims to be partially meritorious. Thus, absent no cogent reason to hold otherwise, the Court deems it inappropriate to award attorney's fees in favor of either party.

APPEARANCES OF COUNSEL

Pazziuagan-Olivete Ojeda & Associates for Church of Jesus Christ of Latter Day Saints.
Earl Anthony Gambe for BTL Construction Corp.
Jacinto Jimenez for BPI-MS Insurance Corp.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions for review on *certiorari*[1] both assailing the Decision[2] dated August 15, 2006 and Resolution[3] dated January 26, 2007 of the Court of Appeals

[1] *Rollo* (G.R. No. 176439), pp. 10–A-41; *rollo* (G.R. No. 176718), pp. 12-61.

[2] *Rollo* (G.R. No. 176439), pp. 45-64; *rollo* (G.R. No. 176718), pp. 590-609. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Jose L. Sabio, Jr. and Sesinando E. Villon, concurring.

[3] *Rollo* (G.R. No. 176439), pp. 66-68; *rollo* (G.R. No. 176718), pp. 698-700.

(CA) in CA-G.R. SP No. 84068 which modified the Decision[4] dated April 27, 2004 of the Construction Industry Arbitration Commission (CIAC), awarding the following amounts: (*a*) ₱1,248,179.87 as 10% retention money, and ₱1,612,017.74 as unpaid balance of the original contract price in favor of BTL Construction Corporation (BTL); and (*b*) ₱526,400.00 as cost overrun, ₱300,533.49 as overpayment for the works taken in the change orders subject of these cases, and ₱1,800,560.00 as liquidated damages in favor of the Church of Jesus Christ of Latter Day Saints[5] (COJCOLDS).

The Facts

On January 10, 2000, COJCOLDS and BTL entered into a Construction Contract[6] (Contract) for the latter's construction of the former's meetinghouse facility at Barangay Cabug, Medina, Misamis Oriental (Medina Project). The contract price was set at ₱12,680,000.00 (contract price), and the construction period from January 15 to September 15, 2000.[7] However, due to bad weather conditions, power failures, and revisions in the construction plans (as per Change Order Nos. 1 to 12 agreed upon by the parties),[8] among others, the completion date of the Medina Project was extended.

On May 18, 2001, BTL informed COJCOLDS that it suffered financial losses from another project (*i.e.*, the Pelaez Arcade II Project) and thereby requested that it be allowed to: (*a*) bill COJCOLDS based on 95% and 100% completion of the Medina Project; and (*b*) execute deeds of assignment in favor of its

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[4] *Rollo* (G.R. No. 176718), pp. 317-344. Signed by Chairman Joven B. Joaquin and Members Salvador P. Castro, Jr. and Eliseo I. Evangelista.

[5] Based on the records, the actual party is the Church of Latter Day Saints despite the cases' captions. (See *rollo* [G.R. No. 176439], p. 11; *rollo* [G.R. No. 176718], p. 12.)

[6] *Rollo* (G.R. No. 176718), pp. 77-80.

[7] *Rollo* (G.R. No. 176439), pp. 45-46; *rollo* (G.R. No. 176718), pp. 590-591.

[8] *Rollo* (G.R. No. 176718), pp. 84-96 and 112-117.

suppliers so that they may collect any eventual payments directly from COJCOLDS.[9] COJCOLDS granted said request which BTL, in turn, acknowledged.[10]

On August 13, 2001, BTL ceased its operations in the Medina Project because of its lack of funds to advance the cost of labor necessary to complete the said project, as well as the supervening increase in the prices of materials and other items for construction.[11] Consequently, COJCOLDS terminated its Contract with BTL[12] on August 17, 2001 and, thereafter, engaged the services of another contractor, Vigor Construction (Vigor), to complete the Medina Project.[13]

On November 12, 2003, BTL filed a complaint against COJCOLDS before the CIAC, claiming a total amount of ₱28,716,775.40 broken down as follows: (*a*) ₱12,464,005.11 as cost of labor, materials, equipment, overhead expenses, lost profits and interests; (*b*) ₱1,248,179.87 as the 10% retention money stipulated in the contract; (*c*) ₱373,838.42 as interest on said retention money; (*d*) ₱14,330,752.00 as actual damages;[14] (*e*) ₱300,000.00 as attorney's fees; (*f*) moral and exemplary damages; and (*g*) costs of arbitration.[15]

For its part, COJCOLDS filed its answer with compulsory counterclaim, praying for the award of ₱4,134,693.49 which consists of: (*a*) ₱2,307,760.00 as liquidated damages in view of BTL's delay in completing the pending project; (*b*) ₱300,533.49

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[9] *CA rollo*, pp. 259–G-260.

[10] *Id.* at 261.

[11] *Id.* at 271.

[12] *Id.* at 274.

[13] *Rollo* (G.R. No. 176439), pp. 46-47.

[14] ₱3,556,951.85 as cost of foreclosed properties; ₱163,382.41 as legal fees/litigation expenses; ₱1,066,697.32 as interests/charges paid to banks; ₱458, 469.02 as interests paid to suppliers; and ₱9,085,251.40 as business losses.

[15] *Rollo* (G.R. No. 176439), p. 47; see also *rollo* (G.R. No. 176718), p. 325.

as reimbursement of the payments it directly made to BTL's suppliers as per the latter's request; (*c*) ₱526,400.00 as cost overrun; and (*d*) ₱1,000,000.00 as attorney's fees.[16]

During the preliminary conference held on February 10, 2004, the parties agreed to a Terms of Reference (TOR)[17] which was later amended on March 4, 2004.[18] Under the amended TOR, it was stipulated that the parties' relationship with respect to the Medina Project is governed by, among others, the Contract,[19] and the General Conditions of the Contract[20] (General Conditions). They also stipulated that 98% of the said project had been completed.

The CIAC Ruling

In a Decision[21] dated April 27, 2004, the CIAC found both parties' claims to be partly meritorious and thus ordered: (*a*) COJCOLDS to pay BTL the amount of ₱2,760,838.79 as the unpaid balance of the original contract price, plus the unpaid additional works, and ₱300,000.00 as attorney's fees; and (*b*) BTL to pay COJCOLDS the amount of ₱1,191,920.00 as liquidated damages, and ₱300,533.49 as reimbursement of the balance of the latter's direct payments to the former's suppliers.[22]

Based on the parties' stipulations, COJCOLDS was found liable only for 98% of the original contract price (*i.e.*, ₱12,680,000.00) in the amount of ₱12,426,400.00. Considering its previous payments in the total amount of ₱10,814,382.26, COJCOLDS was then ordered to pay BTL the unpaid balance

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[16] *Rollo* (G.R. No. 176439), p. 47; see also *rollo* (G.R. No. 176718), pp. 325-326.

[17] *Rollo* (G.R. No. 176718), pp. 215-222.

[18] *Id.* at 266-274.

[19] *Id.* at 77-80.

[20] *CA rollo*, pp. 107-140.

[21] *Rollo* (G.R. No. 176718), pp. 317-344.

[22] *Id.* at 343.

of **₱1,612,017.74**, as well as the costs of the additional works made on the Medina Project, particularly, ₱804,460.89[23] for the concrete retaining wall, and ₱344,360.16 for the unpaid balances from the works done under Change Order Nos. 8 to 12.[24] On the other hand, BTL was ordered to pay COJCOLDS liquidated damages at the rate of ₱12,680.00 per day, or a total of ₱1,191,920.00, pursuant to Article 3(B) of the Contract as well as Article 29.04 of the General Conditions, due to the former's 94-day delay, notwithstanding several extensions (238 days in total).[25]

Dissatisfied with the CIAC's ruling, COJCOLDS elevated the matter to the CA.[26]

The CA Ruling

In a Decision[27] dated August 15, 2006, the CA modified the CIAC's ruling in that it ordered COJCOLDS not only to pay BTL the amount of ₱1,612,017.74 representing the unpaid portion of 98% of the contract price, but also to return to BTL the 10% retention money in the amount of ₱1,248,179.87, after deducting the cost overrun of ₱526,400.00 that BTL was held to shoulder as per Article 3(E) of the Contract[28] (under which COJCOLDS was allowed to engage the services of another contractor, *i.e.*, Vigor, to complete the Medina Project using the 10% retention amount).

Meanwhile, the CA ordered BTL to return to COJCOLDS the amount of ₱300,533.49 which was found to be an overpayment made by the latter pursuant to the change orders.[29]

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[23] ₱804,460.00 in some parts of the record.

[24] *Rollo* (G.R. No. 176718), p. 340.

[25] *Id.* at 338-339.

[26] See COJCOLDS's Petition for Review dated June 4, 2004 in CA-G.R. SP No. 84068, *id.* at 350-390.

[27] *Rollo* (G.R. No. 176439), pp. 45-64; *rollo* (G.R. No. 176718), pp. 590-609.

[28] *Rollo* (G.R. No. 176439), p. 59; *rollo* (G.R. No. 176718), p. 604. See also Article 29.04 of the General Conditions, *CA rollo*, p. 133.

[29] *Rollo* (G.R. No. 176439), p. 63; *rollo* (G.R. No. 176718), p. 608.

The CA also increased the award of liquidated damages in COJCOLDS's favor from ₱1,191,920.00 to ₱1,800,560.00 since BTL was actually in delay for 142 days (and not 94 days as found by the CIAC). The CA clarified that pursuant to Article 21.04(A) of the General Conditions as well as the practice in the construction industry, the architect's recommendation regarding the grant of extensions should be controlling and thus BTL was only given an extension of 190 days (and not 238 days as found by the CIAC).[30]

Further, the CA deleted the awards for the additional works (*i.e.*, ₱804,460.89 for the concrete retaining wall, and ₱344,360.16 for the unpaid balances from the works taken under Change Order Nos. 8 to 12) adjudged by the CIAC in favor of COJCOLDS because: (*a*) the retaining wall should be properly deemed as part of the original works, considering that it was not covered by any change order, unlike the other additional works performed on the Medina Project; and (*b*) there is no basis in saying that COJCOLDS failed to pay the balance for the works taken under Change Order Nos. 8 to 12, considering that COJCOLDS paid such balance directly to BTL's suppliers, pursuant to BTL's May 18, 2001 request to COJCOLDS.[31]

Finally, the CA deleted the award of attorney's fees in BTL's favor as COJCOLDS was not in bad faith in refusing to pay the former's claims.

Dissatisfied, both parties moved for reconsideration, which were, however, denied in a Resolution[32] dated January 26, 2007, hence, these petitions.[33]

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[30] *Rollo* (G.R. No. 176439), pp. 55-56; *rollo* (G.R. No. 176718), pp. 600-601.

[31] See *CA rollo*, pp. 259–G-260.

[32] *Rollo* (G.R. No. 176439), pp. 66-68; *Rollo* (G.R. No. 176718), pp. 698-700.

[33] *Rollo* (G.R. No. 176439), pp. 10–A-41; *Rollo* (G.R. No. 176718), pp. 12-61.

The Issues Before the Court

The issues raised for the Court's resolution are as follows: (*a*) whether or not the 10% retention money that COJCOLDS was ordered to release in favor of BTL is separate and distinct from the unpaid balance of the contract price amounting to ₱1,612,017.74; (*b*) whether or not COJCOLDS is liable for the "additional works" performed by BTL, specifically the concrete retaining wall and the works taken under Change Order Nos. 8 to 12; (*c*) whether or not BTL incurred delay in its obligation to complete the Medina Project and thus, must pay COJCOLDS liquidated damages at the rate of ₱12,680.00 for every day of delay; (*d*) whether or not BTL is liable to pay COJCOLDS the value of cost overrun in the amount of ₱526,400.00; (*e*) whether or not BTL received overpayments in the change orders from COJCOLDS amounting to ₱300,533.49 and thus, should be held liable to return the same; and (*f*) whether or not the parties are liable to pay each other's attorney's fees, arbitration costs, and costs of suit.

The Court's Ruling

COJCOLDS's petition in G.R. No. 176439 is partly meritorious, while BTL's petition in G.R. No. 176718 is without merit. The Court shall resolve the above-mentioned issues in the order that they are mentioned.

I. Liabilities of COJCOLDS to BTL.

a. The 10% Retention Money and the Unpaid Balance of the Contract Price.

In its petition, COJCOLDS concedes that it has yet to pay BTL the unpaid balance of the contract price amounting to ₱1,612,017.74 and that it has withheld the 10% retention money in the amount of ₱1,248,179.87 which should be returned to BTL. It, however, argues that the CA erred in ruling that the retention money should be paid **in addition** to the unpaid balance of the contract price. COJCOLDS contends that treating the

retention money as a separate and distinct liability from the unpaid balance would unduly increase its total liability from the Medina Project (including the amount of ₱10,814,382.26 which it had already paid to BTL) from ₱12,426,400.00 to ₱13,674,579.87.[34]

The Court agrees with COJCOLDS.

In *H.L. Carlos Construction, Inc. v. Marina Properties Corp.*,[35] the Court held that in the construction industry, the 10% retention money is **a portion of the contract price automatically deducted from the contractor's billings, as security for the execution of corrective work** – if any – becomes necessary.[36]

Articles 3(E) and 5 of the Contract and Article 22.14 of the General Conditions govern the application of the 10% retention money in these cases, *viz.*:

CONSTRUCTION CONTRACT

x x x x x x x x x

ARTICLE 3. TIME AND COMPLETION AND SCHEDULE OF CONSTRUCTION

x x x x x x x x x

E. The CONTRACTOR'S TEN (10) percent retention under Article V hereof shall be retained by the OWNER until all items on the Substantial Inspection are satisfactorily completed and accepted by the OWNER. If the CONTRACTOR shall refuse or fail to complete the Substantial Inspection punchlist, within the time fixed by a written notice, the OWNER shall then have the right to hire the services of another contractor to complete the same using the contractor's TEN (10) percent retention amount and the balance, if any, shall be returned to the CONTRACTOR.[37]

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[34] *Rollo* (G.R. No. 176439), pp. 20-26.

[35] 466 Phil. 182 (2004).

[36] *Id.* at 199-200.

[37] *CA rollo*, p. 289.

x x x x x x x x x

ARTICLE 5. PAYMENTS

The OWNER shall make payment on account of this Contract based on the value of work accomplished less TEN (10) percent retention and Expanded Withholding Tax (One percent of the amount due), for the duration of the Contract. The percentage value of work to be paid is in order of 15%, 30%, 45%, 60%, 75%, 90% and 100% accomplishments.

x x x x x x x x x

The full and final payment, together with the ten (10) percent retention shall be paid to the CONTRACTOR as provided for and upon compliance of all requisites under Article 22.11 of the General Conditions.[38]

x x x x x x x x x

GENERAL CONDITIONS OF THE CONTRACT

x x x x x x x x x

22.14 RELEASE OF RETENTION

The amount retained by the owner under the provision of the Contract shall be released within three (3) months after the date of final payment.[39]

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A reading of the foregoing contractual provisions would reveal that the nature of the 10% retention money under the parties' Contract is no different from the description laid down by jurisprudence – that it is **a portion of the contract price** withheld from the contractor **to function as a security** for any corrective work to be performed on the infrastructure covered by a construction contract. As such, the 10% retention money **should not be treated as a separate and distinct liability** of COJCOLDS to BTL as it merely forms part of the contract price. While COJCOLDS is bound to eventually return to BTL the amount

[38] *Id.* at 290.

[39] *Id.* at 129.

of ₱1,248,179.87 as retention money, the said amount should be automatically deducted from BTL's outstanding billings. Ultimately, COJCOLDS's total liability to BTL should only be pegged at **₱1,612,017.74**, representing the unpaid balance of 98% of the contract price, **inclusive** of the 10% retention money.

b. Costs of Additional Works: Price of the Concrete Retaining Wall and the Works Under Change Order Nos. 8 to 12.

BTL claims that the construction of the concrete retaining wall was not part of the original plans of the Contract and that there was evident bad faith on the part of COJCOLDS's architect when he inserted the plan on the concrete retaining wall sometime after the contract signing of the parties to make it appear as part of the original plans in order to cover up for his oversight.[40]

BTL's claim is untenable.

Article 1724[41] of the Civil Code governs the recovery of additional costs in contracts for a stipulated price (such as fixed lump-sum contracts), as well as the increase in price for any additional work due to a subsequent change in the original plans and specifications. Based on the same provision, such added costs can only be allowed upon the: (*a*) written authority from the developer or project owner ordering or allowing the written changes in work; **and** (*b*) written agreement of parties with regard to the increase in price or cost due to the change in work or design modification. Case law instructs that compliance with

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[40] *Rollo* (G.R. No. 176718), p. 46.

[41] Article 1724 of the Civil Code provides:

Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the land-owner, can neither withdraw from the contract nor demand **an increase in the price on account of the higher cost of labor or materials**, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor has been determined in writing by both parties. (Emphasis supplied)

these two (2) requisites is **a condition precedent for recovery**. The absence of one or the other condition thus bars the claim of additional costs. Notably, neither the authority for the changes made nor the additional price to be paid therefor may be proved by any evidence other than the written authority and agreement as above-mentioned.[42]

In these cases, records reveal that there is neither a written authorization nor agreement covering the additional price to be paid for the concrete retaining wall. This confirms the CA's finding that the construction of the perimeter wall of the Medina Project, which is included in the **original** plans and specifications for the same, **already subsumes** the construction of the concrete retaining wall.[43] Accordingly, COJCOLDS should not pay the amount of ₱804,460.89 claimed by BTL as additional cost for the same.

In similar regard, the COJCOLDS should not be held liable for the costs of the additional works taken under Change Order Nos. 8 to 12 amounting to ₱344,360.16 as claimed by BTL. As correctly observed by the CA, BTL had, in fact, requested COJCOLDS to make the payments therefor directly to its suppliers in view of its financial losses in another project.[44] Hence, considering that COJCOLDS's payment to BTL's suppliers **already covered** the costs of said additional works upon its own request and to its own credit,[45] BTL maintains no right to pursue such claim.

With BTL's claims for the costs of additional works herein denied, COJCOLDS's total liability to BTL thus stands in the amount of **₱1,612,017.74**, which represents the unpaid balance

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[42] See *Chung v. Ulanday Construction, Inc.*, G.R. No. 156038, October 11, 2010, 632 SCRA 485, 497-498, citing *Titan-Ikeda Construction & Dev't. Corp. v. Primetown Properties Group, Inc.*, 568 Phil. 432, 453 (2008); *Powton Conglomerate, Inc. v. Agcolicol*, 448 Phil. 643, 655 (2003).

[43] *Rollo* (G.R. No. 176439), pp. 56-57.

[44] *Id.* at 59-60.

[45] *CA rollo*, pp. 150 and 178.

of 98% of the contract price, inclusive of the 10% retention money, as previously stated.

Having resolved the foregoing issues, the Court now proceeds to determine BTL's liabilities to COJCOLDS.

II. Liabilities of BTL to COJCOLDS.

a. Liquidated Damages Due to Delay.

BTL's liability to COJCOLDS for liquidated damages is a result of its delay in the performance of its obligations under the Contract. While the fact of BTL's delay has not been seriously disputed in these cases, the Court must, however, resolve the extent of such delay in view of the conflicting findings of the CIAC and the CA on the matter.

In these cases, records reveal that BTL sought for a 304-day extension of the original completion deadline of September 15, 2000, broken down as follows: (*a*) 184 days as per Change Order Nos. 1 to 6;[46] and (*b*) 120 days as per Change Order Nos. 8 to 12.[47] However, the architect only recommended that COJCOLDS should only grant BTL extensions of 160 days for the works to be done under Change Order Nos. 1 to 6 and 30 days for Change Order Nos. 8 to 12, or a total of 190 days. Since Article 21.04[48] of the General Conditions **expressly**

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[46] *Rollo* (G.R. No. 176718), pp. 112-117.

[47] *CA rollo*, p. 366.

[48] 21.04 EXTENSION OF TIME

The Contractor will be allowed an extension of time based on the following conditions:

A. Should the Contractor be obstructed or delayed in the prosecution or completion of the work by the act, neglect, delay or default of the Owner or any other contractor employed by the Owner on the work; by strikes or lockouts; by an Act of God or Force Majeure as defined in Article 1.26; by delay authorized by the Architect pending arbitration; then the Contractor shall within fifteen (15) days from the occurrence of such delay file the necessary request for extension. The Architect may grant the request for extensions for such period of time as he considers reasonable.

recognizes that the architect's recommendations regarding extensions of time should be controlling, the Court upholds the CA's finding that BTL was only granted a 190-day extension (from the original completion deadline) to finish the Medina Project, or until March 24, 2001. Despite such extension, BTL nevertheless failed to complete the same. In fact, as the parties themselves admitted, the Medina Project was only 98% complete when the Contract was terminated. Based on the foregoing, the Court thus finds that BTL's delay should be reckoned from March 25, 2001 (or the day after the above-stated 190-day extension) up until August 17, 2001 (or the day when the Contract was terminated), or a total of **146 days** (length of delay). Applying Article 3(B)[49] of the Contract and Article 29.04[50] of the General

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However, no such extension of time shall be granted for any alleged failure of the Owner to furnish materials or information unless they be required in the proper prosecution of the work in the order prescribed by the Architect and unless the Contractor shall have made written request for them at least ten (10) days before they are actually needed.

x x x x x x x x x

C. If the satisfactory fulfilment of the Contract shall require the performance of work in greater quantities than those set forth in the Contract, the time allowed for performance shall be increased in the same ratio that the total cost of work actually performed against the total cost in the Contract. However, if in the opinion of the Architect, the nature of the increased work is such that the new Contract Time as computed above is unreasonably short, the time allowance for any extension and increases shall be agreed upon in writing.

x x x x x x x x x

F. The contractor shall give written notice to the Architect at least ten (10) days prior to beginning, suspending (except in case of accident), or resuming the work to the end that the Architect may make the necessary preparations for inspection without delaying the work. All delays and losses resulting from failure of the Contractor to give such notice will be at the Contractor's risk; and all extra costs to the Owner of such delay (said cost to be determined by the Architect) shall be deducted from the Final Payment. (*Id.* at 124.)

[49] ARTICLE 3. TIME OF COMPLETION AND SCHEDULE OF CONSTRUCTION

x x x x x x x x x

Conditions, BTL is therefore liable to pay COJCOLDS liquidated damages in the amount of ₱12,680.00 multiplied by the length of delay, resulting in a total of **₱1,851,280.00**.

b. Cost Overrun.

Due to BTL's delay which impelled COJCOLDS to terminate the Contract and subsequently hire the services of another contractor, *i.e.,* Vigor, to finish the Medina Project, the Court equally agrees with the CA's finding that COJCOLDS incurred a cost overrun of **₱526,400.00.** Conformably with Article 3(E)[51]

B. It is understood that time is an essential feature of this contract and that upon failure of the CONTRACTOR to complete the work stipulated in this contract within the time provided, the CONTRACTOR shall pay the OWNER the sum of one-tenth (1/10th) of ONE (1) PERCENT of the Contract Price of PESOS: TWELVE THOUSAND SIX HUNDRED EIGHTY PESOS Php12,680.00 Philippines currency, (per diem) each day of delay in the completion of the contract, said payment to be made as liquidated damages, and not by way of penalty; and the OWNER may deduct from any sum due or to become due to the CONTRACTOR any sum accruing from liquidated damages as hereinafter stated, without the need of any court action. (*Id.* at 96.)

x x x x x x x x x

[50] 29.04. OWNER'S RIGHT TO RECOVER LIQUIDATED DAMAGES

Neither the taking over by the Owner of the work for completion by administration nor the re-letting of the same to another contractor shall be construed as a waiver of the Owner's right to recover damages against the original Contractor and/or his sureties for the failure to complete the work as stipulated.

In such case, the full extent of the damages for which the Contractor and/or his sureties shall be liable shall be:

A. The total daily liquidated damages up to and including the day immediately before the date the Owner effectively takes over the work.

B. The excess cost incurred by the Owner in the completion of the project over the Contract Price. This excess includes cost of architectural, managerial and administrative services, supervision and inspection from the time the Owner effectively took over the work by administration or by re-letting same. (*Id.* at 133.)

[51] *Id.* at 289.

of the Contract and Article 29.04[52] of the General Conditions, BTL should therefore reimburse COJCOLDS the said cost which the latter incurred essentially because of BTL's failure to complete the project as agreed upon.

c. Overpayments.

Based on the records, BTL charged COJCOLDS the amount of ₱1,014,469.79 for the modifications introduced to the Medina Project as indicated in Change Order Nos. 1 to 12.[53] In turn, COJCOLDS paid BTL the amount of ₱651,727.91[54] for the modifications covered by Change Order Nos. 1 to 7 and no longer paid for those covered by Change Order Nos. 8 to 12 because, as discussed earlier, COJCOLDS diverted such payments directly to BTL's suppliers upon its own request and to its own credit. Accordingly, COJCOLDS paid ₱663,275.37 to these suppliers, resulting in COJCOLDS actually paying a total of ₱1,315,003.28 for the works taken under Change Order Nos. 1 to 12.[55] This means that BTL was effectively overpaid the amount of **₱300,533.49**, and is therefore obliged to return the same to COJCOLDS pursuant to Article 2154 of the Civil Code which states that "[i]f something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises."

To recapitulate, the Court sustains the following liabilities of BTL to COJCOLDS: (*a*) ₱1,851,280.00 as liquidated damages; (*b*) ₱526,400.00 as cost overrun; and (*c*) ₱300,533.49 as overpayment under Change Order Nos. 1 to 12.

III. Mutual Liabilities: Attorney's Fees, Arbitration Costs, and Costs of Suit.

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[52] *Id.* at 133.

[53] *Rollo* (G.R. No. 176718), pp. 84-94. See also *CA rollo*, pp. 150 and 178.

[54] *Id.*

[55] *CA rollo*, pp. 150 and 178.

The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208[56] of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still **attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause**.[57]

In these cases, the Court observes that neither party was shown to have acted in bad faith in pursuing their respective

[56] Article 2208 of the Civil Code provides:

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

(1) When exemplary damages are awarded;

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

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

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

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

(6) In actions for legal support;

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

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

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

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

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

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

[57] *Development Bank of the Philippines v. Traverse Development Corporation*, G.R. No. 169293, October 5, 2011, 658 SCRA 614, 624, citing *ABS-CBN Broadcasting Corp. v. CA*, 361 Phil. 499, 529 (1999).

claims against each other. The existence of bad faith is negated by the fact that the CIAC, the CA, and the Court have all found the parties' original claims to be partially meritorious. Thus, absent no cogent reason to hold otherwise, the Court deems it inappropriate to award attorney's fees in favor of either party.

Finally, in view of their legitimate claims against each other, each party should bear its own arbitration costs and costs of suit.[58]

WHEREFORE, the petition in G.R. No. 176439 is **PARTLY GRANTED**, while the petition in G.R. No. 176718 is **DENIED**. The Decision dated August 15, 2006 and Resolution dated January 26, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 84068 are hereby **MODIFIED** as follows:

(*a*) COJCOLDS is **ORDERED** to pay BTL the amount of ₱1,612,017.74 representing the unpaid balance of 98% of the contract price, inclusive of the 10% retention money;

(*b*) BTL is **ORDERED** to pay COJCOLDS the amounts of ₱1,851,280.00 as liquidated damages, ₱526,400.00 as cost overrun, and ₱300,533.49 as reimbursement for the overpayment in the works taken under Change Order Nos. 1 to 12.

(*c*) Each party shall bear its own costs.

SO ORDERED.

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

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[58] Section 1, Rule 142 of the Rules of Court provides:

Section 1. *Cost ordinarily follow results of suit*. — Unless otherwise provided in these rules, cost shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law.

SECOND DIVISION

[G.R. No. 178564. January 15, 2014]

INC SHIPMANAGEMENT, INC., CAPTAIN SIGFREDO E. MONTERROYO AND/OR INTERORIENT NAVIGATION LIMITED, *petitioners, vs.* **ALEXANDER L. MORADAS**, *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* JURISDICTION OF THE SUPREME COURT IN CASES BROUGHT FROM THE COURT OF APPEALS *VIA* RULE 45, LIMITED TO REVIEWING ERRORS OF LAW.—** The Court's jurisdiction in cases brought before it from the CA *via* Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The Court is not the proper venue to consider a factual issue as it is not a trier of facts. This rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the NLRC and LA, as in this case. x x x In *Career Philippines Shipmanagement, Inc. v. Serna*, the Court expressed the following view: x x x **Nevertheless, there are exceptional cases where we, in the exercise of our discretionary appellate jurisdiction *may* be urged to look into factual issues raised in a Rule 45 petition**. For instance, 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*, 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**.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; OVERSEAS EMPLOYMENT; DISABILITY BENEFITS; THE ENTITLEMENT OF SEAMEN ON OVERSEAS WORK TO DISABILITY BENEFITS IS GOVERNED, NOT ONLY BY MEDICAL FINDINGS, BUT BY LAW AND**

CONTRACT.— With respect to the applicable rules, it is doctrinal that the entitlement of seamen on overseas work to disability benefits "is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation [to] Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement bind the seaman and his employer to each other."

3. ID.; ID.; ID.; ID.; ID.; ENTITLEMENT TO DISABILITY BENEFITS, DETERMINED BY THE GOVERNING CIRCULAR AT THE TIME THE EMPLOYMENT CONTRACT WAS EXECUTED.— In the foregoing light, the Court observes that respondent executed his contract of employment on July 17, 2000, incorporating therein the terms and conditions of the 2000 POEA-SEC which took effect on June 25, 2000. However, since the implementation of the provisions of the foregoing 2000 POEA-SEC was temporarily suspended by the Court on September 11, 2000, particularly Section 20, paragraphs (A), (B), and (D) thereof, and was lifted only on June 5, 2002, through POEA Memorandum Circular No. 2, series of 2002, the determination of respondent's entitlement to the disability benefits should be resolved under the provisions of the 1996 POEA-SEC as it was, effectively, the governing circular at the time respondent's employment contract was executed.

4. ID.; ID.; ID.; POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; EMPLOYER SHALL BE LIABLE FOR THE INJURY OR ILLNESS SUFFERED BY A SEAFARER DURING THE TERM OF HIS CONTRACT.— The prevailing rule under Section 20 (B) of the 1996 POEA-SEC on compensation and benefits for injury or illness was that an employer shall be liable for the injury or illness suffered by a seafarer during the term of his contract. There was no need to show that such injury was work-related except that it must be proven to have been contracted during the term of the contract.

5. ID.; ID.; ID.; ID.; ID.; ID.; RULE NOT ABSOLUTE AND THE EMPLOYER MAY BE EXEMPT FROM LIABILITY.— The rule, however, is not absolute and the employer may be exempt from liability if he can successfully prove that the cause of the seaman's injury was directly attributable to his deliberate or willful act as provided under Section 20 (D) thereof, to wit: D. No compensation shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to seafarer. Hence, the *onus probandi* falls on the petitioners herein to establish or substantiate their claim that the respondent's injury was caused by his willful act with the requisite quantum of evidence.

6. REMEDIAL LAW; EVIDENCE; SUBSTANTIAL EVIDENCE; DEFINED.— In labor cases, as in other administrative proceedings, **only substantial evidence** or such relevant evidence as **a reasonable mind might accept as sufficient to support a conclusion is required**. To note, considering that **substantial evidence is an evidentiary threshold**, the Court, **on exceptional cases**, may assess the factual determinations made by the NLRC in a particular case.

7. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC.— The Court holds that the CA erred in attributing grave abuse of discretion on the part of the NLRC in affirming the LA's dismissal of respondent's complaint. This is based on the Court's observation that the NLRC had cogent legal bases to conclude that petitioners have successfully discharged the burden of proving by substantial evidence that respondent's injury was directly attributable to himself. x x x All told, petitioners having established through substantial evidence that respondent's injury was self-inflicted and, hence, not compensable pursuant to Section 20 (D) of the 1996 POEA-SEC, no grave abuse of discretion can be imputed against the NLRC in upholding the dismissal by the LA of his complaint for disability benefits. It is well-settled that an act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.

8. ID.; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; SELF-INFLICTED INJURY; CASE AT BAR.— In particular, respondent was seen alone in the vicinity of the portside seachest which cover was found to have been intentionally removed and thereby caused the flooding. He was also seen disappearing up to the boiler deck just when the bilge level alarm sounded with patches of water left on the floor plates and on the stairways. Respondent neither denied nor proffered any explanation on the foregoing claims especially when all of his fellow engine room staff, except him, responded to the alarm and helped pump out the water in the engine room. x x x To add, Bejada's statement that respondent's burnt overalls had patches of green paint on the arms and body and strongly smelled of thinner conforms with Gile's claim that he soaked his hands in a can of thinner before approaching the incinerator (thinner may be found in a paint room). Such fact further fortifies petitioners' assertion that his injury was self-inflicted as a prudent man would not dispose of garbage in the incinerator under such condition.

9. ID.; ID.; CREDIBILITY OF WITNESSES; SELF-SERVING STATEMENTS; CORROBORATING STATEMENTS OF WITNESSES NOT SELF-SERVING ABSENT ANY SHOWING THAT WITNESSES WERE LYING; CASE AT BAR.— While respondent contended that the affidavits and statements of the vessel's officers and his fellow crew members should not be given probative value as they were biased, self-serving, and mere hearsay, he nonetheless failed to present any evidence to substantiate his own theory. Besides, as correctly pointed out by the NLRC, the corroborating affidavits and statements of the vessel's officers and crew members must be taken as a whole and cannot just be perfunctorily dismissed as self-serving absent any showing that they were lying when they made the statements therein.

10. ID.; ID.; MOTIVE; CIRCUMSTANCES ANTECEDENT TO THE EVENT, EXAMINED IN CONJUNCTION WITH TESTIMONIES OF WITNESSES; CASE AT BAR.— At this juncture, the Court finds it important to examine the existence of motive in this case since no one actually saw what transpired in the incinerator room. To this end, the confluence of the circumstances antecedent to the burning should be examined in conjunction with the existing accounts of the crew members. That said, both the LA and the NLRC made a factual finding

that prior to the burning incident, respondent was caught pilfering the vessel's supplies for which he was told that he was to be relieved from his duties. This adequately supports the reasonable conclusion that respondent may have harbored a grudge against the captain and the chief steward who denied giving him the questioned items. At the very least, it was natural for him to brood over feelings of resentment considering his impending dismissal. These incidents shore up the theory that he was motivated to commit an act of sabotage which, however, backfired into his own burning.

11. ID.; ID.; MENTAL UNFITNESS; FINDING ON MENTAL UNFITNESS UNNECESSARY WHERE ACT WAS MADE CONSCIOUSLY; CASE AT BAR.— In this relation, the Court observes that a definitive pronouncement on respondent's mental unfitness need not be reached since the totality of the above-stated circumstances already figures into the rational inference that respondent's burning was not a product of an impaired mental disposition but rather an incident which sprung from his own volition. Mental impairment connotes the lack of control over one's action. If the actor is conscious of what he is doing, as respondent was in this case by sabotaging the ship, then a finding of mental unfitness is not needed.

BRION, *J., concurring and dissenting opinion:*

1. REMEDIAL LAW; APPEALS; APPEAL OF LABOR CASES; APPEAL FROM RULINGS OF LA AND NLRC MAY BE RAISED TO CA, LIMITED TO JURISDICTIONAL GROUNDS UNDER RULE 65.— When a labor case decided by quasi-judicial tribunals - the Labor Arbiter *(LA)* and the National Labor Relations Commission *(NLRC)* – finds its way into the judicial sphere, the court must proceed and act on the petition on the basic premise that the assailed ruling is *a* **final and executory ruling**. This premise, in turn, is based on two facts: *first,* labor cases that reach the CA (and eventually the Supreme Court) are already rulings on the merits that finally dispose of the case; and, *second,* after the labor tribunals have rendered judgment, substantive law no longer provides any remedy of appeal to the losing party. As the legal battle is transferred from the quasi-judicial sphere to the strictly judicial sphere, the aggrieved party must contend with the fact that the

new avenue for legal advocacy becomes narrower. The review allowed is limited to ***jurisdictional grounds under Rule 65 of the Rules of Court*** *(Rule 65).*

2. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* AND APPEAL; *CERTIORARI* IS THE PROPER REMEDY FOR ERRORS OF JURISDICTION WHILE APPEAL IS THE PROPER REMEDY FOR ERRORS OF JUDGMENT.— A *certiorari* proceeding is limited in scope and narrow in character. The special civil action for *certiorari* lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. *Certiorari* will issue only to correct errors of jurisdiction and not mere errors of judgment, particularly in the findings or conclusions of the quasi-judicial tribunals or lower courts. For errors of judgment, appeal, if provided for by law, is the proper remedy and not *certiorari.* Accordingly, when a petition for *certiorari* is filed, the judicial inquiry should be limited to the issue of whether the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction. x x x The ***indiscriminate*** adoption of this remedial law principle into labor cases stands on shaky legal grounds. To begin with, ***certiorari* is different from appeal**. In an appellate proceeding, the original suit is continued on appeal. In a *certiorari* proceeding, the *certiorari* petition is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of.

3. ID.; ID.; PETITION FOR *CERTIORARI*; SCOPE AND BREADTH; WHEN THERE IS A SHOWING THAT THE FINDINGS OR CONCLUSIONS WERE ARRIVED AT ARBITRARILY OR IN DISREGARD OF THE EVIDENCE ON RECORD, THEY MAY BE REVIEWED BY THE COURTS.— The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* **cannot be exercised for the purpose of reviewing the intrinsic correctness** of a judgment. Even if the findings of the lower court or tribunal are incorrect, as long as it has jurisdiction over the case, such correction is **normally** beyond the province of *certiorari. Certiorari* jurisdiction is not to be equated with appellate jurisdiction. To depart from this well-established scope and breadth of *certiorari* by reviewing, and worse overturning, the assailed

ruling (in the guise of correcting errors of jurisdiction even if they are plainly errors of judgment) plainly amounts to **unwarranted judicial legislation, by indirectly creating a non-existing right of appeal**. x x x Indeed, when there is a showing that the findings or conclusions, drawn from the same pieces of evidence, were arrived at arbitrarily or in disregard of the evidence on record, they may be reviewed by the courts. x x x While the Court really has to undertake a review of the records before it, for emphasis, its *evaluation* of the evidence on record is limited to ascertaining the correctness of the CA's decision *in finding the presence or absence of grave abuse of discretion.* **In the present case, in determining the presence or absence of grave abuse of discretion, the Court may examine, on the basis of the parties' presentations, whether the CA correctly determined that, at the NLRC level, the petitioners, INC Shipmanagement, Inc., Captain Sigfredo Monterroyo and/or Interorient Navigation Limited failed to present substantial evidence to prove their claim of a self-inflicted injury.** Just because the LA and the NLRC, on one hand, and the CA, on the other hand, arrived at conflicting conclusions from the same pieces of evidence does not warrant the Court to unilaterally substitute its judgment based on its ***unbridled preference of the parties' evidence.***

4. ID.; ID.; ID.; APPEAL FROM CA RULING MAY BE FILED WITH THE SUPREME COURT THROUGH A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45.— Under *St. Martin,* a party who loses in the CA or is dissatisfied with the CA ruling, is given the further option to file ***an appeal with the Supreme Court*** through a petition for review on *certiorari* under Rule 45 of the Rules of Court *(Rule 45).* Expressly stated under Rule 45 is that the review it provides is not a matter of right but of sound judicial discretion.

5. ID.; ID.; ID.; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 LIMITED TO PURE QUESTIONS OF LAW.— The approximate metes and bounds of the express limitations under Rule 45 - that ***only questions of law*** may be raised and that the Court may entertain the petition and exceptionally undertake a review of factual questions ***based on "sound judicial discretion"*** - are, however, not clearly defined in *St. Martin. x x x* Without a definite guideline on

the scope of this "question of law" before the Court, **more often than not, the rule (that factual findings of labor tribunals are binding on the Court) became the exception (with the Court effectively becoming a trier of facts) and the exception became the rule.** Notably, when one traces in jurisprudence the justification for the invoked exception, it will invariably point to cases where the Supreme Court departed from the rule - that the jurisdiction of the Court in cases brought to it from the CA is limited to the review of errors of law, as its findings of fact are deemed conclusive - when, among others, the findings of facts ***by* the trial court and the appellate court** are conflicting. x x x In concrete terms, the Court's review of a CA ruling is limited to: **(i) ascertaining the correctness of the CA's decision in finding the presence or absence of grave abuse of discretion; and (ii) deciding any other jurisdictional error** that attended the CA's interpretation or application of the law. In determining the presence or absence of grave abuse of discretion, the Court may examine, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC findings.

6. LABOR AND SOCIAL LEGISLATION; LABOR CODE; OVERSEAS EMPLOYMENT; POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; EMPLOYER HAS BURDEN TO PROVE THAT THE INJURY, INCAPACITY, DISABILITY OR DEATH IS DIRECTLY ATTRIBUTABLE TO THE SEAFARER.— *Moradas is not required to prove that his injury was not due to his own wilful act.* That burden falls on the petitioners as part of their defense, after invoking Section 20(D) of the POEA Standard Terms and Conditions Governing the Employment of Seafarers On-Board Ocean Going Vessels. No compensation shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his wilful or criminal act, provided however that the employer can prove that such injury, incapacity, disability or death is directly attributable to seafarer. This provision expressly requires the employer to prove that the injury is directly attributable to the seafarer.

7. **REMEDIAL LAW; EVIDENCE; SUBSTANTIAL EVIDENCE; DEFINED.—** Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, ***even if other minds equally reasonable might conceivably opine otherwise.*** If the employer is able to establish by substantial evidence its defense, then that is the only time that the burden of evidence shifts to the seafarer to overcome the employer's case.

8. **ID.; APPEALS; APPEAL OF LABOR CASES; FACTUAL FINDINGS OF THE LABOR ARBITER AND OF THE NLRC, BINDING ON THE COURTS.—** Hence, the rule that factual findings of the LA and of the NLRC are binding on the courts applies only if these are supported by substantial evidence. If substantial evidence supports the factual findings, and the legal conclusions are in accord with prevailing law and jurisprudence, the courts would have no option but to dismiss the petition. x x x We must not fail to consider that substantiality of evidence depends not only on its quantitative, but also on its *qualitative,* aspects.

9. **ID.; EVIDENCE; JUDICIAL NOTICE; MAN FOLLOWS THE INSTINCT OF SELF-PRESERVATION.— In the natural order of things, man follows the instinct of self-preservation.** The Court may take judicial notice of the fact that our seafarers endure the hardships of sea work not only for their own survival, but of the family or families they left behind. Hence, the conclusion that one not only injured himself but actually willfully set himself ablaze must stand out from the evidence presented.

10. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; OVERSEAS EMPLOYMENT; DISABILITY BENEFITS; THE ENTITLEMENT OF SEAMEN ON OVERSEAS WORK TO DISABILITY BENEFITS IS GOVERNED, NOT ONLY BY MEDICAL FINDINGS, BUT BY LAW AND CONTRACT.—** Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193, Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, (presently) Department Order No. 4, series

of 2000 of the Department of Labor and Employment (the POEA Standard Employment Contract) and the parties' CBA bind the seaman and his employer to each other.

11. ID.; ID.; ID.; ID.; TEMPORARY TOTAL DISABILITY TREATMENT, INITIAL PERIOD OF 120 DAYS MAY BE EXTENDED TO A MAXIMUM OF 240 DAYS.— As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. **For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability*** as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the *temporary total* disability period may be extended up to a maximum of 240 days,** subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

12. ID.; ID.; ID.; ID.; ID.; COMPANY-DESIGNATED PHYSICIAN'S FINDINGS ON SEAFARER'S FITNESS, FATAL TO THE LATTER'S CAUSE OF ACTION FOR DISABILITY BENEFITS.— Clearly, from the time Moradas was repatriated until the last time he underwent treatment, only 169 days had elapsed. While the 120-day period under Section 20(B) of the POEA-Standard Employment Contract and Article 192 of the Labor Code has already been exceeded, per Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code, since no fit-to-work declaration or declaration of disability is made because Dr. Alegre required Moradas to undergo further medical treatment, Moradas' *temporary total* disability period may be extended up to a maximum of 240 days or until June 17, 2001. Until this date, the company-designated physician can make a finding on a seafarer's fitness for further sea duties or degree of disability. However, for reasons known only to him, Moradas did not

anymore submit himself for medical treatment after April 7, 2001. **His failure to do so is fatal to his cause of action for total and permanent disability benefits.**

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Bantog and Andaya Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated October 31, 2006 and Resolution[3] dated June 25, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 84769 which granted respondent Alexander L. Moradas's (respondent) claim to permanent total disability benefits in the amount of US$60,000.00, or its peso equivalent, and attorney's fees.

The Facts

On July 17, 2000, respondent was employed as wiper for the vessel MV Commander (vessel) by petitioner INC Shipmanagement, Inc. for its principal, petitioner Interorient Navigation, Ltd. (petitioners), for a period of 10 months, with a basic monthly salary of US$360.00, plus benefits.[4]

On October 13, 2000, respondent claimed that while he was disposing of the garbage in the incinerator room of the vessel, certain chemicals splashed all over his body because of an explosion.[5] He was sent to the Burns Unit of the Prince of

[1] *Rollo*, pp. 44-86.

[2] *Id*. at 94-118. Penned by then Presiding Justice Ruben T. Reyes (now retired Associate Justice of the Supreme Court), with Associate Justices Juan Q. Enriquez, Jr. and Vicente S. E. Veloso, concurring.

[3] *Id*. at 155-157.

[4] *Id*. at 95. See also Contract of Employment dated July 17, 2000; *id*. at 165.

[5] *Id*.

Wales Hospital on the same day wherein he was found to have suffered deep burns. Eventually, upon his own request, respondent was sent home.[6]

On October 21, 2000, he was admitted to the St. Luke's Medical Center.[7] Subsequently, he was diagnosed to have sustained "thermal burns, upper and lower extremities and abdomen, 2°-3°, 11%"[8] for which he underwent debridement. He was referred to a physical therapist for his subsequent debridement through hydrotherapy. On November 10, 2000, the attending physician, Dr. Natalio G. Alegre II, reported that the respondent's thermal burns were healing well and that they were estimated to fully heal within a period of 3 to 4 months.[9]

Claiming that the burns rendered him permanently incapable of working again as a seaman, respondent demanded[10] for the payment of his full disability benefits under Section 20 (B) in relation to Sections 30 and 30-A of the Philippine Overseas Employment Agency (POEA) Standard Employment Contract (POEA-SEC), in the amount of US$60,000.00, which petitioners refused to heed.[11] Thus, respondent filed a complaint against petitioners for the same, seeking as well moral and exemplary damages, including attorney's fees.

In their position paper,[12] petitioners denied respondent's claims, contending that his injury was self-inflicted and, hence, not compensable under Section 20 (D) of the POEA-SEC. They denied that the vessel's incinerator exploded and claimed that respondent burned himself by pouring paint thinner on his overalls and thereafter set himself on fire. They averred that he was led

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[6] *Id*. at 96.

[7] *Id*.

[8] *Id*. at 249.

[9] *Id*. at 250.

[10] *Id*. at 181-182.

[11] *Id*. at 96.

[12] *Id*. at 232-245.

to commit such act after he was caught last October 10, 2000[13] stealing the vessel's supplies during a routine security inspection conducted by Captain Bodo Wirth (Captain Wirth) where respondent was informed that he was to be dismissed.[14] They also stated that just before they discovered respondent to be burning, the vessel's engine room became flooded.[15] They ascribed the flooding incident to respondent, having been seen by fellow crew members standing at the railing around the portside seachest and looking at it[16] and that when the bilge level alarm sounded, he was seen disappearing up to the boiler deck leaving small patches of water on the floor, on the steps, and on the deck where he had been.[17] In support thereof, petitioners submitted the report of the ship captain on the flooding as extracted from the vessel's deck logbook[18] as well as the affidavits and statements executed by the vessel's officers and crew members relative to the flooding and burning incidents. Based on the said affidavits and statements, the vessel's bosun, Antonio Gile (Gile), attested that he saw respondent go to the paint room and there soak his hands in a can full of thinner. Respondent then proceeded to the incinerator door where he was set ablaze. Gile further pointed

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[13] *Id*. at 234. Erroneously stated as "October 10, 2001" in the records.

[14] *Id*. at 238. See also the statement dated December 7, 2000 signed by Captain Wirth; *id*. at 264-269. Based on the aforesaid statement, on October 10, 2000, while the vessel was docked in Hong Kong, Captain Wirth conducted a routine security inspection when he came across a large parcel which belonged to respondent lying on the crew passageway. Upon inspection, the box contained a television set, a day bed cover, several towels and some provisions, all belonging to the vessel. When asked why he was stealing the foregoing articles, respondent claimed that they were given to him as a present by the chief steward. However, when Captain Wirth asked the latter, he denied giving respondent the same. As a result, Captain Wirth informed respondent that his actions warranted his immediate dismissal.

[15] *Id*. at 234.

[16] *Id*. at 322-323. See Affidavit of Janito Subebe dated August 24, 2001. See also *id*. at 234.

[17] *Id*. at 318-319. See Affidavit of Edgardo Israel dated August 27, 2001. See also *id*. at 234.

[18] *Id*. at 258-260.

out that there was no fire in the incinerator at that time.[19] Also, Chief Officer Antonino S. Bejada (Bejada) testified that prior to the burning incident, he had ordered an ordinary seaman who had been burning deck waste in the incinerator to extinguish the fire with water and close up the incinerator door because of bad weather conditions. Bejada then checked the incinerator after the burning incident and found unburnt cardboard cartons inside with no sign of explosion and that the steel plates surrounding it were cool to the touch. He also noticed that the respondent's overalls had patches of green paint on the arms and body and smelled strongly of thinner. An open paint tin can was found near the place of the incident and a cigarette lighter lying beside respondent[20] which oiler Edgardo Israel confirmed was borrowed from him even though he knew that the former did not smoke.[21] Finally, petitioners denied respondent's claim for damages and attorney's fees for lack of factual and legal bases.[22]

In his Reply to the position paper,[23] respondent denied burning himself, contending that such act was contrary to human nature and logic and that there was no showing that he was mentally unfit.[24] Further, he posited that the affidavits and statements submitted by the vessel's officers and crew members have no probative value for being mere hearsay and self-serving.[25] He equally insisted on his claim for moral and exemplary damages and attorney's fees.[26]

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[19] *Id*. at 320-321. See Sinumpaang Salaysay of Gile dated January 22, 2001.

[20] *Id*. at 270-272. See Statement of Chief Officer Bejada dated December 7, 2000.

[21] *Id*. at 318-319. See Affidavit of Edgardo Israel dated August 27, 2001.

[22] *Id*. at 243-245.

[23] *Id*. at 288-301.

[24] *Id*. at 291.

[25] *Id*. at 293-294.

[26] *Id*. at 298-301.

Meanwhile, or on February 29, 2001, petitioner Captain Sigfredo E. Monterroyo filed a complaint[27] for disciplinary action against respondent before the POEA for his various infractions committed on board the vessel, namely: (a) act of dishonesty for stealing the vessel's supplies on October 10, 2000; (b) act of sabotage committed on October 13, 2000; and (c) grave misconduct for inflicting the injury to himself.[28]

The LA Ruling

In a Decision[29] dated April 15, 2003, the Labor Arbiter (LA) ruled in favor of petitioners, dismissing respondent's complaint for lack of merit. The LA held that respondent's injury was self-inflicted and that no incinerator explosion occurred that would have caused the latter's injuries.[30] The LA gave more credence to the corroborating testimonies of the petitioners' witnesses that respondent's botched attempts to sabotage the vessel and steal its supplies may have motivated him to inflict injuries to himself.[31] Lastly, the LA denied respondent's claim for moral and exemplary damages as well as attorney's fees since he failed to prove any evident bad faith or malice on petitioners' part.[32]

The NLRC Ruling

On appeal, the National Labor Relations Commission (NLRC), in a Decision[33] dated January 30, 2004, sustained the findings

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[27] *Id*. at 158-159.

[28] *Id*. at 160-163. See Affidavit-Complaint dated February 21, 2001.

[29] *Id*. at 400-408. Docketed as NLRC NCR OFW Case No. (M) 01-07-1316-00. Penned by LA Fe Superiaso-Cellan.

[30] *Id*. at 407.

[31] *Id*. at 405-406.

[32] *Id*. at 408.

[33] *Id*. at 485-492. Docketed as NLRC NCR CA No. 035689-03. Penned by Presiding Commissioner Lourdes C. Javier, with Commissioners Ernesto C. Verceles and Tito F. Genilo, concurring.

of the LA and held, *inter alia*, that while some of the statements and affidavits of the vessel's officers and crew members were not notarized, the corroborating testimonial evidence must be taken as a whole. In this accord, it gave due credence to the questioned evidence absent any showing that the petitioners were motivated by ill will.[34] Also, it pointed out that respondent's mental or physical fitness was not at issue since he was motivated to inflict injury to himself for reasons related to his impending discharge and not because of his disposition.[35]

Respondent filed a motion for reconsideration but the same was denied in a Resolution[36] dated March 31, 2004. Dissatisfied, he filed a petition for *certiorari* before the CA.

The CA Ruling

On October 31, 2006, the CA rendered the assailed Decision,[37] holding that grave abuse of discretion tainted the NLRC ruling.

It found no logical and causal connection between the act of pilferage as well as the act of causing the flooding in the engine room and the conclusion that respondent's injury was self-inflicted. It added that it was contrary to human nature and experience for respondent to burn himself.[38] Further, the CA noted that the location of the burns on the different parts of respondent's body was more consistent with respondent's assertion that certain chemicals splashed all over his body rather than petitioners' theory of self-inflicted injury.[39] Moreover, it pointed out that no evidence was presented to show that respondent had no business near the engine room.[40] In the same vein, it

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[34] *Id*. at 491.

[35] *Id*.

[36] *Id*. at 510-511.

[37] *Id*. at 94-118.

[38] *Id*. at 105.

[39] *Id*. at 107-108.

[40] *Id*. at 108.

observed that the mere finding of a cigarette lighter was inadequate to justify the conclusion that he burned himself.[41] Consequently, for petitioners' failure to discharge the burden of proving that respondent's injury was directly attributable to him as required under Section 20 (D) of the POEA-SEC, the CA found that the NLRC gravely abused its discretion and, thus, held petitioners liable to pay respondent permanent total disability benefits in the amount of US$60,000.00, or its peso equivalent.[42]

On the other hand, respondent's claims for moral and exemplary damages were denied for lack of basis but the CA awarded him attorney's fees in the amount of ₱50,000.00.[43]

Aggrieved, petitioners moved for reconsideration which was, however, denied in a Resolution[44] dated June 25, 2007. Hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in finding that the NLRC gravely abused its discretion when it denied respondent's claim for disability benefits.

The Court's Ruling

The petition is meritorious.

A. Preliminary Matters: Framework of Review and Governing Rules

At the outset, the Court deems it proper to elucidate on the framework in which the review of this case had been conducted, in conjunction with the applicable governing rules to analyze its substantive merits.

[41] *Id.* at 107.

[42] *Id.* at 110-115 and 117.

[43] *Id.* at 115-117.

[44] *Id.* at 155-157.

The Court's jurisdiction in cases brought before it from the CA *via* Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The Court is not the proper venue to consider a factual issue as it is not a trier of facts. This rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the NLRC and LA, as in this case. In this regard, there is therefore a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[45]

With respect to the applicable rules, it is doctrinal that the entitlement of seamen on overseas work to disability benefits "is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193 under Chapter VI (Disability Benefits) of the Labor Code, in relation [to] Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, the POEA-SEC, as provided under Department Order No. 4, series of 2000 of the Department of Labor and Employment, and the parties' Collective Bargaining Agreement bind the seaman and his employer to each other."[46]

In the foregoing light, the Court observes that respondent executed his contract of employment on July 17, 2000,[47] incorporating therein the terms and conditions of the 2000 POEA-SEC which took effect on June 25, 2000. However, since the implementation of the provisions of the foregoing 2000 POEA-SEC was temporarily suspended[48] by the Court on September

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[45] *Dimagan v. Dacworks United, Incorporated,* G.R. No. 191053, November 28, 2011, 661 SCRA 438, 445-446.

[46] *Magsaysay Maritime Corp. v. NLRC (Second Division)*, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 372-373.

[47] *Rollo*, p. 165.

[48] On September 12, 2000, POEA Administrator Reynaldo A. Regalado issued Memorandum Circular No. 11, series of 2000, declaring, *inter alia*, that Section 20 (A), (B), and (D) of the 1996 POEA-SEC (on Compensation and benefits for Death and for Injury or Illness) shall continue to be applied

11, 2000, particularly Section 20, paragraphs (A), (B), and (D) thereof, and was lifted only on June 5, 2002, through POEA Memorandum Circular No. 2, series of 2002,[49] the determination of respondent's entitlement to the disability benefits should be resolved under the provisions of the 1996 POEA-SEC as it was, effectively, the governing circular at the time respondent's employment contract was executed.

The prevailing rule under Section 20 (B) of the 1996 POEA-SEC on compensation and benefits for injury or illness was that an employer shall be liable for the injury or illness suffered by a seafarer during the term of his contract. There was no need to show that such injury was work-related except that it must be proven to have been contracted during the term of the contract. The rule, however, is not absolute and the employer may be exempt from liability if he can successfully prove that the cause of the seaman's injury was directly attributable to his deliberate or willful act as provided under Section 20 (D) thereof, to wit:

D. No compensation shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to seafarer.

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in view of the Temporary Restraining Order dated September 11, 2000 issued by the Court in G.R. No. 143476 entitled, "*Pedro Linsangan v. Laguesma*" and G.R. No. 144479 entitled, "*MARINO, Inc. v. Laguesma,*" enjoining certain amendments introduced by the 2000 POEA-SEC. (See POEA Memorandum Circular No. 11, series of 2000 and POEA Memorandum Circular No. 2, series of 2002. See also *Coastal Safeway Marine Services, Inc. v. Delgado*, G.R. No. 168210, June 17, 2008, 554 SCRA 590).

[49] Through POEA Memorandum Circular No. 2, series of 2002 which states:

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In view of which POEA Memorandum Circular No. 11, series of 2000, issued on 12 September 2000 enforcing the Temporary restraining Order issued by the Supreme Court in a Resolution dated 11 September 2000, on the implementation of the abovementioned provision is hereby Rescinded.

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Hence, the *onus probandi* falls on the petitioners herein to establish or substantiate their claim that the respondent's injury was caused by his willful act with the requisite quantum of evidence.

In labor cases, as in other administrative proceedings, **only substantial evidence** or such relevant evidence **as a reasonable mind might accept as sufficient to support a conclusion is required.**[50] To note, considering that **substantial evidence is an evidentiary threshold**, the Court, **on exceptional cases**, may assess the factual determinations made by the NLRC in a particular case. In *Career Philippines Shipmanagement, Inc. v. Serna,*[51] the Court expressed the following view:

> Accordingly, we do not re-examine conflicting evidence, re-evaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. Nor do we substitute our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the NLRC, when affirmed by the CA, are generally conclusive on this Court.
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> **Nevertheless, there are exceptional cases where we, in the exercise of our discretionary appellate jurisdiction** *may* **be urged to look into factual issues raised in a Rule 45 petition.** For instance, 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, 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**.[52] (Emphases supplied; citations omitted)

The evident conflict between the NLRC's and CA's factual findings as shown in the records of this case prompts the Court to sift through their respective factual determinations if only to

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[50] *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529, 544.

[51] G.R. No. 172086, December 3, 2012, 686 SCRA 676.

[52] *Id.* at 684-685.

determine if the NLRC committed grave abuse of discretion in reaching its disposition, keeping in mind that the latter's assessment should only meet the threshold of substantial evidence.

B. Application

In view of the above-discussed considerations and after a judicious scrutiny of the facts on record, the Court holds that the CA erred in attributing grave abuse of discretion on the part of the NLRC in affirming the LA's dismissal of respondent's complaint. This is based on the Court's observation that the NLRC had cogent legal bases to conclude that petitioners have successfully discharged the burden of proving by substantial evidence that respondent's injury was directly attributable to himself. The reasons therefor are as follows:

First, records bear out circumstances which all lead to the reasonable conclusion that respondent was responsible for the flooding and burning incidents.

Records show that the LA and NLRC gave credence to the corroborating testimonies of the crewmen pointing to respondent as the person who deliberately caused the flooding incident. In particular, respondent was seen alone in the vicinity of the portside seachest which cover was found to have been intentionally removed and thereby caused the flooding. He was also seen disappearing up to the boiler deck just when the bilge level alarm sounded with patches of water left on the floor plates and on the stairways. Respondent neither denied nor proffered any explanation on the foregoing claims especially when all of his fellow engine room staff, except him, responded to the alarm and helped pump out the water in the engine room.[53] As to the burning, respondent failed to successfully controvert Gile's claim that he saw the former go to the paint room, soak his hands in a can full of thinner and proceed to the incinerator door where he was set ablaze. In fact, respondent's burnt overalls conform to the aforesaid claim as it had green paint on the arms and

[53] *Rollo*, p. 275. Statement of 2nd Engineer Alexander Pynikov dated December 7, 2000.

body and smelled strongly of thinner, while the open paint tin can that was found in the vicinity contained solvent which had the same green color found on the overalls.

Second, respondent's version that the burning was caused by an accident is hardly supported by the evidence on record.

The purported explosion in the incinerator was belied by Gile who also claimed that there was no fire in the incinerator room at the time respondent got burned. This was corroborated by Bejada who testified having ordered an ordinary seaman that was burning deck waste in the incinerator early that day to extinguish the fire with water and close up the incinerator door because of bad weather conditions. Accordingly, an inspection of the incinerator after the incident showed that there were unburnt cardboard cartons found inside with no sign of explosion and the steel plates surrounding it were cool to the touch. Further, as aptly discerned by the LA, if there was really an incinerator explosion, then respondent's injury would have been more serious.[54]

Respondent debunked Gile's claim by merely asserting in his Answer and Rejoinder before the POEA that the latter could not have been in the room at the time he got burned as he was not the first person to rescue him and concluded that he could not have soaked his hands in a can full of thinner considering the extent of damage caused to his hands.[55] This argument is riddled with serious flaws: Gile could have been the second man in, and still personally know the matters he has alleged. Also, that respondent soaked his hands in thinner is not denied by the fact that the greatest damage was not caused to it since the fire could have started at some part of his body considering that his overalls also had flammable chemicals. Reason also dictates that he could have extinguished the fire on his hands sooner than the other parts of his body. In any event, the medical records of respondent, particularly the report[56] issued by the

[54] *Rollo*, p. 407.

[55] *Id*. at 324-332.

[56] *Id*. at 740.

Prince of Wales Hospital Burns Surgery, show that he suffered from "deep burn area" that was distributed over his left upper limb, right hand, left flank and both thighs.[57] To assert that respondent's hands should have suffered the greatest damage is plainly argumentative and records are bereft of showing as to the exact degree of burn suffered for each part.

To add, Bejada's statement that respondent's burnt overalls had patches of green paint on the arms and body and strongly smelled of thinner conforms with Gile's claim that he soaked his hands in a can of thinner before approaching the incinerator (thinner may be found in a paint room). Such fact further fortifies petitioners' assertion that his injury was self-inflicted as a prudent man would not dispose of garbage in the incinerator under such condition.

And if only to placate other doubts, the CA's finding that "some chemicals splashed [on respondent's] body"[58] should not automatically mean that the "splashing" was caused by pure accident. It is equally reasonable to conclude that the "splashing" — as may be inferred from both the LA's and NLRC's findings — was a by-product of respondent's botched sabotage attempt.

While respondent contended that the affidavits and statements of the vessel's officers and his fellow crew members should not be given probative value as they were biased, self-serving, and mere hearsay, he nonetheless failed to present any evidence to substantiate his own theory. Besides, as correctly pointed out by the NLRC, the corroborating affidavits and statements of the vessel's officers and crew members must be taken as a whole and cannot just be perfunctorily dismissed as self-serving absent any showing that they were lying when they made the statements therein.[59]

Third, petitioners' theory that respondent's burns were self-inflicted gains credence through the existence of motive.

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[57] *Id.* at 95-96.

[58] See CA Decision, *rollo,* p. 109.

[59] See *Progress Homes v. NLRC*, 336 Phil. 265, 270 (1997).

At this juncture, the Court finds it important to examine the existence of motive in this case since no one actually saw what transpired in the incinerator room. To this end, the confluence of the circumstances antecedent to the burning should be examined in conjunction with the existing accounts of the crew members. That said, both the LA and the NLRC made a factual finding that prior to the burning incident, respondent was caught pilfering the vessel's supplies for which he was told that he was to be relieved from his duties. This adequately supports the reasonable conclusion that respondent may have harbored a grudge against the captain and the chief steward who denied giving him the questioned items. At the very least, it was natural for him to brood over feelings of resentment considering his impending dismissal. These incidents shore up the theory that he was motivated to commit an act of sabotage which, however, backfired into his own burning.

In this relation, the Court observes that a definitive pronouncement on respondent's mental unfitness need not be reached since the totality of the above-stated circumstances already figures into the rational inference that respondent's burning was not a product of an impaired mental disposition but rather an incident which sprung from his own volition. Mental impairment connotes the lack of control over one's action. If the actor is conscious of what he is doing, as respondent was in this case by sabotaging the ship, then a finding of mental unfitness is not needed. Differing from the CA's take on the matter, it is not contrary to human experience or logic for a spurned man to resort to tactics of desperation, however ludicrous or extreme those tactics may be, or however untoward or unfortunate its consequences may turn out, as in this case.

All told, petitioners having established through substantial evidence that respondent's injury was self-inflicted and, hence, not compensable pursuant to Section 20 (D) of the 1996 POEA-SEC, no grave abuse of discretion can be imputed against the NLRC in upholding the dismissal by the LA of his complaint for disability benefits. It is well-settled that an act of a court or tribunal can only be considered to be tainted with grave abuse of discretion when such act is done in a capricious or whimsical

exercise of judgment as is equivalent to lack of jurisdiction.[60] For the reasons herein detailed, the Court finds these qualities of capriciousness or whimsicality wanting in the case at bar and thus, holds that the CA erred in ruling that grave abuse of discretion exists.

WHEREFORE, the petition is **GRANTED**. The Decision dated October 31, 2006 and Resolution dated June 25, 2007 of the Court of Appeals in CA-G.R. SP No. 84769 are **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated January 30, 2004 of the National Labor Relation Commission dismissing respondent Alexander L. Moradas's complaint for permanent total disability benefits and other money claims is hereby **REINSTATED**.

SO ORDERED.

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

Brion, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

BRION, *J.*:

I concur with the *ponencia's* conclusion that Alexander L. Moradas' complaint for total and permanent disability benefits must be dismissed and consequently, the Court of Appeals (*CA*) ruling must be reversed and set aside. However, I strongly disagree with the legal framework of review it adopted in arriving at this conclusion. Due to its adoption of an erroneous framework of review, its basis for reversing the assailed CA ruling is necessarily tainted with serious legal error.

In this Opinion, I submit that the proper and legal framework of review of a CA decision in a labor case is that laid down by the Court in *Montoya v. Transmed Manila Corporation*.[1] I

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

[1] G.R. No. 183329, August 27, 2009, 597 SCRA 334, reiterated by the Court *en banc* in *Holy Child Catholic School v. Hon. Patricia Sto. Tomas, etc., et al.,* G.R. No. 179146, July 23, 2013.

also submit that while Moradas is not entitled to total and permanent disability benefits, he is entitled to an income benefit.

I. The proper and legal framework of review of a Rule 65 CA decision in a labor case

a. The transfer of a labor case from the quasi-judicial sphere to the judicial sphere entails a specific mode of limited review

When a labor case decided by quasi-judicial tribunals — the Labor Arbiter (*LA*) and the National Labor Relations Commission (*NLRC*) — finds its way into the judicial sphere, the court must proceed and act on the petition on the basic premise that the assailed ruling is a ***final and executory ruling***. This premise, in turn, is based on two facts: *first*, labor cases that reach the CA (and eventually the Supreme Court) are already rulings on the merits that finally dispose of the case; and, *second*, after the labor tribunals have rendered judgment, substantive law no longer provides any remedy of appeal to the losing party.

Notwithstanding the absence of appeal, the aggrieved party is not without any legal remedy. As the legal battle is transferred from the quasi-judicial sphere to the strictly judicial sphere, the aggrieved party must contend with the fact that the new avenue for legal advocacy becomes narrower. The review allowed is limited to ***jurisdictional grounds under Rule 65 of the Rules of Court*** (*Rule 65*).[2] As early as 1975, the Court had the occasion to state:

While an appeal does not lie, it is available **whenever a jurisdictional issue is raised or one of grave abuse of discretion amounting to a lack of excess thereof**. x x x This excerpt, from the opinion of Justice Aquino in *San Miguel Corporation v. Secretary*

[2] See *San Miguel Corp. v. Sec. of Labor*, 159-A Phil. 346, 350-351 (1975). Since the Labor Code took effect in November 1974, this has been the mode of review observed in labor cases.

of Labor, is in point: "Yanglay raised a jurisdictional question which was not brought up by respondent public officials. He contends that this Court has no jurisdiction to review the decisions of the NLRC and the Secretary of Labor 'under the principle of separation of powers' and that judicial review is not provided for in Presidential Decree No. 21. That contention is a flagrant error. 'It is generally understood that as to administrative agencies exercising quasi-judicial or legislative power **there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute'** x x x. Judicial review is proper in case of **lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion**."[3] (emphases ours, citations omitted)

A *certiorari* proceeding is limited in scope and narrow in character. The special civil action for *certiorari* lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. *Certiorari* will issue only to correct errors of jurisdiction and not mere errors of judgment, particularly in the findings or conclusions of the quasi-judicial tribunals or lower courts. For errors of judgment, appeal, if provided for by law, is the proper remedy and not *certiorari*.[4] Accordingly, when a petition for *certiorari* is filed, the judicial inquiry should be limited to the issue of whether the NLRC acted with grave abuse of discretion amounting to lack or in excess of jurisdiction.[5]

The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* **cannot be exercised for the purpose of**

[3] *Scott v. Hon. Inciong*, 160-A Phil. 1107, 1112-1113 (1975).

[4] *Winston F. Garcia, etc. v. Court of Appeals, et al.*, G.R. No. 169005, January 28, 2013; *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, October 16, 2006, 504 SCRA 336, 351; *Beluso v. Commission on Elections*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 457; *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 134, citing *Pure Foods Corporation v. NLRC*, G.R. No. 78591, March 21, 1989, 171 SCRA 415; and *Leynes v. Former Tenth Division of the Court of Appeals*, G.R. No. 154462, January 19, 2011, 640 SCRA 25, 38-40.

[5] *Empire Insurance Company v. NLRC*, G.R. No. 121879, August 14, 1998, 294 SCRA 263, 269-270.

reviewing the intrinsic correctness of a judgment. Even if the findings of the lower court or tribunal are incorrect, as long as it has jurisdiction over the case, such correction is **normally** beyond the province of *certiorari*.[6] *Certiorari* jurisdiction is not to be equated with appellate jurisdiction.[7] To depart from this well-established scope and breadth of *certiorari* by reviewing, and worse overturning, the assailed ruling (in the guise of correcting errors of jurisdiction even if they are plainly errors of judgment) plainly amounts to **unwarranted judicial legislation, by indirectly creating a non-existing right of appeal.**

Nevertheless, while a *certiorari* proceeding does not strictly include an inquiry as to the correctness of the evaluation of evidence (that was the basis of the labor tribunals in determining their conclusion),[8] **the incorrectness of its evidentiary evaluation should not result in negating the requirement of substantial evidence.**[9] Indeed, when there is a showing that the findings or conclusions, drawn from the same pieces of evidence, were arrived at arbitrarily or in disregard of the evidence on record, they may be reviewed by the courts. In particular, the CA can grant the petition for *certiorari* if it finds that the NLRC, in its assailed decision or resolution, made a factual finding not supported by substantial evidence.[10] A decision that

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[6] *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424, 440-441, citing *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, *supra* note 4.

[7] *Palomado v. National Labor Relations Commission*, G.R. No. 96520, June 28, 1996, 257 SCRA 680, 689-690.

[8] *Secon Philippines, Ltd. v. NLRC*, G.R. No. 97399, December 3, 1999, 319 SCRA 685, 688; and *Leonis Navigation Co., Inc. v. Villamater*, G.R. No. 179169, March 3, 2010, 614 SCRA 182, 192.

[9] *Career Philippines Shipmanagement, Inc. v. Serna*, G.R. No. 172086, December 3, 2012, 686 SCRA 676, 684-685; and *St. Mary's College (Tagum, Davao) v. NLRC*, G.R. No. 76752, January 12, 1990, 181 SCRA 62, 66.

[10] *Norkis Trading Corporation v. Buenavista*, G.R. No. 182018, October 10, 2012, 683 SCRA 406, 423; *Emcor Incorporated v. Sienes*, G.R. No. 152101, September 8, 2009, 598 SCRA 617, 631-632; and *Leonis Navigation Co., Inc. v. Villamater*, *supra* note 8, at 192.

is not supported by substantial evidence is definitely a decision tainted with grave abuse of discretion.

b. The court's limited certiorari jurisdiction as applied in jurisprudence

Unfortunately, the clear limits of a *certiorari* jurisdiction are somewhat a murky area in our jurisprudence. More often than not, the Court actively engages in reviewing the NLRC ruling without fully considering the absence of a statutory right to appeal. In fact, a survey of the Court's rulings will not be beneficial in determining the scope and breadth of the Court's ***supervisory power*** under a Rule 65 petition as distinguished from the Court's discretionary ***review power*** under a Rule 45 petition in labor cases. In effect, the supposedly final and executory character of the NLRC ruling was, more often than not, sidestepped as a non-essential legal consideration. The result was a deluge of labor cases before the Highest Court.

To put an end to this, the Court, in *St. Martin Funeral Homes v. NLRC (St. Martin)*,[11] opted to change the ***procedure of review*** of labor cases, taking into account the judicial hierarchy of courts. Thus, the Court decreed that the proper recourse from the NLRC's final and executory ruling is to assail the ruling before ***the CA under Rule 65***. *Without altering* the unappealable character of the NLRC ruling that substantive law provides,[12]

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[11] 356 Phil. 811, 814-815 (1998). The Court said:

Before proceeding further into the merits of the case at bar, the Court feels that it is now exigent and opportune to reexamine the functional validity and systemic practicability of the mode of judicial review it has long adopted and still follows with respect to decisions of the NLRC. The increasing number of labor disputes that find their way to this Court and the legislative changes introduced over the years into the provisions of Presidential Decree (*P.D.*) No. 442 (The Labor Code of the Philippines and Batas Pambansa Blg. (*B.P.* No.) 129 (The Judiciary Reorganization Act of 1980) now stridently call for and warrant a reassessment of that procedural aspect. [underscore ours, italics supplied]

[12] See Article 223 of the Labor Code.

the Court thereby sought to improve the process by which labor cases — most of which are highly factual in character — can reach the Highest Court of the land, whose time is better devoted to matters within its exclusive jurisdiction and to issues that significantly impact on the nation as a whole.

Under *St. Martin*, a party who loses in the CA or is dissatisfied with the CA ruling, is given the further option to file ***an appeal with the Supreme Court*** through a petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rule 45*). Expressly stated under Rule 45 is that the review it provides is not a matter of right but of sound judicial discretion. Too, this mode of appeal limits the review to questions of law.

Obviously, the Court did not intend this discretion to be an unbridled discretion one.[13] The approximate metes and bounds of the express limitations under Rule 45 — that ***only questions of law*** may be raised and that the Court may entertain the petition and exceptionally undertake a review of factual questions ***based on "sound judicial discretion"*** — are, however, not clearly defined in *St. Martin*. In fact, cases decided ***before or after*** *St. Martin* almost uniformly hold that:

> **The rule is that factual findings of quasi-judicial agencies such as the NLRC are generally accorded not only respect, but at times, even finality** because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction. It is also settled that this Court is not a trier of facts and does not normally embark in the evaluation of evidence adduced during trial. **This rule, however, allows for exceptions. One of these exceptions covers instances when the findings of fact of** the trial court, or of **the quasi-judicial agencies**

[13] The reasons why the Supreme Court does not routinely undertake the re-examination of the evidence presented by the contending parties during the trial of the case are: *one*, it is not really a trier of facts; *two*, since the Court is not a trier of facts, factual findings of the labor tribunals are generally accorded not only respect, but even finality, and are binding upon the Court when supported by substantial evidence; and *three*, the ruling that is brought in for judicial review is already a final and executory ruling rendered by labor tribunals which are deemed to have acquired expertise in matters within their respective jurisdiction.

concerned, are conflicting or contradictory with those of the CA. When there is a variance in the factual findings, it is incumbent upon the Court to re-examine the facts once again.[14] (emphases and underscores ours, citations omitted)

In other words, the existence of conflict in the factual findings and/or conclusions at any stage of the case, from the LA to the CA, makes it incumbent upon the Court to conduct a review of the records to determine which of them should be preferred as more conformable to evidentiary facts. **This is what the *ponencia* expressly relied upon in undertaking an independent review**. With this approach, the Court obviously considered the Rule 65 petition route to the CA only in light of the doctrine of hierarchy of courts and disregarded the final and unappealable character of the NLRC decision. If the CA's *certiorari* jurisdiction has a limited scope and breadth, the Court, under a Rule 45 petition to review the CA decision, could not have a more expanded jurisdiction than what Rule 45 expressly provides, *i.e.*, that the issue is limited to pure question of law.

Without a definite guideline on the scope of this "question of law" before the Court, **more often than not, the rule (that factual findings of labor tribunals are binding on the Court) became the exception (with the Court effectively becoming a trier of facts) and the exception became the rule**. Notably, when one traces in jurisprudence the justification for the invoked exception, it will invariably point to cases where the Supreme Court departed from the rule — that the jurisdiction of the Court in cases brought to it from the CA is limited to the review of errors of law, as its findings of fact are deemed conclusive — when, among others, the findings of facts ***by* the trial court and the appellate court** are conflicting.[15]

The ***indiscriminate*** adoption of this remedial law principle into labor cases stands on shaky legal grounds. To begin with,

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[14] *General Milling Corporation v. Viajar*, G.R. No. 181738, January 30, 2013, 689 SCRA 598, 606-607.

[15] *Reyes v. Court of Appeals (Ninth Division)*, G.R. No. 110207 July 11, 1996, 258 SCRA 651, 659.

***certiorari* is different from appeal**. In an appellate proceeding, the original suit is continued on appeal. In a *certiorari* proceeding, the *certiorari* petition is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts.[16]

Put more bluntly, when the Court undertakes a review of the factual findings made by the lower courts, it does so on the premise that the *recourse* to the CA is part of the *appellate process authorized by law*. Hence, when the trier of facts at the trial and appellate level reach divergent factual findings, even if the same pieces of evidence are before them, the Court is constrained to set aside the rule that only questions of law may be raised under a Rule 45 petition in order to arrive at a correct and just decision. The same situation does not apply in labor cases because statutory law does not provide for an appellate process, and thus, the mere existence of a conflict in the factual findings at any stage of the proceedings does not by itself warrant the Court to undertake an independent review.

c. The case of Montoya v. Transmed Manila Corporation

In *Montoya v. Transmed Manila Corporation*,[17] the Court had the occasion to lay down the proper interpretation of the "question of law" that the Court must resolve in a Rule 45 petition assailing a CA decision on a Rule 65 petition:

> In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence**

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[16] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation, supra* note 4, at 134-135.

[17] *Supra* note 1.

of grave abuse of discretion in the NLRC decision before it, 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. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[18] (emphases and italics supplied; citations omitted)

In concrete terms, the Court's review of a CA ruling is limited to: **(i) ascertaining the correctness of the CA's decision in finding the presence or absence of grave abuse of discretion; and (ii) deciding any other jurisdictional error** that attended the CA's interpretation or application of the law.[19] In determining the presence or absence of grave abuse of discretion, the Court may examine, on the basis of the parties' presentations, whether the CA correctly determined that at the NLRC level, all the adduced pieces of evidence were considered; no evidence which should not have been considered was considered; and the evidence presented supports the NLRC findings.

In this kind of limited review, the Court avoids reviewing a labor case by re-weighing the evidence or re-evaluating its sufficiency; the task of weighing or evaluation, as a rule, lies within the NLRC's jurisdiction as an administrative appellate body.

If the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, ***dismiss*** the petition. If grave abuse of discretion exists, then the CA must grant the petition and nullify the NLRC ruling, entering at the same time the ruling that is justified under the evidence and the governing law, rules and jurisprudence. In our Rule 45 review, this Court must ***deny*** the petition if it finds that the CA correctly acted.[20]

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[18] *Id*. at 342-343.

[19] See Dissenting Opinion of Justice Arturo Brion in *Abbott Laboratories, Philippines, et al. v. Pearlie Ann F. Alcaraz*, G.R. No. 192571, July 23, 2013.

[20] *Ibid*.

The point I am driving at is this: Given the absence of the right to appeal from the decision of the NLRC, the Court should observe the rule on the limitation of its own scope of review under the Rules and recognize the exception — *i.e.*, the Court can undertake an independent factual review — only if there is a jurisdictional error. Unfortunately, this petition is demonstrably not the case to bend the rule and act based on the exception.

In this case, the NLRC sustained the factual findings of the LA. Thus, these findings are generally binding on the CA, *unless* there was a showing that these findings were arrived at arbitrarily or in disregard of the evidence on record. On Moradas' *certiorari* petition, what the CA *primarily* re-examined is the *conclusion* reached by the labor tribunals from its factual findings (*i.e.*, that Moradas committed the acts of pilferage, sabotage and self-burning). The CA reversed the labor tribunals' conclusion an the ground that there was "no logical and causal connection between the act of pilferage and the act of causing the flood in the engine room sufficient to make a conclusion that [Moradas] willfully burned himself."[21]

In this case, the *ponencia* saw the need "**to review the records to determine which of [these factual findings and conclusions] should be preferred** as more conformable to evidentiary facts"[22] just because there is a conflict between the findings of the LA and of the NLRC. As previously discussed, this approach does not have strong legal mooring.

While the Court really has to undertake a review of the records before it, for emphasis, its *evaluation* of the evidence on record is limited to ascertaining the correctness of the CA's decision *in finding the presence or absence of grave abuse of discretion*. **In the present case, in determining the presence or absence of grave abuse of discretion, the Court may examine, on the basis of the parties' presentations, whether the CA correctly determined that, at the NLRC level, the petitioners,**

[21] *Rollo*, p. 105.

[22] Decision, p. 6.

INC Shipmanagement, Inc., Captain Sigfredo Monterroyo and/or Interorient Navigation Limited failed to present substantial evidence to prove their claim of a self-inflicted injury. Just because the LA and the NLRC, on one hand, and the CA, on the other hand, arrived at conflicting conclusions from the same pieces of evidence does not warrant the Court to unilaterally substitute its judgment based on its ***unbridled preference of the parties' evidence.***

II. Reviewing the present CA decision under Rule 45

a. The parties' respective burdens

In ruling that the CA legally erred in finding that the NLRC gravely abused its discretion, the *ponencia* correctly stated that the petitioners must prove by substantial evidence that Moradas' injury was self-inflicted. According to the *ponencia*, the NLRC had cogent legal bases to conclude that the petitioners have proven by substantial evidence that Moradas' injuries were self-inflicted, on the following grounds:

1. Moradas was responsible for the flooding and burning incidents;
2. Moradas' claim that the burning was caused by the explosion in the incinerator is not supported by the evidence on record; and
3. The petitioners' theory that Moradas' burns were self-inflicted is bolstered by the existence of motive; thereby, a finding on his mental fitness may be dispensed with.

I strongly disagree.

While technical rules of procedure and evidence are not strictly observed before the, NLRC,[23] this does not mean that the rules

[23] LABOR CODE, Article 221; 2011 NLRC RULES OF PROCEDURE, Rule VII, Section 10.

on proving allegations are entirely dispensed with. The basic rule in evidence that each party must prove his affirmative allegation still applies. Insofar as Moradas is concerned, he must establish the following:

1. That the illness/injury was suffered during the term of employment;
2. That the seafarer report to the company-designated physician for a post-employment medical examination and evaluation within three (3) working days from the time of his return;
3. That any disability should be assessed by the company-designated physician on the basis of the Schedule of Disability Grades as provided under the POEA-SEC.[24]

Except as to the third requisite (which shall be subject of a later discussion), the existence of the first two requisites is not seriously disputed: Moradas suffered his injuries during the term of his contract and he underwent a medical evaluation from the company-designated physician. At this juncture, I emphasize that *Moradas is not required to prove that his injury was not due to his own wilful act*. That burden falls on the petitioners as part of their defense,[25] after invoking Section 20 (D) of the POEA Standard Terms and Conditions Governing the Employment of Seafarers On-Board Ocean Going Vessels.

> No compensation shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his wilful or criminal act, provided however that the employer can prove that such injury, incapacity, disability or death is directly attributable to seafarer.

This provision expressly requires the employer to prove that the injury is directly attributable to the seafarer. As in other

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[24] See Section 20 (B) 1996 of the POEA Standard Employment Contract.

[25] Section 1, Rule 131 of the Rules of Court reads:

> Section 1. *Burden of proof.* — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

administrative proceedings, substantial evidence will suffice for the petitioners to avoid liability under this provision.

Substantial evidence is defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, ***even if other minds equally reasonable might conceivably opine otherwise***.[26] If the employer is able to establish by substantial evidence its defense, then that is the only time that the burden of evidence shifts to the seafarer to overcome the employer's case.

Hence, the rule that factual findings of the LA and of the NLRC are binding on the courts applies only if these are supported by substantial evidence. If substantial evidence supports the factual findings, and the legal conclusions are in accord with prevailing law and jurisprudence, the courts would have no option but to dismiss the petition.

b. The present case and the CA's finding that the NLRC gravely abused its discretion ultimately for lack of substantial evidence

For emphasis, the *ponencia* could not have reached its conclusion that the NLRC did not commit grave abuse of discretion

[26] This qualification on the definition of substantial evidence was first made in 1971 in *In the Matter of the Petition for Habeas Corpus of Lansang, et al.,* 149 Phil. 547, 593 (1971), holding as follows:

Under the principle of separation of powers and the system of checks and balances, the judicial authority to review decisions of administrative bodies or agencies is much more limited, as regards findings of fact made in said decisions. Under the English law, the reviewing court determines *only* whether there is *some evidentiary basis* for the contested administrative finding; *no quantitative* examination of the supporting evidence is undertaken. The administrative finding can be interfered with *only* if there is *no* evidence whatsoever in support thereof, and said finding is, accordingly, arbitrary, capricious and obviously unauthorized. This view has been adopted by some American courts. It has, likewise, been adhered to in a number of Philippine cases. Other cases, in *both* jurisdictions, have applied the "substantial evidence" rule, which has been construed to mean "more than a mere scintilla" or "relevant evidence as a reasonable mind might accept as adequate to support a conclusion," even if other minds equally reasonable might conceivably opine otherwise. [italics supplied]

if the correct standard of review was used at the outset. **At this point,** my disagreement is mainly with the ***unreasonableness — resulting from the unbridled power of review under the legal framework it adopted*** — of the *ponencia's* holding that the CA legally erred in finding that the NLRC gravely abused its discretion.

To recall, the CA found that the NLRC gravely abused its discretion in dismissing Moradas' complaint on the basis of the following:

> We tried to link these two incidents alluded to by the NLRC over its findings and that of the labor arbiter that [Moradas] wilfully burned himself. But **we found no logical and causal connection between the act of pilferage and the act of causing the flood in the engine room sufficient to make a conclusion that [Moradas] wilfully burned himself.**
>
> **Human nature and common experience dictate that no person in his right mind would wilfully burn himself**. Only a person of unsound mind would resort to this horrible act. The moral and legal and presumption is that every person is presumed to be of sound mind.
>
> x x x x x x x x x
>
> x x x While it may be true that [Moradas] did not smoke, it is not a gauge and a determining factor to adequately sustain a conclusion that he used the cigarette lighter in burning himself. He must be out of his mind in doing so. Even the presence of the lighter near the place where [Moradas] was burned was not enough to justify the conclusion that he intentionally burned himself. It is not incredible to find the lighter within the vicinity of the incident because it is probable that it fell during petitioner's struggle when he was caught by fire.
>
> **It is significant to note that the location of the burns on the different parts of his body is inconsistent with the allegation of self-inflicted injury.** On the contrary, the location of the burns conforms with [Moradas'] assertion that certain chemicals splashed all over his body while he was disposing garbage in the incinerator room. **The deep burn area was distributed over his left upper limb, right hand, left flank and both thighs** as found by the Burns Unit of the Prince of Wales Hospital.

x x x x x x x x x

Chief Officer Bejada claimed that when he checked the incinerator room, no sign of any explosion having occurred x x x He also noticed that [Moradas] had patches of green paint on his arms and body and there was a green paint tin nearby.

Between the claim of [Moradas] and the self-serving testimony of Chief Officer Bejada, we find [Moradas] to be more credible and convincing. The green paint on his arms and body is consistent with [Moradas] assertion that some chemicals splashed all over his body. Whereas, other than the Chief Officer Bejada's denial, no other evidence was presented to prove that there was no such explosion.[27]

After finding the lack of causal connection between the alleged acts of pilfering and sabotaging the ship, on one hand, and a self-inflicted injury, on the other hand, the CA then raised doubts as to Moradas' complicity in the flooding of the engine room.

Too, the presence of [Moradas] in the vicinity of the engine room is not sufficient to warrant a conclusion that he was the one who caused the flood in that room. It should be noted that the flood occurred because the valve of the port sea chest was open. The possibility that someone negligently left it open or intentionally opened it is not remote.

Likewise, no evidence was presented to show that [Moradas] had no business to be within the premises or near the engine room or inside the engine room itself. His presence in the area is not sufficient to impute suspicion that the entire engine room was flooded with water because of him. On the contrary, [Moradas] had every right to be at the engine room[.][28]

The question that invites scrutiny is whether the LA and the NLRC's conclusion (that Moradas' acts of allegedly pilfering and causing the flood in the engine room prompted him to commit an act of sabotage which backfired into his own burning) is by itself an adequate conclusion of a reasonable mind. According to the *ponencia*, it is not contrary to human experience or logic

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[27] CA Decision, pp. 12-16.

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

for a spurned man to resort to tactics of desperation, however ludicrous or extreme those tactics may be, as in this case.

I am completely at a loss on how the *ponencia* could have disagreed with the CA. **In the natural order of things, man follows the instinct of self-preservation**. The Court may take judicial notice of the fact that our seafarers endure the hardships of sea work not only for their own survival, but of the family or families they left behind. Hence, the conclusion that one not only injured himself but actually willfully set himself ablaze must stand out from the evidence presented.

As the CA did, **I do not see any logical or causal connection between the *charges* of stealing and the acts of sabotage, on one hand, and the self-inflicted burning that Moradas allegedly committed, on the other hand**. It is simply contrary to human nature and experience for Moradas to set himself ablaze because he was caught stealing the ship's supplies.[29]

b1. The lack of causal connection, aggravated by flimsy reliance on the alleged prior acts of pilfering and sabotaging the ship

Unsurprisingly, the *ponencia* had to pin down Moradas first for his alleged acts of pilfering and causing the flooding in the engine room in order to create a makeshift anchorage for a finding of self-inflicted injury. Unfortunately, even its findings on these points are riddled with inconsistencies that the supposed causal connection the *ponencia* relied upon similarly suffers.

We must not lose sight of the fact that the core issue before the labor tribunals is whether Moradas' injury is self-inflicted. The issues as to whether Moradas stole the ship's properties

[29] There is no standard by which the weight of conflicting evidence can be ascertained. We have no test of the truth of human testimony except its conformity to our knowledge, observation, and experience (*Frondarina v. Malazarte*, G.R. No. 148423, December 6, 2006, 510 SCRA 223, 225, citing III V. Francisco, *Criminal Evidence* 146 [1947], in turn citing I Moore *On Facts* 35).

and committed an act of sabotaging the ship are issues that are appropriately before the POEA Adjudication Office. The records show that sometime in February 2001 (or several weeks after Moradas, through counsel, sent a demand letter to the petitioners), the petitioners filed an administrative complaint against Moradas for dishonesty and grave misconduct. **A finding by that body that indeed Moradas committed the acts imputed to him would have provided sufficient starting basis for the logic of the *ponencia's* view that a causal connection existed**. Unfortunately, the petitioners, who have the burden of proving that the injury was self-inflicted, submitted nothing on this point.

While a reference to these incidents may be justified as circumstantial evidence to prove that Moradas' injury was self-inflicted, I find it highly disturbing that the ***ponencia made a conclusive factual finding*** that "Moradas was caught pilfering the ship's supplies"[30] and effectively implied that he committed the act of sabotaging the ship, ***notwithstanding*** **Moradas' categorical denial of these accusations, with an explanation of his own account of the facts — denials which the petitioners themselves never bothered to address in any of their pleadings.**

On the other hand, I cannot also understand why Moradas' categorical denials were disregarded but the similar negative statements of Bosun Antonio Gile and Chief Officer Antonio Bejada (that there was no fire in the incinerator) were believed to defeat Moradas' claim that the burning was caused by the explosion. If the Court would be allowed to make such a first-hand preference of evidence, by what standard of "sound judicial discretion" is it based?

Also, according to the *ponencia*, **Moradas failed to rebut** Bosun Gile's claim that he saw Moradas go to the paint room, soak his hands in a can full of thinner and proceed to the incinerator door where he was set ablaze. Contrary to the *ponencia's* holding,

[30] Decision, p. 9.

[31] *Rollo*, pp. 196, 212-214.

Moradas even made a *specific denial* of Bosun Gile's claim in his Position Paper before the LA.[31]

The logical inconsistency created by the *ponencia's* observation is even more alarming. As observed by Moradas himself, if he indeed soaked his hands in a can full of thinner, then his hands must have sustained the injuries, if not the most severe damage. I also find it amusing that Bosun Gile never asked or approached Moradas after seeing him soak his hands in a can full of thinner considering that, as the *ponencia* observed, that act is certainly ludicrous in itself.

The *ponencia* turned a blind eye on these logical inconsistencies and simply held that Bosun Giles' claim conforms with that of Chief Officer Bejada. According to Chief Officer Bejada, he noticed that Moradas had patches of green paint on the arms and body of his overalls. He also stated that there was an open paint tin nearby that had the same green color as the marks on Moradas' overalls; that he ordered an ordinary seaman to extinguish the fire and close the incinerator doors just before Moradas got burned; and that he personally "checked the incinerator and found that it contained cardboard cartons which were intact and unburnt [and that] [t]here was no sign of any explosion having occurred and the steel plates which made up the incinerator box were cool to the touch."[32]

The *ponencia* also explained that the corroborating affidavits of the other crew members and officers cannot be dismissed as self-serving in the absence of any showing that they were lying when they made their statements. The problem with this explanation is that **the *other* crew members who executed their own affidavits have no personal knowledge about the burning itself**.

With Bosun Gile's statement bearing logical inconsistency with Moradas' own injury, Chief Officer Bejada's statement would assume crucial importance in establishing the petitioners' case of a self-inflicted injury. Chief Officer Bejada's un-notarized written statement establishes the following facts: (i) that he saw

[32] *Id*. at 270-272.

Moradas while burning; and (ii) that there was no fire in the incinerator whose steel plates were cool to the touch. His bare statements, however, do not in any way prove that Moradas' injury was self inflicted. The *ponencia* merely *deduced* that Moradas either burned himself or wanted to sabotage the ship. Whichever of these deductions, however, have been earlier shown to be logically inconsistent and contrary to human nature.

We must not fail to consider that substantiality of evidence depends not only on its quantitative, but also on its *qualitative*, aspects.[33] (We have earlier discussed that the "corroborating affidavits" are immaterial insofar as Moradas' burning itself and that Bosun Giles' testimony is too incredible to be believed.) However, the substantiality of the petitioners' evidence — supposedly through the "circumstantial evidence," *i.e.*, the smell of Moradas' overalls, the location of the thinner can and the lighter in relation to the place where Moradas was found burning," and the borrowing of Chief Officer Bejada's lighter — supporting Chief Officer Bejada's statements is itself negated by the clear evidence on record. As the CA correctly observed, "the green paint on [Moradas'] arms and body is consistent with [his] assertion that some chemicals splashed over all his body."[34] Even the location of the thinner hardly adds up to the substantiality required to support Chief Officer Bejada's statement since the incinerator room is not shown to be far from the paint room, where paint chemicals would obviously be located.

While Moradas' act of borrowing a lighter from someone, even though he does not smoke, may have led the petitioners to conclude that he must have intended to commit a wrong, this line of thinking does not substantially establish a defense of self-inflicted injury. Note that while Chief Officer Bejada stated that he ordered an ordinary seaman to extinguish the fire in the incinerator, **the petitioners did not even bother to present**

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[33] *Insular Life Assurance Co., Ltd. Employees Association-Natu v. Insular Life Assurance Co., Ltd.,* No. L-25291, March 10, 1977, 76 SCRA 50, 53.

[34] CA Decision, p. 16.

the crucial testimony of this supposed seaman to substantially corroborate Chief Officer Bejada's claim.

In these lights, I cannot also agree with the *ponencia* that a finding on Moradas' mental disposition is dispensable. The *ponencia's* reasoning that a sane person who "harbors a grudge" and "is brooding over feelings of resentment" because he was caught stealing can be driven to set himself ablaze is ***tenuously speculative*** to say the least. **Moradas' mental disposition would have also established the substantial evidence requirement lacking in this case** which the *ponencia* obviously, but unsuccessfully, tries to fill up.

In short, there are a lot of crucial lapses and inconsistencies, logical and factual, in the petitioners' case that even brushing aside, for the sake of argument, the lack of causal connection (between the acts imputed against Moradas, on one hand, and his alleged self-inflicted injury, on the other hand), the substantial evidence can hardly be said to have been met.

III. Moradas is entitled only to income benefit

This is not say, however, that the CA's conclusion on Moradas' entitlement to ***permanent and total disability*** is also legally correct. Moradas' inability to return to the same line of work does not by itself ***legally*** entitle him to permanent and total disability benefits.

Entitlement to disability benefits by seamen on overseas work is a matter governed, not only by medical findings, but by law and by contract. The material statutory provisions are Articles 191 to 193, Chapter VI (Disability Benefits) of the Labor Code, in relation with Rule X of the Rules and Regulations Implementing Book IV of the Labor Code. By contract, (presently) Department

[35] SECTION 20. COMPENSATION AND BENEFITS. —

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B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

Order No. 4, series of 2000 of the Department of Labor and Employment (the POEA Standard Employment Contract)[35] and the parties' CBA bind the seaman and his employer to each other.[36] As to how these provisions operate, *Vergara v. Hammonia Maritime Services, Inc. (Vergara)*[37] discussed:

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1. The employer shall continue to pay the seafarer his wages during the time he is on board the vessel;

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to [be] repatriated.

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

4. Upon sign-off of the seafarer from the vessel for medical treatment, the employer shall bear the full cost of repatriation in the event that the seafarer is declared (1) fit for repatriation; or (2) fit to work but the employer is unable to find employment for the seafarer on board his former vessel or another vessel of the employer despite earnest efforts.

5. In case of permanent total or partial disability of the seafarer during the term of employment caused by either injury or illness, the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 30 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

[36] *Vergara v. Hammonia Maritime Services,* G.R. No. 172933, October 6, 2008.

[37] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 628; emphases, underscore and italics ours.

As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. **For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability*** as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

In the present case, Moradas was repatriated on October 20, 2000. The following day, he was admitted at the St. Luke's Medical Center under the care of the company-designated physician, Dr. Natalio G. Alegre. On November 22, 2000, Dr. Alegre found that Moradas' burns were already healing and *recommended his out-patient treatment*. However, on August 1, 2001, Dr. Alegre reported that Moradas discontinued receiving medical treatment from him after April 7, 2001, the last time that Moradas went to him for medical treatment. On July 2001, Moradas filed his complaint with the LA.

Clearly, from the time Moradas was repatriated until the last time he underwent treatment, only 169 days had elapsed. While the 120-day period under Section 20 (B) of the POEA-Standard Employment Contract and Article 192 of the Labor Code has already been exceeded, per Section 2, Rule X of the Rules and Regulations Implementing Book IV of the Labor Code, since no fit-to-work declaration or declaration of disability is made because Dr. Alegre required Moradas to undergo further medical treatment, Moradas' *temporary total* disability period may be extended up to a maximum of 240 days or until June 17, 2001. Until this date, the company-designated physician can make a

finding on a seafarer's fitness for further sea duties or degree of disability. However, for reasons known only to him, Moradas did not anymore submit himself for medical treatment after April 7, 2001. **His failure to do so is fatal to his cause of action for total and permanent disability benefits**. Moradas' case is very much similar to the seafarer in *Magsaysay Maritime Corporation, et al. v. National Labor Relations Commission, etc., et al. (Magsaysay)*.[38]

In *Magsaysay*, the seafarer discontinued his therapy sessions even if it appears "to be yielding positive results" and demanded the payment of total and permanent disability benefits soon after the expiration of the 120-day period. In denying his claim, the Court capitalized on the absence of an assessment from the company-designated physician, thus:

> First. There was no assessment of the extent of Capoy's disability by the company-designated physician, as required by Section 20(B)(3) of the POEA-SEC, which provides:
>
> x x x x x x x x x
>
> **Considering that Capoy was still undergoing medical treatment, particularly through therapy sessions under the care of the company-designated specialists, Dr. Salvador (the lead company doctor) cannot be faulted for not issuing an assessment of Capoy's disability or fitness for work at that time**. In fact, as Dr. Salvador's progress report of March 17, 2006 showed that Capoy was expected to return on April 6, 2006 for re-evaluation by the orthopedic surgeon. This aspect of the POEA-SEC and Capoy's compliance totally escaped the labor tribunals and the CA. [emphasis and underscore ours]

Applying *Vergara, Magsaysay* also squarely rejected the argument that a seafarer's disability for more than 120 days automatically entitles him to total and permanent disability, viz.:

> As matters stood on March 17, 2006, when Dr. Salvador issued her last progress report, 197 days from Capoy's repatriation on August 31, 2005, Capoy was legally under temporary total disability since

[38] G.R. No. 191903, June 19, 2013.

the 240-day period under Section 2, Rule X of the Rules and Regulations implementing Book IV of the Labor Code had not yet lapsed. The LA, the NLRC and the CA, therefore, grossly misappreciated the facts and the applicable law when they ruled that because Capoy was unable to perform his work as a fitter for more than 120 days, he became entitled to permanent total disability benefits. **The CA cited in support of its challenged ruling Dr. Salvador's failure to make a disability assessment or a fit-to-work declaration for Capoy after 197 days from his repatriation. This is a misappreciation of the underlying reason for the absence of Dr. Salvador's assessment. There was no assessment yet because Capoy was still undergoing treatment and evaluation by the company doctors, especially the orthopedic surgeon, within the 240-day maximum period provided under the above-cited rule.** To reiterate, Capoy was supposed to see the orthopedic surgeon for re-evaluation, but he did not honor the appointment.

x x x x x x x x x

Capoy, needless to say, prevented Dr. Salvador from determining his fitness or unfitness for sea duty when he did not return on April 6, 2006 for re-evaluation. [emphasis and underscore ours]

As we did in *Magsaysay*, the Court must necessarily reject Moradas' claim for permanent total disability benefits. However, since it is undisputed that Moradas still needed medical treatment beyond the initial 120 days from his repatriation, he is entitled, under the rules,[39] to the income benefit for temporary total disability during the extended period from the time he was repatriated on October 20, 2000 up to the time he last underwent medical treatment on April 7, 2001 or for 169 days. This is the monetary benefit that must be paid to him.

In light of the foregoing, I vote to partially **GRANT** the petition. The October 31, 2006 decision and the June 25, 2007 resolution of the Court of Appeals in CA-G.R. SP No. 84769 should be **MODIFIED** to reflect that respondent Alexander L. Moradas is entitled to the income benefit for temporary total disability during the extended period or for 169 days.

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[39] Rules and Regulations implementing Book IV of the Labor Code, Section 2, Rule X.

THIRD DIVISION

[G.R. No. 183015. January 15, 2014]

REPUBLIC OF THE PHILIPPINES, represented by THE SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS and HIGHWAYS (DPWH), *petitioner, vs.* **TETRO ENTERPRISES, INCORPORATED,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; AMENDED AND SUPPLEMENTAL PLEADINGS; PROVISIONS ON AMENDMENTS OF PLEADING FIND NO APPLICABILITY IN A CASE WHICH IS MERELY A CONTINUATION OF THE TRIAL OF THE ORIGINAL COMPLAINT; CASE AT BAR.—** [T]he only thing the RTC was asked to do when the case was remanded to it by the CA was to determine the damages respondent is entitled to for the loss of the use and enjoyment of the property when the property was taken from it in 1974. Thus, when the case was remanded to the RTC for the purpose of computing the damages, the case was not considered a new case where an amendment of the complaint may still be allowed. Rather, it is merely a continuation of the trial of the original complaint filed in 1992 only for the purpose of receiving the evidence of the damages which respondent allegedly suffered as alleged in the original complaint, since no evidence proving damages was received and passed upon when the RTC issued its Order dated March 29, 1996. Therefore, the x x x provisions on amendments of pleading find no applicability in this case.

2. **POLITICAL LAW; INHERENT POWERS OF THE STATE; EXPROPRIATION; THE JUST COMPENSATION AND THE INDEMNITY FOR RENTAL VALUE OF THE SUBJECT LOT SHALL BE COMPUTED BASED ON ITS VALUE AT THE TIME OF THE TAKING.—** It cannot be clearly inferred from the CA decision that when it remanded the case to the RTC for determination of damages respondent suffered that the former referred to indemnity for rentals. Assuming that the CA did refer to the rentals on the subject

lot, it bears stressing that when it modified the RTC's award of just compensation, it reckoned the value of the land on the date of its actual taking, and quoted the rationale for the rule as cited in *Republic v. Lara* x x x. Consequently, as the CA computed the just compensation of the subject lot based on its value at the time of taking, whatever indemnity for rental value of the subject lot is, if to be awarded, must also be computed at the time of the taking. This is so because it is as of that time that the true measure of respondent's loss may be reasonably determined. We find that the RTC committed a grave abuse of discretion amounting to lack of jurisdiction when it admitted respondent's amended complaint which increased the amount claimed as back rentals.

3. ID.; ID.; ID.; FACTORS WHICH ARE NOT EXISTING AT THE TIME OF THE TAKING COULD NOT BE CONSIDERED IN THE COMPUTATION OF DAMAGES.— We find that it was not the CA's intention, when it remanded the case to the RTC for the computation of damages, to award respondent beyond its loss or injury at the time of the taking. Hence, the factors which are not existing at the time of the taking could not be considered. To reiterate, the CA then could not award damages since no evidence yet was introduced at the RTC at that time; otherwise, if there was already an evidence presented to establish the damages prayed for in the original complaint, the CA could have already awarded damages and the case is now closed and terminated. There is, therefore, no basis to consider the devaluation of peso as a ground in allowing the amendment of the complaint.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Libra Law for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* and prohibition are the Decision[1] dated November 29, 2007 and the Resolution[2] dated May 8, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 97784. The CA affirmed the Order[3] dated September 22, 2006 of the Regional Trial Court (RTC), Branch 41, San Fernando, Pampanga, granting respondent's motion to admit amended complaint, and denied reconsideration thereof.

The antecedent facts of this case are as follows:

On February 10, 1992, respondent Tetro Enterprises, Inc. filed with the RTC of San Fernando, Pampanga a Complaint[4] for recovery of possession and damages against petitioner, the Republic of the Philippines, represented by the Regional Director of Region III of the Department of Public Works and Highways (DPWH), docketed as Civil Case No. 9179. In its complaint, respondent alleged that: it is the registered owner of a piece of land consisting of 12,643 square meters (the subject lot), located in Barangay San Jose, San Fernando, Pampanga, under Transfer Certificate of Title No. 283205-R with a probable value of ₱252,869.00; that sometime in 1974, petitioner, without going through the legal process of expropriation or negotiated sale, constructed a road on the subject lot depriving it of possession without due process of law; and, despite its repeated demands, petitioner refused to return the subject lot and to pay the rent for the use of the same since 1974. Respondent prayed that petitioner be ordered to return the subject lot in its original

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan-Castillo, concurring; *rollo*, pp. 66-74.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Hakim S. Abdulwahid and Sesinando E. Villon, concurring; *id.* at 75.

[3] *Id.* at 76.

[4] *Id.* at 79-82

state before it was taken away and to close the road constructed thereon; and to pay actual damages in the amount of ₱100,000.00, rentals for the use of the land at ₱200.00 a month, in the total amount of ₱40,800.00, and attorney's fees equivalent to 5% of any amount recoverable.

In its Answer, petitioner contended that respondent had no cause of action and that the State has not given its consent to be sued; that the construction of the part of the Olongapo-Gapan Road on the subject lot was with respondent's knowledge and consent who, subsequently, entered into negotiations regarding the price of the lot; that petitioner was willing to pay the fair market value of the lot at the time of taking, plus interest.

As the return of the subject lot was no longer feasible, the RTC, with the parties' conformity, converted the action for recovery of possession to eminent domain and expropriation.

Upon agreement of the parties, the RTC issued an Order dated November 25, 1994, creating a Board of Commissioners tasked to determine the actual value of the subject lot which shall be the basis for an amicable settlement by the parties, or the decision to be rendered by the Court as the case may be.[5] On December 8, 1995, the Board submitted its report recommending that the price for the subject lot be fixed between ₱4,000.00 and ₱6,000.00 per square meter, which is the just and reasonable price to be paid to respondent.[6]

On March 29, 1996, the RTC, taking into consideration the report submitted by the Board, rendered a decision fixing the price of the subject lot at ₱6,000.00 per square meter, or the total amount of ₱75,858,000.00.[7] Petitioner's motion for reconsideration was denied in an Order dated October 3, 1996.[8]

On December 13, 1996, petitioner filed a Notice of Appeal, which the RTC denied in an Order dated January 7, 1997,

[5] *Id.* at 84.

[6] *Id.*

[7] *Id.* at 85.

[8] *Id.*

since the decision had become final and executory. Petitioner filed a petition for *certiorari* with the CA which was dismissed in a Decision dated June 9, 1997. A motion for reconsideration of the CA decision was also denied in a Resolution dated August 6, 1997. Petitioner came to us in a petition for review on *certiorari*, docketed as G.R. No. 130118, which we granted by reversing the CA decision and ordered the RTC to approve petitioner's notice of appeal.[9]

Consequently, petitioner's appeal was taken up in the CA, docketed as CA-G.R. CV No. 60492.

On May 24, 2001, the CA rendered its decision,[10] the dispositive portion of which reads as follows:

> **WHEREFORE**, the appealed decision dated March 29, 1996 is **MODIFIED** to the effect that the Republic of the Philippines, represented by the defendant-appellant, is held liable to pay the amount of Two Hundred Fifty-Two Thousand Eight Hundred Sixty-Nine (₱252,869.00), plus six percent (6%) interest per annum from 1974 until such time that the same shall have been fully paid; and, for further determination of other damages that plaintiff-appellee had suffered for the loss of the use and enjoyment of its property, let the original records of Civil Case No. 9179 be **REMANDED** to the Regional Trial Court of San Fernando, Pampanga, Branch 41, for further proceedings.[11]

Respondent filed a petition for review with us, docketed as G.R. No. 151959, which we denied in a Resolution dated October 2, 2002. Respondent's motion for reconsideration was also denied.

The case was then remanded to the RTC for the computation of damages for the loss of the use and enjoyment of the subject lot. The case was scheduled for mediation proceedings, which failed, thus, the case was set for a pre-trial conference. At the

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[9] *Id.*

[10] Penned by Associate Justice Ma. Alicia Austria-Martinez (retired Justice of this Court), with Associate Justices Hilarion L. Aquino and Jose L. Sabio, Jr., concurring; *id.* at 83-91.

[11] *Id.* at 90. (Emphasis in the original)

pre-trial conference on March 21, 2006, Presiding Judge Divina Luz P. Aquino-Simbulan called the attention of the parties on the improper conduct committed by respondent's representative for approaching her close relative and trying to influence the outcome of the case. Thus, Presiding Judge Aquino-Simbulan voluntarily inhibited herself from conducting the trial of the case,[12] but proceeded with the scheduled pre-trial conference of the case without objection from the parties.[13] When petitioner presented the proposed issue, to wit: "Assuming that plaintiff is entitled to damages, can it legally claim an amount more than what is alleged and prayed in its complaint," respondent moved for the amendment of its original complaint, which the Presiding Judge granted and ordered respondent to file the required motion within 30 days. Petitioner moved for reconsideration of such order, which the RTC denied for being premature.[14]

Respondent filed a Motion to Admit Amended Complaint,[15] attaching the amended complaint[16] therewith. In its Order dated September 22, 2006, the RTC admitted the amended complaint. Petitioner's motion for reconsideration was denied in an Order[17] dated December 7, 2006. In its amended complaint, respondent, citing the report of a professional licensed appraiser on the fair rental value of the subject lot, sought payment in the amount of ₱57,631,680.00 representing damages it suffered since 1974 for the alleged undue deprivation of the use and enjoyment of the subject lot.

Petitioner filed with the CA a petition for *certiorari* and prohibition with urgent prayer for temporary restraining order alleging grave abuse of discretion committed by the RTC in allowing substantial amendments of the complaint at the very

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[12] *Id.* at 48-51.

[13] *Id.* at 159.

[14] *Id.*at 107-109.

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

[16] *Id.* at 112-116

[17] *Id.* at 77-78.

late stage of the proceedings, thus, increasing the claim for damages or rentals from the original amount of ₱147,840.00 to a grossly excessive amount of ₱57,884,549.00. After the submission of the parties' respective pleadings, the CA issued its assailed Decision dated November 29, 2007, which affirmed *in toto* the RTC Order admitting the amended complaint.

In finding no grave abuse of discretion committed by the RTC in admitting the amended complaint, the CA found that such allowance was made pursuant to the Decision dated May 24, 2001 of its Former Third Division in CA-G.R. CV No. 60492, which ruled that aside from the actual value of the subject lot, respondent was likewise entitled to damages; and so remanded the case to the RTC for the determination of the amount of damages respondent suffered since 1974 as the lawful owner of the property unduly deprived of its use and enjoyment for 27 years. The CA also found that the amendment of the complaint was sanctioned by Sections 2 and 3 of Rule 10 of the Rules of Court; and that the amendment introduced did not alter respondent's cause of action for damages which is yet to be determined by the RTC; that the grant or leave to file an amended complaint is a matter peculiarly within the sound discretion of the RTC in the exercise of its jurisdiction which normally should not be disturbed on appeal unless there is evident abuse thereof which was not so in this case; and, that Section 2, Rule 18 of the Rules of Court explicitly allows amendment during the course of the pre-trial conference when it listed, among other things, that the RTC may consider in the conduct thereof "the necessity or desirability of amendment of the pleadings."

Petitioner's motion for reconsideration was denied in the Resolution dated May 8, 2008.

Hence, this petition wherein petitioner raises the following errors committed by the CA, thus:

I

RESPONDENT JUDGE COMMITTED REVERSIBLE ERROR WHEN SHE PEREMPTORILY, OVER PETITIONER'S VEHEMENT

OBJECTIONS, ALLOWED THE SUBSTANTIAL AMENDMENT OF THE COMPLAINT FOURTEEN (14) YEARS AFTER IT WAS FILED.

II

RESPONDENT JUDGE COMMITTED REVERSIBLE ERROR DESPITE HER EARLIER VOLUNTARY INHIBITION, WHEN SHE UNJUSTLY HELD ON TO THE CASE AND EVEN ALLOWED THE SUBSTANTIAL AMENDMENT OF THE COMPLAINT IN PRIVATE RESPONDENT'S FAVOR.

III

RESPONDENT JUDGE COMMITTED REVERSIBLE ERROR WHEN SHE WENT BEYOND THE COURT OF APPEALS' DIRECTIVE FOR DETERMINATION OF DAMAGES BASED ON THE ORIGINAL COMPLAINT.

IV

RESPONDENT JUDGE SHOWED MANIFEST PARTIALITY IN FAVOR OF PRIVATE RESPONDENT.[18]

The main issue for resolution is whether the CA erred in finding that the RTC committed no grave abuse of discretion amounting to lack of jurisdiction in admitting the amended complaint.

We find merit in the petition.

The CA found that the amendment of the original complaint filed in 1992 is sanctioned by Sections 2 and 3 of Rule 10 of the Rules on Civil Procedure, which provide:

Section 2. *Amendments as a matter of right*. — A party may amend his pleading once as a matter of right at any time before a responsive pleading is served or, in the case of a reply, at any time within ten (10) days after it is served.

Section 3. *Amendments by leave of court*. — Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. Orders of the court upon the matters provided in this section shall be made

[18] *Id.* at 42.

upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard.

We are not persuaded.

To begin with, the original case which respondent filed in 1992 was for recovery of possession, which the RTC, with the parties' conformity, converted into an expropriation case as recovery of the subject lot was no longer possible. Thus, the pre-trial of the case had long taken place in 1994. The expropriation case was then decided by the RTC on March 29, 1996, fixing the value of the subject lot in the total amount of ₱75,858,000.00 as just compensation. Such decision was modified by the CA's Former Third Division in a Decision dated May 24, 2001, docketed as CA-G.R. CV No. 60492, reducing the amount of just compensation to ₱252,869.00 plus 6% interest from 1974 until full payment thereof and ordered the remand of the case to the RTC for further determination of other damages respondent suffered for the loss of use and enjoyment of its property. The CA decision was brought to us in a petition for review on *certiorari* which, in a Resolution dated October 2, 2002, denied the same and affirmed the CA decision. In ordering the remand of the case to the RTC, the CA then said:

x x x the Board of Commissioners did not consider the amount of damages that should be given the plaintiff-appellee for the loss of the use and enjoyment of the property. Understandably so because the Presiding Judge limited the function of the Board of Commissioners, to wit:

> x x x to determine the actual value of the property subject of this case which shall be the basis for amicable settlement by the parties on the decision to be rendered by this Court, as the case may be.
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> x x x x x x x x x

x x x In addition to the actual value of the land at the time of the taking, plus legal interest thereon, plaintiff-appellee is likewise entitled to damages. The subject property used to be a sugar land earmarked for a subdivision, but no evidence was adduced before

the trial court. Any attempt on our part to award damages in the present appeal would then be purely speculative.

Thus, there is a need to remand this case to the court of origin to determine the amount of damages that plaintiff-appellee suffered since 1974 as the lawful owner of the property unduly deprived of its use and enjoyment for twenty-seven years.

Clearly, the only thing the RTC was asked to do when the case was remanded to it by the CA was to determine the damages respondent is entitled to for the loss of the use and enjoyment of the property when the property was taken from it in 1974. Thus, when the case was remanded to the RTC for the purpose of computing the damages, the case was not considered a new case where an amendment of the complaint may still be allowed. Rather, it is merely a continuation of the trial of the original complaint filed in 1992 only for the purpose of receiving the evidence of the damages which respondent allegedly suffered as alleged in the original complaint, since no evidence proving damages was received and passed upon when the RTC issued its Order dated March 29, 1996. Therefore, the above-quoted provisions on amendments of pleading find no applicability in this case.

Respondent's contention that amending the complaint to include reasonable rental value for the deprivation of the use and enjoyment of the land is the logical implication of the CA ruling is not persuasive. It cannot be clearly inferred from the CA decision that when it remanded the case to the RTC for determination of damages respondent suffered that the former referred to indemnity for rentals. Assuming that the CA did refer to the rentals on the subject lot, it bears stressing that when it modified the RTC's award of just compensation, it reckoned the value of the land on the date of its actual taking, and quoted the rationale for the rule as cited in *Republic v. Lara*,[19] to wit:

x x x where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose

[19] 50 O.G. 5778.

for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time it is taken to the time the complaint is filed, due to general economic conditions. The owner of the private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken. This is the only way that compensation to be paid can be truly just; *i.e.*, "just not only to the individual whose property is taken," "but to the public, which is to pay for it."[20]

Consequently, as the CA computed the just compensation of the subject lot based on its value at the time of taking, whatever indemnity for rental value of the subject lot is, if to be awarded, must also be computed at the time of the taking. This is so because it is as of that time that the true measure of respondent's loss may be reasonably determined. We find that the RTC committed a grave abuse of discretion amounting to lack of jurisdiction when it admitted respondent's amended complaint which increased the amount claimed as back rentals.

Respondent pointed out that the reasons for amending its original complaint was due to the devaluation of the Philippine peso in the interim as well as the improvements in the conditions of the real property market, thus, the amount solicited as relief in the original complaint is no longer realistic; and, that consistent with the development abovementioned, the evidence now to be submitted will establish a greater amount of damage.

We do not agree.

We find that it was not the CA's intention, when it remanded the case to the RTC for the computation of damages, to award respondent beyond its loss or injury at the time of the taking. Hence, the factors which are not existing at the time of the taking could not be considered. To reiterate, the CA then could not award damages since no evidence yet was introduced at the RTC at that time; otherwise, if there was already an evidence

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[20] *Id.*

presented to establish the damages prayed for in the original complaint, the CA could have already awarded damages and the case is now closed and terminated. There is, therefore, no basis to consider the devaluation of peso as a ground in allowing the amendment of the complaint.

While we find that the RTC committed grave abuse of discretion in allowing the amendment of the complaint filed in 1992, such finding does not necessarily establish that Presiding Judge Simbulan had exhibited bias or partiality in favor of respondent, as petitioner claims, in the absence of clear and convincing evidence.

WHEREFORE, the petition for review is **GRANTED**. The Decision dated November 29, 2007 and the Resolution dated May 8, 2008, of the Court of Appeals in CA-G.R. SP No. 97784, are hereby **REVERSED.** The RTC Orders dated September 22, 2006 and December 7, 2006 are **NULLIFIED** and **SET ASIDE**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 183860. January 15, 2014]

RODOLFO LABORTE and PHILIPPINE TOURISM AUTHORITY, *petitioners, vs.* **PAGSANJAN TOURISM CONSUMERS' COOPERATIVE and LELIZA S. FABRICIO, WILLIAM BASCO, FELICIANO BASCO, FREDIE BASCO, ROGER MORAL, NIDA ABARQUEZ, FLORANTE MUNAR, MARY JAVIER, MARIANO PELAGIO, ALEX EQUIZ, ALEX PELAGIO, ARNOLD OBIEN, EDELMIRO ABAQUIN, ARCEDO MUNAR, LIBRADO MALIWANAG, OSCAR LIWAG, OSCAR ABARQUEZ, JOEL BALAGUER, LIZARDO MUNAR, ARMANDO PANCHACOLA, MANUEL SAYCO, EDWIN MATIBAG, ARNEL VILLAGRACIA, RODOLFO LERON, ALFONSO ABANILLA, SONNY LAVA, and DENNIS BASCO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; OFFER OF EVIDENCE; AN EVIDENCE CAN BE CONSIDERED ONLY WHEN IT IS FORMALLY OFFERED; EXCEPTION.— [T]he court considers the evidence only when it is formally offered. The offer of evidence is necessary because it is the duty of the trial court to base its findings of fact and its judgment only and strictly on the evidence offered by the parties. A piece of document will remain a scrap of paper without probative value unless and until admitted by the court in evidence for the purpose or purposes for which it is offered. The formal offer of evidence allows the parties the chance to object to the presentation of an evidence which may not be admissible for the purpose it is being offered. However, there are instances when the Court relaxed the foregoing rule and allowed evidence not formally offered to be admitted. Citing *People v. Napat-a* and *People. v. Mate*, the Court in *Heirs of Romana Saves, et al. v. Heirs of Escolastico Saves, et al.,* enumerated the requirements for

the evidence to be considered despite failure to formally offer it, namely: "*first*, the same must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case." In *People v. Vivencio De Roxas et al.,* the Court also considered exhibits which were not formally offered by the prosecution but were repeatedly referred to in the course of the trial by the counsel of the accused. x x x To identify is to prove the identity of a person or a thing. *Identification* means proof of identity; the proving that a person, subject or article before the court is the very same that he or it is alleged, charged or reputed to be.

2. **ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; COVERS QUESTIONS OF LAW ONLY; EXCEPTIONS.—** The Court has consistently held that as a general rule, a petition for review under Rule 45 of the Rules of Court covers questions of law only. The rule, however, admits of exceptions, subject to the following exceptions, to wit: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record. After a careful review and based on the evidence on record, the Court finds cogent reason to deviate from the general rule, warranting a reversal of the decision of the CA.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT OWNED AND CONTROLLED CORPORATIONS; PHILIPPINE TOURISM AUTHORITY; HAS THE RIGHT TO TERMINATE AT ANY TIME THE OPERATION OF BUSINESSES WHICH WERE ALLOWED BY MERE TOLERANCE; CASE AT BAR.—** The PTA is a government

owned and controlled corporation which was mandated to administer tourism zones. Based on this mandate, it was the PTA's obligation to adopt a comprehensive program and project to rehabilitate and upgrade the facilities of the PTA Complex as shown in Annexes "H-2" to "H-4" of the petition. The Court finds that there was indeed a renovation of the Pagsanjan Administration Complex which was sanctioned by the PTA main office; and such renovation was done in good faith in performance of its mandated duties as tourism administrator. In the exercise of its management prerogative to determine what is best for the said agency, the PTA had the right to terminate at any moment the PTCC's operations of the restaurant and the boat ride services since the PTCC has no contract, concession or franchise from the PTA to operate the above-mentioned businesses. As shown by the records, the operation of the restaurant and the boat ride services was merely tolerated, in order to extend financial assistance to its PTA employee-members who are members of the then fledging PTCC. Except for receipts for rents paid by the PTCC to the PTA, the respondents failed to show any contract, concession agreement or franchise to operate the restaurant and boat ride services. In fact, the PTCC initially did not implead the PTA in its Complaint since it was well aware that there was no contract executed between the PTCC and the PTA. While the PTCC has been operating the restaurant and boat ride services for almost ten (10) years until its closure, the same was by mere tolerance of the PTA. In the consolidated case of *Phil. Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.,* the Court upheld the authority of government agencies to terminate at any time hold-over permits. Thus, considering that the PTCC's operation of the restaurant and the boat ride services was by mere tolerance, the PTA can, at any time, terminate such operation.

4. ID.; ID.; ID.; AN OFFICER CANNOT BE HELD PERSONALLY LIABLE WITH THE CORPORATION, WHETHER CIVILLY OR OTHERWISE, FOR THE CONSEQUENCES OF HIS ACTS, IF ACTED FOR AND IN BEHALF OF THE CORPORATION, WITHIN THE SCOPE OF HIS AUTHORITY AND IN GOOD FAITH.— With respect to Laborte's liability in his official and personal capacity, the Court finds that Laborte was simply implementing the lawful order of the PTA Management. As a general rule

"the officer cannot be held personally liable with the corporation, whether civilly or otherwise, for the consequences of his acts, if acted for and in behalf of the corporation, within the scope of his authority and in good faith." Furthermore, the Court also notes that the charges against petitioners Laborte and the PTA for grave coercion and for the violation of R.A. 6713 have all been dismissed. Thus, the Court finds no basis to hold petitioner Laborte liable.

5. CIVIL LAW; DAMAGES; CANNOT BE AWARDED IN CASE AT BAR.— [T]he award of damages to the respondents and respondents-intervenors is without basis. Absent a contract between the PTCC and the PTA, and considering further that the respondents were adequately notified to properly vacate the PTA Complex, the Court finds no justifiable reason to award any damages. Neither may the respondents-intervenors claim damages since the act directed against the PTCC was a lawful exercise of the PTA's management prerogative. While it is true that the exercise of management prerogative is a recognized right of a corporate entity, it cannot be gainsaid that the exercise of such right must be tempered with justice, honesty, good faith and a careful regard of other party's rights. In the instant case, there is ample evidence to show that the petitioners were able to observe the same.

APPEARANCES OF COUNSEL

Office of the Corporate Legal Counsel (Tourism Infrastructure & Enterprise Zone Authority) for petitioners.

Leonardo M. Ragaza, Jr. for Pagsanjan Tourism Consumers' Cooperative.

Leopoldo M. Consunto, Jr. for Leliza S. Fabricio, *et al*.

D E C I S I O N

REYES, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Revised Rules on Civil Procedure seeks to nullify and set aside:

[1] *Rollo,* pp. 12-37.

(a) the Court of Appeals (CA) Decision[2] dated May 29, 2008, affirming the Decision[3] dated May 29, 2002 of the Regional Trial Court (RTC), Branch 28, Santa Cruz, Laguna in Civil Case No. SC-3150; and

(b) the CA Resolution[4] dated July 23, 2008, denying the subsequent Motion for Reconsideration[5] thereof.

The antecedent facts are as follows:

Petitioner Philippine Tourism Authority (PTA) is a government-owned and controlled corporation that administers tourism zones as mandated by Presidential Decree (P.D.) No. 564 and later amended by P.D. No. 1400. PTA used to operate the Philippine Gorge Tourist Zone (PGTZ) Administration Complex (PTA Complex), a declared tourist zone in Pagsanjan, Laguna.

Respondent Pagsanjan Tourism Consumers' Cooperative (PTCC) is a cooperative organized since 1988 under Republic Act No. 6938, or the "Cooperative Code of the Philippines." The other individual respondents are PTCC employees, consisting of restaurant staff and boatmen at the PTA Complex.

In 1989, in order to help the PTCC as a cooperative, the PTA allowed it to operate a restaurant business located at the main building of the PTA Complex and the boat ride services to ferry guests and tourists to and from the Pagsanjan Falls, paying a certain percentage of its earnings to the PTA.[6]

In 1993, the PTA implemented a reorganization and reshuffling in its top level management. Herein petitioner Rodolfo Laborte (Laborte) was designated as Area Manager, CALABARZON

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[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Edgardo P. Cruz and Marlene G. Sison, concurring; *id.* at 42-61.

[3] *Id.* at 178-184.

[4] *Id.* at 86.

[5] *Id.* at 63-85.

[6] *Id.* at 43-44, 14-15, 91; TSN, November 25, 1993, pp. 24-26, TSN, June 6, 1996, pp. 12-14, and TSN, October 4, 1996, p. 17.

area with direct supervision over the PTA Complex and other entities at the Southern Luzon.

On October 22, 1993, Laborte served a written notice upon the respondents to cease the operations of the latter's restaurant business and boat ride services in view of the rehabilitation, facelifting and upgrading project of the PTA Complex. Consequently, on November 9, 1993, the PTCC filed with the RTC, Branch 28, Santa Cruz, Laguna a Complaint for Prohibition, Injunction and Damages with Temporary Restraining Order (TRO) and Preliminary Injunction[7] against Laborte, docketed as Civil Case No. 3150. The PTCC also sought from the court the award of moral and exemplary damages, attorney's fees and costs of suit. It also prayed for the issuance of a TRO or writ of preliminary injunction to prohibit Laborte from causing the PTCC to cease the operations of the restaurant and boat ride services and from evicting the PTCC's restaurant from the main building of the PTA Complex.[8]

In an Order dated November 11, 1993, the trial court issued the TRO prayed for, prohibiting Laborte from (a) causing the PTCC to cease operations; (b) doing the threatened act of closing the operation of the PTCC's restaurant and other activities; (c) evicting the PTCC's restaurant from the main building of the PTA Complex; and (d) demolishing the said building. In the same Order, the trial court set the hearing on the Writ of Preliminary Injunction on November 25, 1993.[9]

Opposing the issuance of the TRO, Laborte averred that the PTCC does not own the restaurant facility as it was only tolerated to operate the same by the PTA as a matter of lending support and assistance to the cooperative in its formative years. It has neither been granted any franchise nor concession to operate the restaurant nor any exclusive franchise to handle the boating operations in the complex. Since the PTCC had no contract,

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[7] *Id.* at 91-96.

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

[9] *Id.* at 97.

concession, or exclusive franchise to operate the restaurant business and the boating services in the PTA Complex, no existing right has been allegedly violated by the petitioners. The respondents, therefore, had no right for the injunctive relief prayed for.[10]

On December 7, 1993, the PTCC filed with the trial court a Petition for Contempt with Motion for Early Resolution. It alleged that Laborte and his lawyers defied the TRO and proceeded to close the restaurant on December 2, 1993. The PTCC also alleged that Laborte prohibited its own boatmen from ferrying tourists and allowed another association of boatmen to operate.[11]

On December 13, 1993, Laborte filed his Answer with Counter-Claim.[12] He denied the PTCC's allegations of harassment, threat and retaliation. He claimed (a) that his actions were upon the mandate of his superiors and the PTA's rehabilitation programs in the area;[13] (b) that the PTA only tolerated the PTCC's operations;[14] and (c) that the issuance of a permanent injunction will violate the PTA's constitutional freedom to operate a legitimate business enterprise and the legal requirement of a public bidding for the operation of revenue-generating projects of government entities involving private third parties.[15]

On March 14, 1994, the individual respondents, Fabricio, *et al.,* who are employees and boatmen of the PTCC, filed a Complaint-in-Intervention against Laborte.[16] They stated that they were rendered jobless and were deprived of their livelihood because Laborte failed to heed the trial court's TRO. Thus, they prayed that the trial court order Laborte to pay their unearned

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[10] *Id.* at 107-110.

[11] *Id.* at 45, 114.

[12] *Id.* at 118-125.

[13] *Id.* at 120-121.

[14] *Id.* at 118-119, 122-123.

[15] *Id.* at 123.

[16] *Id.* at 128-133.

salaries, among others.[17] Laborte opposed but the trial court in an Order dated March 25, 1994 admitted the Complaint-in-Intervention, finding the same to be well-founded.[18]

On April 4, 1994, the PTCC filed an Amended Complaint to include petitioner PTA as defendant and the additional prayer for payment of Thirty Thousand Pesos (₱30,000.00) a month, representing the PTCC's unrealized profits from November 1993 up to the actual resumption of its restaurant and boat ride businesses.[19] In return, the PTA filed its Answer with Counterclaim,[20] alleging, among others, that (1) the PTCC has no cause of action against it since the PTA owned the restaurant and the boat ride facilities within the Complex and that it never formally entered into a contract with the PTCC to operate the same; (2) the PTA did not violate the trial court's TRO and Writ of Preliminary Injunction since the PTA was not yet impleaded as defendant at that time; (3) the physical rehabilitation of the PTA Complex, including the restaurant and boat facilities therein, was part of its new marketing strategy; and (4) the action had become moot and academic in view of the actual closure of the PTCC's restaurant and boat service businesses.[21]

On May 29, 2002, the RTC rendered a decision finding for the respondents, the dispositive portion of which provides:

> WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, Judgment is hereby rendered in favor of the plaintiff and intervenors and against the defendants by ordering the defendants jointly and severally to pay the plaintiff and intervenors the following sums:
>
> FOR THE PLAINTIFF
>
> 1. The sum of ₱1,475,760 representing the income which the plaintiff failed to receive from December 1993 up to the present, computed at ₱16,417.00 per month;

[17] *Id.* at 128-131.

[18] *Id.* at 146.

[19] *Id.* at 147-152.

[20] *Id.* at 154-163.

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

2. The sum of ₱230,000.00 as costs of restaurants (sic) facilities unlawfully confiscated by the defendant from the plaintiff when the restaurant was closed; and

3. The sum of ₱25,000.00 as attorney's fees.

FOR THE INTERVENORS:

The total sum of [₱]3,971,760.00 representing the monthly salaries of the 8 intervenors who are employees of the restaurant business and take home pay of 20 boatmen-intervenors for a period of seven (7) years up to the present; and

Attorney's fees in the amount of ₱992,940.00 or 25% of the total claim of the intervenors.

SO ORDERED.[22]

Dissatisfied, Laborte and the PTA appealed to the CA.[23] On May 29, 2008, the CA promulgated its Decision, affirming the RTC Decision[24] dated May 29, 2002. The petitioners seasonably filed a Motion for Reconsideration,[25] but the said motion was also denied for lack of merit.[26]

Hence, the petitioners filed the present petition, raising the following:

I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING DUE COURSE [TO] THE PETITIONERS' APPEAL AND IN NOT SETTING ASIDE AND REVERSING THE DECISION OF THE TRIAL COURT.

II

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE CLOSURE OF PTCC'S RESTAURANT AND

[22] *Id.* at pp. 184.

[23] *Id.* at 186-210.

[24] *Id.* at 42-61.

[25] *Id.* at 63-85.

[26] *Id.* at 86.

BOAT RIDE BUSINESS WAS NOT A VALID AND LAWFUL EXERCISE OF PTA'S MANAGEMENT PREROGATIVE.

III

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING PETITIONER LABORTE LIABLE BOTH IN HIS PERSONAL AND OFFICIAL CAPACITY NOTWITHSTANDING THE EXISTENCE OF PECULIAR AND UNUSUAL CIRCUMSTANCES WHICH WOULD RENDER THE DECISION UNJUST AND INEQUITABLE, IN THAT:

A) PETITIONER LABORTE, IN HIS CAPACITY AS ACTING RESIDENT MANAGER OF PGTZ, MERELY COMPLIED IN GOOD FAITH, WITH THE VALID AND LAWFUL ORDERS OF THE TOP MANAGEMENT OF PTA TO NOTIFY RESPONDENT PTCC TO CEASE BUSINESS OPERATIONS AT THE COMPLEX IN VIEW OF THE INTENDED RENOVATION AND REPAIR OF THE RESTAURANT FACILITY AT THE COMPLEX.

B) THE FAILURE OF ATTY. HERNANDO CABRERA, FORMER COUNSEL OF PETITIONERS TO FILE THEIR FORMAL OFFER OF EVIDENCE AND TO MAKE A MANIFESTATION BEFORE THE TRIAL COURT THAT THEY WERE ADOPTING IN THE TRIAL PROPER THE EVIDENCE THEY PRESENTED DURING THE HEARING ON THE APPLICATION FOR WRIT OF PRELIMINARY INJUNCTION IN CIVIL CASE NO. SC-3150 IS SO GROSS, PALPABLE AND INEXCUSABLE, THEREBY RESULTING IN THE VIOLATION OF THE SUBSTANTIVE RIGHTS OF [THE] PETITIONERS.[27]

There is merit in the petition.

Anent the procedural issue raised, both the trial court and the CA faulted the petitioners for their failure to formally offer their evidence inspite of the ample opportunity granted to do so.[28] Thus, such lapse allegedly militated against the petitioners whose assertions were otherwise supported by sufficient evidence on record.

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

[28] *Id.* at 54.

Section 34, Rule 132 of the Revised Rules on Evidence provides the general rule, to wit:

> Sec. 34. *Offer of Evidence.* – The Court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

From the above provision, it is clear that the court considers the evidence only when it is formally offered. The offer of evidence is necessary because it is the duty of the trial court to base its findings of fact and its judgment only and strictly on the evidence offered by the parties. A piece of document will remain a scrap of paper without probative value unless and until admitted by the court in evidence for the purpose or purposes for which it is offered.[29] The formal offer of evidence allows the parties the chance to object to the presentation of an evidence which may not be admissible for the purpose it is being offered.[30]

However, there are instances when the Court relaxed the foregoing rule and allowed evidence not formally offered to be admitted. Citing *People v. Napat-a*[31] and *People v. Mate*,[32] the Court in *Heirs of Romana Saves, et al., v. Heirs of Escolastico Saves, et al.,*[33] enumerated the requirements for the evidence to be considered despite failure to formally offer it, namely: "*first*, the same must have been duly identified by testimony duly recorded and, *second*, the same must have been incorporated in the records of the case."[34] In *People v. Vivencio De Roxas et al.,*[35] the Court also considered exhibits which were not formally

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[29] *Westmont Investment Corporation v. Amos P. Francia, Jr., et al.,* G.R. No. 194128, December 7, 2011, 661 SCRA 787, 800.

[30] *Ahag v. Cabiling*, 18 Phil. 415 (1911); *Chua v. Court of Appeals,* G.R. No. 88383, February 19, 1992, 206 SCRA 339, 346.

[31] 258-A Phil. 994 (1989).

[32] 191 Phil. 72 (1981).

[33] G.R. No. 152866, October 6, 2010, 632 SCRA 236.

[34] *Id.* at 246.

[35] 116 Phil. 977 (1962).

offered by the prosecution but were repeatedly referred to in the course of the trial by the counsel of the accused.[36]

In the instant case, the Court finds that the above requisites are attendant to warrant the relaxation of the rule and admit the evidence of the petitioners not formally offered. As can be seen in the records of the case, the petitioners were able to present evidence that have been duly identified by testimony duly recorded. To identify is to prove the identity of a person or a thing.[37] *Identification* means proof of identity; the proving that a person, subject or article before the court is the very same that he or it is alleged, charged or reputed to be.[38]

In support of his position, Laborte in his testimony presented and identified the following: (a) the letter informing the Chairman of PTCC about the decision of PTA main office regarding the repair works to be conducted;[39] (b) Office Order No. 1018-93 from a person named Mr. Anota, relative to the suspension of the boat ride services at the Complex;[40] (c) a copy of the memorandum from the Technical Evaluation Committee (TEC), referring to the conduct of the repair works at the Complex;[41] (d) the letter to PTCC informing it of the repair at the Complex;[42] (e) the certificates of availability of funds for the guesthouse of the PTC Complex and for the repainting, repair works at the Pagsanjan Administration Complex respectively;[43] (f) the program of works dated July 22, 1993 for the renovation of the Pagsanjan Complex and of the swimming pool at the guesthouse

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[36] *Id.* at 980-981.

[37] *BLACK'S LAW DICTIONARY,* 8th Edition, p. 761.

[38] *People v. Maximo Ramos y San Diego*, 417 Phil. 807, 815 (2001).

[39] TSN, August 28, 1998, pp. 45-47; records, pp. 402, 432; Folder of Exhibits, Exhibit "C," p. 13.

[40] TSN, August 28, 1998, p. 49; records, pp. 198, 429.

[41] TSN, August 28, 1998, p. 54.

[42] TSN, November 23, 1998, p. 2; records, pp. 38, 42.

[43] TSN, November 23, 1998, pp. 3-4; records, pp. 47, 50.

respectively;[44] (g) the program of works referring to the repainting and repair works at the Complex dated August 6, 1993;[45] (h) a set of plans and specification of the projects conducted at the Complex, particularly for the repairs and repainting of the guesthouse shower room, the repair of the Pagsanjan Administration Complex;[46] (i) the office order relative to the directive to Mr. Francisco Abalos of the PTA main office to close the restaurant facilities;[47] (j) a memorandum from Mr. Oscar Anota, Deputy General Manager for Operation of the PTA, dated December 8, 1993 addressed to the security office of the Pagsanjan Administration Complex, instructing the same not to allow the entry of anything without the clearance from the main office in Manila into the Pagsanjan Complex;[48] and (k) the office order signed by Eduardo Joaquin, General Manager of the PTA, relative to the posting of bond in favor of herein petitioner Laborte by the PTA main office in the amount of ₱10,000.00 to be deposited with the RTC, Branch 28, Sta. Cruz, Laguna.[49]

Undeniably, these pertinent evidence were also found in the records of the RTC, *i.e.*: (a) the letter informing the Chairman of PTCC about the decision of PTA main office regarding the repair works to be conducted;[50] (b) Office Order No. 1018-93 from a person named Mr. Anota, relative to the suspension of the boat ride services at the Complex;[51] (c) the letter to PTCC informing it of the repair at the Complex;[52] (d) the certificates

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[44] TSN, November 23, 1998, p. 4; records, pp. 44-46.

[45] TSN, November 23, 1998, pp. 4-5; records, pp. 48-49.

[46] TSN, November 23, 1998, pp. 5-6.

[47] TSN, November 23, 1998, pp. 7-8.

[48] TSN, November 23, 1998, pp. 8-9; records, pp. 196, 431.

[49] TSN, November 23, 1998, pp. 9-10.

[50] TSN, August 28, 1998, pp. 45-47; records, pp. 402, 432; Folder of Exhibits, Exhibit "C," p. 13.

[51] TSN, August 28, 1998, p. 49; records, pp. 198, 429.

[52] TSN, November 23, 1998, p. 2; records, pp. 38, 42.

of availability of funds for the guesthouse of the PTC Complex and for the repainting, repair works at the Pagsanjan Administration Complex respectively;[53] (e) the program of works dated July 22, 1993 for the renovation of the Pagsanjan Complex and of the swimming pool at the guesthouse respectively;[54] (f) the program of works referring to the repainting and repair works at the Complex dated August 6, 1993;[55] and (g) a memorandum from Mr. Oscar Anota, Deputy General Manager for Operation of the PTA, dated December 8, 1993 addressed to the security office of the Pagsanjan Administration Complex, instructing the same not to allow the entry of anything without clearance from the main office in Manila into the Pagsanjan Complex.[56] In all these, the respondents had all the chance to object to the documents which Laborte properly identified and marked and which are found in the records of the trial court. Considering that no objections were made by the respondents to the foregoing documents, the Court sees no reason why these documents should not be admitted.

The Court notes the CA's ruling that the closure of the business is a factual matter which need not be reviewed by the Court under Rule 45. The Court has consistently held that as a general rule, a petition for review under Rule 45 of the Rules of Court covers questions of law only. The rule, however, admits of exceptions, subject to the following exceptions, to wit: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions

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[53] TSN, November 23, 1998, pp. 3-4; records, pp. 47, 50.

[54] TSN, November 23, 1998, p. 4; records, pp. 44-46.

[55] TSN, November 23, 1998, pp. 4-5; records, pp. 48-49.

[56] TSN, November 23, 1998, pp. 8-9; records, pp. 196, 431.

without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[57] After a careful review and based on the evidence on record, the Court finds cogent reason to deviate from the general rule, warranting a reversal of the decision of the CA.

In their petition, the petitioners assert that:

(1) the PTA is mandated to administer tourism zones and it has adopted a comprehensive program and project to rehabilitate and upgrade the facilities of the PTA Complex. To prove this, the petitioners attached Annexes "H-2" to "H-4,"[58] namely: (a) Program Work/Scope of works of the repairs and rehabilitation project for the PGTZ dated July 22, 1993;[59] (b) Certificate of Availability of Funds for the repairs and rehabilitation project for PGTZ;[60] and (c) Program of Work/Scope of Works for the repairs and rehabilitation of the restaurant facility dated August 6, 1993;[61]

(2) The petitioners also claimed that bidding out to private parties of the business operations in the PTA Complex is a legal requirement and a mandate given to every revenue-generating government entity like the PTA. Thus, since it is only exercising its mandate and has acted in good faith, petitioner PTA believes that it has not incurred any liability against respondents.[62] Citing *Mendoza v. Rural Bank of Lucban,*[63] the petitioners argued

[57] *Vitarich Corporation v. Losin,* G.R. No. 181560, November 15, 2010, 634 SCRA 671, 682.

[58] *Rollo*, pp. 99-106.

[59] *Id.* at 99-102.

[60] *Id.* at 103-104.

[61] *Id.* at 105-106.

[62] *Id.* at 25-26.

[63] *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, July 7, 2004, 433 SCRA 756.

that: "[L]abor laws discourage interference in employers' judgments concerning the conduct of their business. The law must protect not only the welfare of employees, but also the right of [the] employers."[64] In other words, the petitioners likened the relationship between PTA and the respondents to that of an employer and employee;

(3) The petitioners also reiterated that the PTCC is without contract, concession or exclusive franchise to operate the restaurant and boat ride service at the PTA Complex. They insisted that the PTA temporarily authorized the PTCC to operate the same in order to extend financial assistance to its PTA employee-members who are members of the then fledging PTCC. Thus, for the petitioners, the PTCC has no vested right to continue operating the restaurant and boat ride services, and therefore, not entitled to damages;[65] and

(4) The petitioners also claimed to have informed the PTCC as early as October 22, 1993 of the intention to rehabilitate and upgrade the facilities of the PTA Complex and for the PTCC to vacate the area by November 15, 1993. In fact, the deadline was even extended for another twenty-one (21) days or until December 6, 1993, to allow the PTCC sufficient time to pack its goods, merchandise and appliances.[66]

The Court is persuaded.

The PTA is a government owned and controlled corporation which was mandated to administer tourism zones. Based on this mandate, it was the PTA's obligation to adopt a comprehensive program and project to rehabilitate and upgrade the facilities of the PTA Complex as shown in Annexes "H-2" to "H-4" of the petition. The Court finds that there was indeed a renovation of the Pagsanjan Administration Complex which was sanctioned by the PTA main office; and such renovation was done in good faith in performance of its mandated duties

[64] *Rollo,* p. 26.

[65] *Id.* at 26-28.

[66] *Id.* at 25.

as tourism administrator. In the exercise of its management prerogative to determine what is best for the said agency, the PTA had the right to terminate at any moment the PTCC's operations of the restaurant and the boat ride services since the PTCC has no contract, concession or franchise from the PTA to operate the above-mentioned businesses. As shown by the records, the operation of the restaurant and the boat ride services was merely tolerated, in order to extend financial assistance to its PTA employee-members who are members of the then fledging PTCC.

Except for receipts for rents paid by the PTCC to the PTA, the respondents failed to show any contract, concession agreement or franchise to operate the restaurant and boat ride services. In fact, the PTCC initially did not implead the PTA in its Complaint since it was well aware that there was no contract executed between the PTCC and the PTA. While the PTCC has been operating the restaurant and boat ride services for almost ten (10) years until its closure, the same was by mere tolerance of the PTA.[67] In the consolidated case of *Phil. Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.,*[68] the Court upheld the authority of government agencies to terminate at any time hold-over permits.[69] Thus, considering that the PTCC's operation of the restaurant and the boat ride services was by mere tolerance, the PTA can, at any time, terminate such operation.

The CA ruled that "the closure of the restaurant and boat ride business within the PTA Complex was tainted with bad faith on the part of [the] defendants-appellants."[70] It referred to the Sheriff's Report dated January 19, 1994, which stated that no such repairs and rehabilitation were actually undertaken. Further, the petitioners engaged the services of a new restaurant operator (the New Selecta Restaurant) after the closure of the restaurant per official receipts showing that the new operator

[67] *Id.* at 52-53, 178.

[68] 512 Phil. 74 (2005).

[69] *Id.* at 85-88.

[70] *Rollo,* p. 53.

of the restaurant paid PTA commissions for its catering services from March 1994 to April 1994.[71]

The Court disagrees. The records disclose that sufficient notice was given by the PTA for the respondents to vacate the area. The Sheriff's Report dated January 19, 1994, alleging that there were, in fact, no repairs and rehabilitation undertaken in the area at the time of inspection cannot be given weight. It must be noted that the RTC had issued on November 11, 1993 a TRO enjoining the petitioners from pursuing its actions. Thus, the absence of any business activity in the premises is even proof of the petitioner's compliance to the order of the trial court. Furthermore, the Sheriff's Report was executed only about a month after the announced construction or development; thus, it cannot be expected that the petitioners would immediately go full-blast in the implementation of the repair and renovation.

As to the alleged engagement of the services of a new restaurant operator, the Court agrees with the petitioners that the engagement of New Selecta Restaurant was temporary and due only to the requests of the guests who needed catering services for the duration of their stay. The evidence offered by the respondents which were receipts issued to New Selecta Restaurant on different dates even emphasize this point.[72] From the foregoing, the Court concludes that the engagement of New Selecta Restaurant is not continuous but on contingency basis only.

With respect to Laborte's liability in his official and personal capacity, the Court finds that Laborte was simply implementing the lawful order of the PTA Management. As a general rule "the officer cannot be held personally liable with the corporation, whether civilly or otherwise, for the consequences of his acts, if acted for and in behalf of the corporation, within the scope of his authority and in good faith."[73] Furthermore, the Court also notes that the charges against petitioners Laborte and the

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[71] *Id.*

[72] Folder of Exhibits, Exhibits "P", "P-1" to "P-3", pp. 47-50.

[73] *Francisco v. Mejia*, 415 Phil. 153, 166 (2001).

PTA for grave coercion and for the violation of R.A. 6713[74] have all been dismissed.[75] Thus, the Court finds no basis to hold petitioner Laborte liable.

Likewise, the award of damages to the respondents and respondents-intervenors is without basis. Absent a contract between the PTCC and the PTA, and considering further that the respondents were adequately notified to properly vacate the PTA Complex, the Court finds no justifiable reason to award any damages. Neither may the respondents-intervenors claim damages since the act directed against the PTCC was a lawful exercise of the PTA's management prerogative. While it is true that the exercise of management prerogative is a recognized right of a corporate entity, it can not be gainsaid that the exercise of such right must be tempered with justice, honesty, good faith[76] and a careful regard of other party's rights. In the instant case, there is ample evidence to show that the petitioners were able to observe the same.

WHEREFORE, the petition is **GRANTED.** The Decision dated May 29, 2008 and the Resolution dated July 23, 2008 of the Court of Appeals are **VACATED**. The Amended Complaint and the Complaint-in-Intervention filed by the Respondents in the Regional Trial Court, Branch 28, Sta. Cruz, Laguna in Civil Case No. SC-3150 are **DISMISSED**.

SO ORDERED.

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

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[74] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees.

[75] *Rollo,* pp. 31-32; 213-220.

[76] CIVIL CODE, Article 19.

SECOND DIVISION

[G.R. No. 183918. January 15, 2014]

FRANCISCO LIM, *petitioner, vs.* **EQUITABLE PCI BANK, now known as the BANCO DE ORO UNIBANK, INC.,**[*] *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALLEGATIONS OF FORGERY MUST BE PROVED BY CLEAR, POSITIVE, AND CONVINCING EVIDENCE BY THE PARTY ALLEGING IT; CASE AT BAR.— Allegations of forgery, like all other allegations, must be proved by clear, positive, and convincing evidence by the party alleging it. It should not be presumed but must be established by comparing the alleged forged signature with the genuine signatures. Although handwriting experts are often offered as witnesses, they are not indispensable because judges must exercise independent judgment in determining the authenticity or genuineness of the signatures in question. In this case, the alleged forged signature was not compared with the genuine signatures of petitioner as no sample signatures were submitted. What petitioner submitted was another mortgage contract executed in favor of Planters Development Bank, which he claims was also forged by his brother. But except for this, no other evidence was submitted by petitioner to prove his allegation of forgery. His allegation that he was in the US at the time of the execution of the mortgage contract is also not sufficient proof that his signature was forged. x x x Moreover, petitioner's subsequent actions belie his allegation of forgery. Before the expiration of the redemption period, petitioner sent respondent a letter signifying his intention to reacquire the said property. He even visited the bank to discuss the matter. Clearly, his acts contradict his claim of forgery, which appears to be an afterthought and a last-ditch effort to recover the said property.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; MORTGAGE; FAILURE OF BANKS TO EXERCISE DUE

[*] See CA *rollo*, p. 108.

DILIGENCE BEFORE ENTERING INTO A MORTGAGE CONTRACT MUST BE ESTABLISHED BY EVIDENCE; CASE AT BAR.— Before entering into a mortgage contract, banks are expected to exercise due diligence. However, in this case, no evidence was presented to show that respondent did not exercise due diligence or that it was negligent in accepting the mortgage. That petitioner was erroneously described as single and a Filipino citizen in the mortgage contract, when in fact he is married and an American citizen, cannot be attributed to respondent considering that the title of the mortgaged property was registered under "FRANCISCO LIM and FRANCO LIM, both Filipino citizens, of legal age, single."

3. **ID.; FAMILY CODE; PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE; CONJUGAL PARTNERSHIP OF GAINS; THE PRESUMPTION THAT ALL PROPERTY OF THE MARRIAGE IS CONJUGAL MAY NOT BE APPLIED WHEN A PARTY HAD NO OPPORTUNITY TO REBUT THE PRESUMPTION; CASE AT BAR.—** We are not unaware that all property of the marriage is presumed to be conjugal, unless it is shown that it is owned exclusively by the husband or the wife; that this presumption is not overcome by the fact that the property is registered in the name of the husband or the wife alone; and that the consent of both spouses is required before a conjugal property may be mortgaged. However, we find it iniquitous to apply the foregoing presumption especially since the nature of the mortgaged property was never raised as an issue before the RTC, the CA, and even before this Court. In fact, petitioner never alleged in his Complaint that the said property was conjugal in nature. Hence, respondent had no opportunity to rebut the said presumption.

APPEARANCES OF COUNSEL

Plata and Associates Law Offices for petitioner.
Isip San Juan Guirnalda & Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The basic rule is that he who alleges must prove his case.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the July 30, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 85139.

Factual Antecedents

On November 17, 1988, petitioner Francisco Lim (petitioner) executed an Irrevocable Special Power of Attorney[3] in favor of his brother, Franco Lim (Franco), authorizing the latter to mortgage his share in the property covered by Transfer Certificate of Title (TCT) No. 57176,[4] which they co-owned.[5]

On February 9, 1989, Banco De Oro Savings and Mortgage Bank released a loan in the amount of ₱8.5 million by virtue of the said Irrevocable Special Power of Attorney, which was entered in the Register of Deeds of San Juan, Metro Manila.[6]

On December 28, 1992, the loan was fully paid by Franco.[7]

On June 14, 1996, petitioner, Franco, and their mother Victoria Yao Lim (Victoria) obtained from respondent Equitable PCI Bank (respondent; formerly Equitable Banking Corporation) a loan in the amount of ₱30 million in favor of Sun Paper Products, Inc. To secure the loan, petitioner and Franco executed in favor of respondent a Real Estate Mortgage[8] over the same property.[9] However, when the loan was not paid, respondent foreclosed the mortgaged property.[10]

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[1] *Rollo,* pp. 13-27.

[2] *Id.* at 107-116; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican.

[3] Records, pp. 292-293.

[4] *Id.* at 294-297.

[5] *Rollo*, p. 108.

[6] *Id.*

[7] *Id.*

[8] Records, pp. 298-301.

[9] *Rollo*, p. 108.

[10] *Id.*

On September 29, 1999, TCT No. 9470[11] and Tax Declaration No. 96-31807[12] were issued in the name of respondent.[13]

Thereafter, a Writ of Possession[14] in favor of respondent was issued by the Regional Trial Court (RTC) of Pasig City, Branch 158, in LRC Case No. R-5818.

On January 11, 2001, petitioner filed before the RTC of Pasig a Motion for the Issuance of Temporary Restraining Order (TRO)[15] and a Complaint[16] for Cancellation of Special Power of Attorney, Mortgage Contract, Certificate of Sale, TCT No. 9470, and Tax Declaration No. 96-31807, with Damages and Issuance of Preliminary Mandatory Injunction, docketed as Civil Case No. 68214 and raffled to Branch 267, against respondent, Franco, and Victoria. Petitioner alleged that he did not authorize Franco to mortgage the subject property to respondent and that his signatures in the Real Estate Mortgage and the Surety Agreement[17]were forged.

On January 19, 2001, the RTC issued an Order[18] granting petitioner's Motion for the issuance of a TRO to prevent respondent from enforcing the Writ of Possession. Thus:

> WHEREFORE, considering that grave and irreparable injury will result on [petitioner] before the application of injunctive relief can be heard on notice and pursuant to Section 4, Rule 58 of the 1997 Rules of Civil Procedure, as amended, let a Temporary Restraining Order (TRO) be issued upon posting by [petitioner] of a bond executed to the party enjoined ([respondent] Equitable PCI Bank) in the amount of ONE HUNDRED THOUSAND PESOS (₱100,000.00) bond to

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[11] Records, pp. 42-43.

[12] *Id.* at 44.

[13] *Rollo,* p. 108.

[14] Records, p. 70; penned by Judge Jose R. Hernandez.

[15] *Id.* at 4-6.

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

[17] *Id.* at 32-33.

[18] *Id.* at 75-76; penned by Judge Florito S. Macalino

be approved by the Court, to the effect that [petitioner] will pay to such party all damages which [respondent and] defendants may sustain by reason of the TRO if the Court should finally decide that the [petitioner] is not really entitled thereto. Consequently, [respondent and] defendants, their agents, officers, representatives and all persons acting on their behalf, are restrained from further executing the Notice of Compliance and/or Writ of Possession.

SO ORDERED.[19]

Respondent, for its part, filed an Answer Cum Motion to Dismiss[20] contending that the trial court has no jurisdiction to issue a TRO or a preliminary injunction enjoining the implementation of the Writ of Possession issued by a co-equal court.[21] Respondent also argued that it is not privy to the execution of the Irrevocable Special Power of Attorney[22] and that since there is no allegation that the foreclosure was defective or void, there is no reason to cancel TCT No. 9470 and Tax Declaration No. 96-31807.[23]

On April 19, 2001, the RTC issued an Order[24] granting petitioner's application for injunctive relief, to wit:

WHEREFORE, considering that based from testimonial and documentary evidence, there is sufficient reason to believe that grave and irreparable injury will result on [petitioner] before the main case can be heard on notice and pursuant to Section 4, Rule 58 of the 1997 Rules of Civil Procedure, as amended, let a writ of preliminary injunction be issued upon posting by [petitioner] of a bond executed to the party enjoined ([respondent] Equitable PCI Bank) in the amount of THREE MILLION PESOS (Php3,000,000.00) bond to be approved by the Court, to the effect that [petitioner] will pay to such party all damages which [respondent and] defendants

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[19] *Id.* at 76.

[20] *Id.* at 87-92.

[21] *Id.* at 88-89.

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

[23] *Id.* at 90.

[24] *Id.* at 201-204.

may sustain by reason of the said writ if the Court should finally decide that the [petitioner] is not really entitled thereto. Consequently, [respondent and] defendants, their agents, officers, representatives and all persons acting on their behalf, are restrained from further executing the Notice of Compliance and/or Writ of Possession.

SO ORDERED.[25]

Franco and Victoria, however, did not participate in the proceedings.[26]

Ruling of the Regional Trial Court

On April 4, 2005, the RTC rendered a Decision[27] in favor of petitioner. It ruled that petitioner was able to prove by preponderance of evidence that he did not participate in the execution of the mortgage contract giving rise to the presumption that his signature was forged.[28] The dispositive portion of the Decision reads:

WHEREFORE, IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of [petitioner] Francisco Lim and against the [respondent] Equitable PCI Bank, Franco Lim and Victoria Yao Lim.

Accordingly, the Real Estate Mortgage Contract dated 14 June 1996 covered by Transfer Certificate of Title No. 57176; the Certificate of Sale dated 23 December 1997 covering the same title; TCT No. 9470 in the name of [respondent] Bank; and Tax Declaration No. 96-31807 issued in the name of the [respondent] Bank are hereby declared null and void and of no force and effect.

The writ of preliminary injunction which was issued by the Court as per Order dated 19 April 2001 is hereby made permanent.

SO ORDERED.[29]

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[25] *Id.* at 204.

[26] *Rollo,* p. 109.

[27] *Id.* at 29-36; penned by Judge Florito S. Macalino.

[28] *Id.* at 31.

[29] *Id.* at 36.

Ruling of the Court of Appeals

On appeal, the CA reversed the RTC Decision. It ruled that petitioner's mere allegation that his signature in the mortgage contract was forged is not sufficient to overcome the presumption of regularity of the notarized document.[30] Thus, the CA disposed of the case in this wise:

> WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The assailed Decision of the Regional Trial Court is SET ASIDE. The complaint filed by [petitioner] Francisco Lim against [respondent] Equitable PCI Banking Corporation is DISMISSED for lack of merit.
>
> SO ORDERED.[31]

Issues

Hence, this recourse by petitioner raising the following questions:

> Did the [CA] err when it held that no evidence was presented to support Petitioner's claim that his signature was forged[?]
>
> Corollary to the issue above, is the presentation of expert evidence indispensable in order that forgery may be sufficiently proven in this case[?]
>
> Did the [CA] err when it set aside the Decision rendered by the Trial Court on 04 April 2005 and forthwith dismissed the complaint filed by Francisco Lim against Equitable PCI Banking Corporation for lack of merit[?]
>
> Did Respondent Bank exercise the diligence required of it in the subject mortgage transaction; if it did not, did Respondent Bank's failure violate the rights of Petitioner[?][32]

In a nutshell, the issues boil down to whether petitioner was able to prove that his signature was forged.

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[30] *Id.* at 113-115.

[31] *Id.* at 115.

[32] *Id.* at 168.

Petitioner's Arguments

Petitioner contends that his signature in the mortgage contract was forged as he was not in the Philippines at the time of its execution.[33] He posits that the presentation of expert witnesses is not required to prove forgery as the court may make its own determination based on the evidence presented.[34] He claims that respondent was negligent in approving the loan and in accepting the subject property as security for the loan.[35] He also blames respondent for not conducting a more in-depth inquiry before approving the loan since it was a "take-out" from a mortgage[36] constituted in favor of Planters Development Bank.[37] Lastly, he insists that respondent should have been alerted by the fact that the mortgage contract was executed without the consent of his wife.[38]

Respondent's Arguments

Respondent, on the other hand, echoes the ruling of the CA that petitioner's mere denial is not enough to prove that his signature was forged.[39] Respondent points out that there was, in fact, no attempt on petitioner's part to compare the alleged forged signature with any of his genuine signatures.[40] Also, no evidence was presented to show that respondent did not exercise due diligence when it approved the loan and accepted the mortgage.[41] More important, petitioner cannot feign ignorance of the execution and existence of the mortgage because he even

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[33] *Id.* at 169.

[34] *Id.* at 169-171.

[35] *Id.* at 171-174.

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

[37] *Id.* at 171-172.

[38] *Id.* at 171.

[39] *Id.* at 207-209.

[40] *Id.* at 211-216.

[41] *Id.* at 218-219.

communicated with respondent to settle the loan and, when the property was foreclosed, to repurchase the same.[42] Hence, petitioner is estopped from assailing the validity of the mortgage contract.[43]

Our Ruling

The Petition is bereft of merit.

Petitioner failed to prove that his signature was forged.

Allegations of forgery, like all other allegations, must be proved by clear, positive, and convincing evidence by the party alleging it.[44] It should not be presumed[45] but must be established by comparing the alleged forged signature with the genuine signatures.[46] Although handwriting experts are often offered as witnesses, they are not indispensable because judges must exercise independent judgment in determining the authenticity or genuineness of the signatures in question.[47]

In this case, the alleged forged signature was not compared with the genuine signatures of petitioner as no sample signatures were submitted. What petitioner submitted was another mortgage contract[48] executed in favor of Planters Development Bank, which he claims was also forged by his brother. But except for this, no other evidence was submitted by petitioner to prove his allegation of forgery. His allegation that he was in the US at the time of the execution of the mortgage contract is also not sufficient proof that his signature was forged.

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[42] *Id.* at 219-224.

[43] *Id.* at 219-220.

[44] *Bautista v. Court of Appeals*, 479 Phil. 787, 793 (2004).

[45] *Id.*

[46] *Heirs of Severa P. Gregorio v. Court of Appeals*, 360 Phil. 753,763 (1998).

[47] *Id.* at 763-764.

[48] *Rollo,* pp. 78-81.

Petitioner failed to prove negligence on the part of respondent.

Likewise without merit is petitioner's allegation of negligence on the part of respondent.

Before entering into a mortgage contract, banks are expected to exercise due diligence.[49] However, in this case, no evidence was presented to show that respondent did not exercise due diligence or that it was negligent in accepting the mortgage.[50] That petitioner was erroneously described as single and a Filipino citizen in the mortgage contract, when in fact he is married and an American citizen, cannot be attributed to respondent considering that the title of the mortgaged property was registered under "FRANCISCO LIM and FRANCO LIM, both Filipino citizens, of legal age, single."

The nature of the property was never raised as an issue.

The absence of his wife's signature on the mortgage contract also has no bearing in this case.

We are not unaware that all property of the marriage is presumed to be conjugal, unless it is shown that it is owned exclusively by the husband or the wife;[51] that this presumption is not overcome by the fact that the property is registered in the name of the husband or the wife alone;[52] and that the consent of both spouses is required before a conjugal property may be mortgaged.[53] However, we find it iniquitous to apply the foregoing

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[49] *Cruz v. Bancom Finance Corporation*, 429 Phil. 225, 239 (2002).

[50] *Rollo*, pp. 114-115.

[51] *Dewara v. Lamela*, G.R. No. 179010, April 11, 2011, 647 SCRA 483, 490.

[52] *Id.*

[53] Article 124 of the Family Code states that:

Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the

presumption especially since the nature of the mortgaged property was never raised as an issue before the RTC, the CA, and even before this Court. In fact, petitioner never alleged in his Complaint that the said property was conjugal in nature. Hence, respondent had no opportunity to rebut the said presumption.

Worth mentioning, in passing, is the ruling in *Philippine National Bank v. Court of Appeals*[54] to wit:

> The well-known rule in this jurisdiction is that a person dealing with a registered land has a right to rely upon the face of the torrens certificate of title and to dispense with the need of inquiring further, except when the party concerned has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry.
>
> A torrens title concludes all controversy over ownership of the land covered by a final [decree] of registration. Once the title is registered the owner may rest assured without the necessity of stepping into the portals of the court or sitting in the *mirador de su casa* to avoid the possibility of losing his land.
>
> Article 160 of the Civil Code provides as follows:
>
> > "Art. 160. All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife."

The presumption applies to property acquired during the lifetime of the husband and wife. In this case, it appears on the face of the

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husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be vo*id.* However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

[54] 237 Phil. 426, 432-433 (1987).

title that the properties were acquired by Donata Montemayor when she was already a widow. **When the property is registered in the name of a spouse only and there is no showing as to when the property was acquired by said spouse, this is an indication that the property belongs exclusively to said spouse. And this presumption under Article 160 of the Civil Code cannot prevail when the title is in the name of only one spouse and the rights of innocent third parties are involved.**

The PNB had a reason to rely on what appears on the certificates of title of the properties mortgaged. For all legal purposes, the PNB is a mortgagee in good faith for at the time the mortgages covering said properties were constituted the PNB was not aware to any flaw of the title of the mortgagor. (Emphasis supplied)

Petitioner's allegation of forgery is belied by the evidence.

Moreover, petitioner's subsequent actions belie his allegation of forgery. Before the expiration of the redemption period, petitioner sent respondent a letter[55] signifying his intention to reacquire the said property. He even visited the bank to discuss the matter.[56] Clearly, his acts contradict his claim of forgery, which appears to be an afterthought and a last-ditch effort to recover the said property.

All told, we find no error on the part of the CA in upholding the validity of the mortgage contract.[57]

WHEREFORE, the Petition is hereby **DENIED**. The July 30, 2008 Decision of the Court of Appeals in CA-G.R. CV No. 85139 is hereby **AFFIRMED**.

SO ORDERED.

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

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[55] Records, p. 427.

[56] TSN dated Feb 20, 2001, pp. 16-17(Direct Testimony of Alfred Pineda).

[57] *Rollo,* pp. 113-115.

SECOND DIVISION

[G.R. No. 185922. January 15, 2014]

HEIRS OF DR. MARIANO FAVIS, SR., represented by their co-heirs and Attorneys-in-Fact MERCEDES A. FAVIS and NELLY FAVIS-VILLAFUERTE, *petitioners, vs.* **JUANA GONZALES, her son MARIANO G. FAVIS, MA. THERESA JOANA D. FAVIS, JAMES MARK D. FAVIS, all minors represented herein by their parents, SPS. MARIANO FAVIS and LARCELITA D. FAVIS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EFFECT OF FAILURE TO PLEAD; DISMISSAL OF CLAIM BY THE COURT *MOTU PROPRIO*; WHEN PROPER.— Section 1, Rule 9 provides for only four instances when the court may *motu proprio* dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action.

2. ID.; ID.; ID.; A MOTION TO DISMISS BASED ON THE ABSENCE OF A CONDITION PRECEDENT IS BARRED IF NOT FILED WITHIN THE TIME FOR BUT BEFORE FILING THE ANSWER TO THE COMPLAINT OR PLEADING ASSERTING A CLAIM.— That a condition precedent for filing the claim has not been complied with, a ground for a motion to dismiss emanating from the law that no suit between members from the same family shall prosper unless it should appear from the verified complaint that earnest efforts toward a compromise have been made but had failed, is, as the Rule so words, a ground for a motion to dismiss. Significantly, the Rule requires that such a motion should be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim." The time frame indicates that thereafter, the motion to dismiss based on the absence of the condition precedent is barred. It is so inferable from the opening sentence of Section 1 of Rule 9 stating that defense and objections not pleaded either in a motion to dismiss

or in the answer are deemed waived. There are x x x only four exceptions to this Rule, namely, lack of jurisdiction over the subject matter; *litis pendentia*; *res judicata*; and prescription of action. Failure to allege in the complaint that earnest efforts at a compromise has been made but had failed is not one of the exceptions. Upon such failure, the defense is deemed waived.

3. ID.; ID.; ID.; FAILURE TO ALLEGE EARNEST BUT FAILED EFFORTS AT A COMPROMISE IN A COMPLAINT AMONG MEMBERS OF THE SAME FAMILY IS NOT A JURISDICTIONAL DEFECT AND THE RULE ON DEEMED WAIVER OF NON-JURISDICTIONAL DEFENSE OR OBJECTION APPLIES.— [A] failure to allege earnest but failed efforts at a compromise in a complaint among members of the same family, is not a jurisdictional defect but merely a defect in the statement of a cause of action. x x x In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals. Therefore, the rule on deemed waiver of the non-jurisdictional defense or objection is wholly applicable to respondent. If the respondents as parties-defendants could not, and did not, after filing their answer to petitioner's complaint, invoke the objection of absence of the required allegation on earnest efforts at a compromise, the appellate court unquestionably did not have any authority or basis to *motu proprio* order the dismissal of petitioner's complaint.

APPEARANCES OF COUNSEL

Maria Cecilia I. Olivas for petitioners.
Benjamin P. Quitoriano for respondents.

D E C I S I O N

PEREZ, *J.*:

Before this Court is a petition for review assailing the 10 April 2008 Decision[1] and 7 January 2009 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 86497 dismissing petitioners' complaint for annulment of the Deed of Donation for failure to exert earnest efforts towards a compromise.

Dr. Mariano Favis, Sr. (Dr. Favis) was married to Capitolina Aguilar (Capitolina) with whom he had seven children named Purita A. Favis, Reynaldo Favis, Consolacion Favis-Queliza, Mariano A. Favis, Jr., Esther F. Filart, Mercedes A. Favis, and Nelly Favis-Villafuerte. When Capitolina died in March 1944, Dr. Favis took Juana Gonzales (Juana) as his common-law wife with whom he sired one child, Mariano G. Favis (Mariano). When Dr. Favis and Juana got married in 1974, Dr. Favis executed an affidavit acknowledging Mariano as one of his legitimate children. Mariano is married to Larcelita D. Favis (Larcelita), with whom he has four children, named Ma. Theresa Joana D. Favis, Ma. Cristina D. Favis, James Mark D. Favis and Ma. Thea D. Favis.

Dr. Favis died intestate on 29 July 1995 leaving the following properties:

1. A parcel of residential land located at Bonifacio St. Brgy. 1, Vigan, Ilocos Sur, consisting an area of 898 square meters, more or less, bounded on the north by Salvador Rivero; on the East by Eleutera Pena; on the South by Bonifacio St., and on the West by Carmen Giron; x x x;

2. A commercial building erected on the aforesaid parcel of land with an assessed value of ₱126,000.00; x x x;

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[1] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Rebecca De Guia-Salvador and Apolinario D. Bruselas, Jr., concurring. *Rollo,* pp. 87-102.

[2] *Id.* at 103-106.

3. A parcel of residential land located in Brgy. VII, Vigan, Ilocos Sur, containing an area of 154 sq. ms., more or less, bounded on the North by the High School Site; on the East by Gomez St., on the South by Domingo [G]o; and on the West by Domingo Go; x x x;

4. A house with an assessed value of ₱17,600.00 x x x;

5. A parcel of orchard land located in Brgy. VI, Vigan, Ilocos Sur, containing an area of 2,257 sq. ma. (*sic*) more or less, bounded on the North by Lot 1208; on the East by Mestizo River; on the South by Lot 1217 and on the West by Lot 1211-B, 1212 and 1215 x x x.[3]

Beginning 1992 until his death in 1995, Dr. Favis was beset by various illnesses, such as kidney trouble, hiatal hernia, congestive heart failure, Parkinson's disease and pneumonia. He died of "cardiopulmonary arrest secondary to multi-organ/system failure secondary to sepsis secondary to pneumonia."[4]

On 16 October 1994, he allegedly executed a Deed of Donation[5] transferring and conveying properties described in (1) and (2) in favor of his grandchildren with Juana.

Claiming that said donation prejudiced their legitime, Dr. Favis' children with Capitolina, petitioners herein, filed an action for annulment of the Deed of Donation, inventory, liquidation and partition of property before the Regional Trial Court (RTC) of Vigan, Ilocos Sur, Branch 20 against Juana, Spouses Mariano and Larcelita and their grandchildren as respondents.

In their Answer with Counterclaim, respondents assert that the properties donated do not form part of the estate of the late Dr. Favis because said donation was made *inter vivos*, hence petitioners have no stake over said properties.[6]

The RTC, in its Pre-Trial Order, limited the issues to the validity of the deed of donation and whether or not respondent Juana and Mariano are compulsory heirs of Dr. Favis.[7]

[3] *Id.* at 123-124.

[4] Records, p. 338.

[5] *Id.* at 339-340.

[6] *Id.* at 34.

[7] *Rollo*, p. 172.

In a Decision dated 14 November 2005, the RTC nullified the Deed of Donation and cancelled the corresponding tax declarations. The trial court found that Dr. Favis, at the age of 92 and plagued with illnesses, could not have had full control of his mental capacities to execute a valid Deed of Donation. Holding that the subsequent marriage of Dr. Favis and Juana legitimated the status of Mariano, the trial court also declared Juana and Mariano as compulsory heirs of Dr. Favis. The dispositive portion reads:

> WHEREFORE, in view of all the foregoing considerations, the Deed of Donation dated October 16, 1994 is hereby annulled and the corresponding tax declarations issued on the basis thereof cancelled. Dr. Mariano Favis, Sr. having died without a will, his estate would result to intestacy. Consequently, plaintiffs Heirs of Dr. Mariano Favis, Sr., namely Purita A. Favis, Reynaldo A. Favis, Consolacion F. Queliza, Mariano A. Favis, Jr., Esther F. Filart, Mercedes A. Favis, Nelly F. Villafuerte and the defendants Juana Gonzales now deceased and Mariano G. Favis, Jr. shall inherit in equal shares in the estate of the late Dr. Mariano Favis, Sr. which consists of the following:
>
> 1. A parcel of residential land located at Bonifacio St. Brgy. 1, Vigan City, Ilocos Sur, consisting an area of 89 sq. meters more or less, bounded on the north by Salvador Rivero; on the East by Eleutera Pena; on the South by Bonifacio St., and on the West by Carmen Giron;
>
> 2. A commercial building erected on the aforesaid parcel of land with an assessed value of ₱126,000.00;
>
> 3. One-half (1/2) of the house located in Brgy. VI, Vigan City, Ilocos Sur[,] containing an area of 2,257 sq. meters more or less, bounded on the north by Lot 1208; on the east by Mestizo River; on the South by Lot 1217 and on the West by Lot 1211-B, 1212 and 1215.
>
> 4. The accumulated rentals of the new Vigan Coliseum in the amount of One Hundred Thirty [Thousand] (₱130,000.00) pesos per annum from the death of Dr. Mariano Favis, Sr.[8]

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[8] *Id.* at 208-209.

Respondents interposed an appeal before the Court of Appeals challenging the trial court's nullification, on the ground of vitiated consent, of the Deed of Donation in favor of herein respondents. The Court of Appeals ordered the dismissal of the petitioners' nullification case. However, it did so not on the grounds invoked by herein respondents as appellant.

The Court of Appeals *motu proprio* ordered the dismissal of the complaint for failure of petitioners to make an averment that earnest efforts toward a compromise have been made, as mandated by Article 151 of the Family Code. The appellate court justified its order of dismissal by invoking its authority to review rulings of the trial court even if they are not assigned as errors in the appeal.

Petitioners filed a motion for reconsideration contending that the case is not subject to compromise as it involves future legitime.

The Court of Appeals rejected petitioners' contention when it ruled that the prohibited compromise is that which is entered between the decedent while alive and compulsory heirs. In the instant case, the appellate court observed that while the present action is between members of the same family it does not involve a testator and a compulsory heir. Moreover, the appellate court pointed out that the subject properties cannot be considered as "future legitime" but are in fact, legitime, as the instant complaint was filed after the death of the decedent.

Undaunted by this legal setback, petitioners filed the instant petition raising the following arguments:

1. The Honorable Court of Appeals GRAVELY and SERIOUSLY ERRED in DISMISSING the COMPLAINT.

2. Contrary to the finding of the Honorable Court of Appeals, the verification of the complaint or petition is not a mandatory requirement.

3. The Honorable Court of Appeals seriously failed to appreciate that the filing of an intervention by Edward Favis had placed the case beyond the scope of Article 151 of the Family Code.

4. Even assuming *arguendo* without admitting that the filing of intervention by Edward Favis had no positive effect to the complaint filed by petitioners, it is still a serious error for the Honorable Court of Appeals to utterly disregard the fact that petitioners had substantially complied with the requirements of Article 151 of the Family Code.

5. Assuming *arguendo* that petitioners cannot be construed as complying substantially with Article 151 of the Family Code, still, the same should be considered as a non-issue considering that private respondents are in estoppel.

6. The dismissal of the complaint by the Honorable Court of Appeals amounts to grave abuse of discretion amounting to lack and excess of jurisdiction and a complete defiance of the doctrine of primacy of substantive justice over strict application of technical rules.

7. The Honorable Court of Appeals gravely and seriuosly erred in not affirming the decision of the Court *a quo* that the Deed of Donation is void.[9]

In their Comment, respondents chose not to touch upon the merits of the case, which is the validity of the deed of donation. Instead, respondents defended the ruling the Court of Appeals that the complaint is dismissible for failure of petitioners to allege in their complaint that earnest efforts towards a compromise have been exerted.

The base issue is whether or not the appellate court may dismiss the order of dismissal of the complaint for failure to allege therein that earnest efforts towards a compromise have been made.

The appellate court committed egregious error in dismissing the complaint. The appellate courts' decision hinged on Article 151 of the Family Code, *viz*:

Art. 151. No suit between members of the same family shall prosper unless it should appear from the verified complaint or petition that earnest efforts toward a compromise have been made, but that the same have failed. If it is shown that no such efforts were in fact made, the case must be dismissed.

[9] *Id.* at 61-71.

This rule shall not apply to cases which may not be the subject of compromise under the Civil Code.

The appellate court correlated this provision with Section 1, par. (j), Rule 16 of the 1997 Rules of Civil Procedure, which provides:

Section 1. Grounds. — Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(j) That a condition precedent for filing the claim has not been complied with.

The appellate court's reliance on this provision is misplaced. Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court *motu proprio*. Section 1, Rule 9 of the 1997 Rules of Civil Procedure provides:

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.

Section 1, Rule 9 provides for only four instances when the court may *motu proprio* dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) *litis pendentia*; (c) *res judicata*; and (d) prescription of action.[10] Specifically in *Gumabon v. Larin,*[11] cited in *Katon v. Palanca, Jr.,*[12] the Court held:

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[10] *P.L. Uy Realty Corporation v. ALS Management and Development Corp.*, G.R. No. 166462, 24 October 2012, 684 SCRA 453, 464-465.

[11] 422 Phil. 222, 230 (2001).

[12] 481 Phil. 168, 180 (2004).

x x x [T]he *motu proprio* dismissal of a case was traditionally limited to instances when the court clearly had no jurisdiction over the subject matter and when the plaintiff did not appear during trial, failed to prosecute his action for an unreasonable length of time or neglected to comply with the rules or with any order of the court. Outside of these instances, any *motu proprio* dismissal would amount to a violation of the right of the plaintiff to be heard. Except for qualifying and expanding Section 2, Rule 9, and Section 3, Rule 17, of the Revised Rules of Court, the amendatory 1997 Rules of Civil Procedure brought about no radical change. Under the new rules, a court may *motu proprio* dismiss a claim when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter; when there is another cause of action pending between the same parties for the same cause, or where the action is barred by a prior judgment or by statute of limitations. x x x.[13]

The error of the Court of Appeals is evident even if the consideration of the issue is kept within the confines of the language of Section 1(j) of Rule 16 and Section 1 of Rule 9. That a condition precedent for filing the claim has not been complied with, a ground for a motion to dismiss emanating from the law that no suit between members from the same family shall prosper unless it should appear from the verified complaint that earnest efforts toward a compromise have been made but had failed, is, as the Rule so words, a ground for a motion to dismiss. Significantly, the Rule requires that such a motion should be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim." The time frame indicates that thereafter, the motion to dismiss based on the absence of the condition precedent is barred. It is so inferable from the opening sentence of Section 1 of Rule 9 stating that defense and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. There are, as just noted, only four exceptions to this Rule, namely, lack of jurisdiction over the subject matter; *litis pendentia*; *res judicata*; and prescription of action. Failure to allege in the complaint that earnest efforts at a compromise has been made but had failed is not one of the exceptions. Upon such failure, the defense is deemed waived.

[13] *Gumabon v. Larin, supra* note 11 at 230.

It was in *Heirs of Domingo Valientes v. Ramas*[14] cited in *P.L. Uy Realty Corporation v. ALS Management and Development Corporation*[15] where we noted that the second sentence of Section 1 of Rule 9 does not only supply exceptions to the rule that defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, it also allows courts to dismiss cases *motu propio* on any of the enumerated grounds. The tenor of the second sentence of the Rule is that the allowance of a *motu propio* dismissal can proceed only from the exemption from the rule on waiver; which is but logical because there can be no ruling on a waived ground.

Why the objection of failure to allege a failed attempt at a compromise in a suit among members of the same family is waivable was earlier explained in the case of *Versoza v. Versoza*,[16] a case for future support which was dismissed by the trial court upon the ground that there was no such allegation of infringement of Article 222 of the Civil Code, the origin of Article 151 of the Family Code. While the Court ruled that a complaint for future support cannot be the subject of a compromise and as such the absence of the required allegation in the complaint cannot be a ground for objection against the suit, the decision went on to state thus:

> The alleged defect is that the present complaint does not state a cause of action. The proposed amendment seeks to complete it. An amendment to the effect that the requirements of Article 222 have been complied with does not confer jurisdiction upon the lower court. With or without this amendment, the subject-matter of the action remains as one for support, custody of children, and damages, cognizable by the court below.

To illustrate, *Tamayo v. San Miguel Brewery, Inc.*,[17] allowed an amendment which "*merely corrected a defect in the allegation of plaintiff-appellant's cause of action, because as it then stood,*

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[14] G.R. No. 157852, 15 December 2010, 638 SCRA 444, 451.

[15] *Supra* note 10 at 465.

[16] 135 Phil. 84, 94 (1968).

[17] 119 Phil. 368 (1964).

the original complaint stated no cause of action." We there ruled out as inapplicable the holding in *Campos Rueda Corporation v. Bautista,*[18] that an amendment cannot be made so as to confer jurisdiction on the court x x x. (Italics supplied).

Thus was it made clear that a failure to allege earnest but failed efforts at a compromise in a complaint among members of the same family, is not a jurisdictional defect but merely a defect in the statement of a cause of action. *Versoza* was cited in a later case as an instance analogous to one where the conciliation process at the *barangay* level was not priorly resorted to. Both were described as a "condition precedent for the filing of a complaint in Court."[19] In such instances, the consequence is precisely what is stated in the present Rule. Thus:

> x x x The defect may however be waived by failing to make seasonable objection, in a motion to dismiss or answer, the defect being a mere procedural imperfection which does not affect the jurisdiction of the court.[20] (Underscoring supplied).

In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals.

Therefore, the rule on deemed waiver of the non-jurisdictional defense or objection is wholly applicable to respondent. If the respondents as parties-defendants could not, and did not, after

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[18] 116 Phil. 546 (1962).

[19] *Peregrina v. Hon. Panis*, 218 Phil. 90, 92 (1984).

[20] *Agbayani v. Hon. Belen,* 230 Phil. 39, 42 (1986) citing *Catorce v. Court of Appeals*, 214 Phil. 181 (1984).

filing their answer to petitioner's complaint, invoke the objection of absence of the required allegation on earnest efforts at a compromise, the appellate court unquestionably did not have any authority or basis to *motu proprio* order the dismissal of petitioner's complaint.

Indeed, even if we go by the reason behind Article 151 of the Family Code, which provision as then Article 222 of the New Civil Code was described as "having been given more teeth"[21] by Section 1(j), Rule 16 of the Rule of Court, it is safe to say that the purpose of making sure that there is no longer any possibility of a compromise, has been served. As cited in commentaries on Article 151 of the Family Code –

> This rule is introduced because it is difficult to imagine a sudden and more tragic spectacle than a litigation between members of the same family. It is necessary that every effort should be made towards a compromise before a litigation is allowed to breed hate and passion in the family. It is known that a lawsuit between close relatives generates deeper bitterness than between strangers.[22]

The facts of the case show that compromise was never an option insofar as the respondents were concerned. The impossibility of compromise instead of litigation was shown not alone by the absence of a motion to dismiss but on the respondents' insistence on the validity of the donation in their favor of the subject properties. Nor could it have been otherwise because the Pre-trial Order specifically limited the issues to the validity of the deed and whether or not respondent Juana and Mariano are compulsory heirs of Dr. Favis. Respondents not only confined their arguments within the pre-trial order; after losing their case, their appeal was based on the proposition that it was error for the trial court to have relied on the ground of vitiated consent on the part of Dr. Favis.

The Court of Appeals ignored the facts of the case that clearly demonstrated the refusal by the respondents to compromise.

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[21] *Verzosa v. Verzosa*, *supra* note 16 at 88.

[22] Paras, *Report of the Code Commission, Code Commission of the Philippines Annotated*, 14th Ed., Vol. 1, p. 579.

Instead it ordered the dismissal of petitioner's complaint on the ground that it did not allege what in fact was shown during the trial. The error of the Court of Appeals is patent.

Unfortunately for respondents, they relied completely on the erroneous ruling of the Court of Appeals even when petitioners came to us for review not just on the basis of such defective *motu propio* action but also on the proposition that the trial court correctly found that the donation in question is flawed because of vitiated consent. Respondents did not answer this argument.

The trial court stated that the facts are:

> x x x To determine the intrinsic validity of the deed of donation subject of the action for annulment, the mental state/condition of the donor Dr. Mariano Favis, Sr. at the time of its execution must be taken into account. Factors such as his age, health and environment among others should be considered. As testified to by Dr. Mercedes Favis, corroborated by Dr. Edgardo Alday and Dra. Ofelia Adapon, who were all presented as expert witnesses, Dr. Mariano Favis, Sr. had long been suffering from Hiatal Hernia and Parkinson's disease and had been taking medications for years. That a person with Parkinson's disease for a long time may not have a good functioning brain because in the later stage of the disease, 1/3 of death develop from this kind of disease, and or dementia. With respect to Hiatal Hernia, this is a state wherein organs in the abdominal cavity would go up to the chest cavity, thereby occupying the space for the lungs causing the lungs to be compromised. Once the lungs are affected, there is less oxygenation to the brain. The Hernia would cause the heart not to pump enough oxygen to the brain and the effect would be chronic, meaning, longer lack of oxygenation to the brain will make a person not in full control of his faculties. Dr. Alday further testified that during his stay with the house of Dr. Mariano Favis, Sr. (1992-1994), he noticed that the latter when he goes up and down the stairs will stop after few seconds, and he called this pulmonary cripple – a very advanced stage wherein the lungs not only one lung, but both lungs are compromised. That at the time he operated on the deceased, the left and right lung were functioning but the left lung is practically not even five (5%) percent functioning since it was occupied by abdominal organ. x x x.

Dr. Mariano Favis, Sr. during the execution of the Deed of Donation was already 92 years old; living with the defendants and those years from 1993 to 1995 were the critical years when he was sick most of the time. In short, he's dependent on the care of his housemates particularly the members of his family. It is the contention of the defendants though that Dr. Mariano Favis, Sr. had full control of his mind during the execution of the Deed of Donation because at that time, he could go on with the regular way of life or could perform his daily routine without the aid of anybody like taking a bath, eating his meals, reading the newspaper, watching television, go to the church on Sundays, walking down the plaza to exercise and most importantly go to the cockpit arena and bet. Dr. Ofelia Adapon, a neurology expert however, testified that a person suffering from Parkinson's disease when he goes to the cockpit does not necessarily mean that such person has in full control of his mental faculties because anyone, even a retarded person, a person who has not studied and have no intellect can go to the cockpit and bet. One can do everything but do not have control of his mind. x x x That Hiatal Hernia creeps in very insidiously, one is not sure especially if the person has not complained and no examination was done. It could be there for the last time and no one will know. x x x.

The Deed of Donation in favor of the defendants Ma. Theresa, Joana D. Favis, Maria Cristina D. Favis, James Mark D. Favis and Maria Thea D. Favis, all of whom are the children of Mariano G. Favis, Jr. was executed on [16 October] 1994, seven (7) months after Dra. Mercedes Favis left the house of Dr. Favis, Sr. at Bonifacio St., Vigan City, Ilocos Sur, where she resided with the latter and the defendants.

Putting together the circumstances mentioned, that at the time of the execution of the Deed of Donation, Dr. Mariano Favis, Sr. was already at an advanced age of 92, afflicted with different illnesses like Hiatal hernia, Parkinsons' disease and pneumonia, to name few, which illnesses had the effects of impairing his brain or mental faculties and the deed being executed only when Dra. Me[r]cedes Favis had already left his father's residence when Dr. Mariano Favis, Sr. could have done so earlier or even in the presence of Dra. Mercedes Favis, at the time he executed the Deed of Donation was not in full control of his mental faculties. That although age of senility varies from one person to another, to reach the age of 92 with all those medications and treatment one have received for those illnesses, yet claim that his mind remains unimpaired, would be unusual. The

fact that the Deed of Donation was only executed after Dra. Mercedes Favis left his father's house necessarily indicates that they don't want the same to be known by the first family, which is an indicia of bad faith on the part of the defendant, who at that time had influence over the donor.[23]

The correctness of the finding was not touched by the Court of Appeals. The respondents opted to rely only on what the appellate court considered, erroneously though, was a procedural infirmity. The trial court's factual finding, therefore, stands unreversed; and respondents did not provide us with any argument to have it reversed.

The issue of the validity of donation was fully litigated and discussed by the trial court. Indeed, the trial court's findings were placed at issue before the Court of Apppeals but the appellate court of Appeals, even if it dealt only with procedure, is deemed to have covered all issues including the correctness of the factual findings of the trial court. Moreover, remanding the case to the Court of Appeals would only constitute unwarranted delay in the final disposition of the case.

WHEREFORE, the Decision of the Court of Appeals is **REVERSED** and **SET ASIDE** and the Judgment of the Regional Trial Court of Vigan, Ilocos Sur, Branch 20 is **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 186063. January 15, 2014]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SAN MIGUEL CORPORATION,** *respondent.*

[23] *Rollo*, pp. 433-435.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; SEVERAL JUDGMENTS; PROPER IN CASE AT BAR.— It is clear from the proceedings held before and the orders issued by the RTC that the intention of the trial court is to conduct separate proceedings to determine the respective liabilities of Goroza and PNB, and thereafter, to render several and separate judgments for or against them. While ideally, it would have been more prudent for the trial court to render a single decision with respect to Goroza and PNB, the procedure adopted by the RTC is, nonetheless, allowed under Section 4, Rule 36 of the Rules of Court, which provides that "[i]n an action against several defendants, the court may, when a several judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others." In addition, Section 5 of the same Rule states that "[w]hen more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim may render a separate judgment disposing of such claim." Further, the same provision provides that "[t]he judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims." Thus, the appeal of Goroza, assailing the judgment of the RTC finding him liable, will not prevent the continuation of the ongoing trial between SMC and PNB. The RTC retains jurisdiction insofar as PNB is concerned, because the appeal made by Goroza was only with respect to his own liability. In fact, PNB itself, in its Reply to respondent's Comment, admitted that the May 10, 2005 judgment of the RTC was "decided solely against defendant Rodolfo Goroza." The propriety of a several judgment is borne by the fact that SMC's cause of action against PNB stems from the latter's alleged liability under the letters of credit which it issued. On the other hand, SMC's cause of action against Goroza is the latter's failure to pay his obligation to the former. As to the separate judgment, PNB has a counterclaim against SMC which is yet to be resolved by the RTC.

APPEARANCES OF COUNSEL

Office of the Chief Legal Counsel (PNB) for petitioner.
Office of the General Counsel (SMC) for respondent.

D E C I S I O N

PERALTA, *J.*:

This treats of the petition for review on *certiorari* of the Decision[1] and Resolution[2] of the Court of Appeals *(CA)*, dated June 17, 2008 and December 15, 2008, respectively, in CA-G.R. SP No. 01249-MIN.

The facts, as summarized by the CA, are as follows:

> On July 1, 1996, respondent San Miguel Corporation (SMC, for brevity) entered into an Exclusive Dealership Agreement with a certain Rodolfo R. Goroza (Goroza, hereafter), wherein the latter was given by SMC the right to trade, deal, market or otherwise sell its various beer products.
>
> Goroza applied for a credit line with SMC, but one of the requirements for the credit line was a letter of credit. Thus, Goroza applied [for] and was granted a letter of credit by the PNB in the amount of two million pesos (₱2,000,000.00). Under the credit agreement, the PNB has the obligation to release the proceeds of Goroza's credit line to SMC upon presentation of the invoices and official receipts of Goroza's purchases of SMC beer products to the PNB, Butuan Branch.
>
> On August 1, 1996, Goroza availed of his credit line with PNB and started selling SMC's beer products x x x.
>
> On February 11, 1997, Goroza applied for an additional credit line with the PNB. The latter granted Goroza a one (1) year revolving credit line in the amount not exceeding two million four hundred [thousand] pesos (₱2,400,000.00). Thus, Goroza's total [credit line] reached four million four hundred thousand pesos (₱4,400,000.00) x x x. Initially, Goroza was able to pay his credit purchases with SMC x x x. Sometime in January 1998, however, Goroza started to become delinquent with his accounts.

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[1] Penned by Associate Justice Mario V. Lopez, with Associate Justices Romulo V. Borja and Elihu A. Ybañez, concurring; Annex "S" to petition, *rollo*, pp. 107-119.

[2] Annex "U" to petition, *id.* at 132-135.

Demands to pay the amount of three million seven hundred twenty-two thousand four hundred forty pesos and 88/100 (₱3,722,440.88) were made by SMC against Goroza and PNB, but neither of them paid. Thus, on April 23, 2003, SMC filed a Complaint for collection of sum of money against PNB and Goroza with the respondent Regional Trial Court Branch 3, Butuan City.[3]

After summons, herein petitioner filed its Answer,[4] while Goroza did not. Upon respondent's Motion to Declare Defendant in Default,[5] Goroza was declared in default.

Trial ensued insofar as Goroza was concerned and respondent presented its evidence *ex parte* against the former. Respondent made a formal offer of its exhibits on April 6, 2004 and the trial court admitted them on June 16, 2004.

Thereafter, on January 21, 2005, pre-trial between PNB and SMC was held.[6]

On May 10, 2005, the RTC rendered a Decision,[7] disposing as follows:

WHEREFORE, the Court hereby renders judgment in favor of plaintiff [SMC] ordering defendant Rodolfo Goroza to pay plaintiff the following:

1. The principal amount of ₱3,722,440.00;

2. The interest of 12% per annum on the principal amount reckoned from January 27, 1998 up to the time of execution of the Judgment of this case;

3. Attorney's fees of ₱30,000.00;

4. Litigation expenses of ₱20,000.00.

SO ORDERED.[8]

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[3] *Rollo*, pp. 109-110.

[4] Annex "C" to petition, *id.* at 40-43.

[5] Annex "D" to petition, *id.* at 44-45.

[6] See Pre-Trial Order, Annex "G" to petition, *id.* at 62-64.

[7] Annex "H" to petition, *id.* at 65-72.

[8] *Id.* at 72.

Goroza filed a Notice of Appeal,[9] while SMC filed a Motion for Reconsideration.[10]

On July 14, 2005, the RTC granted SMC's motion for reconsideration. The trial court amended its Decision by increasing the award of litigation expenses to ₱90,652.50.[11]

Thereafter, on July 25, 2005, the RTC issued an Order,[12] pertinent portions of which read as follows:

x x x x x x x x x

Finding the Notice of Appeal filed within the reglementary period and the corresponding appeal fee paid, x x x. The same is hereby given due course.

Considering that the case as against defendant PNB is still on-going, let the Record in this case insofar as defendant Rodolfo R. Goroza is concerned, be reproduced at the expense of defendant-appellant so that the same can be forwarded to the Court of Appeals, together with the exhibits and transcript of stenographic notes in the required number of copies.

SO ORDERED.[13]

In the meantime, trial continued with respect to PNB.

On September 27, 2005, PNB filed an Urgent Motion to Terminate Proceedings[14] on the ground that a decision was already rendered on May 10, 2005 finding Goroza solely liable.

The RTC denied PNB's motion in its Resolution[15] dated October 11, 2005.

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[9] Annex "I" to petition, *id.* at 73-74.

[10] Annex "K" to petition, *id.* at. 77-78.

[11] See RTC Resolution, Annex "L" to petition, *id.* at 79-80.

[12] Annex "J" to petition, *id.* at 76.

[13] *Id.*

[14] Annex "M" to petition, *id.* at 81-86.

[15] Annex "B" to comment, *id.* at 165.

On October 14, 2005, the RTC issued a Supplemental Judgment,[16] thus:

> The Court omitted by inadvertence to insert in its decision dated May 10, 2005 the phrase "without prejudice to the decision that will be made against the other co-defendant, PNB, which was not declared in default."
>
> WHEREFORE, the phrase "without prejudice to the decision made against the other defendant PNB which was not declared in default" shall be inserted in the dispositive portion of said decision.
>
> SO ORDERED.[17]

On even date, the RTC also issued an Amended Order,[18] to wit:

> The Court's Order dated July 25, 2005 is hereby amended to include the phrase "this appeal applies only to defendant Rolando Goroza and without prejudice to the continuance of the hearing on the other defendant Philippine National Bank".
>
> SO ORDERED.[19]

PNB then filed a Motion for Reconsideration[20] of the above-quoted Supplemental Judgment and Amended Order, but the RTC denied the said motion via its Resolution[21] dated July 6, 2006.

Aggrieved, PNB filed a special civil action for *certiorari* with the CA imputing grave abuse of discretion on the part of the RTC for having issued its July 6, 2006 Resolution.[22]

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[16] Annex "N" to petition, *id.* at 87.

[17] *Id.*

[18] Annex "O" to petition, *id.* at 88.

[19] *Id.*

[20] Annex "P" to petition, *id.* at 89-91.

[21] Annex "Q" to petition, *id.* at 92-95.

[22] Annex "R" to petition, *id.* at 96-106.

On June 17, 2008, the CA rendered its questioned Decision denying the petition and affirming the assailed Resolution of the RTC.

PNB filed a Motion for Reconsideration,[23] but the CA denied it in its assailed Resolution.

Hence, the instant petition with the following Assignment of Errors:

THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL COURT WAS CORRECT IN RENDERING A SUPPLEMENTAL JUDGMENT AND AMENDED ORDER AGAINST THE BANK DESPITE THE PERFECTION OF APPEAL OF ONE OF THE DEFENDANTS.

THE COURT OF APPEALS ERRED IN HOLDING THAT PROCEEDINGS MAY CONTINUE AGAINST PNB DESPITE THE COMPLETE ADJUDICATION OF RELIEF IN FAVOR OF SMC.[24]

PNB contends that the CA erred in holding that the RTC was correct in rendering its Supplemental Judgment and Amended Order despite the perfection of Goroza's appeal. PNB claims that when Goroza's appeal was perfected, the RTC lost jurisdiction over the entire case making the assailed Supplemental Judgment and Amended Order void for having been issued without or in excess of jurisdiction.

PNB also argues that the CA erred in ruling that proceedings against it may continue in the RTC, despite the trial court's complete adjudication of relief in favor of SMC. PNB avers that the May 10, 2005 Decision of the RTC, finding Goroza solely liable to pay the entire amount sought to be recovered by SMC, has settled the obligation of both Goroza and PNB, and that there is no longer any ground to hold PNB for trial and make a separate judgment against it; otherwise, SMC will recover twice for the same cause of action.

The petition lacks merit.

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[23] Annex "T" to petition, *id.* at 120-131.

[24] *Rollo*, p. 13.

It is clear from the proceedings held before and the orders issued by the RTC that the intention of the trial court is to conduct separate proceedings to determine the respective liabilities of Goroza and PNB, and thereafter, to render several and separate judgments for or against them. While ideally, it would have been more prudent for the trial court to render a single decision with respect to Goroza and PNB, the procedure adopted by the RTC is, nonetheless, allowed under Section 4, Rule 36 of the Rules of Court, which provides that "[i]n an action against several defendants, the court may, when a several judgment is proper, render judgment against one or more of them, leaving the action to proceed against the others." In addition, Section 5 of the same Rule states that "[w]hen more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim may render a separate judgment disposing of such claim." Further, the same provision provides that "[t]he judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims." Thus, the appeal of Goroza, assailing the judgment of the RTC finding him liable, will not prevent the continuation of the ongoing trial between SMC and PNB. The RTC retains jurisdiction insofar as PNB is concerned, because the appeal made by Goroza was only with respect to his own liability. In fact, PNB itself, in its Reply to respondent's Comment, admitted that the May 10, 2005 judgment of the RTC was "decided solely against defendant Rodolfo Goroza."[25]

The propriety of a several judgment is borne by the fact that SMC's cause of action against PNB stems from the latter's alleged liability under the letters of credit which it issued. On the other hand, SMC's cause of action against Goroza is the latter's failure to pay his obligation to the former. As to the separate judgment, PNB has a counterclaim against SMC which is yet to be resolved by the RTC.

[25] *Id.* at 180.

Indeed, the issues between SMC and PNB which are to be resolved by the RTC, as contained in the trial court's Pre-Trial Order dated January 21, 2005, were not addressed by the RTC in its Decision rendered against Goroza. In particular, the RTC judgment against Goroza did not make any determination as to whether or not PNB is liable under the letter of credit it issued and, if so, up to what extent is its liability. In fact, contrary to PNB's claim, there is nothing in the RTC judgment which ruled that Goroza is "solely liable" to pay the amount which SMC seeks to recover.

In this regard, this Court's disquisition on the import of a letter of credit, in the case of *Transfield Philippines, Inc. v. Luzon Hydro Corporation,*[26] as correctly cited by the CA, is instructive, to wit:

> By definition, a letter of credit is a written instrument whereby the writer requests or authorizes the addressee to pay money or deliver goods to a third person and assumes responsibility for payment of debt therefor to the addressee. A letter of credit, however, changes its nature as different transactions occur and if carried through to completion ends up as a binding contract between the issuing and honoring banks without any regard or relation to the underlying contract or disputes between the parties thereto.
>
> x x x x x x x x x
>
> Thus, the engagement of the issuing bank is to pay the seller or beneficiary of the credit once the draft and the required documents are presented to it. The so-called "independence principle" assures the seller or the beneficiary of prompt payment independent of any breach of the main contract and precludes the issuing bank from determining whether the main contract is actually accomplished or not. Under this principle, banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon, nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by any documents, or for the

[26] 485 Phil. 699 (2004).

good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers, or the insurers of the goods, or any other person whomsoever.

x x x x x x x x x

As discussed above, in a letter of credit transaction, such as in this case, where the credit is stipulated as irrevocable, there is a definite undertaking by the issuing bank to pay the beneficiary provided that the stipulated documents are presented and the conditions of the credit are complied with. Precisely, the independence principle liberates the issuing bank from the duty of ascertaining compliance by the parties in the main contract. As the principle's nomenclature clearly suggests, **the obligation under the letter of credit is independent of the related and originating contract. In brief, the letter of credit is separate and distinct from the underlying transaction**.[27]

In other words, PNB cannot evade responsibility on the sole ground that the RTC judgment found Goroza liable and ordered him to pay the amount sought to be recovered by SMC. PNB's liability, if any, under the letter of credit is yet to be determined.

WHEREFORE, the instant petition is **DENIED**. The Decision of the Court of Appeals, dated June 17, 2008, and its Resolution dated December 15, 2008, both in CA-G.R. SP No. 01249-MIN, are **AFFIRMED**.

SO ORDERED.

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

[27] *Id.* at 718-721. (Emphasis supplied; citations omitted)

SECOND DIVISION

[G.R. No. 186439. January 15, 2014]

UNIVERSAL ROBINA SUGAR MILLING CORPORATION and RENE CABATI, *petitioners, vs.* **FERDINAND ACIBO, ROBERTO AGUILAR, EDDIE BALDOZA, RENE ABELLAR, DIOMEDES ALICOS, MIGUEL ALICOS, ROGELIO AMAHIT, LARRY AMASCO, FELIPE BALANSAG, ROMEO BALANSAG, MANUEL BANGOT, ANDY BANJAO, DIONISIO BENDIJO, JR., JOVENTINO BROCE, ENRICO LITERAL, RODGER RAMIREZ, BIENVENIDO RODRIGUEZ, DIOCITO PALAGTIW, ERNIE SABLAN, RICHARD PANCHO, RODRIGO ESTRABELA, DANNY KADUSALE and ALLYROBYL OLPUS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; KINDS OF EMPLOYMENT; REGULAR EMPLOYMENT; THE LAW REGARDS THE EMPLOYEE AS REGULAR WHEN HE PERFORMS ACTIVITIES CONSIDERED NECESSARY AND DESIRABLE TO THE OVERALL BUSINESS SCHEME OF THE EMPLOYER; EXCEPTION.— Regular employment refers to that arrangement whereby the employee "*has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer*[.]"Under the definition, the primary standard that determines regular employment is the reasonable connection between the particular activity performed by the employee and the usual business or trade of the employer; the emphasis is on the necessity or desirability of the employee's activity. Thus, when the employee performs activities considered necessary and desirable to the overall business scheme of the employer, the law regards the employee as regular. By way of an exception, paragraph 2, Article 280 of the Labor Code also considers regular a casual employment arrangement when the casual employee's engagement has lasted for at least one year,

regardless of the engagement's continuity. The controlling test in this arrangement is the length of time during which the employee is engaged.

2. ID.; ID.; ID.; PROJECT EMPLOYMENT; REQUIREMENTS.— A project employment x x x contemplates an arrangement whereby "*the employment has been fixed for a specific project or undertaking whose completion or termination has been determined at the time of the engagement of the employee*[.]" Two requirements, therefore, clearly need to be satisfied to remove the engagement from the presumption of regularity of employment, namely: (1) designation of a specific project or undertaking for which the employee is hired; and (2) clear determination of the completion or termination of the project at the time of the employee's engagement. The services of the project employees are legally and automatically terminated upon the end or completion of the project as the employee's services are coterminous with the project. Unlike in a regular employment under Article 280 of the Labor Code, however, the length of time of the asserted "project" employee's engagement is not controlling as the employment may, in fact, last for more than a year, depending on the needs or circumstances of the project. Nevertheless, this length of time (or the continuous rehiring of the employee even after the cessation of the project) may serve as a badge of regular employment when the activities performed by the purported "project" employee are necessary and indispensable to the usual business or trade of the employer. In this latter case, the law will regard the arrangement as regular employment.

3. ID.; ID.; ID.; SEASONAL EMPLOYMENT; CONDITIONS.— Seasonal employment operates much in the same way as project employment, albeit it involves work or service that is seasonal in nature or lasting for the duration of the season. As with project employment, although the seasonal employment arrangement involves work that is seasonal or periodic in nature, the employment itself is not automatically considered seasonal so as to prevent the employee from attaining regular status. To exclude the asserted "seasonal" employee from those classified as regular employees, the employer must show that: (1) the employee must be performing work or services that are seasonal in nature; and (2) he had been employed for the duration of the season. Hence, when the "seasonal" workers

are continuously and repeatedly hired to perform the same tasks or activities *for several seasons* or *even after the cessation of the season*, this length of time may likewise serve as badge of regular employment. In fact, even though denominated as "seasonal workers," if these workers are called to work from time to time and are only temporarily laid off during the off-season, the law does not consider them separated from the service during the off-season period. The law simply considers these seasonal workers on leave until re-employed.

4. **ID.; ID.; ID.; CASUAL EMPLOYMENT AND CONTRACTUAL OR FIXED TERM EMPLOYMENT; DEFINED.—** Casual employment, the third kind of employment arrangement, refers to any other employment arrangement that does not fall under any of the first two categories, *i.e.,* regular or project/seasonal. Interestingly, the Labor Code does not mention another employment arrangement – contractual or fixed term employment (or employment for a term) – which, if not for the fixed term, should fall under the category of regular employment in view of the nature of the employee's engagement, which is to perform an activity usually necessary or desirable in the employer's business.

5. **ID.; ID.; ID.; NATURE OF EMPLOYMENT, HOW DETERMINED.—** [T]he nature of the employment does not depend solely on the will or word of the employer or on the procedure for hiring and the manner of designating the employee. Rather, the nature of the employment depends on the nature of the activities to be performed by the employee, considering the nature of the employer's business, the duration and scope to be done, and, in some cases, even the length of time of the performance and its continued existence.

6. **ID.; ID.; ID.; REGULAR SEASONAL EMPLOYMENT; ESTABLISHED IN CASE AT BAR.—** [T]he respondents are neither project, seasonal nor fixed-term employees, but **regular seasonal workers** of URSUMCO. The following factual considerations from the records support this conclusion: ***First***, the respondents were made to perform various tasks that did not at all pertain to any specific phase of URSUMCO's strict milling operations that would ultimately cease upon completion of a particular phase in the milling of sugar; rather, they were tasked to perform duties regularly and habitually needed in

URSUMCO's operations during the milling season. x x x ***Second***, the respondents were regularly and repeatedly hired to perform the same tasks year after year. This regular and repeated hiring of the same workers (two different sets) for two separate seasons has put in place, principally through jurisprudence, the system of regular seasonal employment in the sugar industry and other industries with a similar nature of operations. Under the system, the plantation workers or the mill employees do not work continuously for one whole year but only for the duration of the growing of the sugarcane or the milling season. Their seasonal work, however, does not detract from considering them in regular employment since in a litany of cases, this Court has already settled that seasonal workers who are called to work from time to time and are temporarily laid off during the off-season are not separated from the service in said period, but are merely considered on leave until re-employment. **Be this as it may, regular seasonal employees, like the respondents in this case, should not be confused with the regular employees of the sugar mill such as the administrative or office personnel who perform their tasks for the entire year regardless of the season**. x x x ***Third***, while the petitioners assert that the respondents were free to work elsewhere during the off-season, the records do not support this assertion. There is no evidence on record showing that after the completion of their tasks at URSUMCO, the respondents sought and obtained employment elsewhere.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO RESOLVING QUESTIONS OF LAW.— [O]nly questions of law are allowed in a petition for review on *certiorari*. This Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to any perceived legal errors, which the CA may have committed in issuing the assailed decision. In reviewing the legal correctness of the CA's Rule 65 decision in a labor case, we examine the CA decision in the context that it determined, *i.e.,* 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.

8. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; PRESENT IN CASE AT BAR.— **[T]he issue brought to the CA for resolution is whether the NLRC gravely abused its discretion in declaring the respondents regular employees of URSUMCO and, as such, entitled to the benefits under the CBA for the regular employees**. x x x [T]he respondents are **regular seasonal employees**, as the CA itself opined when it declared that "private respondents who are regular workers with respect to their seasonal tasks or activities and while such activities exist, cannot automatically be governed by the CBA between petitioner URSUMCO and the authorized bargaining representative of the regular and permanent employees." Citing jurisprudential standards, it then proceeded to explain that the respondents cannot be lumped with the regular employees due to the differences in the nature of their duties and the duration of their work *vis-a-vis* the operations of the company. The NLRC was well aware of these distinctions as it acknowledged that the respondents worked only during the milling season, yet it ignored the distinctions and declared them regular employees, a marked departure from existing jurisprudence. **This, to us, is grave abuse of discretion, as it gave no reason for disturbing the system of regular seasonal employment already in place in the sugar industry and other industries with similar seasonal operations. For upholding the NLRC's flawed decision on the respondents' employment status, the CA committed a reversible error of judgment**.

APPEARANCES OF COUNSEL

Bolos Reyes-Beltran Miranda-Araneta Del Rosario Law Offices for petitioners.

Lowell A. Andaya for respondents.

D E C I S I O N

BRION, *J.*:

We resolve in this petition for review on *certiorari*[1] the challenge to the November 29, 2007 decision[2] and the January 22, 2009 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CEB-SP No. 02028. This CA decision affirmed with modification the July 22, 2005 decision[4] and the April 28, 2006 resolution[5] of the National Labor Relations Commission *(NLRC)* in NLRC Case No. V-00006-03 which, in turn, reversed the October 9, 2002 decision[6] of the Labor Arbiter *(LA)*. The LA's decision dismissed the complaint filed by complainants Ferdinand Acibo, *et al.*[7] against petitioners Universal Robina Sugar Milling Corporation *(URSUMCO)* and Rene Cabati.

The Factual Antecedents

URSUMCO is a domestic corporation engaged in the sugar cane milling business; Cabati is URSUMCO's Business Unit General Manager.

The complainants were employees of URSUMCO. They were hired on various dates (between February 1988 and April 1996)

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[1] Dated March 18, 2009 and filed on April 3, 2009 under Rule 45 of the Rules of Court; *rollo*, pp. 11-39.

[2] Penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justices Francisco P. Acosta and Amy Lazaro-Javier; *id.* at 47-56.

[3] *Id.* at 58-59; penned by Associate Justice Francisco P. Acosta, and concurred in by Associate Justices Antonio L. Villamor and Amy C. Lazaro-Javier.

[4] Penned by Commissioner Aurelio D. Menzon; *id.* at 154-157.

[5] *Id.* at 175-177.

[6] Penned by Labor Arbiter Geoffrey P. Villahermosa; *id.* at 140-145.

[7] The other named respondents are as follows: Roberto Aguilar, **Eddie Baldoza**, Rene Abellar, Diomedes Alicos, Miguel Alicos, Rogelio Amahit, Larry Amasco, Felipe Balansag, Romeo Balansag, Manuel Bangot, **Andy**

and on different capacities,[8] *i.e.,* drivers, crane operators, bucket hookers, welders, mechanics, laboratory attendants and aides, steel workers, laborers, carpenters and masons, among others. At the start of their respective engagements, the complainants signed contracts of employment for a period of one (1) month

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Banjao, **Dionisio Bendijo, Jr.**, Joventino Broce, Enrico Literal, **Rodger Ramirez**, Bienvenido Rodriguez, **Diocito Palagtiw**, Ernie Sablan, Richard Pancho, Rodrigo Estrabela, **Danny Kadusale** and **Allyrobyl Olpus**.

Only those whose names are in bold letters appealed the LA's October 9, 2002 decision before the NLRC; *id.* at 152.

[8] *Id.* at 135. The following are the respective hiring dates and duties of the named respondents:

Name	Duties	Hiring Date
Allyrobyl P. Olpus	Hooker	February 24, 1988
Felipe B. Balansag	Driver	March 8, 1988
Richard E. Pancho	Loader Operator	March 24, 1989
Joventino C. Broce	Gantry Hooker	April 3, 1989
Romeo B. Balansag	Driver	May 1, 1989
Ferdinand G. Acibo	Utility	February 19, 1990
Danny S. Kadusale	Crane Operator	September 11, 1991
Dionisio Bendijo, Jr.	Welder	September 16, 1991
Eddie Z. Baldoza	Welder	October 16, 1991
Andy C. Banjao	Welder	October 16, 1991
Diocito H. Palagtiw	Welder	October 21, 1991
Diomedes F. Alicos	Prod. Raw Maintenance	February 28, 1992
Rodrigo A. Estrabela	Utility	June 4, 1992
Miguel F. Aliocos	Utility	January 28, 1993
Bienvenido M. Rodriguez	Lime Attendant	August 25, 1993
Manuel T. Bangot	Driver	February 1, 1994
Rodger L. Ramirez	Utility	August 1, 1994
Rogelio M. Amahit	Prod. Raw Maintenance	August 15, 1994
Ernie D. Sabla-on	Welder	February 8, 1996
Rene V. Abellar	Lime Tender	February 10, 1996
Larry C. Amosco	Evaporator Helper	March 26, 1996
Enrico A. Literal	Prod. Raw Maintenance	March 26, 1996
Roberto S. Aguilar	Lime Attendant	April 8, 1996

or for a given season. URSUMCO repeatedly hired the complainants to perform the same duties and, for every engagement, required the latter to sign new employment contracts for the same duration of one month or a given season.

On August 23, 2002,[9] the complainants filed before the LA complaints for regularization, entitlement to the benefits under the existing Collective Bargaining Agreement *(CBA)*, and attorney's fees.

In the decision[10] dated October 9, 2002, the LA dismissed the complaint for lack of merit. The LA held that the complainants were seasonal or project workers and not regular employees of URSUMCO. The LA pointed out that the complainants were required to perform, for a definite period, phases of URSUMCO's several projects that were not at all directly related to the latter's main operations. As the complainants were project employees, they could not be regularized since their respective employments were coterminous with the phase of the work or special project to which they were assigned and which employments end upon the completion of each project. Accordingly, the complainants were not entitled to the benefits granted under the CBA that, as provided, covered only the regular employees of URSUMCO.

Of the twenty-two original complainants before the LA, seven appealed the LA's ruling before the NLRC, namely: respondents Ferdinand Acibo, Eddie Baldoza, Andy Banjao, Dionisio Bendijo, Jr., Rodger Ramirez, Diocito Palagtiw, Danny Kadusale and Allyrobyl Olpus.

The Ruling of the NLRC

In its decision[11] of July 22, 2005, the NLRC reversed the LA's ruling; it declared the complainants as regular URSUMCO employees and granted their monetary claims under the CBA. The NLRC pointed out that the complainants performed activities

[9] *Id.* at 88-129.

[10] *Supra* note 6.

[11] *Supra* note 4.

which were usually necessary and desirable in the usual trade or business of URSUMCO, and had been repeatedly hired for the same undertaking every season. Thus, pursuant to Article 280 of the Labor Code, the NLRC declared that the complainants were regular employees. As regular employees, the NLRC held that the complainants were entitled to the benefits granted, under the CBA, to the regular URSUMCO employees.

The petitioners moved to reconsider this NLRC ruling which the NLRC denied in its April 28, 2006 resolution.[12] The petitioners elevated the case to the CA *via* a petition for *certiorari*.[13]

The Ruling of the CA

In its November 29, 2007 decision,[14] the CA granted in part the petition; it affirmed the NLRC's ruling finding the complainants to be regular employees of URSUMCO, but deleted the grant of monetary benefits under the CBA.

The CA pointed out that the primary standard for determining regular employment is the reasonable connection between a particular activity performed by the employee *vis-à-vis* the usual trade or business of the employer. This connection, in turn, can be determined by considering the nature of the work performed and the relation of this work to the business or trade of the employer in its entirety.

In this regard, the CA held that the various activities that the complainants were tasked to do were necessary, if not indispensable, to the nature of URSUMCO's business. As the complainants had been performing their respective tasks for at least one year, the CA held that this repeated and continuing need for the complainants' performance of these same tasks, regardless of whether the performance was continuous or intermittent, constitutes sufficient evidence of the necessity, if not indispensability, of the activity to URSUMCO's business.

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[12] *Supra* note 5.

[13] *Rollo,* pp. 178-197.

[14] *Supra* note 2.

Further, the CA noted that the petitioners failed to prove that they gave the complainants opportunity to work elsewhere during the off-season, which opportunity could have qualified the latter as seasonal workers. Still, the CA pointed out that even during this off-season period, seasonal workers are not separated from the service but are simply considered on leave until they are re-employed. Thus, the CA concluded that the complainants were regular employees with respect to the activity that they had been performing and while the activity continued.

On the claim for CBA benefits, the CA, however, ruled that the complainants were not entitled to receive them. The CA pointed out that while the complainants were considered regular, albeit seasonal, workers, the CBA-covered regular employees of URSUMCO were performing tasks needed by the latter for the entire year with no regard to the changing sugar milling season. Hence, the complainants did not belong to and could not be grouped together with the regular employees of URSUMCO, for collective bargaining purposes; they constitute a bargaining unit separate and distinct from the regular employees. Consequently, the CA declared that the complainants could not be covered by the CBA.

The petitioners filed the present petition after the CA denied their motion for partial reconsideration[15] in the CA's January 22, 2009 resolution.[16]

The Issues

The petition essentially presents the following issues for the Court's resolution: (1) whether the respondents are regular employees of URSUMCO; and (2) whether affirmative relief can be given to the fifteen (15) of the complainants who did not appeal the LA's decision.[17]

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[15] *Rollo,* pp. 60-79.

[16] *Supra* note 3.

[17] The matter of the respondents' non-entitlement to the CBA benefits, as declared by the CA, was not raised before this Court in the present proceeding either by the petitioners or the respondents.

The Court's Ruling

We resolve to partially **GRANT** the petition.

On the issue of the status of the respondents' employment

The petitioners maintain that the respondents are contractual or project/seasonal workers and not regular employees of URSUMCO. They thus argue that the CA erred in applying the legal parameters and guidelines for regular employment to the respondents' case. They contend that the legal standards – length of the employee's engagement and the desirability or necessity of the employee's work in the usual trade or business of the employer – apply only to regular employees under paragraph 1, Article 280 of the Labor Code, and, under paragraph 2 of the same article, to casual employees who are deemed regular by their length of service.

The respondents, the petitioners point out, were specifically engaged for a fixed and predetermined duration of, on the average, one (1) month at a time that coincides with a particular phase of the company's business operations or sugar milling season. By the nature of their engagement, the respondents' employment legally ends upon the end of the predetermined period; thus, URSUMCO was under no legal obligation to rehire the respondents.

In their comment,[18] the respondents maintain that they are regular employees of URSUMCO. Relying on the NLRC and the CA rulings, they point out that they have been continuously working for URSUMCO for more than one year, performing tasks which were necessary and desirable to URSUMCO's business. Hence, under the above-stated legal parameters, they are regular employees.

We **disagree** with the petitioners' position. We find the respondents to be **regular seasonal employees** of URSUMCO.

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[18] *Rollo*, pp. 246-249.

As the CA has explained in its challenged decision, Article 280 of the Labor Code provides for three kinds of employment arrangements, namely: *regular, project/seasonal and casual*. Regular employment refers to that arrangement whereby the employee "*has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer*[.]"[19] Under the definition, the primary standard that determines regular employment is the reasonable connection between the particular activity performed by the employee and the usual business or trade of the employer;[20] the emphasis is on the necessity or desirability of the employee's activity. Thus, when the employee performs activities considered necessary and desirable to the overall business scheme of the employer, the law regards the employee as regular.

By way of an exception, paragraph 2, Article 280 of the Labor Code also considers regular a casual employment arrangement when the casual employee's engagement has lasted for at least one year, regardless of the engagement's continuity. The controlling test in this arrangement is the length of time during which the employee is engaged.

[19] Article 280 of the Labor Code reads in full:

Art. 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 the 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 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 exists.

[20] *De Leon v. National Labor Relations Commission*, 257 Phil. 626, 632 (1989). See also *Hda. Fatima v. Nat'l. Fed. of Sugarcane Workers-Food and Gen. Trade*, 444 Phil. 587, 596 (2003); *Abasolo v. National Labor Relations Commission*, 400 Phil. 86, 103 (2000); and *Hacienda Bino/Hortencia Starke, Inc. v. Cuenca*, 496 Phil. 198, 209 (2005).

A project employment, on the other hand, contemplates an arrangement whereby "*the employment has been fixed for a specific project or undertaking whose completion or termination has been determined at the time of the engagement of the employee*[.]"[21] Two requirements, therefore, clearly need to be satisfied to remove the engagement from the presumption of regularity of employment, namely: (1) designation of a specific project or undertaking for which the employee is hired; and (2) clear determination of the completion or termination of the project at the time of the employee's engagement.[22] The services of the project employees are legally and automatically terminated upon the end or completion of the project as the employee's services are coterminous with the project.

Unlike in a regular employment under Article 280 of the Labor Code, however, the length of time of the asserted "project" employee's engagement is not controlling as the employment may, in fact, last for more than a year, depending on the needs or circumstances of the project. Nevertheless, this length of time (or the continuous rehiring of the employee even after the cessation of the project) may serve as a badge of regular employment when the activities performed by the purported "project" employee are necessary and indispensable to the usual business or trade of the employer.[23] In this latter case, the law will regard the arrangement as regular employment.[24]

Seasonal employment operates much in the same way as project employment, albeit it involves work or service that is seasonal in nature or lasting for the duration of the season.[25] As with project employment, although the seasonal employment arrangement involves work that is seasonal or periodic in nature, the employment itself is not automatically considered seasonal so as to prevent the employee from attaining regular status. To

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[21] LABOR CODE, Article 280.

[22] See *Violeta v. NLRC*, 345 Phil. 762, 771 (1997).

[23] See *Tomas Lao Construction v. NLRC*, 344 Phil. 268, 279 (1997).

[24] See *Maraguinot, Jr. v. NLRC*, 348 Phil. 580, 600-601 (1998).

[25] *Ibid*.

exclude the asserted "seasonal" employee from those classified as regular employees, the employer must show that: (1) the employee must be performing work or services that are seasonal in nature; and (2) he had been employed for the duration of the season.[26] Hence, when the "seasonal" workers are continuously and repeatedly hired to perform the same tasks or activities *for several seasons* or *even after the cessation of the season*, this length of time may likewise serve as badge of regular employment.[27] In fact, even though denominated as "seasonal workers," if these workers are called to work from time to time and are only temporarily laid off during the off-season, the law does not consider them separated from the service during the off-season period. The law simply considers these seasonal workers on leave until re-employed.[28]

Casual employment, the third kind of employment arrangement, refers to any other employment arrangement that does not fall under any of the first two categories, *i.e.,* regular or project/ seasonal.

Interestingly, the Labor Code does not mention another employment arrangement – contractual or fixed term employment (or employment for a term) – which, if not for the fixed term, should fall under the category of regular employment in view of the nature of the employee's engagement, which is to perform an activity usually necessary or desirable in the employer's business.

In *Brent School, Inc. v. Zamora*,[29] the Court, for the first time, recognized and resolved the anomaly created by a narrow and literal interpretation of Article 280 of the Labor Code that appears to restrict the employee's right to freely stipulate with

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[26] See *Hacienda Bino/Hortencia Starke, Inc. v. Cuenca, supra* note 20, at 209; and *Hda. Fatima v. Nat'l. Fed. of Sugarcane Workers-Food and Gen. Trade, supra* note 20, at 596.

[27] See *Abasolo v. National Labor Relations Commission, supra* note 20, at 103-104.

[28] *Id.*

[29] 260 Phil. 747 (1990).

his employer on the duration of his engagement. In this case, the Court upheld the validity of the fixed-term employment agreed upon by the employer, Brent School, Inc., and the employee, Dorotio Alegre, declaring that the restrictive clause in Article 280 "should be construed to refer to the substantive evil that the Code itself x x x singled out: agreements entered into precisely to circumvent security of tenure. It should have no application to instances where [the] fixed period of employment was agreed upon knowingly and voluntarily by the parties x x x absent any x x x circumstances vitiating [the employee's] consent, or where [the facts satisfactorily show] that the employer and [the] employee dealt with each other on more or less equal terms[.]"[30] The indispensability or desirability of the activity performed by the employee will not preclude the parties from entering into an otherwise valid fixed term employment agreement; a definite period of employment does not essentially contradict the nature of the employees duties[31] as necessary and desirable to the usual business or trade of the employer.

Nevertheless, "where the circumstances evidently show that the employer imposed the period precisely to preclude the employee from acquiring tenurial security, the law and this Court will not hesitate to strike down or disregard the period as contrary to public policy, morals, *etc*."[32] In such a case, the general restrictive rule under Article 280 of the Labor Code will apply and the employee shall be deemed regular.

Clearly, therefore, the nature of the employment does not depend solely on the will or word of the employer or on the procedure for hiring and the manner of designating the employee. Rather, the nature of the employment depends on the nature of the activities to be performed by the employee, considering the

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[30] *Id.* at 763.

[31] See *St. Theresa's School of Novaliches Foundation v. NLRC*, 351 Phil. 1038, 1043 (1998); *Pure Foods Corp. v. NLRC*, 347 Phil. 434, 443 (1997); and *Philips Semiconductors (Phils.), Inc. v. Fadriquela,* G.R. No. 141717, April 14, 2004, 427 SCRA 408, 421-422.

[32] *Cielo v. NLRC*, 271 Phil. 433, 442 (1991).

nature of the employer's business, the duration and scope to be done,[33] and, in some cases, even the length of time of the performance and its continued existence.

In light of the above legal parameters laid down by the law and applicable jurisprudence, the respondents are neither project, seasonal nor fixed-term employees, but **regular seasonal workers** of URSUMCO. The following factual considerations from the records support this conclusion:

First, the respondents were made to perform various tasks that did not at all pertain to any specific phase of URSUMCO's strict milling operations that would ultimately cease upon completion of a particular phase in the milling of sugar; rather, they were tasked to perform duties regularly and habitually needed in URSUMCO's operations during the milling season. The respondents' duties as loader operators, hookers, crane operators and drivers were necessary to haul and transport the sugarcane from the plantation to the mill; laboratory attendants, workers and laborers to mill the sugar; and welders, carpenters and utility workers to ensure the smooth and continuous operation of the mill for the duration of the milling season, as distinguished from the production of the sugarcane which involves the planting and raising of the sugarcane until it ripens for milling. The production of sugarcane, it must be emphasized, requires a different set of workers who are experienced in farm or agricultural work. Needless to say, they perform the activities that are necessary and desirable in sugarcane production. As in the milling of sugarcane, the plantation workers perform their duties only during the planting season.

Second, the respondents were regularly and repeatedly hired to perform the same tasks year after year. This regular and repeated hiring of the same workers (two different sets) for two separate seasons has put in place, principally through jurisprudence, the system of regular seasonal employment in the sugar industry and other industries with a similar nature of operations.

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[33] *Abasolo, et al. v. NLRC*, 400 Phil. 86, 103 (2000).

Under the system, the plantation workers or the mill employees do not work continuously for one whole year but only for the duration of the growing of the sugarcane or the milling season. Their seasonal work, however, does not detract from considering them in regular employment since in a litany of cases, this Court has already settled that seasonal workers who are called to work from time to time and are temporarily laid off during the off-season are not separated from the service in said period, but are merely considered on leave until re-employment.[34] **Be this as it may, regular seasonal employees, like the respondents in this case, should not be confused with the regular employees of the sugar mill such as the administrative or office personnel who perform their tasks for the entire year regardless of the season**. **The NLRC, therefore, gravely erred when it declared the respondents regular employees of URSUMCO without qualification** and that they were entitled to the benefits granted, under the CBA, to URSUMCO'S regular employees.

Third, while the petitioners assert that the respondents were free to work elsewhere during the off-season, the records do not support this assertion. There is no evidence on record showing that after the completion of their tasks at URSUMCO, the respondents sought and obtained employment elsewhere.

Contrary to the petitioners' position, *Mercado, Sr. v. NLRC, 3rd Div.*[35] is not applicable to the respondents as this case was resolved based on different factual considerations. In *Mercado*, the workers were hired to perform phases of the agricultural work in their employer's farm for a definite period of time; afterwards, they were free to offer their services to any other farm owner. The workers were not hired regularly and repeatedly for the same phase(s) of agricultural work, but only intermittently for any single phase. And, more importantly, the employer in *Mercado* sufficiently proved these factual circumstances. The Court reiterated these same observations in *Hda. Fatima v.*

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[34] *Id.* at 104.

[35] 278 Phil. 345 (1991).

Nat'l. Fed. of Sugarcane Workers-Food and Gen. Trade[36] and *Hacienda Bino/Hortencia Starke, Inc. v. Cuenca*.[37]

At this point, we reiterate the settled rule that in this jurisdiction, only questions of law are allowed in a petition for review on *certiorari*.[38] This Court's power of review in a Rule 45 petition is limited to resolving matters pertaining to any perceived legal errors, which the CA may have committed in issuing the assailed decision.[39] In reviewing the legal correctness of the CA's Rule 65 decision in a labor case, we examine the CA decision in the context that it determined, *i.e.,* 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.[40] 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.[41]

Viewed in this light, we find the need to place the CA's affirmation, albeit with modification, of the NLRC decision of July 22, 2005 in perspective. To recall, the NLRC declared the respondents as **regular employees** of URSUMCO.[42] With such a declaration, the NLRC in effect granted the respondents' prayer for regularization and, concomitantly, their prayer for the grant of monetary benefits under the CBA for URSUMCO's regular employees. In its challenged ruling, the CA **concurred** with the NLRC finding, but with the respondents characterized as **regular seasonal employees** of URSUMCO.

The CA misappreciated the real import of the NLRC ruling. The labor agency did not declare the respondents as **regular**

[36] *Supra* note 20.

[37] *Supra* note 20.

[38] *Id.*

[39] *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334, 342.

[40] *Id.* at 342-343.

[41] *Career Philippines Shipmanagement, Inc. v. Serna,* G.R. No. 172086, December 3, 2012, 686 SCRA 676, 683-684.

[42] *Rollo*, p. 157.

seasonal employees, but as **regular employees**. This is the only conclusion that can be drawn from the NLRC decision's dispositive portion, thus:

> WHEREFORE, premises considered, the appeal is hereby GRANTED. Complainants are declared regular employees of respondent. As such, they are entitled to the monetary benefits granted to regular employees of respondent company based on the CBA, reckoned three (3) years back from the filing of the above-entitled case on 23 August 2002 up to the present or to their entire service with respondent after the date of filing of the said complaint if they are no longer connected with respondent company.[43]

It is, therefore, clear that **the issue brought to the CA for resolution is whether the NLRC gravely abused its discretion in declaring the respondents regular employees of URSUMCO and, as such, entitled to the benefits under the CBA for the regular employees**.

Based on the established facts, we find that the CA grossly misread the NLRC ruling and missed the implications of the respondents' regularization. To reiterate, the respondents are **regular seasonal employees**, as the CA itself opined when it declared that "private respondents who are regular workers with respect to their seasonal tasks or activities and while such activities exist, cannot automatically be governed by the CBA between petitioner URSUMCO and the authorized bargaining representative of the regular and permanent employees."[44] Citing jurisprudential standards,[45] it then proceeded to explain that the respondents cannot be lumped with the regular employees due to the differences in the nature of their duties and the duration of their work *vis-a-vis* the operations of the company.

The NLRC was well aware of these distinctions as it acknowledged that the respondents worked only during the milling

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[43] *Ibid*.

[44] *Id.* at 55.

[45] *Golden Farms, Inc. v. Secretary of Labor*, G.R. No. 102130, July 26, 1994, 234 SCRA 517.

season, yet it ignored the distinctions and declared them regular employees, a marked departure from existing jurisprudence. **This, to us, is grave abuse of discretion, as it gave no reason for disturbing the system of regular seasonal employment already in place in the sugar industry and other industries with similar seasonal operations. For upholding the NLRC's flawed decision on the respondents' employment status, the CA committed a reversible error of judgment**.

In sum, we find the complaint to be devoid of merit. The issue of granting affirmative relief to the complainants who did not appeal the CA ruling has become academic.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. Except for the denial of the respondents' claim for CBA benefits, the November 29, 2007 decision and the January 22, 2009 resolution of the Court of Appeals are **SET ASIDE**. The complaint is **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189618. January 15, 2014]

RIVELISA REALTY, INC., represented by RICARDO P. VENTURINA, *petitioner, vs.* **FIRST STA. CLARA BUILDERS CORPORATION, represented by RAMON A. PANGILINAN, as President,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; 1999 INTERNAL RULES OF THE COURT OF APPEALS; MOTION FOR RECONSIDERATION; THE 15-DAY PERIOD FOR FILING THEREOF IS NON-EXTENDIBLE.—** While a motion for additional time is expressly permitted in the filing of a petition for review before the Court under Section 2, Rule 45 of the Rules of Court, a similar **motion seeking to extend the period for filing a motion for reconsideration is prohibited in all other courts**. x x x Restating the rule in *Rolloque v. CA* (*Rolloque*), the Court emphasized that **the 15-day period for filing a motion for new trial or reconsideration is non-extendible**. Hence, **the filing of a motion for extension of time to file a motion for reconsideration did not toll the 15-day period before a judgment becomes final and executory**.

2. **ID.; ACTIONS; APPEALS; FAILURE TO PERFECT AN APPEAL IN THE MANNER AND WITHIN THE PERIOD FIXED BY LAW RENDERS THE DECISION SOUGHT TO BE APPEALED FINAL.—** In this case, Rivelisa Realty only had until March 18, 2009 within which to file either a motion for reconsideration before the CA or a petition for review of the CA Decision to the Court. But it committed the fatal error of filing instead a Motion for Extension of Time to File a Motion for Reconsideration before the CA which – as expressed in *Rolloqu*e – did not toll the running of the period for the finality of the latter's decision. Verily, a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to him, becomes final and binding. Since the CA Decision had already become final and executory due to the lapse of the reglementary period, not only did the CA properly deny Rivelisa Realty's belatedly-filed motion for reconsideration but also the remedy of review before the Court had already been lost. The Court has repeatedly held that the failure to perfect an appeal in the manner and within the period fixed by law renders the decision sought to be appealed final, with the result that no court can exercise appellate jurisdiction to review the decision. Considering that the CA Decision had long become final and unalterable by the time

Rivelisa Realty elevated the same, the Court must hereby deny the instant petition.

3. ID.; ID.; ACTION FOR WORK AND LABOR; PRINCIPLE OF *QUANTUM MERUIT*, DEFINED; BASED ON THIS PRINCIPLE, A CONTRACTOR IS ALLOWED TO RECOVER THE REASONABLE VALUE OF THE THING OR SERVICES RENDERED DESPITE THE LACK OF A WRITTEN CONTRACT, IN ORDER TO AVOID UNJUST ENRICHMENT.— The Court concurs with the CA that First Sta. Clara is entitled to be compensated for the development works it had accomplished on the project based on the principle of *quantum meruit*. Case law instructs that under this principle, a contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of a written contract, in order to avoid unjust enrichment. *Quantum meruit* means that, in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves. The measure of recovery should relate to the reasonable value of the services performed because the principle aims to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain any benefit without paying for it.

APPEARANCES OF COUNSEL

E.O. Gana and Partners for petitioner.
Edgardo G. Villarin 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 27, 2009, and the Resolutions[3] dated

[1] *Rollo,* pp. 11-54.

[2] *Id.* at 85-95. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Martin S. Villarama, Jr. (now Supreme Court Associate Justice) and Myrna Dimaranan Vidal, concurring.

[3] *Id.* at 136-138 and 60-61, respectively.

May 22, 2009 and September 8, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 67198 which reversed and set aside the Decision[4] dated March 30, 2000 of the Regional Trial Court of Cabanatuan City, Branch 86 (RTC), holding that: (*a*) the 15-day reglementary period to file a motion for reconsideration is non-extendible; and (*b*) the Joint Venture Agreement (JVA) entered into by petitioner Rivelisa Realty, Inc. (Rivelisa Realty) and respondent First Sta. Clara Builders Corporation (First Sta. Clara) had been terminated through mutual assent.

The Facts

On January 25, 1995, Rivelisa Realty entered into a JVA[5] with First Sta. Clara for the construction and development of a residential subdivision located in Cabanatuan City (project). According to its terms, First Sta. Clara was to assume the horizontal development works in the remaining 69% undeveloped portion of the project owned by Rivelisa Realty, and complete the same within twelve (12) months from signing. Upon its completion, 60% of the total subdivided lots shall be transferred in the name of First Sta. Clara. Also, since 31% of the project had been previously developed by Rivelisa Realty which was assessed to have an aggregate worth of ₱10,000,000.00, it was agreed that First Sta. Clara should initially use its own resources (in the same aggregate amount of ₱10,000,000.00) before it can start claiming additional funds from the pre-sale of the 31% developed lots. 40% of the cost of additional works not originally part of the JVA was to be shouldered by Rivelisa Realty, while 60% by First Sta. Clara.[6]

During the course of the project, First Sta. Clara hired a subcontractor to perform the horizontal development work as well as the additional works on the riprap and the elevation of the road embankment. Since First Sta. Clara ran out of funds after only two (2) months of construction, Rivelisa Realty was

[4] *Id.* at 76-83. Penned by Presiding Judge Raymundo Z. Annang.

[5] *Id.* at 69-72.

[6] *Id.* at 81-82.

forced to shoulder part of the payment due to the subcontractor.[7] First Sta. Clara manifested its intention to back out from the JVA and to discontinue operations when Rivelisa Realty refused to advance any more funds until 60% of the project had been accomplished. In a letter dated August 24, 1995, Rivelisa Realty readily agreed to release First Sta. Clara from the JVA and estimated its actual accomplishment at ₱4,000,000.00, which included the payment to the subcontractor in the amount of ₱1,258,892.72 and the cash advances amounting to ₱319,259.68.[8] First Sta. Clara, however, insisted on a valuation of its accomplished works at ₱4,578,142.10, which, less the cash advances and subcontractor's fees, should leave a net reimbursable amount of ₱3,000,000.00 in its favor. After several exchanges, Rivelisa Realty agreed to reimburse First Sta. Clara the amount of ₱3,000,000.00, emphasizing in its letter dated October 9, 1995 that the amount is actually over and beyond its obligation under the JVA.[9] However, the reimbursable amount of ₱3,000,000.00 remained unpaid despite several demands. Hence, First Sta. Clara filed a complaint[10] for rescission of the JVA against Rivelisa Realty before the RTC, claiming the payment of damages for breach of contract and delay in the performance of an obligation.

For its part, Rivelisa Realty asserted that it was not obligated to pay First Sta. Clara any amount at all since the latter had even failed to comply with its obligation to initially spend the equivalent amount of ₱10,000,000.00 on the project before being entitled to cash payments.[11]

The RTC Ruling

In a Decision[12] dated March 30, 2000, the RTC dismissed the complaint and ordered First Sta. Clara to instead pay Rivelisa

[7] *Id.* at 79.

[8] *Id.* at 89.

[9] *Id.* at 77-78 and 214-215.

[10] *Id.* at 73-75.

[11] *Id.* at 80.

[12] *Id.* at 76-83.

Realty on its counterclaims for actual expenses and damages amounting to ₱300,000.00, and for attorney's fees of ₱50,000.00, including costs of suit.[13] It found that First Sta. Clara had agreed to first accomplish several conditions before it could demand from Rivelisa Realty the performance of the latter's obligations under the JVA, namely: (*a*) to finish the development and construction of the remaining 69% of horizontal work in the project within a period of twelve (12) months from signing; (*b*) to spend an initial amount of ₱10,000,000.00 of its own resources for the project; and (*c*) to accomplish at least 60% of the horizontal work in the remaining undeveloped area.[14] As First Sta. Clara stopped working on the project halfway into the construction period due to its own lack of funds, the RTC concluded that it was actually the party that first violated the JVA.[15] Dissatisfied, First Sta. Clara elevated the matter on appeal.

The CA Ruling

In a Decision[16] dated February 27, 2009 (CA Decision), the CA found Rivelisa Realty still liable for First Sta. Clara's actual accomplishments in the project amounting to ₱3,000,000.00, after deducting certain costs it advanced during the construction period. It held that First Sta. Clara was no longer obligated to comply with the terms and conditions of the JVA after Rivelisa Realty agreed that it be dissolved. First Sta. Clara was, however, entitled to reimbursement because Rivelisa Realty agreed to reimburse the former for the value of the work done on the project.[17]

On March 3, 2009, Rivelisa Realty received a copy of the CA Decision[18] and, on March 18, 2009, moved for a fifteen

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[13] *Id.* at 83.

[14] *Id.* at 82.

[15] *Id.* at 83.

[16] *Id.* at 85-95.

[17] *Id.* at 92-94.

[18] See petition, *id.* at 18; see also CA Resolution dated May 22, 2009, *id.* at 136.

(15) day extension – from March 18, 2009 to April 2, 2009 – within which to file its motion for reconsideration (*i.e.*, Motion for Extension of Time to File a Motion for Reconsideration).[19] Thereafter, Rivelisa Realty filed its Motion for Reconsideration[20] by registered mail on April 2, 2009.

In a Resolution[21] dated May 22, 2009, the CA denied Rivelisa Realty's motion for extension as the 15-day period for filing a motion for reconsideration cannot be extended, and merely noted without action the subsequently filed motion for reconsideration. In a Resolution[22] dated September 8, 2009, the CA eventually denied Rivelisa Realty's motion for reconsideration on the ground that the same was filed out of time, hence, the instant petition.

The Issues Before the Court

The essential issues in this case are whether or not the CA erred in finding that: (*a*) the 15-day reglementary period for the filing of a motion for reconsideration cannot be extended; and (*b*) First Sta. Clara is entitled to be compensated for the development works it had accomplished on the project.

The Court's Ruling

The petition is bereft of merit.

The CA Decision subject of the instant petition for review had already attained finality in view of Rivelisa Realty's failure to file a motion for reconsideration within the 15-day reglementary period allowed under the CA's internal rules,[23] to wit:

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

[20] *Id.* at 96-121.

[21] *Id.* at 136-138.

[22] *Id.* at 60-61.

[23] At the time of the CA proceedings in this case, the governing rules were the 1999 Internal Rules of the Court of Appeals. The 2009 Internal Rules of the Court of Appeals were approved only on December 15, 2009 as per A.M. No. 09-11-11-CA.

RULE 12
PROCESS OF ADJUDICATION

x x x x x x x x x

Section 16. *Entry of Judgments and Final Resolutions*. — **If no appeal or motion for new trial or reconsiderations is filed within the time provided in the Rules of Court, the judgment or final resolution shall forthwith be entered by the Division Clerk of Court in the book of entries of judgments**. **The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry**. The record shall contain dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgments or final resolution has become final and executory. (SEC. 10, Rule 51, RCP)

RULE 13

MOTIONS FOR RECONSIDERATION

x x x x x x x x x

Section 2. *Time for Filing*. — **The motion for reconsideration shall be filed within the period for taking an appeal from the decision or resolution**, and a copy thereof shall be served on the adverse party. The period for filing a motion for reconsideration is non-extendible.

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RULE 4
PROCEDURE IN ORDINARY APPEALS IN CIVIL CASES

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Section 3. *Period of Ordinary Appeal*. — **The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from.** Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. (Sec. 3, Rule 41, RCP)

(Emphases supplied)

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While a motion for additional time is expressly permitted in the filing of a petition for review before the Court under Section 2, Rule 45 of the Rules of Court,[24] a similar **motion seeking to extend the period for filing a motion for reconsideration is prohibited in all other courts**. This rule was first laid down in the case of *Habaluyas Enterprises v. Japzon*[25] wherein it was held that:[26]

> Beginning one month after the promulgation of this Resolution, the **rule shall be strictly enforced that *no motion for extension of time to file a motion for new trial or reconsideration*** may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, **and the Intermediate Appellate Court**. Such a motion **may be filed only in cases pending with the Supreme Court as the court of last resort**, which may in its **sound discretion** either grant or deny the extension requested. (Emphases and underscoring supplied)

Restating the rule in *Rolloque v. CA*[27] (*Rolloque*), the Court emphasized that **the 15-day period for filing a motion for new trial or reconsideration is non-extendible**. Hence, **the filing of a motion for extension of time to file a motion for reconsideration did not toll the 15-day period before a judgment becomes final and executory**.[28]

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[24] Section 2. *Time for filing*; *extension*. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the **Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition**. (Emphases and underscoring supplied)

[25] 226 Phil. 144 (1986).

[26] *Id.* at 148.

[27] 271 Phil. 40 (1991).

[28] See *id.* at 49-50.

In this case, Rivelisa Realty only had until March 18, 2009[29] within which to file either a motion for reconsideration before the CA or a petition for review of the CA Decision to the Court. But it committed the fatal error of filing instead a Motion for Extension of Time to File a Motion for Reconsideration before the CA which – as expressed in *Rolloque* – did not toll the running of the period for the finality of the latter's decision. Verily, a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to him, becomes final and binding.[30] Since the CA Decision had already become final and executory due to the lapse of the reglementary period, not only did the CA properly deny Rivelisa Realty's belatedly-filed motion for reconsideration but also the remedy of review before the Court had already been lost. The Court has repeatedly held that the failure to perfect an appeal in the manner and within the period fixed by law renders the decision sought to be appealed final, with the result that no court can exercise appellate jurisdiction to review the decision.[31] Considering that the CA Decision had long become final and unalterable by the time Rivelisa Realty elevated the same,[32] the Court must hereby deny the instant petition.

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[29] As stated in its petition, Rivelisa Realty received a copy of the CA Decision on March 3, 2009 (see *rollo*, p. 18; see also CA Resolution dated May 22, 2009, *id.* at 136). Hence, in view of the 15-day reglemantary period, the last day for Rivelisa Realty to file either a motion for reconsideration before the CA or a petition for review of the CA Decision to the Court was on March 18, 2009.

[30] *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643, 650, citing *Ocampo v. CA*, G.R. No. 150334, March 20, 2009, 582 SCRA 43, 49.

[31] *Uy v. CA,* 349 Phil. 1002, 1011 (1998), citing *Azores vs. Securities and Exchange Commission*, 322 Phil. 425, 433 (1996).

[32] Rivelisa Realty first filed a Motion For Extension of Time to File Petition For Review on *Certiorari* Under Rule 45 before the Court on October 12, 2009 (*rollo,* p. 3), while the instant petition was filed on November 10, 2009 (*id.* at 11).

Even discounting the above-discussed procedural aspects, the Court is still wont to deny the instant petition on substantive grounds.

The Court concurs with the CA that First Sta. Clara is entitled to be compensated for the development works it had accomplished on the project based on the principle of *quantum meruit*. Case law instructs that under this principle, a contractor is allowed to recover the reasonable value of the thing or services rendered despite the lack of a written contract, in order to avoid unjust enrichment.[33] *Quantum meruit* means that, in an action for work and labor, payment shall be made in such amount as the plaintiff reasonably deserves.[34] The measure of recovery should relate to the reasonable value of the services performed[35] because the principle aims to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain any benefit without paying for it.[36] In this case, it is undisputed that First Sta. Clara already performed certain works on the project with an estimated value of ₱4,578,152.10. Clearly, to completely deny it payment for the same would result in Rivelisa Realty's unjust enrichment at the former's expense. Besides, as may be gleaned from the parties' correspondence, Rivelisa Realty obligated itself to unconditionally reimburse First Sta. Clara the amount of ₱3,000,000.00 (representing First Sta. Clara's valuation of its accomplished works at ₱4,578,152.10, less the cash advances and subcontractor's fees) after the JVA had already been terminated by them through mutual assent. As such, Rivelisa Realty cannot unilaterally renege on its promise by citing First Sta. Clara's non-fulfillment of the terms and conditions of the terminated JVA. For all these reasons, the CA's ruling must be upheld.

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[33] *H.L. Carlos Construction, Inc. v. Marina Properties Corp.*, 466 Phil. 182, 199 (2004), citing *Melchor v. Commission on Audit*, G.R. No. 95398, August 16, 1991, 200 SCRA 704, 713.

[34] *Id.*, citing *Republic v. CA*, 359 Phil. 530, 640 (1998).

[35] *International Hotel Corporation v. Francisco B. Joaquin, Jr. and Rafael Suarez*, G.R. No. 158361, April 10, 2013, 695 SCRA 382, 406, citing *Department of Health v. C.V. Canchela & Associates*, G.R. Nos. 151373-74, November 17, 2005, 475 SCRA 218, 244.

[36] *Id.*

WHEREFORE, the petition is **DENIED**. The Decision dated February 27, 2009, and Resolutions dated May 22, 2009 and September 8, 2009 of the Court of Appeals in CA-G.R. CV No. 67198 are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190106. January 15, 2014]

MAGDALENA T. VILLASI, *petitioner, vs.* **FILOMENO GARCIA, substituted by his heirs, namely, ERMELINDA H. GARCIA, LIZA GARCIA-GONZALEZ, THERESA GARCIA-TIANGSON, MARIVIC H. GARCIA, MARLENE GARCIA-MOMIN, GERARDO H. GARCIA, GIDEON H. GARCIA and GENEROSO H. GARCIA, and ERMELINDA H. GARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; MONEY JUDGMENTS; ENFORCEABLE ONLY AGAINST PROPERTIES UNQUESTIONABLY BELONGING TO THE JUDGMENT DEBTOR; REMEDIES OF A THIRD PERSON WHOSE PROPERTY IS MISTAKENLY LEVIED UPON.— It is a basic principle of law that money judgments are enforceable only against the property incontrovertibly belonging to the judgment debtor,

and if the property belonging to any third person is mistakenly levied upon to answer for another man's indebtedness, such person has all the right to challenge the levy through any of the remedies provided for under the Rules of Court. Section 16, Rule 39 specifically provides that a third person may avail himself of the remedies of either *terceria,* to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor, or an independent "separate action" to vindicate his claim of ownership and/or possession over the foreclosed property. However, the person other than the judgment debtor who claims ownership or right over levied properties is not precluded from taking other legal remedies to prosecute his claim. Indeed, the power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts.

2. ID.; ID.; ID.; ID.; ID.; ID.; REMEDY OF *TERCERIA*; TO PROSPER, THE THIRD-PARTY CLAIMANT RESORTING THERETO MUST FIRST SUFFICIENTLY ESTABLISH HIS OWNERSHIP OR RIGHT OF POSSESSION ON THE PROPERTY.— The right of a third-party claimant to file a *terceria* is founded on his title or right of possession. Corollary thereto, before the court can exercise its supervisory power to direct the release of the property mistakenly levied and the restoration thereof to its rightful owner, the claimant must first unmistakably establish his ownership or right of possession thereon. In *Spouses Sy v. Hon. Discaya*, we declared that for a third-party claim or a *terceria* to prosper, the claimant must first sufficiently establish his right on the property x x x.

3. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; PAYMENT OF TAXES COUPLED WITH ACTUAL POSSESSION OF THE LAND COVERED BY TAX DECLARATION STRONGLY SUPPORTS A CLAIM OF OWNERSHIP; CASE AT BAR.— Villasi was able to satisfactorily establish the ownership of FGCI thru the pieces of evidence she appended to her opposition.

Worthy to note is the fact that the building in litigation was declared for taxation purposes in the name of FGCI and not in the Spouses Garcias'. While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, they constitute credible proof of claim of title over the property. In *Buduhan v. Pakurao,* we underscored the significance of a tax declaration as proof that a holder has claim of title, and, we gave weight to the demonstrable interest of the claimant holding a tax receipt x x x. It likewise failed to escape our attention that FGCI is in actual possession of the building and as the payment of taxes coupled with actual possession of the land covered by tax declaration strongly supports a claim of ownership. Quite significantly, all the court processes in an earlier collection suit between FGCI and Villasi were served, thru the former's representative Filomeno Garcia, at No. 140 Kalayaan Avenue, Quezon City, where the subject property is located. This circumstance is consistent with the tax declaration in the name of FGCI.

4. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EVERY PREVAILING LITIGANT ENJOYS THE COROLLARY RIGHT TO THE FRUITS OF THE JUDGMENT.— Every prevailing party to a suit enjoys the corollary right to the fruits of the judgment and, thus, court rules provide a procedure to ensure that every favorable judgment is fully satisfied. It is almost trite to say that execution is the fruit and end of the suit. Hailing it as the "life of the law," *ratio legis est anima,* this Court has zealously guarded against any attempt to thwart the rigid rule and deny the prevailing litigant his right to savour the fruit of his victory. A judgment, if left unexecuted, would be nothing but an empty triumph for the prevailing party.

5. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; OWNERSHIP; RULE ON ACCESSION; THE OWNERSHIP OF THE PROPERTY GIVES THE RIGHT BY ACCESSION TO EVERYTHING WHICH IS PRODUCED THEREBY, OR WHICH IS INCORPORATED OR ATTACHED THERETO, EITHER NATURALLY OR ARTIFICIALLY; EXCEPTION.— While it is a hornbook doctrine that the accessory follows the principal, that is, the ownership of the property gives the right by accession to

everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially, such rule is not without exception. In cases where there is a clear and convincing evidence to prove that the principal and the accessory are not owned by one and the same person or entity, the presumption shall not be applied and the actual ownership shall be upheld. In a number of cases, we recognized the separate ownership of the land from the building and brushed aside the rule that accessory follows the principal. x x x The rule on accession is not an iron-clad *dictum*. On instances where this Court was confronted with cases requiring judicial determination of the ownership of the building separate from the lot, it never hesitated to disregard such rule. The case at bar is of similar import. When there are factual and evidentiary evidence to prove that the building and the lot on which it stands are owned by different persons, they shall be treated separately. As such, the building or the lot, as the case may be, can be made liable to answer for the obligation of its respective owner.

APPEARANCES OF COUNSEL

Ricardo J.M. Rivera Law Office for petitioner.
Pelaez Gregorio Gregorio & Lim for respondents.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review on *Certiorari*[1] filed pursuant to Rule 45 of the Revised Rules of Court, assailing the 19 May 2009 Decision[2] rendered by the Sixth Division of the Court of Appeals in CA-G.R. SP No. 92587. The appellate court affirmed the Order[3] of the Regional Trial Court (RTC) of Quezon City, Branch 77, directing the Deputy Sheriff to suspend the conduct of the execution sale of the buildings levied upon by him.

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[1] *Rollo*, pp. 10-38.

[2] Penned by Associate Justice Ricardo R. Rosario with Associate Justices Jose L. Sabio, Jr. and Vicente S. E. Veloso, concurring. *Id.* at 43-51.

[3] Presided by Judge Vivencio S. Baclig. *Id.* at 104-106.

The Facts

Sometime in 1990, petitioner Magdalena T. Villasi (Villasi) engaged the services of respondent Fil-Garcia Construction, Inc. (FGCI) to construct a seven-storey condominium building located at Aurora Boulevard corner N. Domingo Street, Cubao, Quezon City. For failure of Villasi to fully pay the contract price despite several demands, FGCI initiated a suit for collection of sum of money before the RTC of Quezon City, Branch 77. In its action docketed as Civil Case No. Q-91-8187, FGCI prayed, among others, for the payment of the amount of ₱2,865,000.00, representing the unpaid accomplishment billings. Served with summons, Villasi filed an answer specifically denying the material allegations of the complaint. Contending that FGCI has no cause of action against her, Villasi averred that she delivered the total amount of ₱7,490,325.10 to FGCI but the latter accomplished only 28% of the project. After the pre-trial conference was terminated without the parties having reached an amicable settlement, trial on the merits ensued.

Finding that FGCI was able to preponderantly establish by evidence its right to the unpaid accomplishment billings, the RTC rendered a Decision[4] dated 26 June 1996 in FGCI's favor. While the trial court brushed aside the allegation of Villasi that an excess payment was made, it upheld the claim of FGCI to the unpaid amount of the contract price and, thus, disposed:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Ordering [Villasi] to pay [FGCI] the sum of ₱2,865,000.00 as actual damages and unpaid accomplishment billings;
> 2. Ordering [Villasi] to pay [FGCI] the amount of ₱500,000.00 representing the value of unused building materials;
> 3. Ordering [Villasi] to pay [FGCI] the amount of ₱100,000.00, as moral damages and ₱100,000.00 as attorney's fees.[5]

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[4] Presided by Judge Ignacio L. Salvador. *Id.* at 54-61.

[5] *Id.* at 61.

Elevated on appeal and docketed as CA-GR CV No. 54750, the Court of Appeals reversed the disquisition of the RTC in its Decision[6] dated 20 November 2000. The appellate court ruled that an overpayment was made by Villasi and thereby directed FGCI to return the amount that was paid in excess, *viz:*

> WHEREFORE, premises considered, the present appeal is hereby GRANTED and the appealed decision in Civil Case No. Q-91-8187 is hereby REVERSED and SET ASIDE and judgment is hereby rendered ordering the [FGCI] to return to [Villasi] the sum of ₱1,244,543.33 as overpayment under their contract, and the further sum of ₱425,004.00 representing unpaid construction materials obtained by it from [Villasi]. [FGCI] is likewise hereby declared liable for the payment of liquidated damages in the sum equivalent to 1/10 of 1% of the contract price for each day of delay computed from March 6, 1991.
>
> No pronouncement as to costs.[7]

Unrelenting, FGCI filed a Petition for Review on *Certiorari* before this Court, docketed as G.R. No. 147960, asseverating that the appellate court erred in rendering the 20 November 2000 Decision. This Court, however, in a Resolution dated 1 October 2001, denied the appeal for being filed out of time. The said resolution became final and executory on 27 November 2001, as evidenced by the Entry of Judgment[8] made herein.

To enforce her right as prevailing party, Villasi filed a Motion for Execution of the 20 November 2000 Court of Appeals Decision, which was favorably acted upon by the RTC.[9] A Writ of Execution was issued on 28 April 2004, commanding the Sheriff to execute and make effective the 20 November 2000 Decision of the Court of Appeals.

To satisfy the judgment, the sheriff levied on a building located at No. 140 Kalayaan Avenue, Quezon City, covered by Tax

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[6] *Id.* at 62-69.

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

[8] *Id.* at 70.

[9] *Id.* at 72-74.

Declaration No. D-021-01458, and built in the lots registered under Transfer Certificates of Title (TCT) Nos. 379193 and 379194. While the building was declared for taxation purposes in the name of FGCI, the lots in which it was erected were registered in the names of the Spouses Filomeno Garcia and Ermelinda Halili-Garcia (Spouses Garcia). After the mandatory posting and publication of notice of sale on execution of real property were complied with, a public auction was scheduled on 25 January 2006.

To forestall the sale on execution, the Spouses Garcia filed an Affidavit of Third Party Claim[10] and a Motion to Set Aside Notice of Sale on Execution,[11] claiming that they are the lawful owners of the property which was erroneously levied upon by the sheriff. To persuade the court *a quo* to grant their motion, the Spouses Garcia argued that the building covered by the levy was mistakenly assessed by the City Assessor in the name of FGCI. The motion was opposed by Villasi who insisted that its ownership belongs to FGCI and not to the Spouses Garcia as shown by the tax declaration.

After weighing the arguments of the opposing parties, the RTC issued on 24 February 2005 an Order[12] directing the Sheriff to hold in abeyance the conduct of the sale on execution, to wit:

> WHEREFORE, premises considered, the Court hereby orders Deputy Sheriff Angel Doroni to suspend or hold in abeyance the conduct of the sale on execution of the buildings levied upon by him, until further orders from the Court.[13]

The motion for reconsideration of Villasi was denied by the trial court in its 11 October 2005 Order.[14]

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[10] *Id.* at 76-78.

[11] *Id.* at 97-102.

[12] *Id.* at 104-106.

[13] *Id.* at 106.

[14] *Id.* at 112.

Arguing that the RTC gravely abused its discretion in ordering the suspension of the sale on execution, Villasi timely filed a Petition for *Certiorari* before the Court of Appeals. In a Decision[15] dated 19 May 2009, the appellate court dismissed the petition. In a Resolution[16] dated 28 October 2009, the Court of Appeals refused to reconsider its decision.

Villasi is now before this Court *via* this instant Petition for Review on *Certiorari* assailing the adverse Court of Appeals Decision and Resolution and raising the following issues:

The Issues

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN UPHOLDING THE DECISION OF THE TRIAL COURT TO SUSPEND AND HOLD IN ABEYANCE THE SALE ON EXECUTION OF THE BUILDINGS LEVIED UPON ON THE BASIS OF RESPONDENTS' AFFIDAVIT OF THIRD-PARTY CLAIM[;]

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT HELD THAT THERE IS NO REASON TO PIERCE THE VEIL OF [FGCI'S] CORPORATE FICTION IN THE CASE AT BAR[;] [AND]

III.

WHETHER OR NOT THE BRANCH SHERIFF OF THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 77 SHOULD BE DIRECTED TO FILE THE APPROPRIATE NOTICE OF LEVY WITH THE REGISTER OF DEEDS OF QUEZON CITY.[17]

The Court's Ruling

It is a basic principle of law that money judgments are enforceable only against the property incontrovertibly belonging

[15] *Id.* at 43-51.

[16] *Id.* at 53.

[17] *Id.* at 19.

to the judgment debtor, and if the property belonging to any third person is mistakenly levied upon to answer for another man's indebtedness, such person has all the right to challenge the levy through any of the remedies provided for under the Rules of Court. Section 16,[18] Rule 39 specifically provides that a third person may avail himself of the remedies of either *terceria,* to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor, or an independent "separate action" to vindicate his claim of ownership and/or possession over the foreclosed property. However, the person other than the judgment debtor who claims ownership or right over levied properties is not precluded from taking other legal remedies to prosecute his claim.[19]

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[18] **Sec. 16.** Proceedings where property claimed by third person. - If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

[19] *Gagoomal v. Villacorta*, G.R. No. 192813, 18 January 2012, 663 SCRA 444, 454-455.

Indeed, the power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts.[20]

Claiming that the sheriff mistakenly levied the building that lawfully belongs to them, the Spouses Garcia availed themselves of the remedy of *terceria* under Section 16, Rule 39 of the Revised Rules of Court. To fortify their position, the Spouses Garcia asserted that as the owners of the land, they would be deemed under the law as owners of the building standing thereon. The Spouses Garcia also asserted that the construction of the building was financed thru a loan obtained from Metrobank in their personal capacities, and they merely contracted FGCI to construct the building. Finally, the Spouses Garcia argued that the tax declaration, based on an erroneous assessment by the City Assessor, cannot be made as basis of ownership.

For her part, Villasi insists that the levy effected by the sheriff was proper since the subject property belongs to the judgment debtor and not to third persons. To dispute the ownership of the Spouses Garcia, Villasi pointed out that the levied property was declared for tax purposes in the name of FGCI. A Certification issued by the Office of the City Engineering of Quezon City likewise showed that the building permit of the subject property was likewise issued in the name of FGCI.

We grant the petition.

The right of a third-party claimant to file a *terceria* is founded on his title or right of possession. Corollary thereto, before the court can exercise its supervisory power to direct the release of the property mistakenly levied and the restoration thereof to its rightful owner, the claimant must first unmistakably establish his ownership or right of possession thereon. In *Spouses Sy v.*

[20] *Corpus v. Pascua*, A.M. No. P-11-2972, 28 September 2011, 658 SCRA 239, 248.

Hon. Discaya,[21] we declared that for a third-party claim or a *terceria* to prosper, the claimant must first sufficiently establish his right on the property:

> [A] third person whose property was seized by a sheriff to answer for the obligation of the judgment debtor may invoke the supervisory power of the court which authorized such execution. Upon due application by the third person and after summary hearing, the court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. What said court can do in these instances, however, is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat of the matter only insofar as may be necessary to decide if the sheriff has acted correctly or not. It can require the sheriff to restore the property to the claimant's possession if warranted by the evidence. **However, if the claimant's proofs do not persuade the court of the validity of his title or right of possession thereto, the claim will be denied.**[22] (Emphasis and underscoring supplied).

Our perusal of the record shows that, as the party asserting their title, the Spouses Garcia failed to prove that they have a *bona fide* title to the building in question. Aside from their postulation that as title holders of the land, the law presumes them to be owners of the improvements built thereon, the Spouses Garcia were unable to adduce credible evidence to prove their ownership of the property. In contrast, Villasi was able to satisfactorily establish the ownership of FGCI thru the pieces of evidence she appended to her opposition. Worthy to note is the fact that the building in litigation was declared for taxation purposes in the name of FGCI and not in the Spouses Garcias'. While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, they constitute credible

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[21] 260 Phil. 401 (1990).

[22] *Id.* at 406-407.

proof of claim of title over the property.[23] In *Buduhan v. Pakurao,*[24] we underscored the significance of a tax declaration as proof that a holder has claim of title, and, we gave weight to the demonstrable interest of the claimant holding a tax receipt:

> Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.[25]

It likewise failed to escape our attention that FGCI is in actual possession of the building and as the payment of taxes coupled with actual possession of the land covered by tax declaration strongly supports a claim of ownership.[26] Quite significantly, all the court processes in an earlier collection suit between FGCI and Villasi were served, thru the former's representative Filomeno Garcia, at No. 140 Kalayaan Avenue, Quezon City, where the subject property is located. This circumstance is consistent with the tax declaration in the name of FGCI.

The explanation proffered by the Spouses Garcia, that the City Assessor merely committed an error when it declared the property for taxation purposes in the name of FGCI, appears to be suspect in the absence of any prompt and serious effort on their part to have it rectified before the onset of the instant

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[23] *Director of Lands v. Intermediate Appellate Court*, G.R. No. 68946, 22 May 1992, 209 SCRA 214, 227-228.

[24] 518 Phil. 285 (2006).

[25] *Id.* at 296 citing *Ganila v. Court of Appeals,* 500 Phil. 212, 224 (2005).

[26] *Heirs of Marcelina Arzadon-Crisologo v. Rañon*, 559 Phil. 169, 187 (2007).

controversy. The correction of entry belatedly sought by the Spouses Garcia is indicative of its intention to put the property beyond the reach of the judgment creditor. Every prevailing party to a suit enjoys the corollary right to the fruits of the judgment and, thus, court rules provide a procedure to ensure that every favorable judgment is fully satisfied.[27] It is almost trite to say that execution is the fruit and end of the suit. Hailing it as the "life of the law," *ratio legis est anima,*[28] this Court has zealously guarded against any attempt to thwart the rigid rule and deny the prevailing litigant his right to savour the fruit of his victory.[29] A judgment, if left unexecuted, would be nothing but an empty triumph for the prevailing party.[30]

While it is a hornbook doctrine that the accessory follows the principal,[31] that is, the ownership of the property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially,[32] such rule is not without exception. In cases where there is a clear and convincing evidence to prove that the principal and the accessory are not owned by one and the same person or entity, the presumption shall not be applied and the actual ownership shall be upheld. In a number of cases, we recognized the separate ownership of the land from the building and brushed aside the rule that accessory follows the principal.

In *Carbonilla v. Abiera,*[33] we denied the claim of petitioner that, as the owner of the land, he is likewise the owner of the

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[27] *Solar Resources, Inc. v. Inland Trailways, Inc.*, 579 Phil. 548, 560 (2008).

[28] The reason is its soul.

[29] *Florentino v. Rivera*, 515 Phil. 494, 504 (2006).

[30] *Id.* at 505.

[31] *Torbela v. Rosario*, G.R. Nos. 140528 and 140553, 7 December 2011, 661 SCRA 633, 675.

[32] New Civil Code, Art. 440. The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially.

[33] G.R. No. 177637, 26 July 2010, 625 SCRA 461.

building erected thereon, for his failure to present evidence to buttress his position:

> To set the record straight, while petitioner may have proven his ownership of the land, as there can be no other piece of evidence more worthy of credence than a Torrens certificate of title, he failed to present any evidence to substantiate his claim of ownership or right to the possession of the building. Like the CA, we cannot accept the Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership executed by the Garcianos as proof that petitioner acquired ownership of the building. There is no showing that the Garcianos were the owners of the building or that they had any proprietary right over it. Ranged against respondents' proof of possession of the building since 1977, petitioner's evidence pales in comparison and leaves us totally unconvinced.[34]

In *Caltex (Phil.) Inc. v. Felias,*[35] we ruled that while the building is a conjugal property and therefore liable for the debts of the conjugal partnership, the lot on which the building was constructed is a paraphernal property and could not be the subject of levy and sale:

> x x x. In other words, when the lot was donated to Felisa by her parents, as owners of the land on which the building was constructed, the lot became her paraphernal property. The donation transmitted to her the rights of a landowner over a building constructed on it. Therefore, at the time of the levy and sale of the sheriff, Lot No. 107 did not belong to the conjugal partnership, but it was paraphernal property of Felisa. As such, it was not answerable for the obligations of her husband which resulted in the judgment against him in favor of Caltex.[36]

The rule on accession is not an iron-clad *dictum*. On instances where this Court was confronted with cases requiring judicial determination of the ownership of the building separate from the lot, it never hesitated to disregard such rule. The case at bar is of similar import. When there are factual and evidentiary

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[34] *Id.* at 468.

[35] 108 Phil. 873 (1960).

[36] *Id.* at 877.

evidence to prove that the building and the lot on which it stands are owned by different persons, they shall be treated separately. As such, the building or the lot, as the case may be, can be made liable to answer for the obligation of its respective owner.

Finally, the issue regarding the piercing of the veil of corporate fiction is irrelevant in this case. The Spouses Garcia are trying to protect FGCI from liability by asserting that they, not FGCI, own the levied property. The Spouses Garcia are asserting their separation from FGCI. FGCI, the judgment debtor, is the proven owner of the building. Piercing FGCI's corporate veil will not protect FGCI from its judgment debt. Piercing will result in the identification of the Spouses Garcia as FGCI itself and will make them liable for FGCI's judgment debt.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 92587 are hereby **REVERSED and SET ASIDE**. The Deputy Sheriff is hereby directed to proceed with the conduct of the sale on execution of the levied building.

SO ORDERED.

Carpio (Chairperson), Brion, Perlas-Bernabe, and *Leonen,*[*] *JJ.,* concur.

[*] Per Raffle dated 4 December 2013.

FIRST DIVISION

[G.R. No. 191498. January 15, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MINDANAO II GEOTHERMAL PARTNERSHIP,** *respondent.*

SYLLABUS

1. **TAXATION; 1997 TAX CODE; VALUE-ADDED TAX; REFUNDS OR TAX CREDITS OF INPUT TAX; TWO-YEAR PRESCRIPTIVE PERIOD; APPLIES ONLY TO ADMINISTRATIVE CLAIMS.—** In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi),* we dispelled the misconception that **both the administrative and judicial claims** must be filed within the two-year prescriptive period x x x. The message of *Aichi* is clear: **it is only the administrative claim that must be filed within the two-year prescriptive period;** the judicial claim need not fall within the two-year prescriptive period.

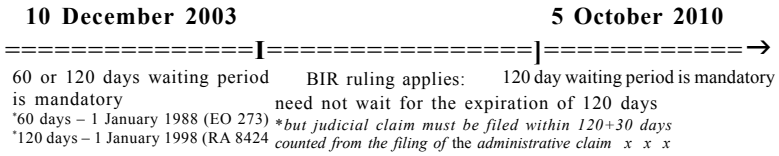
2. **ID.; ID.; ID.; ID.; ID.; BEGINS TO RUN FROM THE CLOSE OF THE TAXABLE QUARTER WHEN THE RELEVANT SALES WERE MADE.—** In the recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation* (*San Roque*), this Court resolved the threshold question of when to reckon the two-year prescriptive period for filing an administrative claim for refund or credit of unutilized input VAT under the 1997 Tax Code in view of our pronouncements in *Atlas* and *Mirant.* In that case, we delineated the scope and effectivity of the *Atlas* and *Mirant* doctrines x x x. Furthermore, *San Roque* distinguished between Section 112 and Section 229 of the 1997 Tax Code x x x. Two things are clear from the x x x *San Roque* disquisitions. *First,* when it comes to recovery of unutilized input VAT, Section 112, and not Section 229 of the 1997 Tax Code, is the governing law. *Second,* prior to 8 June 2007, the applicable rule is neither *Atlas* nor *Mirant,* but Section 112(A). We present the rules laid down by *San Roque* in determining the proper reckoning date of the two-year prescriptive period through the following timeline:

8 June 2007		12 September 2008
§112 (A): Close of taxable quarter when the relevant sales were made	***Atlas:*** Date of filing of return and payment of the tax	***Mirant:*** Close of taxable quarter when the relevant sales were made

x x x In this case, Mindanao II filed its administrative claims for refund or credit for the second, third and fourth quarters of 2004 on 6 October 2005. The case thus falls within the first period as indicated in the above timeline. In other words, it is covered by the rule prior to the advent of either *Atlas* or *Mirant.* Accordingly, the proper reckoning date in this case, as provided by **Section 112(A) of the 1997 Tax Code,** is **the close of the taxable quarter when the relevant sales were made**.

3. **ID.; ID.; ID.; ID.; JUDICIAL CLAIM FOR REFUND OR TAX CREDIT OF INPUT VAT; TIME REQUIREMENTS; APPEAL, HOW MADE.—** Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for refund or tax credit of input VAT x x x. Section 112(D) speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or credit, and the period of 30 days, which refers to the period for interposing an appeal with the CTA. x x x The taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

4. **ID.; ID.; ID.; ID.; ID.; THE 30-DAY PERIOD WHICH IS BOTH MANDATORY AND JURISDICTIONAL APPLIES NOT ONLY TO INSTANCES OF ACTUAL DENIAL BY THE COMMISSIONER OF INTERNAL REVENUE (CIR) OF THE CLAIM BUT TO CASES OF INACTION BY THE CIR AS WELL.—** The 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well. x x x [T]he 30-day period to appeal is both mandatory and jurisdictional x x x. We sum up the rules established by *San Roque* on the mandatory and jurisdictional nature of the 30-day period to appeal through the following timeline:



5. ID.; ID.; ID.; ID.; ID.; THE 120+30-DAY PERIOD IS MANDATORY AND JURISDICTIONAL; EXCEPTION; APPLIES ONLY TO PREMATURE JUDICIAL CLAIMS FILED WHEN BIR RULING NO. DA-489-03 WAS STILL IN FORCE.— *San Roque* provides an exception to the mandatory and jurisdictional nature of the 120+30 day period — *BIR Ruling No. DA-489-03 dated 10 December 2003.* The BIR ruling declares that the "taxpayer-claimant **need not wait** for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review." x x x BIR Ruling No. DA-489-03 is a general interpretative rule; thus, taxpayers can rely on it from the time of its issuance **on 10 December 2003** until its reversal by this Court in *Aichi* **on 6 October 2010**, when the 120+30 day periods were held to be mandatory and jurisdictional. x x x [I]n *San Roque,* the Court applied this exception to Taganito Mining Corporation (Taganito), one of the taxpayers in *San Roque.* Taganito filed its judicial claim on 14 February 2007, **after** the BIR ruling took effect on 10 December 2003 and before the promulgation of *Mirant*. x x x *San Roque* was also careful to point out that the BIR ruling does not retroactively apply to premature judicial claims filed *before* the issuance of the BIR ruling x x x. *San Roque* likewise ruled out the application of the BIR ruling to cases of late filing. The Court held that the BIR ruling, as an exception to the mandatory and jurisdictional nature of the 120+30 day period, is limited to premature filing *and does not extend to late filing of a judicial claim*.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Villanue Caña & Associates Law Offices for respondent.

D E C I S I O N

SERENO, *C.J.*:

This Rule 45 Petition[1] requires this Court to address the question of timeliness with respect to petitioner's administrative and judicial claims for refund and credit of accumulated unutilized input Value Added Tax (VAT) under Section 112(A) and Section 112(D) of the 1997 Tax Code.

Petitioner Mindanao II Geothermal Partnership (Mindanao II) assails the Decision[2] and Resolution[3] of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA *En Banc* Case No. 448, affirming the Decision in CTA Case No. 7507 of the CTA Second Division.[4] The latter ordered the refund or issuance of a tax credit certificate in the amount of ₱6,791,845.24 representing unutilized input VAT incurred for the second, third, and fourth quarters of taxable year 2004 in favor of herein respondent, Mindanao II.

FACTS

Mindanao II is a partnership registered with the Securities and Exchange Commission.[5] It is engaged in the business of power generation and sale of electricity to the National Power Corporation (NAPOCOR)[6] and is accredited by the Department of Energy.[7]

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[1] *Rollo,* pp. 8-42.

[2] *Id.* at 49-68. CTA *En Banc* Decision dated 11 November 2009, penned by Associate Justice Caesar A. Casanova, concurred in by Presiding Justice Ernesto D. Acosta, and Associate Justices Lovell R. Bautista, Juanito C. Castañeda, Jr., Olga Palanca-Enriquez, and Erlinda P. Uy.

[3] *Id.* at 70. CTA Resolution dated 3 March 2010.

[4] *Id.* at 81-95; dated 12 August 2008, penned by Associate Justice Juanito C. Castañeda, Jr., concurred in by Associate Justices Erlinda D. Uy and Olga Palanca-Enriquez.

[5] *Id.* at 81.

[6] *Id.*

[7] *Id.* at 82.

Mindanao II filed its Quarterly VAT Returns for the second, third and fourth quarters of taxable year 2004 on the following dates:[8]

Date filed		Quarter	Taxable Year
Original	Amended		
26 July 2004	12 July 2005	2nd	2004
22 October 2004	12 July 2005	3rd	2004
25 January 2005	12 July 2005	4th	2004

On 6 October 2005, Mindanao II filed with the Bureau of Internal Revenue (BIR) an application for the refund or credit of accumulated unutilized creditable input taxes.[9] In support of the administrative claim for refund or credit, Mindanao II alleged, among others, that it is registered with the BIR as a value-added taxpayer[10] and all its sales are zero-rated under the EPIRA law.[11] It further stated that for the second, third, and fourth

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[8] *Id.* at 85.

[9] *Id.*

[10] *Id.* at 81.

[11] On 26 June 2001, Republic Act No. 9136 - or the Electric Power Industry Reform Act of 2000 (EPIRA) - came into law, making the sale of power by a generation company a zero-rated transaction under the Value-Added Tax (VAT) system. Section 6 of EPIRA provides:

Generation Sector. — Generation of electric power, a business affected with public interest shall be competitive and open.

Upon the effectivity of this Act, any new generation company shall, before it operates, secure from the Energy Regulatory Commission (ERC) a certificate of compliance pursuant to the standards set forth in this Act, as well as health, safety and environmental clearances from the appropriate government agencies under existing laws.

Any law to the contrary notwithstanding, power generation shall not be considered a public utility operation. For this purpose, any person or entity engaged or which shall engage in power generation and supply of electricity shall not be required to secure a national franchise.

quarters of taxable year 2004, it paid input VAT in the aggregate amount of ₱7,167,005.84, which were directly attributable to the zero-rated sales. The input taxes had not been applied against output tax.

Pursuant to Section 112(D) of the 1997 Tax Code, the Commissioner of Internal Revenue (CIR) had a period of 120 days, or until 3 February 2006, to act on the claim. The administrative claim, however, remained unresolved on 3 February 2006.

Under the same provision, Mindanao II could treat the inaction of the CIR as a denial of its claim, in which case, the former would have 30 days to file an appeal to the CTA, that is, on 5 March 2006. Mindanao II, however, did not file an appeal within the 30-day period.

Apparently, Mindanao II believed that a judicial claim must be filed within the two-year prescriptive period provided under Section 112(A) and that such time frame was to be reckoned from the filing of its Quarterly VAT Returns for the second, third, and fourth quarters of taxable year 2004, that is, *from 26 July 2004, 22 October 2004, and 25 January 2005, respectively*. Thus, on 21 July 2006, Mindanao II, claiming inaction on the part of the CIR and that the two-year prescriptive period was about to expire, filed a Petition for Review with the CTA docketed as CTA Case No. 6133.[12]

On 8 June 2007, while the application for refund or credit of unutilized input VAT of Mindanao II was pending before the

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Upon the implementation of retail competition and open access, the prices charged by a generation company for the supply of electricity shall not be subject to regulation by the ERC except as otherwise provided in this Act.

Pursuant to the objective of lowering electricity rates to end-users, **sales of generated power by generation companies shall be value added tax zero-rated.**

The ERC shall, in determining the existence of market power abuse or anti-competitive behavior, require from generation companies the submission of their financial statements. (Emphasis supplied)

[12] *Rollo,* p. 85. Also, CTA records, pp. 1-8. Petition for Review, pp. 1-8.

CTA Second Division, this Court promulgated *Atlas Consolidated Mining and Development Corporation v. CIR*[13] (*Atlas*). *Atlas* held that the two-year prescriptive period for the filing of a claim for an input VAT refund or credit is to be reckoned from the date of filing of the corresponding **quarterly VAT return and payment of the tax**.

On 12 August 2008, the CTA Second Division rendered a Decision[14] ordering the CIR to grant a refund or a tax credit certificate, but only in the reduced amount of ₱6,791,845.24, representing unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2004.[15]

In support of its ruling, the CTA Second Division held that Mindanao II complied with the twin requisites for VAT zero-rating under the EPIRA law: *first*, it is a generation company, and *second*, it derived sales from power generation. It also ruled that Mindanao II satisfied the requirements for the grant of a refund/credit under Section 112 of the Tax Code: (1) there must be zero-rated or effectively zero-rated sales; (2) input taxes must have been incurred or paid; (3) the creditable input tax due or paid must be attributable to zero-rated sales or effectively zero-rated sales; (4) the input VAT payments must not have been applied against any output liability; and (5) the claim must be filed within the two-year prescriptive period.[16]

As to the second requisite, however, the input tax claim to the extent of ₱375,160.60 corresponding to purchases of services from Mitsubishi Corporation was disallowed, since it was not substantiated by official receipts.[17]

As regards to the fifth requirement in Section 112 of the Tax Code, the tax court, citing *Atlas*, counted from 26 July 2004,

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[13] G.R. Nos. 141104 and 148763, 8 June 2007, 524 SCRA 154.

[14] *Rollo,* pp. 81-95.

[15] *Id.* at 94.

[16] *Id.* at 88-93.

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

22 October 2004, and 25 January 2005 – *the dates when Mindanao II filed its Quarterly VAT Returns for the second, third, and fourth quarters of taxable year 2004, respectively* – and determined that both the administrative claim filed on 6 October 2005 and the judicial claim filed on 21 July 2006 fell within the two-year prescriptive period.[18]

On 1 September 2008, the CIR filed a Motion for Partial Reconsideration,[19] pointing out that prescription had already set in, since the appeal to the CTA was filed only on 21 July 2006, which was way beyond the last day to appeal – 5 March 2006.[20] As legal basis for this argument, the CIR relied on Section 112(D) of the 1997 Tax Code.[21]

Meanwhile, on 12 September 2008, this Court promulgated *CIR v. Mirant Pagbilao Corporation* (*Mirant*).[22] *Mirant* fixed the reckoning date of the two-year prescriptive period for the application for refund or credit of unutilized input VAT at the **close of the taxable quarter when the relevant sales were made**, as stated in Section 112(A).[23]

On 3 December 2008, the CTA Second Division denied the CIR's Motion for Partial Reconsideration.[24] The tax court stood by its reliance on *Atlas*[25] and on its finding that both the administrative and judicial claims of Mindanao II were timely filed.[26]

On 7 January 2009, the CIR elevated the matter to the CTA *En Banc* via a Petition for Review.[27] Apart from the contention

[18] *Id.* at 93.

[19] *Id.* at 96-103.

[20] *Id.* at 97-98.

[21] *Id.*

[22] 586 Phil. 712 (2008).

[23] *Rollo,* pp. 116-118.

[24] *Id.* at 105-107; dated 3 December 2008.

[25] *Id.* at 106.

[26] *Id.*

[27] *Id.* at 108-125.

that the judicial claim of Mindanao II was filed beyond the 30-day period fixed by Section 112(D) of the 1997 Tax Code,[28] the CIR argued that Mindanao II erroneously fixed 26 July 2004, the date when the return for the second quarter was filed, as the date from which to reckon the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT under Section 112(A). As the two-year prescriptive period ended on 30 June 2006, the Petition for Review of Mindanao II was filed out of time on 21 July 2006.[29] The CIR invoked the recently promulgated *Mirant* to support this theory.

On 11 November 2009, the CTA *En Banc* rendered its Decision denying the CIR's Petition for Review.[30] On the question whether the *application* for refund was timely filed, it held that the CTA Second Division correctly applied the *Atlas* ruling.[31] It reasoned that *Atlas* remained to be the controlling doctrine. *Mirant* was a new doctrine and, as such, the latter should not apply retroactively to Mindanao II who had relied on the old doctrine of *Atlas* and had acted on the faith thereof.[32]

As to the issue of compliance with the 30-day period for appeal to the CTA, the CTA *En Banc* held that this was a requirement only when the CIR **actually** denies the taxpayer's claim. But in cases of CIR **inaction**, the 30-day period is not a mandatory requirement; the judicial claim is seasonably filed as long as it is filed after the lapse of the 120-day waiting period but within two years from the date of filing of the return.[33]

The CIR filed a Motion for Partial Reconsideration[34] of the Decision, but it was denied for lack of merit.[35]

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

[29] *Id.* at 117.

[30] *Id.* at 49-68.

[31] *Id.* at 58. Decision, p. 10.

[32] *Id.* at 55-58. Decision, pp. 7-10.

[33] *Id.* at 59-60. Decision, pp. 11-12.

[34] *Id.* at 148-154; dated 8 December 2009.

[35] *Id.* at 70-74, dated 3 March 2010.

Dissatisfied, the CIR filed this Rule 45 Petition, raising the following arguments in support of its appeal:

I.

THE CTA 2ND DIVISION LACKED JURISDICTION TO TAKE COGNIZANCE OF THE CASE.

II.

THE COURT *A QUO'S* RELIANCE ON THE RULING IN ATLAS IS MISPLACED.[36]

ISSUES

The resolution of this case hinges on the question of compliance with the following time requirements for the grant of a claim for refund or credit of unutilized input VAT: (1) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT; and (2) the 120+30 day period for filing an appeal with the CTA.

THE COURT'S RULING

We deny Mindanao II's claim for refund or credit of unutilized input VAT on the ground that its judicial claims were filed out of time, even as we hold that its application for refund was filed on time.

I.

MINDANAO II'S APPLICATION FOR REFUND WAS FILED ON TIME

We find no error in the conclusion of the tax courts that the application for refund or credit of unutilized input VAT was timely filed. The problem lies with their bases for the conclusion as to: (1) what should be filed within the prescriptive period; and (2) the date from which to reckon the prescriptive period.

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[36] *Id.* at 19.

We thus take a different route to reach the same conclusion, initially focusing our discussion on what should be filed within the two-year prescriptive period.

A. The Judicial Claim Need Not Be Filed Within the Two-Year Prescriptive Period

Section 112(A) provides:

SEC. 112. Refunds or Tax Credits of Input Tax. —

(A) Zero-rated or Effectively Zero-rated Sales — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Both the CTA Second Division and CTA *En Banc* decisions held that the phrase "apply for the issuance of a tax credit certificate or refund" in Section 112(A) is construed to refer to both the administrative claim filed with the CIR and the judicial claim filed with the CTA. This view, however, has no legal basis.

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi),* we dispelled the misconception that **both the administrative and judicial claims** must be filed within the two-year prescriptive period:[37]

[37] G.R. No. 184823, 6 October 2010, 632 SCRA 422, 443-444.

There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." **The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA.** This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.

In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA. (Emphasis supplied)

The message of *Aichi* is clear: **it is only the administrative claim that must be filed within the two-year prescriptive period;** the judicial claim need not fall within the two-year prescriptive period.

Having disposed of this question, we proceed to the date for reckoning the prescriptive period under Section 112(A).

B. Reckoning Date is the Close of the Taxable Quarter When the Relevant Sales Were Made.

The other flaw in the reasoning of the tax courts is their reliance on the *Atlas* ruling, which fixed the reckoning point to the date of filing the return and payment of the tax.

The CIR's Stand

The CIR's stand is that *Atlas* is not applicable to the case at hand as it involves Section 230 of the 1977 Tax Code, which contemplates recovery of tax payments *erroneously or illegally* collected. On the other hand, this case deals with claims for tax refund or credit of unutilized input VAT for the second, third, and fourth quarters of 2004, which are covered by Section 112 of the 1977 Tax Code.[38]

The CIR further contends that Mindanao II cannot claim good faith reliance on the *Atlas* doctrine since the case was decided only on 8 June 2007, two years after Mindanao II filed its claim for refund or credit with the CIR and one year after it filed a Petition for Review with the CTA on 21 July 2006.[39]

In lieu of *Atlas,* the CIR proposes that it is the Court's ruling in *Mirant* that should apply to this case despite the fact that the latter was promulgated on 12 September 2008, **after** Mindanao II had filed its administrative claim in 2005.[40] It argues that *Mirant* can be applied retroactively to this case, since the decision merely interprets Section 112, a provision that was already effective when Mindanao II filed its claims for tax refund or credit.

The Taxpayer's Defense

On the other hand, Mindanao II counters that *Atlas,* decided by the Third Division of this Court, could not have been superseded by *Mirant,* a Second Division Decision of this Court. A doctrine laid down by the Supreme Court in a Division may be modified or reversed only through a decision of the Court sitting *en banc*.[41]

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[38] *Rollo*, pp. 33-35.

[39] *Id.* at 35.

[40] *Id.* at 36.

[41] Article VIII, Sec. 4(3) of the 1987 Constitution states: "Cases or matters heard by a division shall be decided or resolved with the concurrence of a

Mindanao II further contends that when it filed its Petition for Review, the prevailing rule in the CTA reckons the two-year prescriptive period from the date of the filing of the VAT return.[42]

Finally, after building its case on *Atlas,* Mindanao II assails the CIR's reliance on the *Mirant* doctrine stating that it cannot be applied retroactively to this case, lest it violate the rock-solid rule that a judicial ruling cannot be given retroactive effect if it will impair vested rights.[43]

Section 112(A) is the Applicable Rule

The issue posed is not novel. In the recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[44] (*San Roque*), this Court resolved the threshold question of when to reckon the two-year prescriptive period for filing an administrative claim for refund or credit of unutilized input VAT under the 1997 Tax Code in view of our pronouncements in *Atlas* and *Mirant.* In that case, we delineated the scope and effectivity of the *Atlas* and *Mirant* doctrines as follows:

> The *Atlas* doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant*.** The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. **Prior to the *Atlas* doctrine, the two-year prescriptive period**

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majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon, and in no case without the concurrence of at least three of such Members. When the required number is not obtained, the case shall be decided *en banc*: *Provided*, that no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

[42] See *Rollo*, p. 83.

[43] *Id.* at pp. 36-37.

[44] G.R. No. 187485, 12 February 2013, 690 SCRA 336, 397.

for claiming refund or credit of input VAT should be governed by Section 112(A) following the *verba legis* rule. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT. (Emphases supplied)

Furthermore, *San Roque* distinguished between Section 112 and Section 229 of the 1997 Tax Code:

The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.

In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.

Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, . . . illegally, . . . excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.

Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for "excess" input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the output VAT. This prescriptive period has no relation to the date of payment of the "excess" input VAT. The "excess" input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for "excess" VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was "excessively" collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.

As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.

Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy. Thus, a non zero-rated VAT-registered taxpayer who has no output

VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. He can only carry-over and apply his "excess" input VAT against his future output VAT. If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added by the taxpayer. If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.

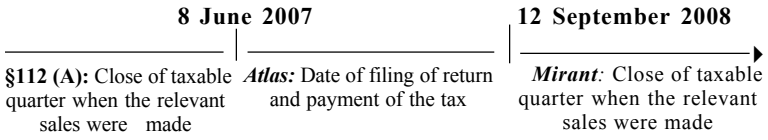
Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously . . . illegally, . . . excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in Mirant, Section 229 should "apply only to instances of erroneous payment or illegal collection of internal revenue taxes." Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally

liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.[45]

Two things are clear from the above quoted *San Roque* disquisitions. *First,* when it comes to recovery of unutilized input VAT, Section 112, and not Section 229 of the 1997 Tax Code, is the governing law. *Second,* prior to 8 June 2007, the applicable rule is neither *Atlas* nor *Mirant,* but Section 112(A).

We present the rules laid down by *San Roque* in determining the proper reckoning date of the two-year prescriptive period through the following timeline:



Thus, the task at hand is to determine the applicable period for this case.

In this case, Mindanao II filed its administrative claims for refund or credit for the second, third and fourth quarters of 2004 on 6 October 2005. The case thus falls within the first period as indicated in the above timeline. In other words, it is covered by the rule prior to the advent of either *Atlas* or *Mirant.*

Accordingly, the proper reckoning date in this case, as provided by **Section 112(A) of the 1997 Tax Code,** is **the close of the taxable quarter when the relevant sales were made**.

C. The Administrative Claims Were Timely Filed

We sum up our conclusions so far: (1) it is only the administrative claim that must be filed within the two-year prescriptive period; and (2) the two-year prescriptive period

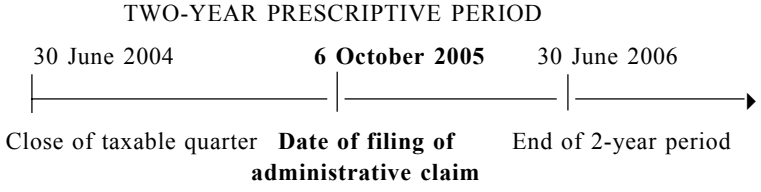
[45] *Id.* at 392-397.

begins to run from the close of the taxable quarter when the relevant sales were made.

Bearing these in mind, we now proceed to determine whether Mindanao II's administrative claims for the second, third, and fourth quarters of 2004 were timely filed.

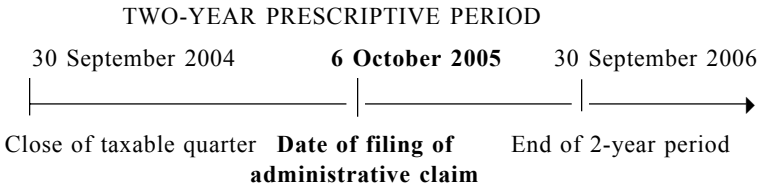
Second Quarter

Since the zero-rated sales were made in the second quarter of 2004, the date of reckoning the two-year prescriptive period is the close of the second quarter, which is on 30 June 2004. Applying Section 112(A), Mindanao II had two years from 30 June 2004, or **until 30 June 2006** to file an administrative claim with the CIR. Mindanao II filed its administrative claim on **6 October 2005**, which is within the two-year prescriptive period. The administrative claim for the second quarter of 2004 was thus timely filed. For clarity, we present the rules laid down by *San Roque* in determining the proper reckoning date of the two-year prescriptive period through the following timeline:



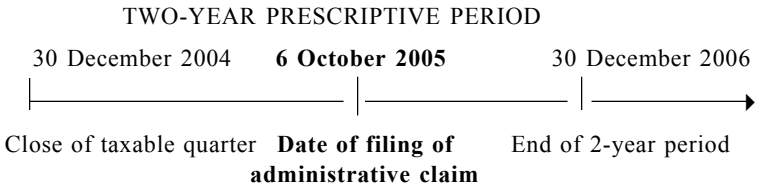
Third Quarter

As regards the claim for the third quarter of 2004, the two-year prescriptive period started to run on 30 September 2004, the close of the taxable quarter. It ended on 30 September 2006, pursuant to Section 112(A) of the 1997 Tax Code. Mindanao II filed its administrative claim on 6 October 2005. Thus, since the administrative claim was filed well within the two-year prescriptive period, the administrative claim for the third quarter of 2004 was timely filed. (See timeline below)



Fourth Quarter

Here, the two-year prescriptive period is counted starting from the close of the fourth quarter which is on 31 December 2004. The last day of the prescriptive period for filing an application for tax refund/credit with the CIR was on **31 December 2006.** Mindanao II filed its administrative claim with the CIR on 6 October 2005. Hence, the claims were filed on time, pursuant to Section 112(A) of the 1997 Tax Code. (See timeline below)



II.

MINDANAO II'S JUDICIAL CLAIMS WERE FILED OUT OF TIME

Notwithstanding the timely filing of the administrative claims, we find that the CTA *En Banc* erred in holding that Mindanao II's judicial claims were timely filed.

A. 30-Day Period Also Applies to Appeals from Inaction

Section 112(D) of the 1997 Tax Code states the time requirements for filing a judicial claim for refund or tax credit of input VAT:

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsection (A) and (B) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period**, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphases supplied)

Section 112(D) speaks of two periods: the period of 120 days, which serves as a waiting period to give time for the CIR to act on the administrative claim for refund or credit, and the period of 30 days, which refers to the period for interposing an appeal with the CTA. It is with the 30-day period that there is an issue in this case.

The CTA *En Banc*'s holding is that, since the word "or" – a disjunctive term that signifies dissociation and independence of one thing from another – is used in Section 112(D), the taxpayer is given two options: 1) file an appeal within 30 days from the CIR's denial of the administrative claim; or 2) file an appeal with the CTA after expiration of the 120-day period, in which case the 30-day appeal period does not apply. The judicial claim is seasonably filed so long as it is filed after the lapse of the 120-day waiting period but before the lapse of the two-year prescriptive period under Section 112(A).[46]

We do not agree.

The 30-day period applies not only to instances of actual denial by the CIR of the claim for refund or tax credit, but to cases of inaction by the CIR as well. This is the correct interpretation of the law, as held in *San Roque*:[47]

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[46] *Rollo,* pp. 59-60. Decision, pp. 11-12.

[47] *Supra* note 44, at 387-388.

Section 112(C)[48] also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:

> x x x the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, **appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.** (Emphasis supplied)

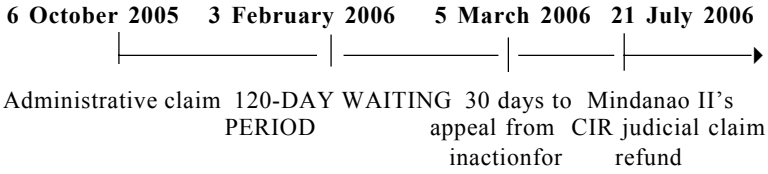
The *San Roque* pronouncement is clear. The taxpayer can file the appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

B. The Judicial Claim Was Belatedly Filed

In this case, the facts are not up for debate. Mindanao II filed its administrative claim for refund or credit for the second, third, and fourth quarters of 2004 on 6 October 2005. The CIR, therefore, had a period of 120 days, or until 3 February 2006, to act on the claim. The CIR, however, failed to do so. Mindanao II then could treat the inaction as a denial and appeal it to the CTA within 30 days from 3 February 2006, or until 5 March 2006.

[48] The section is numbered 112(D) under RA 8424. However, RA 9337 renumbered the section to 112(C). In *San Roque,* the Court refers to Section 112(D) under RA 8424 as Section 112(C) as it is currently numbered. Elsewhere in this Decision, we refer to the provision as Section 112(D) to make it consistent with references to it made by the Court in other cases.

Mindanao II, however, filed a Petition for Review only on 21 July 2006, 138 days after the lapse of the 30-day period on 5 March 2006. The judicial claim was therefore filed late. (See timeline below.)



C. The 30-Day Period to Appeal is Mandatory and Jurisdictional

However, what is up for debate is the nature of the 30-day time requirement. The CIR posits that it is mandatory. Mindanao II contends that the requirement of judicial recourse within 30 days is only directory and permissive, as indicated by the use of the word "may" in Section 112(D).[49]

The answer is found in *San Roque.* There, we declared that the 30-day period to appeal is both mandatory and jurisdictional:

> Section 112(C) also expressly grants the taxpayer a 30-day period to appeal to the CTA the decision or inaction of the Commissioner, thus:
>
> > x x x the taxpayer affected may, **within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period,** appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)
>
> This law is clear, plain, and unequivocal. Following the well-settled *verba legis* doctrine, this law should be applied exactly as worded since it is clear, plain, and unequivocal. As this law states, the taxpayer may, if he wishes, appeal the decision of the Commissioner to the CTA within 30 days from receipt of the Commissioner's decision, or if the Commissioner does not act on the taxpayer's claim within

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[49] *Id.* at pp. 179-181.

the 120-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 120-day period.

x x x x x x x x x

Section 112(A) and (C) must be interpreted according to its clear, plain, and unequivocal language. The taxpayer can file his administrative claim for refund or credit at **anytime** within the two-year prescriptive period. If he files his claim on the last day of the two-year prescriptive period, his claim is still filed on time. The Commissioner will have 120 days from such filing to decide the claim. If the Commissioner decides the claim on the 120th day, or does not decide it on that day, the taxpayer still has 30 days to file his judicial claim with the CTA. This is not only the plain meaning but also the only logical interpretation of Section 112(A) and (C).

x x x x x x x x x

When Section 112(C) states that "the taxpayer affected **may**, within thirty (30) days from receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals," the law does not make the 120+30 day periods optional just because the law uses the word "**may**." **The word "may" simply means that the taxpayer may or may not appeal the decision of the Commissioner within 30 days from receipt of the decision, or within 30 days from the expiration of the 120-day period.** x x x.[50]

D. Exception to the mandatory and jurisdictional nature of the 120+30 day period not applicable

Nevertheless, *San Roque* provides an exception to the mandatory and jurisdictional nature of the 120+30 day period % *BIR Ruling No. DA-489-03 dated 10 December 2003.* The BIR ruling declares that the "taxpayer-claimant **need not wait** for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."

Although Mindanao II has not invoked the BIR ruling, we deem it prudent as well as necessary to dwell on this issue to determine whether this case falls under the exception.

[50] *Rollo,* pp. 179-181.

For this question, we come back to *San Roque,* which provides that BIR Ruling No. DA-489-03 is a general interpretative rule; thus, taxpayers can rely on it from the time of its issuance **on 10 December 2003** until its reversal by this Court in *Aichi* **on 6 October 2010**, when the 120+30 day periods were held to be mandatory and jurisdictional. The Court reasoned as follows:

> Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. x x x.
>
> x x x x x x x x x
>
> Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.
>
> BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.
>
> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional.[51]

[51] *Supra* note 44, at 403-404.

Thus, in *San Roque,* the Court applied this exception to Taganito Mining Corporation (Taganito)*,* one of the taxpayers in *San Roque.* Taganito filed its judicial claim on 14 February 2007, **after** the BIR ruling took effect on 10 December 2003 and before the promulgation of *Mirant*. The Court stated:

> Taganito, however, filed its judicial claim with the CTA on 14 February 2007, ***after*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. Truly, Taganito can claim that in filing its judicial claim prematurely without waiting for the 120-day period to expire, it was misled by BIR Ruling No. DA-489-03. Thus, Taganito can claim the benefit of BIR Ruling No. DA-489-03, which shields the filing of its judicial claim from the vice of prematurity.[52]

San Roque was also careful to point out that the BIR ruling does not retroactively apply to premature judicial claims filed *before* the issuance of the BIR ruling:

> However, BIR Ruling No. DA-489-03 cannot be given retroactive effect for four reasons: *first*, it is admittedly an erroneous interpretation of the law; *second*, prior to its issuance, the BIR held that the 120-day period was mandatory and jurisdictional, which is the correct interpretation of the law; *third*, prior to its issuance, no taxpayer can claim that it was misled by the BIR into filing a judicial claim prematurely; and *fourth*, a claim for tax refund or credit, like a claim for tax exemption, is strictly construed against the taxpayer.[53]

Thus, *San Roque* held that taxpayer San Roque Power Corporation, could not seek refuge in the BIR ruling as it jumped the gun when it filed its judicial claim on 10 April 2003, prior to the issuance of the BIR ruling on 10 December 2003. The Court stated:

> San Roque, therefore, cannot benefit from BIR Ruling No. DA-489-03 because it filed its judicial claim prematurely on 10 April 2003, ***before*** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003. To repeat, San Roque cannot claim that it was misled by the BIR into filing its judicial claim prematurely because BIR Ruling No. DA-489-03 was issued only after San Roque

[52] *Id.* at 405.

[53] *Id.*

filed its judicial claim. At the time San Roque filed its judicial claim, the law as applied and administered by the BIR was that the Commissioner had 120 days to act on administrative claims. This was in fact the position of the BIR prior to the issuance of BIR Ruling No. DA-489-03. **Indeed, San Roque never claimed the benefit of BIR Ruling No. DA-489-03 or RMC 49-03, whether in this Court, the CTA, or before the Commissioner**.[54]

San Roque likewise ruled out the application of the BIR ruling to cases of late filing. The Court held that the BIR ruling, as an exception to the mandatory and jurisdictional nature of the 120+30 day period, is limited to premature filing *and does not extend to late filing of a judicial claim*.

Thus, the Court found that since Philex Mining Corporation, the other party in the consolidated case *San Roque,* filed its claim 426 days **after** the lapse of the 30-day period, it could not avail itself of the benefit of the BIR ruling:

> Philex's situation is not a case of premature filing of its judicial claim but of late filing, indeed *very* late filing. BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim. Philex cannot claim the benefit of BIR Ruling No. DA-489-03 because Philex did not file its judicial claim prematurely but filed it long after the lapse of the 30-day period **following the expiration of the 120-day period**. In fact, Philex filed its judicial claim 426 days after the lapse of the 30-day period.[55]

We sum up the rules established by *San Roque* on the mandatory and jurisdictional nature of the 30-day period to appeal through the following timeline:

10 December 2003 **5 October 2010**

==========**I**==========|==========→

60 or 120 days waiting period is mandatory
*60 days – 1 January 1988 (EO 273)
*120 days – 1 January 1998 (RA 8424

BIR ruling applies: need not wait for the expiration of 120 days
**but judicial claim must be filed within 120+30 days counted from the filing of* the *administrative claim*

120 day waiting period is mandatory

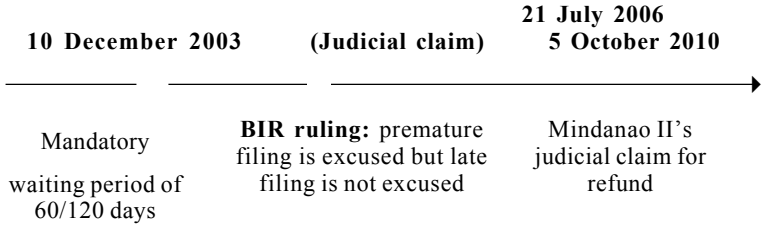
[54] *Id.*

[55] *Id.* at 405-406.

Bearing in mind the foregoing rules for the timely filing of a judicial claim for refund or credit of unutilized input VAT, we rule on the present case of Mindanao II as follows:

We find that Mindanao II's situation is similar to that of Philex in *San Roque*.

As mentioned above, Mindanao II filed its judicial claim with the CTA on **21 July 2006**. This was **after** the issuance of BIR Ruling No. DA-489-03 on 10 December 2003, but before its reversal on 5 October 2010. However, while the BIR ruling was in effect when Mindanao II filed its judicial claim, the rule cannot be properly invoked. The BIR ruling, as discussed earlier, contemplates **premature** filing. The situation of Mindanao II is one of **late** filing. To repeat, its judicial claim was filed on 21 July 2006 – long after 5 March 2006, the last day of the 30-day period for appeal. In fact, it filed its judicial claim 138 days after the lapse of the 30-day period. (See timeline below)



E. Undersigned dissented in San Roque to the retroactive application of the mandatory and jurisdictional nature of the 120+30 day period.

It is worthy to note that in *San Roque,* this *ponente* registered her dissent to the retroactive application of the mandatory and jurisdictional nature of the 120+30 day period provided under Section 112(D) of the Tax Code which, in her view, is unfair to taxpayers. It has been the view of this *ponente* that the mandatory nature of 120+30 day period must be completely applied prospectively or, at the earliest, only upon the finality of *Aichi* in order to create stability and consistency in our tax

laws. Nevertheless, this *ponente* is mindful of the fact that judicial precedents cannot be ignored. Hence, the majority view expressed in *San Roque* must be applied.

SUMMARY OF RULES ON PRESCRIPTIVE PERIODS FOR CLAIMING REFUND OR CREDIT OF INPUT VAT

The lessons of this case may be summed up as follows:

A. Two-Year Prescriptive Period

1. It is only the administrative claim that must be filed within the two-year prescriptive period. (*Aichi*)
2. The proper reckoning date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. (*San Roque*)
3. The only other rule is the *Atlas* ruling, which applied only from **8 June 2007** to **12 September 2008.** *Atlas* states that the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of **filing of the VAT return and payment of the tax**. (*San Roque*)

B. 120+30 Day Period

1. The taxpayer can file an appeal in one of two ways: (1) file the judicial claim within thirty days after the Commissioner denies the claim within the 120-day period, or (2) file the judicial claim within thirty days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.
2. The 30-day period always applies, whether there is a denial or inaction on the part of the CIR.
3. As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. (*Aichi* and *San Roque*)
4. As an exception to the general rule, premature filing is allowed only if filed between 10 December 2003 and 5

October 2010, when BIR Ruling No. DA-489-03 was still in force. (*San Roque)*

5. Late filing is absolutely prohibited, even during the time when BIR Ruling No. DA-489-03 was in force. (*San Roque)*

SUMMARY AND CONCLUSION

In sum, our finding is that the three administrative claims for the refund or credit of unutilized input VAT were all timely filed, while the corresponding judicial claims were belatedly filed.

The foregoing considered, the CTA lost jurisdiction over Mindanao II's claims for refund or credit. The CTA EB erred in granting these claims.

WHEREFORE, we **GRANT** the Petition. The assailed Court of Tax Appeals *En Banc* Decision dated 11 November 2009 and Resolution dated 3 March 2010 of the CTA EB Case No. 448 (CTA Case No. 7507) are hereby **REVERSED** and **SET ASIDE.** A new ruling is entered **DENYING** respondent's claim for a tax refund or credit of ₱6,791,845.24.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 192371. January 15, 2014]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **EMMANUEL OÑATE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; QUESTIONS OF LAW AND QUESTIONS OF FACT, DISTINGUISHED.— "Well-settled is the rule that in petitions for review on *certiorari* under Rule 45, only questions of law can be raised." In *Velayo-Fong v. Spouses Velayo,* we defined a question of law as distinguished from a question of fact: "A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.* The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact."

2. ID.; EVIDENCE; ADMISSIBILITY; TESTIMONIAL EVIDENCE; HEARSAY RULE; ENTRIES MADE IN THE COURSE OF BUSINESS MAY QUALIFY UNDER THE EXCEPTION THERETO.— [B]efore entries made in the course of business may qualify under the exception to the hearsay rule and given weight, the party offering them must establish that: (1) the person who made those entries is dead, outside the country, or unable to testify; (2) the entries were made at, or near the time of the transaction to which they refer; (3) the

entrant was in a position to know the facts stated therein; (4) the entries were made in the professional capacity or in the course of duty of the entrant; and, (5) the entries were made in the ordinary or regular course of business or duty. Here, Land Bank has neither identified the persons who made the entries in the passbooks nor established that they are already dead or unable to testify as required by Section 43, Rule 130 of the Rules of Court. Also, and as correctly opined by the CA, "[w]hile the deposit entries in the bank's passbook enjoy a certain degree of presumption of regularity x x x," the same do "not indicate or explain the source of the funds being deposited or withdrawn from an individual account." They are mere *prima facie* proof of what are stated therein – the dates of the transactions, the amounts deposited or withdrawn, and the outstanding balances. They do not establish that the total amount of ₱4,086,888.89 deposited in Oñate's Trust Account No. 01-125 in November 1980 came from the proceeds of the pre-terminated loans of Land Bank's corporate borrowers.

3. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; CHECKS; UNLESS SUBSEQUENTLY ENDORSED, CHECKS CAN ONLY BE DEPOSITED IN THE ACCOUNT OF THE PAYEE APPEARING THEREIN.— Under paragraph 8 of its Complaint, Land Bank alleged that its corporate borrowers "paid their respective obligations in the form of checks payable to LANDBANK x x x". If it is true, then why were the checks credited to Oñate's account? Unless subsequently endorsed to Oñate, said checks can only be deposited in the account of the payee appearing therein. We cannot thus lend credence to Land Bank's excuse that the proximate cause of the alleged "miscrediting" was the fraudulent representation of Polonio, for assuming that the latter indeed employed fraudulent machinations, with the degree of prudence expected of banks, Land Bank and its tellers could have easily detected that Oñate was not the intended payee. In *Traders Royal Bank v. Radio Philippines Network, Inc.*, we held that petitioner bank was remiss in its duty and obligation for accepting and paying a check to a person other than the payee appearing on the face of the check *sans* valid endorsement.

4. COMMERCIAL LAW; BANKING INSTITUTIONS; AS A CONSEQUENCE OF ITS FAILURE TO PROVE THE SOURCE OF THE CLAIMED "MISCREDITED" FUNDS,

A BANK HAD NO RIGHT TO DEBIT AN ACCOUNT AND MUST RESTORE THE SAME; CASE AT BAR.— The order to restore the debited amount is consistent with the lower courts' ruling that Land Bank failed to prove that the amount of ₱4,086,888.89 was "miscredited" to Oñate's account and, hence, it had no right to seek reimbursement or debit any amount from his accounts in payment therefor. Without such right, Land Bank should return the amount of ₱1,471,416.52 it debited from Oñate's accounts in its attempt to recoup what it allegedly lost due to "miscrediting."

5. ID.; ID.; NATURE OF BANKING BUSINESS AND THE RESPONSIBILITY OF BANKS, ELUCIDATED.— In *Simex International (Manila), Inc. v. Court of Appeals*, we elucidated on the nature of banking business and the responsibility of banks: "The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. x x x In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. ***The bank must record every single transaction accurately, down to the last centavo and as promptly as possible.*** This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. x x x The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligations to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. x x x"

6. ID.; ID.; FAILURE TO EXERCISE ONE'S RIGHTS TO INSPECT THE RECORDS AND AUDIT HIS ACCOUNTS NEITHER EXCUSE THE BANK FROM SENDING THE REQUIRED NOTICES NOR CONSTRUED AS HIS WAVER TO BE FURNISHED WITH UPDATES ON HIS ACCOUNTS NOR AUTHORITY FOR THE BANK TO MAKE UNDOCUMENTED WITHDRAWALS.— Neither does

Oñate's failure to exercise his rights to inspect the records and audit his accounts excuse the bank from sending the required notices, for under the IMAs it behooved upon Land Bank to keep him fully informed of the status of his investments by sending him regular reports and statements. Oñate's failure to inspect the record of his accounts should neither be construed as his waiver to be furnished with updates on his accounts nor authority for the bank to make undocumented withdrawals.

7. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; PRAYER; COURTS CANNOT GRANT A RELIEF NOT PRAYED FOR IN THE PLEADINGS OR IN EXCESS OF WHAT IS BEING SOUGHT BY THE PARTY.—** Land Bank never prayed for the recovery of the negative balances in its Complaint. "It is settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party. x x x Due process considerations require that judgments must conform to and be supported by the pleadings and evidence presented in court."

8. **ID.; ID.; PRE-TRIAL; THE DETERMINATION OF ISSUES AT A PRE-TRIAL CONFERENCE BARS THE CONSIDERATION OF OTHER QUESTIONS ON APPEAL.—** The case of negative balances as alluded to by Land Bank, however, is different. It was never put into issue during the pre-trial conference. In *Caltex (Philippines), Inc. v. Court of Appeals*, we held that "to obviate the element of surprise, parties are expected to disclose at a 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 matters. The determination of issues at a pre-trial conference bars the consideration of other questions on appeal." Land Bank interposed its claim to the negative balances for the first time only when it filed its Memorandum with the RTC.

9. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST RATE; THE UNILATERAL OFFSETTING OF FUNDS WITHOUT LEGAL JUSTIFICATION AND THE UNDOCUMENTED WITHDRAWALS ARE TANTAMOUNT TO FORBEARANCE OF MONEY; APPLICABLE RATE OF INTEREST IS 12% *PER ANNUM*.—** The unilateral offsetting of funds without legal justification and the undocumented withdrawals are tantamount to forbearance of

money. In the analogous case of *Estores v. Supangan*, we held that "[the] unwarranted withholding of the money which rightfully pertains to [another] amounts to forbearance of money which can be considered as an involuntary loan." Following *Eastern Shipping Lines, Inc. v. Court of Appeals*, therefore, the applicable rate of interest in this case is 12% *per annum*. Besides, Land Bank is estopped from assailing the award of 12% *per annum* rate of interest. In its Complaint, Land Bank arrived at ₱8,222,687.89 as the outstanding indebtedness of Oñate by using the same 12% *per annum* rate of interest. It was only after the lower courts rendered unfavorable decisions that Land Bank started to insist that the applicable rate of interest is 6% *per annum*.

10. ID.; ID.; ID.; WHERE THE DEMAND IS ESTABLISHED WITH REASONABLE CERTAINTY, THE INTEREST SHALL BEGIN TO RUN FROM THE TIME THE CLAIM IS MADE JUDICIALLY OR EXTRAJUDICIALLY BUT WHEN SUCH CERTAINTY CANNOT BE SO REASONABLY ESTABLISHED AT THE TIME THE DEMAND IS MADE, THE INTEREST SHALL BEGIN TO RUN ONLY FROM THE DATE THE JUDGMENT OF THE COURT IS MADE.— While we find sufficient basis for the compounding of interest, we find it necessary however to modify the commencement date. In *Eastern Shipping*, it was observed that the commencement of when the legal interest should start to run varies depending on the factual circumstances obtaining in each case. As a rule of thumb, it was suggested that "where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but ***when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made*** (at which time the quantification of damages may be deemed to have been reasonably ascertained)." x x x Hence, we find it just and proper to reckon the running of the interest of 12% *per annum*, compounded yearly, for the debited amount and undocumented withdrawals on different dates. The debited amount of ₱1,471,416.52, shall earn interest beginning May 31, 2006 or the day the RTC rendered its Decision granting said amount to Oñate. As to the undocumented withdrawals of ₱60,663,488.11 and

US$3,210,222.85, the legal rate of interest should start to run the day the CA promulgated its Decision on December 18, 2009.

11. ID.; ID.; ID.; BANGKO SENTRAL NG PILIPINAS CIRCULAR NO. 799, SERIES OF 2013; IN THE ABSENCE OF EXPRESS STIPULATION BETWEEN THE PARTIES, THE RATE OF INTEREST IN LOAN OR FORBEARANCE OF ANY MONEY, GOODS OR CREDITS AND THE RATE ALLOWED IN JUDGMENTS SHALL BE 6% *PER ANNUM*.— During the pendency of this case, however, the Monetary Board issued Resolution No. 796 dated May 16, 2013, stating that in the absence of express stipulation between the parties, the rate of interest in loan or forbearance of any money, goods or credits and the rate allowed in judgments shall be 6% *per annum*. Said Resolution is embodied in Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, which took effect on July 1, 2013. Hence, the 12% annual interest mentioned above shall apply only up to June 30, 2013. Thereafter, or starting July 1, 2013, the applicable rate of interest for both the debited amount and undocumented withdrawals shall be 6% *per annum*, compounded annually, until fully paid.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Medialdea Ata Bello Guevarra & Suarez for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the December 18, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 89346, which affirmed with modification the May 31, 2006 Decision[3] of the Regional Trial Court (RTC), Branch 141,

[1] *Rollo*, pp. 11-94.

[2] CA *rollo*, pp. 484-511; penned by Associate Justice Jose Catral Mendoza (now a Member of this Court) and concurred in by Associate Justices Myrna Dimaranan Vidal and Priscilla J. Baltazar-Padilla.

[3] Records, Vol. IV, pp.1358-1387; penned by Judge Manuel D. Victorio.

Makati City. The RTC dismissed the Complaint[4] for Sum of Money, which petitioner Land Bank of the Philippines (Land Bank) filed against respondent Emmanuel C. Oñate (Oñate), and ordered Land Bank to return the amount of ₱1,471,416.52 it unilaterally debited from his accounts. On separate appeals by both parties, the CA affirmed the RTC Decision with modification that Land Bank was further ordered to pay Oñate the sums of ₱60,663,488.11 and US$3,210,222.85 representing the undocumented withdrawals and drawings from his trust accounts with 12% *per annum* interest compounded annually from June 21, 1991 until fully paid.

Also assailed is the CA's May 27, 2010 Resolution[5] denying Land Bank's Motion for Reconsideration.[6]

Factual Antecedents

Land Bank is a government financial institution created under Republic Act No. 3844.[7] From 1978 to 1980, Oñate opened and maintained seven trust accounts with Land Bank, more particularly described as follows:

Trust Account No.	Date Opened	Beginning Balance
01-014	09.07.78	₱ 250,000.00[8]
01-017	11.16.78	1,312,896.00[9]

[4] *Id.*, Vol. I, pp. 1-8.

[5] CA *rollo*, pp. 594-595; penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Michael P. Elbinias.

[6] *Id.* at 518-558.

[7] AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES. Approved August 8, 1963.

[8] See Passbook 1, Exhibit "D-31".

[9] See Passbook 2, Exhibit "F-3".

01-024	02.23.79	900,000.00[10]
01-075	10.08.79	500,000.00[11]
01-082	10.25.79	200,001.00[12]
01-089	03.18.80	43.98[13]
01-125	03.13.80	188,161.00[14]

Each trust account was covered by an Investment Management Account (IMA) with Full Discretion[15] and has a corresponding passbook where deposits and withdrawals were recorded. Pertinent portions common to the IMAs read:

You [Land Bank] are appointed as my agent with full powers and discretion, subject only to the following provisions:

1. You are authorized to hold, invest and reinvest the Fund and keep the same invested, in your sole discretion, without distinction between principal and income, in any assets which you deem advisable, without being restricted to those of the character authorized for fiduciaries under any present or future law.

2. You shall have full power and authority:

(a) to treat all the Fund as one aggregate amount for purposes of investment, and to deposit all or any part thereof with a reputable bank including your own commercial banking department;

(b) to pay all costs, expenses and charges incurred in connection with the administration, preservation, maintenance and protection of the Fund and to charge the same to the Fund;

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[10] See Passbook 7, Exhibit "C-3".

[11] See Passbook 5, Exhibit "B-3".

[12] See Passbook 4, Exhibit "A-3".

[13] See Passbook 3, Exhibit "E-3".

[14] See Passbook 6, Exhibit "G-3".

[15] Records, Vol. I, pp. 9-23.

(c) to vote in person or by proxy on any stocks, bonds or other securities held by you, for my/our account;

(d) to borrow money for the Fund (from your banking department or from others) with or without giving securities from the Fund;

(e) to cause any asset of the Fund to be issued, held or registered in your name or in the name of your nominee, or in such form that title will pass by delivery, provided your records shall indicate the true ownership of such assets;

(f) to hold the Fund in cash and to invest the same in fixed income placements traded and sold by your own Money Market Division; and

(g) to sign all documents pertinent to the transaction which you will make in behalf of this Account.

3. All actions taken by you hereunder shall be for my account and risk. **Except for willful default or gross misconduct**, you shall not be liable for any loss or depreciation in the value of the assets of the Fund arising from any cause whatsoever.

4. You shall maintain accurate records of all investments, receipts, disbursements and other transactions of the Account. Records relating thereto shall be open at all reasonable times to inspection and audit by me either personally or through duly authorized representatives. Statements consisting of a balance sheet, portfolio analysis, statement of income and expenses, and summary of investment changes are to be sent to me/us quarterly.

I/We shall approve such accounting by delivering in writing to you a statement to that effect or by failure to express objection to such accounting in writing delivered to you within thirty (30) days from my receipt of the accounting.

Upon your receipt of a written approval of the accounting, or upon the passage of said period of time within which objections may be filed, without written objections having been delivered to you, such accounting shall be deemed to be approved, and you shall be released and discharged as to all items, matters and things set forth in such accounting as if such accounting had been settled and allowed by a decree of a court of competent jurisdiction, in an action or proceeding in which you and I were parties.[16] (Emphasis supplied)

[16] *Id.*

In a letter[17] dated October 8, 1981, however, Land Bank demanded from Oñate the return of ₱4 million it claimed to have been inadvertently deposited to Trust Account No. 01-125 as his additional funds but actually represents the total amount of the checks issued to Land Bank by its corporate borrowers as payment for their pre-terminated loans. Oñate refused. To settle the matter, a meeting was held, but the parties failed to reach an agreement. Since then, the issue of "miscrediting" remained unsettled. Then on June 21, 1991, Land Bank unilaterally applied the outstanding balance in all of Oñate's trust accounts against his resulting indebtedness by reason of the "miscrediting" of funds. Although it exhausted the funds in all of Oñate's trust accounts, Land Bank was able to debit the amount of ₱1,528,583.48 only.[18]

Proceedings before the Regional Trial Court

To recoup the remaining balance of Oñate's indebtedness, Land Bank filed a Complaint[19] for Sum of Money seeking to recover the amount of ₱8,222,687.89[20] plus interest at the legal rate of 12% *per annum* computed from May 15, 1992 until fully paid. Pertinent portions of Land Bank's Complaint reads:

5. By virtue of the Deeds of Revocable Trust executed on January 9, 1989[21] [sic] and February 5, 1989[22] [sic] by Philippine

[17] *Id.* at 33.

[18] As alleged in paragraph 14 of the Complaint, *id.* at 5-6. But per Annex "P" of the same Complaint, *id.* at 34-35, the total amount debited was ₱1,471,416.52.

[19] *Id.* at 1-8.

[20] Under paragraph 15 of the Complaint, Land Bank explained how it arrived at the amount of ₱8,222,687.89, *viz*:

15. [Oñate's] outstanding indebtedness to LANDBANK stands at ₱8,222,687.89 as of May 15, 1992, which was computed on the basis of the more than ₱4 Million erroneously credited to [Oñate] multiplied by 12% interest *per annum* from the date of the erroneous crediting up to February 4, 1992, minus ₱1,528,583.48 representing the balance standing in [Oñate's] personal trust accounts which was applied as payment by way of set-off. x x x (*Id.* at 6.)

[21] Should be 1980.

[22] Should be 1980.

Virginia Tobacco Administration (PVTA) and Philippine Virginia Tobacco Board (PVTB), LANDBANK likewise became a Trustee of certain funds belonging to PVTA and PVTB.

6. As authorized under the [Deeds] of Revocable Trust, on October 10, 1980, LANDBANK invested ₱4 Million of the trust accounts of PVTA and PVTB, through a direct lending scheme to the following companies:

(a) Republic Telephone Company, Inc. (RETELCO), under Promissory Note No. 1145 dated October 10, 1980, for ₱1,021,250.00 with maturity date on November 24, 1980, subject to automatic roll-over up to October 10, 1981 at 17% interest per annum.

(b) Philippine Blooming Mills Company, Inc. (PBM), under Promissory Note (unnumbered) dated October 10, 1980, for ₱1,021,250.00, with maturity date on November 24, 1980, subject to automatic roll-over up to October 10, 1981, at 17% interest per annum;

(c) Cheng Ban Yek (CBY), under Promissory Note (unnumbered) dated October 10, 1980, for ₱1,023,138.89, with maturity date on November 28, 1980, subject to automatic roll-over up to October 10, 1981, at 17% interest per annum;

(d) Philippine Tobacco Filters Corporation (PHILTOFIL), under Promissory Note (unnumbered) dated October 10, 1980, for ₱1,021,250.00, with maturity date on November 24, 1980, subject to automatic roll-over up to October 10, 1981, at 17% interest per annum.

x x x x x x x x x

7. Pursuant to such direct loan transactions granted to the aforementioned companies, LANDBANK issued four (4) cashier's checks for ₱1 Million each payable to RETELCO, PBM, CBY, and PHILTOFIL x x x

8. On or about November 24 and 28, 1980, the aforesaid borrowers (RETELCO, PBM, CBY, AND PHILTOFIL), pre-terminated their corresponding loans and paid their respective obligations in the form of checks payable to LANDBANK and delivered by [Oñate's] representative, Mr. Eduardo Polonio.

9. When the checks were delivered, [Oñate] fraudulently misrepresented to LANDBANK that they were [Oñate's] additional capital contribution to his personal trust account. On the basis of this misrepresentation, LANDBANK credited the payments made by the aforementioned corporate borrowers to [Oñate's] Trust Account No. 01-125.

10. After the payments were credited to his personal trust account, Oñate proceeded to withdraw the same, to the damage and prejudice of LANDBANK as the owner thereof.[23]

In his Answer (With Compulsory Counterclaim),[24] Oñate asserted that the setoff was without legal and factual bases. He specifically denied any knowledge or involvement in the transaction between Land Bank and its clients Philippine Virginia Tobacco Administration (PVTA) and Philippine Virginia Tobacco Board (PVTB). He also denied that he made fraudulent misrepresentation to induce the bank to deposit to his Trust Account No. 01-125 as his additional capital the payments allegedly tendered by the bank's corporate borrowers. He maintained that all the funds in his accounts came from legitimate sources and that he was totally unaware of and had nothing to do with the alleged "miscrediting." While Oñate admitted having received the October 8, 1981 demand letter, he argued that he did not acquiesce thereto and, in fact, disputed the same during a meeting with an officer of Land Bank. He also refuted Land Bank's claim that it formally demanded for the return of the disputed amount as the September 3, 1991 letter[25] it alluded to is not a demand letter. It was sent in response to his counsel's letter requesting for an accounting of his trust accounts.

By way of compulsory counterclaim, Oñate pointed out that per Balance Sheets[26] as of June 30, 1982 the funds in his trust accounts already totaled ₱35,555,464.78. And as of January

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[23] Records, Vol. I, pp. 2-5.

[24] *Id.* at 138-152.

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

[26] *Id.* at 153-159.

1993, the accumulated balance of his accounts reached ₱229,222,160.25 and $3,472,683.94 computed as follows:

With interest at the rate of eighteen percent (18%) compounded every ninety (90) days from the third quarter of 1982 to January, 1993, the trustor's equity of ₱35,555,464.78 has earned **interest** in the amount of **₱193,666,695.47.** Adding the trustor's equity to the aforesaid accrued interest thereon, [Oñate's] **peso** deposits [in] his trust accounts with plaintiff bank have an accumulated balance of **₱229,222,160.25** as of **January 1993**.

But that is not all. [Oñate's] dollar deposits to Trust Account No. 01-014 (which is for an "Undisclosed Principal") from the period July-September, 1980 alone, already amounted to $1,690,943.78. x x x

With interest at the rate of six percent (6%) compounded every ninety (90) days from the first quarter of 1981, the said **dollar** deposits have earned interest of **$1,781,740.16** up to **January, 1993**. Thus, [Oñate's] dollar deposits [in] Trust Account No. **01-014** have an aggregate balance of **$3,472,683.94** as of **January 1993**.[27]

Hence, even if the amount of ₱8,222,687.89 as of May 15, 1992 is deducted from the outstanding balance of his trust accounts as of January 1993, the bank still owes him ₱220,999,472.36 on top of his dollar deposits amounting to $3,472,683.94.

Oñate prayed that a judgment be issued dismissing the Complaint and ordering Land Bank to pay him:

i) The sum of ₱220,999,472.36, representing the outstanding balance on the peso deposits [of Oñate's] various trust accounts as of January 1993, with interest thereon from said date at the rate of eighteen percent (18%) compounded every ninety (90) days, until the said amount is fully paid;

ii) The sum of $3,472,683.94, representing the aggregate balance as of January 1993 on [Oñate's] dollar deposits [in] Trust Account No. 01-014, with interest thereon from said date at the rate of six percent (6%) compounded every ninety (90) days, until the said amount is fully paid;

iii) The sum of ₱100,000,000.00 as and by way of moral damages;

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[27] *Id.* at 144-145. Emphases in the original.

iv) The sum of ₱50,000,000.00 as and by way of exemplary damages; and

v) The sum of ₱15,000,000.00, or 20% of all sums collected, whichever is higher, as and for attorney's fees, the further sum of ₱3,000.00 as appearance fee for each hearing attended, and such other sums that may be proved during the trial as litigation expenses.[28]

Upon Oñate's motion, the RTC issued an Order[29] dated May 27, 1994, creating a Board of Commissioners (the Board) for the purpose of examining the records of Oñate's seven trust accounts, as well as to determine the total amount of deposits, withdrawals, funds invested, earnings, and expenses incurred. It was composed of Atty. Engracio M. Escasinas, the Clerk of Court of the RTC of Makati City, as the Chairman; and, Atty. Ma. Cristina C. Malab and Ms. Adeliza M. Jaranilla representing Land Bank and Oñate, respectively, as members.

Initially, the Board submitted three reports.[30] But for clarity, the trial court ordered[31] the Board to reconvene and to submit a consolidated report furnishing copies of the same to both parties, who were given 10 days from receipt thereof to file their respective comments thereto. The Board complied and on August 16, 2004 submitted its consolidated report.[32] As summarized by the RTC, the said consolidated report revealed that there were undocumented and over withdrawals and drawings[33] from Oñate's trust accounts:

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

[29] *Id.*, Vol. II, pp. 409-410.

[30] (i) Report of the Board of Commissioners dated September 24, 1999, *id.*, Vol. V, pp. 1432-1441; (ii) supplemental summary report dated January 27, 2000, *id.*, Vol. III, pp. 790-797; (iii) second supplemental report dated April 6, 2000, *id.* at 811-812.

[31] See Order dated May 25, 2004, *id.*, Vol. IV, p. 1216.

[32] *Id.* at 1220-1228.

[33] Per commissioners' consolidated report dated August 16, 2004, *id.*, "withdrawals" is defined as cash outflow reflected on the passbooks of Oñate, while "drawings" is cash outflow from the capital contribution of Oñate per his Letter of Instructions.

Thus, the Commissioners' Report showed that the total amount of drawings and withdrawals from each account without withdrawal slips are as follows:

In Trust Account No. 01-014, there was a total withdrawals [sic] without withdrawal slips but reflected in the passbook in the amount of ₱45,103,297.33 and this account showed a negative balance of ₱40,367,342.34. On the dollar deposit under the same trust account, there was a total [withdrawal] without withdrawal slips but reflected in the passbook in the amount of $3,210,222.85.

In Trust Account No. 01-017, there was a total withdrawal without withdrawal slips in the amount of ₱2,682,088.58 and there was an over withdrawal of ₱11,738,470.53 and $30,000.00.

In Trust Account No. 01-024, there was a total withdrawal without withdrawal slips of ₱900,000.00 and over withdrawal of ₱13,310,328.01.

In Trust Account No. 01-075, there was a total withdrawal of ₱500,000.00 without withdrawal slips and there was a negative balance of ₱33,342,132.64 and $286,399.34 on the dollar account.

In Trust Account No. 01-082, the total amount of withdrawal without withdrawal slips but reflected in the passbook was ₱1,782,741.86 and there was an over withdrawal of ₱14,031.63.

In Trust Account No. 01-089, there was a total withdrawal without withdrawal slips in the amount of ₱5,054,809.00 but the report indicated that there was a negative balance of ₱1,296,441.92.

In Trust Account No. 01-125, there was a total withdrawal without withdrawal slips in the amount of ₱4,640,551.34 and there was a negative balance of ₱58,327,459.23.[34]

On even date, the Board also submitted a Manifestation[35] informing the RTC that its findings as to the outstanding balance of each trust account may not be accurate considering that it was not given ample opportunity to collate and sort out the documents related to each trust account and that there may have been double take up of accounts since the documents

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[34] *Id.* at 1380-1381.

[35] *Id.* at 1229-1230.

previously reviewed may have been considered again in subsequent reports.

In his Comment,[36] Oñate asserted that the undocumented withdrawals mentioned in the consolidated report should not be considered as cash outflows. Rather, they should be treated as unauthorized transactions and the amounts subject thereof must be credited back to his accounts.

Land Bank did not file any comment or objection to the Board's consolidated comment.

During the pre-trial conference, the parties agreed that they would submit the case for decision based on the reports of the Board after they have submitted their respective memoranda. They also stipulated on the following issues for resolution of the RTC:

1. Whether x x x Oñate could claim on Trust Account Nos. 01-014 and 01-017 which were opened for an undisclosed principal;

2. Whether x x x the undocumented withdrawals and drawings are considered valid and regular and, conversely, if in the negative, whether x x x such amounts shall be credited [back] to the accounts.[37]

In his Memorandum[38] filed on July 12, 2005, Oñate reiterated that Land Bank should be held liable for the undocumented withdrawals and drawings. For its part, Land Bank posited, *inter alia*, that Trust Account Nos. 01-014 and 01-017 should be excluded from the computation of Oñate's counterclaim considering his allegation that said accounts are owned by an undisclosed principal whom/which he failed to join as indispensable party. Land Bank further theorized that Oñate must answer for the negative balances as revealed by the Board's reports.[39]

[36] See Comment (Re: Board of Commissioners' Compliance dated 16 August 2004), *id.* at 1241-1245.

[37] See Order dated June 10, 2005, *id.* at 1286.

[38] *Id.* at 1288-1307.

[39] See Land Bank's Memorandum dated August 5, 2005, *id.* at 1319-1345.

Thereafter, the case was submitted for decision.

Ruling of the Regional Trial Court

On May 31, 2006, the RTC rendered a Decision[40] dismissing Land Bank's Complaint for its failure to establish that the amount of ₱4,086,888.89 allegedly "miscredited" to Oñate's Trust Account No. 01-125 actually came from the investments of PVTA and PVTB. Hence, the RTC ordered Land Bank to restore the total amount of ₱1,471,416.52 which the bank unilaterally debited from Oñate's five trust accounts.[41]

With regard to Oñate's counterclaim for the recovery of ₱220,999,472.36, as well as the alleged US$3,472,683.94 balance of his dollar deposits in Trust Account No. 01-014, the RTC ruled that under the IMAs, Land Bank had the authority to withdraw funds (as in fact it was at all times in possession of the passbooks) from Oñate's accounts even without a letter of instruction or withdrawal slip coming from Oñate. It thus gave weight to the entries in the passbooks since the same were made in the ordinary course of business. The RTC also ruled that Oñate is deemed to have approved the entries in the statements of account that were sent to him as he never interposed any objection thereto within the period given him to do so.

Anent Land Bank's claim for the negative balances, the RTC likewise denied the same for Land Bank never sought them in its Complaint. Moreover, being the manager of the funds and keeper of the records, the RTC held that Land Bank should not have allowed further withdrawals if there were no more funds.

The RTC likewise debunked Land Bank's argument that Oñate's counterclaim with respect to Trust Account Nos. 01-014 and 01-017 should be dismissed for his failure to join his undisclosed

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[40] *Id.* at 1358-1387.

[41] Broken down as follows: Trust Account No. 01-014, ₱170,172.91; Trust Account No. 01-017, ₱622,422.34; Trust Account No. 01-082, ₱4,175.88; Trust Account No. 01-089, ₱148,298.79; and, Trust Account No. 01-125, ₱526,346.61, for a total amount of ₱1,471,416.52.

principal. According to the RTC, Land Bank should have earlier invoked such defense when it filed its answer to the counterclaim. Also, if it is true that said accounts are not owned by Oñate, then the bank had no right to apply the funds in said accounts as payment for the alleged personal indebtedness of Oñate.

The dispositive portion of the RTC's Decision reads:

> WHEREFORE, in view of all the foregoing, decision is hereby rendered dismissing the complaint and ordering [Land Bank] to pay [Oñate] the total amount of ₱1,471,416.52 representing the total amount of funds debited from the five (5) trust accounts of the defendant with legal rate of interest of 12% *per annum*, compounded yearly, effective on 21 June 1991 until fully paid.
>
> No pronouncement as to costs.
>
> SO ORDERED.[42]

Land Bank filed a Motion for Reconsideration.[43] In an Order[44] dated July 11, 2006, however, the RTC denied the same.

Both parties appealed to the CA.

Ruling of the Court of Appeals

In its December 18, 2009 Decision,[45] the CA denied Land Bank's appeal and granted that of Oñate. The CA affirmed the RTC's ruling that Land Bank failed to establish the source of the funds it claimed to have been erroneously credited to Oñate's account. With respect to Oñate's appeal, the CA agreed that he is entitled to the unaccounted withdrawals which, as found by the Board, stood at ₱60,663,488.11 and $3,210,222.85.[46] The

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[42] Records, Vol. IV, p. 1387.

[43] *Id.* at 1388-1399.

[44] *Id.* at 1416-1417.

[45] CA *rollo*, pp. 484-511.

[46] Broken down as follows:

PESO ACCOUNTS

Trust Account No.	Undocumented Withdrawals
01-014	₱45,103,297.33

CA's ruling is anchored on the bank's failure to observe Sections X401 and X425 of the Bangko Sentral ng Pilipinas Manual of Regulation for Banks (MORB) requiring it to give full disclosure of the services it offered and conduct its dealings with transparency, as well as to render reports that would sufficiently apprise its clients of the significant developments in the administration of their accounts. Aside from allowing undocumented withdrawals, the CA likewise noted that Land Bank failed to keep an accurate record and render an accounting of Oñate's accounts. For the CA, the entries in the passbooks are not sufficient because they do not specify where the funds withdrawn from Oñate's accounts were invested.

The dispositive portion of the CA's Decision reads:

WHEREFORE, the appeal of plaintiff-appellant Land Bank is DENIED.

The appeal of defendant-appellant Emmanuel Oñate is hereby partially GRANTED. Accordingly, the May 31, 2006 Decision of the Regional Trial Court, Branch 141, Makati City is hereby MODIFIED in that, in addition to the previous grant of ₱1,471,416.52 representing the total amount of funds debited from defendant-appellant Oñate's trust accounts, plaintiff-appellant Land Bank is hereby ordered to pay defendant-appellant Oñate the sum of ₱60,663,488.11 and $3,210,222.85 representing the undocumented withdrawals it debited from the latter's trust account with interest at the rate of 12% *per annum*, compounded yearly from June 21, 1991 until fully paid.

SO ORDERED.[47]

01-017	2,682,088.58
01-024	900,000.00
01-075	500,000.00
01-082	1,782,741.86
01-089	5,054,089.00
01-125	4,640,551.34
TOTAL	₱60,663,488.11

DOLLAR ACCOUNT

Trust Account No.	Undocumented Withdrawals
01-014	$3,210,222.85

[47] CA *rollo*, pp. 510-511.

Land Bank filed a Motion for Reconsideration.[48] In a Resolution[49] dated May 27, 2010, however, the CA denied its motion. Hence, Land Bank filed the instant Petition for Review on *Certiorari* based on the following issues:

Issues

1. WHETHER X X X THE ENTRIES IN THE PASSBOOK ISSUED BY LBP IN OÑATE'S TRUST ACCOUNT (EXPRESS TRUST) COVERED BY AN INVESTMENT MANAGEMENT AGREEMENT (IMA) WITH FULL DISCRETION ARE SUFFICIENT TO MEET THE "RULE ON PRESUMPTION OF REGULARITY OF ENTRIES IN THE COURSE OF BUSINESS" PROVIDED FOR UNDER SECTION 43, RULE 130 OF THE RULES OF COURT.
2. WHETHER X X X OÑATE IS ENTITLED TO CLAIM FOR ₱1,471,416.52 WHICH IS NOT PLEADED AS COUNTERCLAIM IN HIS ANSWER PURSUANT TO SECTION 2, RULE 9 OF THE RULES OF COURT.
3. WHETHER X X X OÑATE IS ENTITLED TO THE AWARD OF ₱60,663,488.11 AND $3,210,222.85 REPRESENTING THE ALLEGED UNDOCUMENTED WITHDRAWALS DEBITED FROM HIS TRUST ACCOUNTS ON THE GROUND OF LBP'S ALLEGED FAILURE TO MEET THE STANDARDS SET FORTH UNDER THE 2008 MANUAL ON REGULATIONS FOR BANKS (MORB) ISSUED BY BSP.
4. WHETHER X X X OÑATE MAY SUE [ON] TRUST ACCOUNT NOS. 01-014 AND 01-017 OPENED FOR AN UNDISCLOSED PRINCIPAL WITHOUT JOINING HIS UNDISCLOSED PRINCIPAL.
5. WHETHER X X X THE AWARD OF INTEREST TO OÑATE AT THE RATE OF TWELVE PERCENT (12%) *PER ANNUM*, COMPOUNDED YEARLY FROM JUNE 21, 1991 UNTIL FULLY PAID, IS VIOLATIVE OF ARTICLE 1959 OF THE CIVIL CODE.[50]

[48] *Id.* at 518-558.

[49] *Id.* at 594-595.

[50] *Rollo*, p. 465.

Land Bank's Arguments

Land Bank disputes the ruling of both lower courts that it failed to prove the fact of "miscrediting" the amount of ₱4,086,888.89 to Oñate's Trust Account No. 01-125 as the deposit slips pertaining thereto were not presented. Land Bank maintains that in trust accounts the passbooks are always in the bank's possession so that it can record the cash inflows and outflows even without the corresponding deposit or withdrawal slips. Citing Section 43, Rule 130 of the Rules of Court, it asserts that the entries in the passbooks must be accepted as proof of the regularity of the transactions reflected in the trust accounts, including the "miscrediting" of ₱4,086,888.89, for they were made in the regular course of business. In addition, said entries are supported by demand letters dated October 8, 1981[51] and September 3, 1991,[52] as well as a Statement of Account[53] as of May 15, 1992. Land Bank avers that Oñate never questioned the statements of account and the reports it presented to him and, hence, he is deemed to have approved all of them.

Land Bank also imputes error on the lower courts in ordering the restoration of the amount of ₱1,471,416.52 it debited from Oñate's five trust accounts because he never sought it in his Answer.

Petitioner bank vigorously argues that Oñate is not entitled to the undocumented withdrawals amounting to ₱60,663,488.11 and $3,210,222.85. According to Land Bank, in holding it liable for the said amounts, the CA erroneously relied on the 2008 MORB which was not yet in existence at the time the transactions subject of this case were made or even at the time when Land Bank filed its Complaint. In any case, Land Bank insists that it made proper accounting and apprised Oñate of the status of his investments in accordance with the terms of the IMAs. In its

[51] Records, Vol. I, p. 33.

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

[53] *Id.* at 36.

demand letter[54] dated September 3, 1991 Land Bank made a full disclosure that the total outstanding balance of all the trust accounts amounted to ₱1,471,416.52, but that the same was setoff to recoup the "miscredited" funds. It faults Oñate for not interposing any objection as his silence constitutes as his approval after 30 days from receipt thereof. Land Bank asseverates that Oñate could have also inspected and audited the records of his accounts at any reasonable time. But he never did.

Land Bank likewise faults the CA in treating the undocumented withdrawals as unauthorized transactions as the Board's reports do not state anything to that effect. It claims that the CA's reliance on the consolidated report in awarding the extremely huge amounts of ₱60,663,488.11 and $3,210,222.85 is a grievous mistake because the Board itself already manifested that said report "may not be accurate." Consequently too, Land Bank asserts that the reports of the Board cannot prevail over the entries in the passbooks which were made in the regular course of business.

Land Bank further states that as computed by the Board, the amount of negative balances in Oñate's accounts reached ₱131,747,487.02 and $818,674.71.[55] It thus proposes that if the CA awarded to Oñate the undocumented withdrawals on the basis of the Board's reports, then it should have also awarded to Land Bank said negative balances or over withdrawals as reflected in the same reports. After all, Oñate admitted in his Answer that all withdrawals from his trust accounts were done in the ordinary course of business.

Furthermore, Land Bank claims that it argued before the CA that Oñate cannot sue on Trust Account Nos. 01-014 and 01-017. While Oñate alleged that said accounts were opened for an undisclosed principal, he did not, however, join as an indispensable party said principal in violation of Section 3, Rule 3 of the

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

[55] See Memorandum dated October 4, 2011, *rollo*, pp. 443-528, 508.

Rules of Court.[56] Unfortunately, the CA sidestepped the issue and proceeded to grant Oñate the unaccounted withdrawals from said accounts in the aggregate amounts of ₱47,785,385.91 and $3,210,222.85. Following *Quilatan v. Heirs of Lorenzo Quilatan*,[57] Land Bank insists that this case should be remanded to the trial court even if the issue of failure to implead an indispensable party was raised for the first time in a Motion for Reconsideration of the trial court's Decision.

Finally, Land Bank questions the ruling of the CA imposing 12% *per annum* rate of interest. It contends that trust accounts are in the nature of "Express Trust" and not in the nature of a regular deposit account where a debtor-creditor relationship exists between the bank and its depositor. It was not indebted to Oñate but merely held and managed his funds. There being no loan or forbearance of money involved, in the absence of stipulation, the applicable rate of interest is only 6% *per annum*. Land Bank claims that the CA further erred when it compounded the 12% interest even in the absence of any such stipulation.

Oñate's Arguments

In opposing the Petition, Oñate argues that the issues raised by Land Bank involve factual matters not proper in a petition for review on *certiorari*. He posits that the Petition does not fall under any of the exceptions where this Court could review factual issues.

As to Land Bank's allegation that he cannot claim the funds without divulging and impleading as an indispensable party his undisclosed principal, Oñate points out that in his Answer (With

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[56] SEC. 3. *Representatives as parties*. Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

[57] G.R. No. 183059, August 28, 2009, 597 SCRA 519.

Compulsory Counterclaim) he alleged that Trust Account Nos. 01-014 and 01-017 were opened for an "undisclosed principal." Yet Land Bank did not controvert his allegation. It is, therefore, too late in the day for Land Bank to invoke non-joinder of principal as an indispensable party. Besides, when he executed the IMAs, he was acting for himself and on behalf of an undisclosed principal. Hence, he could claim and recover the amounts owing not only to himself but also to his undisclosed principal.

Oñate likewise asserts that Land Bank, as uniformly found by both lower courts, failed to prove by preponderance of evidence the fact of "miscrediting." As to the demand letters adverted to by Land Bank, Oñate asserts that the lower courts did not consider the same because they were not formally offered. Land Bank also failed to present competent and sufficient evidence that he admitted his indebtedness on account of the "miscrediting" of funds. Since Land Bank failed to prove the fact of "miscrediting" it had no right to debit any amount from his accounts and must restore whatever funds it had debited therefrom. Oñate also denies having failed to seek the return of the funds debited from his account.

Oñate further claims that in 1982 his peso trust accounts had a total balance of ₱35,555,464.78 while the dollar trust accounts had a balance of US$1,690,943.78. Since then, however, he never received any report or update regarding his accounts until the bank sent him financial reports dated June 30, 1991 indicating that the balances of his trust accounts had been unilaterally setoff. According to Oñate, Land Bank's failure to keep an accurate record of his accounts and to make proper accounting violate several circulars of the Central Bank.[58] Hence, it is only proper to require the bank to return the undocumented withdrawals which, as found by the Board, amount to ₱60,663,488.11 and $3,210,222.82. In addition, Oñate points out Land Bank's failure to keep an accurate record of his accounts as shown by the

[58] CBP Circular No. 824-81 dated September 17, 1981; Subsection 2415.1 of the 1982 Manual of Regulations for Banks (MORB); and CBP Memorandum dated October 16, 1990 and the 1993 MORB.

huge amounts of unsupported withdrawals and drawings which constitutes willful default if not gross misconduct in violation of the IMAs which, in turn, makes the bank liable for its actions.

Anent Land Bank's invocation that the entries in the passbook made in the ordinary course of business are presumed correct and regular, Oñate argues that such presumption does not relieve the trustee, Land Bank in this case, from presenting evidence that the undocumented withdrawals and drawings were authorized. In any case, the presumption invoked by Land Bank does not lie as one of its elements – that the entrant must be deceased or unable to testify – is lacking. Land Bank cannot also excuse itself for failing to regularly submit to him accounting reports as, anyway, he was free to inspect the records at any reasonable day. Oñate emphasizes that it is the duty of the bank to keep him updated with significant developments in his accounts.

In refutation of Land Bank's claim to negative balances and over withdrawals, Oñate posits that the bank cannot benefit from its own negligence in mismanaging the trust accounts.

Lastly, Oñate defends the CA's grant of 12% *per annum* rate of interest as under BSP Circular No. 416, said rate shall be applied in cases where money is transferred from one person to another and the obligation to return the same or a portion thereof is adjudged. In any event, Land Bank is estopped from disputing said rate for Land Bank itself applied the same 12% *per annum* rate of interest when it sought to recover the amount allegedly "miscredited" to his account. As to the compounding of interest, Oñate claims that the parties intended that interest income shall be capitalized and shall form part of the principal.

Our Ruling

We deny the Petition.

The issues raised are factual and do not involve questions of law.

From the very start the issues involved in this case are factual – the very reason why the RTC created a Board of Commissioners

to assist it in examining the records pertaining to Oñate's accounts and determine the respective cash inflows and outflows in said accounts. Thereafter, the parties agreed to submit the case based on the Board's reports. And when the controversy reached the CA, the appellate court basically conducted an "assiduous assessment of the evidentiary records."[59] No question of law was ever raised for determination of the lower courts. Now, Land Bank practically beseeches us to assess the probative weight of the documentary evidence on record to resolve the same basic issues of (i) whether Land Bank "miscredited" ₱4,086,888.89 to Trust Account No. 01-125 and (ii) "whether x x x the undocumented withdrawals and drawings are considered valid and regular and, conversely, if in the negative, whether x x x such amounts shall be credited to the accounts."[60]

These issues could be resolved by consulting the evidence extant on records, such as the IMAs, the passbooks, the letters of instructions, withdrawal and deposit slips, statements of account, and the Board's reports. Land Bank's heavy reliance on Section 43, Rule 130 of the Rules of Court[61] also attests to the factual nature of the issues involved in this case. "Well-settled is the rule that in petitions for review on *certiorari* under Rule 45, only questions of law can be raised."[62] In *Velayo-Fong v. Spouses Velayo,*[63] we defined a question of law as distinguished from a question of fact:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them*. The resolution of the issue must rest

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[59] CA *rollo*, p. 504.

[60] See Order dated June 10, 2005, Records, Vol. IV, p. 1286.

[61] See paragraph 7 of the Petition, *rollo*, p. 39.

[62] *Atiko Trans, Inc. v. Prudential Guarantee and Assurance, Inc.*, G.R. No. 167545, August 17, 2011, 655 SCRA 625, 633.

[63] 539 Phil. 377, 386-387 (2006).

solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact. (Italics supplied)

While there are recognized exceptions[64] to this rule, none exists in this case.

Anent Land Bank's contention that the determination of whether the CA erred in retroactively applying the 2008 MORB poses a legal question, the same deserves scant consideration. True, the CA included in its *ratio decidendi* a discussion on the 2008 MORB to give emphasis to the duties of banks to keep an accurate record and regularly apprise their clients of the status of their accounts. But the issue of whether Land Bank failed to comply with those duties can be resolved even without the MORB as the same duties are also imposed on Land Bank by the IMAs, the contract that primarily governs the parties in this case. "As a general rule, a contract is the law between the parties. Thus, 'from the moment the contract is perfected, the parties are bound not only to the fulfilment of what has been expressly stipulated but also to all consequences which, according to their

[64] Section 4, Rule 3, The Internal Rules of the Supreme Court enumerates the following exceptions: (a) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (b) the inference made is manifestly mistaken; (c) there is grave abuse of discretion; (d) the judgment is based on a misapprehension of facts; (e) the findings of fact are conflicting; (f) the collegial appellate courts went beyond the issues of the case, and their findings are contrary to the admissions of both appellant and appellee; (g) the findings of fact of the collegial appellate courts are contrary to those of the trial court; (h) said findings of fact are conclusions without citation of specific evidence on which they are based; (i) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (j) the findings of fact of the collegial appellate courts are premised on the supposed evidence, but are contradicted by the evidence on record; and, (k) all other similar and exceptional cases warranting a review of the lower courts' findings of fact.

nature, may be in keeping with good faith, usage and law.' Also, 'the stipulations of the contract being the law between the parties, courts have no alternative but to enforce them as they were agreed [upon] and written' x x x."[65]

Based on the factual milieu of this case even without touching on the MORB, we found that Land Bank still failed to perform its bounden duties to keep accurate records and render regular accounting. We also found no cogent reason to disturb the other factual findings of the CA.

Land Bank failed to prove that the "miscredited" funds came from the proceeds of the pre-terminated loans of its corporate borrowers.

Land Bank argues that the entries in the passbooks were made in the regular course of business and should be accepted as *prima facie* evidence of the facts stated therein. But before entries made in the course of business may qualify under the exception to the hearsay rule and given weight, the party offering them must establish that: (1) the person who made those entries is dead, outside the country, or unable to testify; (2) the entries were made at, or near the time of the transaction to which they refer; (3) the entrant was in a position to know the facts stated therein; (4) the entries were made in the professional capacity or in the course of duty of the entrant; and, (5) the entries were made in the ordinary or regular course of business or duty.[66]

Here, Land Bank has neither identified the persons who made the entries in the passbooks nor established that they are already dead or unable to testify as required by Section 43,[67] Rule 130

[65] *Valarao v. Court of Appeals*, 363 Phil. 495, 506 (1999). Citations omitted.

[66] *Canque v. Court of Appeals*, 365 Phil. 124, 131 (1999).

[67] SEC. 43. *Entries in the course of business*. – Entries made at, or near the time of the transactions to which they refer, by a person deceased, or unable to testify, who was in a position to know the facts therein stated, may be received as *prima facie* evidence, if such person made the entries in his professional capacity or in the performance of duty and in the ordinary or regular course of business or duty.

of the Rules of Court. Also, and as correctly opined by the CA, "[w]hile the deposit entries in the bank's passbook enjoy a certain degree of presumption of regularity x x x," the same do "not indicate or explain the source of the funds being deposited or withdrawn from an individual account."[68] They are mere *prima facie* proof of what are stated therein – the dates of the transactions, the amounts deposited or withdrawn, and the outstanding balances. They do not establish that the total amount of ₱4,086,888.89 deposited in Oñate's Trust Account No. 01-125 in November 1980 came from the proceeds of the pre-terminated loans of Land Bank's corporate borrowers. It would be too presumptuous to immediately conclude that said amount came from the checks paid to Land Bank by its corporate borrowers just because the maturity dates of the loans coincided with the dates said total amount was deposited. There must be proof showing an unbroken link between the proceeds of the pre-terminated loans and the amount allegedly "miscredited" to Oñate's Trust Account No. 01-125. As a bank and custodian of records, Land Bank could have easily produced documents showing that its borrowers pre-terminated their loans, the checks they issued as payment for such loans, and the deposit slips used in depositing those checks. But it did not.

Land Bank did not also bother to explain how Oñate or his representative, Eduardo Polonio (Polonio), obtained possession of the checks when, according to it, the corporate borrowers issued the checks in its name as payment for their loans.[69] Under paragraph 8 of its Complaint, Land Bank alleged that its corporate borrowers "paid their respective obligations in the form of checks payable to LANDBANK x x x".[70] If it is true, then why were the checks credited to Oñate's account? Unless subsequently endorsed to Oñate, said checks can only be deposited in the account of the payee appearing therein. We cannot thus lend

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[68] CA *rollo*, p. 504.

[69] See Land Bank's Memorandum dated October 13, 2011, *rollo*, pp. 443-528, 462.

[70] Records, Vol. I, p. 4.

credence to Land Bank's excuse that the proximate cause of the alleged "miscrediting" was the fraudulent representation of Polonio, for assuming that the latter indeed employed fraudulent machinations, with the degree of prudence expected of banks, Land Bank and its tellers could have easily detected that Oñate was not the intended payee. In *Traders Royal Bank v. Radio Philippines Network, Inc.*,[71] we held that petitioner bank was remiss in its duty and obligation for accepting and paying a check to a person other than the payee appearing on the face of the check *sans* valid endorsement. Consequently, it was made liable for its own negligence and in disregarding established banking rules and procedures.

We are also groping in the dark as to the number of checks allegedly deposited by Polonio to Oñate's Trust Account No. 01-125. According to Land Bank, the entire amount of ₱4,086,888.89 represents the proceeds of the pre-terminated loans of four of its clients, namely, RETELCO, PBM, CBY and PHILTOFIL. But it could only point to two entries made on two separate dates in the passbook as reproduced below:

Date	WITHDRAWAL	DEPOSIT	BALANCE
x x x		x x x	₱250,704.60
24NOV80		159,000.00	409,704.60
24NOV80		**3,063,750.00CK**	**3,473,454.60**
24NOV80	42,000.00		3,431,454.60
25NOV80		275,923.75 CK	3,707,378.35
25NOV 80	1,235,962.00		2,471,416.35
26NOV80		193,800.00 CK	2,665,216.35
26NOV80		250,000.00 CK	2,915,216.35
			2,915,216.35
26NOV80			2,915,216.35
		321,188.38 CK	3,236,404.73

[71] 439 Phil. 475 (2002).

26NOV80	1,373,167.00		1,863,237.73
27NOV80		1,021,250.00CK	2,884,487.73
28NOV80		70,833.33 CK	2,955,321.06
27NOV80	919,300.00		2,036,021.06
28NOV80		**1,023,138.89CK**	**3,059,159.95**[72]

Were there only two checks issued as payment for the separate loans of these four different entities? These hanging questions only confirm the correctness of the lower courts' uniform conclusion that Land Bank failed to prove that the amount allegedly "miscredited" to Oñate's account came from the proceeds of the pre-terminated loans of its clients. It is worth emphasizing that in civil cases, the party making the allegations has the burden of proving them by preponderance of evidence. Mere allegation is not sufficient.[73]

As a consequence of its failure to prove the source of the claimed "miscredited" funds, Land Bank had no right to debit the total amount of ₱1,471,416.52 and must, therefore, restore the same.

In view of the above, Land Bank's argument that the lower courts erred in ordering the return of the amount of ₱1,471,416.52 it debited from Oñate's five trust accounts since he did not seek such relief in his Answer as a counterclaim, falls flat on its face. The order to restore the debited amount is consistent with the lower courts' ruling that Land Bank failed to prove that the amount of ₱4,086,888.89 was "miscredited" to Oñate's account and, hence, it had no right to seek reimbursement or debit any amount from his accounts in payment therefor. Without

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[72] Passbook Under Account No. 101 5759-3 with Name of Depositor LBP ITF 01-125 marked as Exhibits "G-18" to "G-19".

[73] *Hyatt Elevators and Escalators Corporation v. Cathedral Heights Building Complex Association, Inc.*, G.R. No. 173881, December 1, 2010, 636 SCRA 401, 412.

such right, Land Bank should return the amount of ₱1,471,416.52 it debited from Oñate's accounts in its attempt to recoup what it allegedly lost due to "miscrediting." Moreover, contrary to Land Bank's assertion, Oñate contested the bank's application of the balance of his trust accounts in payment for the allegedly "miscredited" amount in his Answer (With Compulsory Counterclaim) for being "without any factual and legal [bases]."[74]

Land Bank was remiss in performing its duties under the IMAs and as a banking institution.

The contractual relation between Land Bank and Oñate in this case is primarily governed by the IMAs. Paragraph 4 thereof expressly imposed on Land Bank the duty to maintain accurate records of all his investments, receipts, disbursements and other transactions relating to his accounts. It also obliged Land Bank to provide Oñate with quarterly balance sheets, statements of income and expenses, summary of investments, *etc*. Thus:

4. ***You shall maintain accurate records of all investments, receipts, disbursements and other transactions of the Account.*** Records relating thereto shall be open at all reasonable times to inspection and audit by me either personally or through duly authorized representatives. ***Statements consisting of a balance sheet, portfolio analysis, statement of income and expenses, and summary of investment changes are to be sent to me/us quarterly***.

I/We shall approve such accounting by delivering in writing to you a statement to that effect or by failure to express objections to such accounting in writing delivered to you within thirty (30) days from my receipt of the accounting.

Upon your receipt of a written approval of the accounting, or upon the passage of said period of time within which objections may be filed, without written objections having been delivered to you, such accounting shall be deemed to be approved, and you shall be released and discharged as to all items, matters and things set forth in such accounting as if such accounting had been settled and

[74] Records, Vol. I, p. 143.

allowed by a decree of a court of competent jurisdiction, in an action or proceeding in which you and I were parties.[75] (Emphasis supplied)

These are the obligations of Land Bank which it should have faithfully complied with in good faith.[76] Unfortunately, Land Bank failed in its contractual duties to maintain accurate records of all investments and to regularly furnish Oñate with financial statements relating to his accounts. Had Land Bank kept an accurate record there would have been no need for the creation of a Board of Commissioners or at least the latter's work would have been a lot easier and more accurate. But because of Land Bank's inefficient record keeping, the Board performed the tedious task of trying to reconcile messy and incomplete records. The lackadaisical attitude of Land Bank in keeping an updated record of Oñate's accounts is aggravated by its reluctance to accord the Board full and unrestricted access to the records when it was conducting a review of the accounts upon the orders of the trial court. Thus, in its Manifestation[77] dated August 16, 2004, the Board informed the trial court that its report pertaining to outstanding balances may not be accurate because "the documents were then in the custody of Land Bank and the documents to be reviewed by the Board at a designated hearing depended on what was released by the then handling lawyer of Land Bank." They were "not given the opportunity to collate/ sort-out the documents related to each trust account"[78] and "the folders being reviewed contained documents related to different trust accounts."[79] As a result, "[t]here may have been double take up of accounts since the documents previously reviewed may have been repeatedly considered in the reports."[80]

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

[76] Article 1159 of the CIVIL CODE OF THE PHILIPPINES provides:

Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[77] See Manifestation dated August 16, 2004, Records, Vol. IV, pp. 1229-1230.

[78] *Id.*

[79] *Id.*

[80] *Id.*

For its failure to faithfully comply with its obligations under the IMAs and for having agreed to submit the case on the basis of the reports of the Board of Commissioners, the latter's findings are binding on Land Bank.

Because of Land Bank's failure to keep an updated and accurate record of Oñate's account, it would have been difficult, if not impossible, to determine with some degree of accuracy the outstanding balances in Oñate's accounts. Indeed, the creation of a Board of Commissioners was a significant development in this case as it facilitated the examination of the records and helped in the determination of the balances in each of Oñate's accounts. In a span of four years, the Board held 60 meetings and scoured the voluminous and scattered records of subject accounts. In the course thereof, it found several undocumented withdrawals and over withdrawals. Thereafter, the Board submitted its consolidated report, to which Land Bank did not file its comment despite having been given the opportunity to do so. It did not question the result of the examinations conducted by the Board, particularly the Board's computation of the outstanding balance in each account, the existence of undocumented and over withdrawals, and how often the bank sent Oñate statements of account. In fact, during the pre-trial conference, Land Bank agreed to submit the case based on the reports of the Board.

Consequently, we found no cogent reason to deviate from the same course taken by the CA – give weight to the consolidated report of the Board and treat it as competent and sufficient evidence of what are stated therein. After all, the dearth of evidentiary documents that could have shed light on the alleged unintended crediting and unexplained withdrawals was brought about by Land Bank's failure to maintain accurate records as required by the IMAs. In *Simex International (Manila), Inc. v. Court of Appeals*,[81] we elucidated on the nature of banking business and the responsibility of banks:

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[81] 262 Phil. 387, 395-396 (1990).

The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Thus, even the humble wage-earner has not hesitated to entrust his life's savings to the bank of his choice, knowing that they will be safe in its custody and will even earn some interest for him. The ordinary person, with equal faith, usually maintains a modest checking account for security and convenience in the settling of his monthly bills and the payment of ordinary expenses. As for business entities like the petitioner, the bank is a trusted and active associate that can help in the running of their affairs, not only in the form of loans when needed but more often in the conduct of their day-to-day transactions like the issuance or encashment of checks.

In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. ***The bank must record every single transaction accurately, down to the last centavo and as promptly as possible.*** This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. x x x

The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligations to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. x x x (Emphasis supplied)

As to the conceded inaccuracies in the reports, we cannot allow Land Bank to benefit therefrom. Time and again, we have cautioned banks to spare no effort in ensuring the integrity of the records of its clients.[82] And in *Philippine National Bank v. Court of Appeals*,[83] we held that "as between parties where negligence is imputable to one and not to the other, the former

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[82] *Dycoco, Jr. v. Equitable PCI Bank*, G.R. No. 188271, August 16, 2010, 628 SCRA 346, 353.

[83] G.R. No. 97995, January 21, 1993, 217 SCRA 347, 358.

must perforce bear the consequences of its neglect." In this case, the Board could have submitted a more accurate report had Land Bank faithfully complied with its duty of maintaining a complete and accurate record of Oñate's accounts. But the Board could not find and present the corresponding slips for the withdrawals reflected in the passbooks. In addition, and as earlier mentioned, Land Bank was less than cooperative when the Board was examining the records of Oñate's accounts. It did not give the Board enough leeway to go over the records systematically or in orderly fashion. Hence, we cannot allow Land Bank to benefit from possible inaccuracies in the reports.

Neither does Oñate's failure to exercise his rights to inspect the records and audit his accounts excuse the bank from sending the required notices, for under the IMAs it behooved upon Land Bank to keep him fully informed of the status of his investments by sending him regular reports and statements. Oñate's failure to inspect the record of his accounts should neither be construed as his waiver to be furnished with updates on his accounts nor authority for the bank to make undocumented withdrawals. As aptly opined by the CA:

> x x x The least that Land Bank could have done was to keep a detailed quarterly report on [its] file. In this case, Land Bank did away with this procedure that made [its] records a complete mess of voluminous and meaningless records of numerous folders containing more than 7,600 leaves/pages and some 90 passbooks, with 1,355 leaves/pages of entries, corresponding to the seven (7) Trust Accounts.
>
> The passbook entries alone are insufficient compliance with Land Bank's duty to keep "accurate records of all investments, receipts, disbursements and other transactions of the Account." These passbooks do not inform what investments were made on the funds withdrawn. Moreover, these passbook entries do not show if the amounts purported to have been invested were indeed received by the concerned entity, facility, or borrower. From these entries alone, Oñate would have no way of knowing where his money went.[84]

[84] CA *rollo*, p. 509.

But Land Bank next postulates that if Oñate is entitled to the undocumented withdrawals on the basis of the reports of the Board, then it should also be entitled to the negative balances or over withdrawals as reflected in the same reports.

We cannot agree for a number of reasons. First, as earlier discussed, Land Bank is guilty of negligence while Oñate (at least insofar as over withdrawals are concerned) is not. Had Land Bank maintained an accurate record, it would have readily detected and prevented over withdrawals. But without any qualms, Land Bank asks for the negative balances, unmindful that such claim is actually detrimental to its cause because it amounts to an admission that it allowed over withdrawals. As aptly observed by the CA:

> Corollarily, the Court cannot allow Land Bank to recover the negative balances from Oñate's trust accounts. Examining the Commissioners' Report, the Court notes that the funds of Oñate's trust accounts became seriously depleted due to the unaccounted withdrawals that Land Bank charged against his accounts. At any rate, those negative balances on Oñate's accounts show Land Bank's inefficient performance in managing his trust accounts. Reasonable bank practice and prudence [dictate] that Land Bank should not have authorized the withdrawal of various sums from Oñate's accounts if it would result to overwithdrawals. x x x[85]

Second, Land Bank never prayed for the recovery of the negative balances in its Complaint.

> It is settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party. x x x Due process considerations require that judgments must conform to and be supported by the pleadings and evidence presented in court. In *Development Bank of the Philippines v. Teston*,[86] this Court expounded that:
>
> > Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the

[85] *Id.* at 505.

[86] G.R. No. 174966, February 14, 2008, 545 SCRA 422, 429.

> opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.[87]

Last, during the pre-trial conference, the issue of the validity of undocumented withdrawals was properly put into issue. The parties also agreed, as a collateral issue, that should it appear that the bank was not authorized to make the undocumented withdrawals, the next issue for consideration would be whether the amount subject thereof should be credited back to Oñate's accounts.[88] The case of negative balances as alluded to by Land Bank, however, is different. It was never put into issue during the pre-trial conference. In *Caltex (Philippines), Inc. v. Court of Appeals*,[89] we held that "to obviate the element of surprise, parties are expected to disclose at a 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 matters. The determination of issues at a pre-trial conference bars the consideration of other questions on appeal." Land Bank interposed its claim to the negative balances for the first time only when it filed its Memorandum with the RTC.

Land Bank knew from the start and admitted during trial that Trust Account Nos. 01-014 and 01-017 do not belong to Oñate; hence, it should not have debited any amount therefrom to compensate for the alleged personal indebtedness of Oñate.

Land Bank claims that Oñate cannot sue on Trust Account Nos. 01-014 and 01-017 without joining as an indispensable party his undisclosed principal.

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[87] *Diona v. Balangue*, G.R. No. 173559, January 7, 2013, 688 SCRA 22, 35-36.

[88] See Order dated June 10, 2005, Records, Vol. IV, p. 1286.

[89] G.R. No. 97753, August 10, 1992, 212 SCRA 448, 462.

But if anyone in this case is guilty of failing to join an indispensable party, it is Land Bank that first committed a violation. The IMAs covering Trust Account Nos. 01-014 and 01-017 attached as Annexes "A"[90] and "B,"[91] respectively, of Land Bank's Complaint clearly state that Oñate signed the same "FOR: UNDISCLOSED PRINCIPAL." As party to the said IMAs, Land Bank knew and ought not to forget that Oñate is merely an agent and not the owner of the funds in said accounts. Yet Land Bank garnished the total amount of ₱792,595.25 from Trust Account Nos. 01-014 and 01-017 to answer for the alleged personal indebtedness of Oñate. Worse, when Land Bank filed its Complaint for Sum of Money, it did not implead said undisclosed principal or inform the trial court thereof. Now that Oñate is seeking the restoration of the amounts debited and withdrawn without withdrawal slips from said accounts, Land Bank is invoking the defense of failure to implead an indispensable party. We cannot allow Land Bank to do this. As aptly observed by the trial court:

> Under the circumstances obtaining, it is highly unfair, unjust and iniquitous, to dismiss the suit with respect to the two Trust Accounts after [Land Bank] had garnished the balances of said accounts to pay the alleged indebtedness of [Oñate] allegedly incurred by the erroneous crediting of ₱4 million to x x x Trust Account No. 01-125 which does not appear to be owned by an undisclosed principal. Trust Account No. 01-125 is [Oñate's] personal trust account with plaintiff. Stated differently, [Land Bank] having now recognized and admitted that Trust Account Nos. 01-014 and 01-017 were not owned by [Oñate], it has perforce no right, nay unlawful for it, to apply the funds in said accounts to pay the alleged indebtedness of [Oñate's] personal account. Equity and justice so demand that the funds be restored to Trust Account Nos. 01-014 and 01-017.[92]

Oñate protested the contents of the statements of account at the earliest opportunity.

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[90] Records, Vol. I, pp. 9-11.

[91] *Id.* at 12-14.

[92] *Id.*, Vol. IV, p. 1387.

As to Land Bank's insistence that Oñate is deemed to have accepted the contents of the statements of account for his failure to manifest his objection thereto within 30 days from receipt thereof, it should be recalled that from the time the alleged "miscrediting" occurred in November 1980, the first communication coming from Land Bank was its letter dated October 8, 1981.[93] This, however, was the subject of a failed negotiation between the parties. Besides, said letter can hardly be considered as an statement that would apprise Oñate of the status of his investments. It is not "a balance sheet, portfolio analysis, statement of income and expenses or a summary of investment changes" as contemplated in paragraph 4 of the IMAs. It is a demand letter seeking the return of the alleged "miscredited" amount. The same goes true with Land Bank's letter dated September 3, 1991. As can be readily seen from its opening paragraph, said letter is in response to Oñate's "demand" for information regarding the offsetting,[94] which Oñate protested and is now one of the issues involved in this case. In fine, it cannot be said that Oñate approved and adopted the outstanding balances in his accounts for his failure to object to the contents of those letters within the 30-day period allotted to him under the IMAs.

From what is available on the voluminous records of this case and as borne out by the Board's consolidated report dated August 16, 2004, the statements which Land Bank sent to Oñate are only the following:

Based on the Annexes[95] attached to Oñate's Answer (With Compulsory Counterclaim)

ITF No.	Balance Sheet As of	Total Liabilities and Trustor's Equity
01-014	June 30, 1982	₱ 1,909,349.80
01-017	June 30, 1982	6,003,616.35

[93] *Id.*, Vol. 1, p. 33.

[94] *Id.* at 34.

[95] *Id.* at 153-159.

01-089	June 30, 1982	551,267.24
01-082	June 30, 1982	1,915.28
01-075	June 30, 1982	12,113,262.95
01-125	June 30, 1982	13,595,271.16
01-024	June 30, 1982	1,131,854.20

Based on the Consolidated Report

ITF No.	Report Details	Last Date of Report	Balances
01-024	Schedule of Money Market Placement	03.31.82	₱ 453,140.69
01-075	Statement of Income and Expenses Balance Sheet	03.31.90 03.31.90	0.00 1,207,501.69
01-014	Schedule of Money Market Placement Statement of Income and Expenses Balance Sheet	06.30.91 06.30.91 06.30.91	14,767.20 3,267.19 20,673.58
01-017	Schedule of Investment Statement of Income and Expenses Balance Sheet	06.30.91 06.30.91 06.30.91	38,502.06 10,437.22 39,659.56
01-082	Statement of Income and Expense Balance Sheet	06.30.91 06.30.91	59.75 70.28
01-125	Schedule of Investment Statement of Income and Expenses Balance Sheet	06.30.91 06.30.91 06.30.91	44,055.72 10,079.16 60,920.42

The patent wide gap between the time Land Bank furnished Oñate with Balance Sheets as of June 30, 1982 and the date it sent him an Statement of Income and Expenses, as well as a Balance Sheet, on March 31, 1990 is a clear and gross violation of the IMAs requiring it to furnish him with balance sheet, portfolio analysis, statement of income and expenses and the like, *quarterly*. As to the reports dated June 30, 1991 and letters subsequent thereto, it should be noted that during those times Oñate had already interposed his objections to the outstanding balances of his accounts.[96]

[96] See Land Bank's letter to Oñate's counsel dated June 4, 1991, *id.* at 60 as well as the latter's letter to the former dated June 20, 1991, *id.* at 61-62.

The proper rate of legal interest.

Land Bank's argument that the lower courts erred in imposing 12% *per annum* rate of interest is likewise devoid of merit. The unilateral offsetting of funds without legal justification and the undocumented withdrawals are tantamount to forbearance of money. In the analogous case of *Estores v. Supangan*,[97] we held that "[the] unwarranted withholding of the money which rightfully pertains to [another] amounts to forbearance of money which can be considered as an involuntary loan." Following *Eastern Shipping Lines, Inc. v. Court of Appeals*,[98] therefore, the applicable rate of interest in this case is 12% *per annum*. Besides, Land Bank is estopped from assailing the award of 12% *per annum* rate of interest. In its Complaint, Land Bank arrived at ₱8,222,687.89 as the outstanding indebtedness of Oñate by using the same 12% *per annum* rate of interest. It was only after the lower courts rendered unfavorable decisions that Land Bank started to insist that the applicable rate of interest is 6% *per annum*.

Of equal importance is the determination of when the said 12% *per annum* rate of interest should commence. Recall that both the RTC and the CA reckoned the running of the 12% *per annum* rate of interest from June 21, 1991, or the day Land Bank unilaterally applied the outstanding balance in all of Oñate's trust accounts, until fully paid. The compounding of interest, on the other hand, was based on the provision of the IMAs granting Land Bank "to hold, invest and reinvest the Fund and keep the same invested, in your sole discretion, without distinction between principal and income."

While we find sufficient basis for the compounding of interest, we find it necessary however to modify the commencement date. In *Eastern Shipping*,[99] it was observed that the

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[97] G.R. No. 175139, April 18, 2012, 670 SCRA 95, 106.

[98] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[99] *Id.*

commencement of when the legal interest should start to run varies depending on the factual circumstances obtaining in each case.[100] As a rule of thumb, it was suggested that "where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but ***when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made***[101] (at which time the quantification of damages may be deemed to have been reasonably ascertained)."[102]

In the case at bench, while Oñate protested the setting off, no proof was presented that he formally demanded for the return of the amount so debited prior to the filing of the Complaint. Quite understandably so because at that time he could not determine with some degree of certainty the outstanding balances of his accounts as Land Bank neglected on its duty to keep him updated on the status of his accounts. Land Bank even undertook to furnish him with "the exact computation"[103] of what remains in his accounts after the set off. But this never happened until Land Bank initiated the Complaint on September 7, 1992. Oñate, on the other hand, filed his Answer (With Compulsory Counterclaim) on May 26, 1993. In other words, we cannot reckon the running of the interest prior to the filing of the Complaint or Oñate's Counterclaim as no demand prior thereto was made. Neither could the interest commence to run at the time of filing of any of aforesaid pleadings (as to constitute judicial demand) since the undocumented withdrawals in the sums of ₱60,663,488.11 and US$3,210,222.85, as well as the amount actually debited from all of Oñate's accounts, were determined only after the Board submitted its consolidated report

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

[101] Emphasis supplied.

[102] *Id.* at 96.

[103] See Letter dated June 4, 1991, Records, Vol. I, p. 60; Letter dated June 20, 1991, *id.*

on August 16, 2004 or more than 10 years after Land Bank and Oñate filed their Complaint and Answer, respectively. Note too that while Oñate sought to recover the amount of undocumented withdrawals before the RTC,[104] the same was denied in the latter's May 31, 2006 Decision. The RTC granted Oñate only the total amount of funds debited from his trust accounts. It was only when the CA rendered its December 18, 2009 Decision that Oñate was awarded the undocumented withdrawals. Hence, we find it just and proper to reckon the running of the interest of 12% *per annum*, compounded yearly, for the debited amount and undocumented withdrawals on different dates. The debited amount of ₱1,471,416.52, shall earn interest beginning May 31, 2006 or the day the RTC rendered its Decision granting said amount to Oñate. As to the undocumented withdrawals of ₱60,663,488.11 and US$3,210,222.85, the legal rate of interest should start to run the day the CA promulgated its Decision on December 18, 2009.

During the pendency of this case, however, the Monetary Board issued Resolution No. 796 dated May 16, 2013, stating that in the absence of express stipulation between the parties, the rate of interest in loan or forbearance of any money, goods or credits and the rate allowed in judgments shall be 6% *per annum*. Said Resolution is embodied in Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, which took effect on July 1, 2013. Hence, the 12% annual interest mentioned above shall apply only up to June 30, 2013. Thereafter, or starting July 1, 2013, the applicable rate of interest for both the debited amount and undocumented withdrawals shall be 6% *per annum*, compounded annually, until fully paid.

WHEREFORE, the Petition is hereby **DENIED** and the December 18, 2009 Decision of the Court of Appeals in CA-G.R. CV No. 89346 is **AFFIRMED with modification** in that the interest of 12% *per annum*, compounded annually, for the debited amount of ₱1,471,416.52 shall commence to run on

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[104] See Comment (Re: Board of Commissioners' Compliance dated 16 August 2004), *id.* at 1241-1245.

May 31, 2006, while the same rate of interest shall apply to the undocumented withdrawals in the amounts of ₱60,663,488.11 and US$3,210,222.85 starting December 18, 2009. Beginning July 1, 2013, however, the applicable rate of interest on all amounts awarded shall earn interest at the rate of 6% *per annum*, compounded yearly, until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193517. January 15, 2014]

THE HEIRS OF VICTORINO SARILI, NAMELY: ISABEL A. SARILI,[*] MELENCIA[**] S. MAXIMO, ALBERTO A. SARILI, IMELDA S. HIDALGO, all herein represented by CELSO A. SARILI, *petitioners, vs.* **PEDRO F. LAGROSA, represented in this act by his Attorney-in-Fact, LOURDES LABIOS MOJICA,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; A DEFECTIVE TITLE MAY BE THE SOURCE OF A COMPLETELY LEGAL AND VALID TITLE IN THE HANDS OF AN INNOCENT PURCHASER FOR VALUE.—

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[*] "Sarile" in some parts of the records.

[**] Erroneously stated as "Melincia" in the petition, *rollo*, p. 3; see records, p. 323.

It is well-settled that even if the procurement of a certificate of title was tainted with fraud and misrepresentation, **such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value.** Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate. The effect of such an outright cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance whether the title has been regularly or irregularly issued. This is contrary to the evident purpose of the law.

2. ID.; ID.; ID.; EVERY PERSON DEALING WITH REGISTERED LAND MAY SAFELY RELY ON THE CORRECTNESS OF THE CERTIFICATE OF TITLE ISSUED THEREFOR BUT A HIGHER DEGREE OF PRUDENCE IS REQUIRED FROM ONE WHO BUYS FROM A PERSON WHO IS NOT THE REGISTERED OWNER, ALTHOUGH THE LAND OBJECT OF THE TRANSACTION IS REGISTERED.— The general rule is that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto. However, **a higher degree of prudence is required from one who buys from a person who is not the registered owner, although the land object of the transaction is registered.** In such a case, the buyer is expected to examine not only the certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor. The buyer also has the duty to ascertain the identity of the person with whom he is dealing with and the latter's legal authority to convey the property. The strength of the buyer's inquiry on the seller's capacity or legal authority to sell **depends on the proof of capacity of the seller.** If the

proof of capacity consists of a special power of attorney duly notarized, mere inspection of the face of such public document already constitutes sufficient inquiry. **If no such special power of attorney is provided or there is one but there appears to be flaws in its notarial acknowledgment, mere inspection of the document will not do; the buyer must show that his investigation went beyond the document and into the circumstances of its execution.**

3. ID.; SPECIAL CONTRACTS; SALES; PERSONS WHO PURCHASE LAND THROUGH AN AGENT AND RELY ON A SPECIAL POWER OF ATTORNEY WITH DEFECTIVE NOTARIZATION CANNOT BE CONSIDERED INNOCENT PURCHASERS FOR VALUE; CASE AT BAR.— In the present case, it is undisputed that Sps. Sarili purchased the subject property from Ramos on the strength of the latter's ostensible authority to sell under the subject SPA. The said document, however, readily indicates flaws in its notarial acknowledgment since the respondent's community tax certificate (CTC) number was not indicated thereon. Under the governing rule on notarial acknowledgments at that time, *i.e*. Section 163(a) of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991," when an individual subject to the community tax acknowledges any document before a notary public, it shall be the duty of the administering officer to require such individual to exhibit the community tax certificate. Despite this irregularity, however, Sps Sarili failed to show that they conducted an investigation beyond the subject SPA and into the circumstances of its execution as required by prevailing jurisprudence. Hence, Sps. Sarili cannot be considered as innocent purchasers for value.

4. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PUBLIC DOCUMENTS; A DEFECTIVE NOTARIZATION WILL STRIP THE DOCUMENT OF ITS PUBLIC CHARACTER AND REDUCE IT TO A PRIVATE INSTRUMENT.— The defective notarization of the subject SPA x x x means that the said document should be treated as a private document and thus examined under the parameters of Section 20, Rule 132 of the Rules of Court which provides that "[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must

be proved either: (*a*) by anyone who saw the document executed or written; or (*b*) by evidence of the genuineness of the signature or handwriting of the maker x x x." Settled is the rule that a defective notarization will strip the document of its public character and reduce it to a private instrument, and the evidentiary standard of its validity shall be based on preponderance of evidence.

5. **CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; WHEN THE INSTRUMENT PRESENTED IS FORGED, EVEN IF ACCOMPANIED BY THE OWNER'S DUPLICATE CERTIFICATE OF TITLE, THE REGISTERED OWNER DOES NOT THEREBY LOSE HIS TITLE, AND NEITHER DOES THE ASSIGNEE IN THE FORGED DEED ACQUIRE RIGHT OR TITLE TO THE PROPERTY; CASE AT BAR.—** [I]t is well to note that it was, in fact, the February 16, 1978 deed of sale which – as the CA found – was actually the source of the issuance of TCT No. 262218. Nonetheless, this document was admitted to be also a forgery. Since Sps. Sarili's claim over the subject property is based on forged documents, no valid title had been transferred to them (and, in turn, to petitioners). Verily, when the instrument presented is forged, **even if accompanied by the owner's duplicate certificate of title**, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property. Accordingly, TCT No. 262218 in the name of Victorino married to Isabel should be annulled, while TCT No. 55979 in the name of respondent should be reinstated.

6. **ID.; PROPERTY, OWNERSHIP AND ITS MODIFICATIONS; OWNERSHIP; BUILDER IN GOOD FAITH; REFERS TO A POSSESSOR IN THE CONCEPT OF AN OWNER WHO IS UNAWARE THAT THERE EXISTS IN HIS TITLE OR MODE OF ACQUISITION ANY FLAW WHICH INVALIDATES IT.—** To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, *i.e.*, that he be a possessor in concept of owner, and that **he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it**. Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of

design to defraud or to seek an unconscionable advantage. It implies honesty of intention, **and freedom from knowledge of circumstances which ought to put the holder upon inquiry**. As for Sps. Sarili, they knew – or at the very least, should have known – from the very beginning that they were dealing with a person who possibly had no authority to sell the subject property considering the palpable irregularity in the subject SPA's acknowledgment. Yet, relying solely on said document and without any further investigation on Ramos's capacity to sell, Sps. Sarili still chose to proceed with its purchase and even built a house thereon. Based on the foregoing, it cannot be seriously doubted that Sps. Sarili were actually aware of a flaw or defect in their title or mode of acquisition and have consequently built the house on the subject property in bad faith under legal contemplation.

APPEARANCES OF COUNSEL

Ritchie I. Esponilla for petitioners.
San Buenaventura Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 20, 2010 and Resolution[3] dated August 26, 2010 of the Court of Appeals (CA) in CA -G.R. CV No. 76258 which: (*a*) set aside the Decision[4] dated May 27, 2002 of the Regional Trial Court of Caloocan City, Branch 131 (RTC) in Civil Case No. C-19152; (*b*) cancelled Transfer Certificate of Title (TCT) No. 262218[5] in the name of Victorino

[1] *Rollo*, pp. 3-11.

[2] *Id*. at 13-30. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias, concurring.

[3] *Id*. at 32-33.

[4] *Id*. at 73-76. Penned by Judge Antonio J. Fineza.

[5] Records, pp. 110-111.

Sarili (Victorino) married to Isabel Amparo (Sps. Sarili); (*c*) reinstated TCT No. 55979[6] in the name of respondent Pedro F. Lagrosa (respondent); and (*d*) awarded respondent moral damages, attorney's fees and litigation expenses.

The Facts

On February 17, 2000, respondent, represented by his attorney-in-fact Lourdes Labios Mojica (Lourdes) via a special power of attorney dated November 25, 1999[7] (November 25, 1999 SPA), filed a complaint[8] against Sps. Sarili and the Register of Deeds of Caloocan City (RD) before the RTC, alleging, among others, that he is the owner of a certain parcel of land situated in Caloocan City covered by TCT No. 55979 (subject property) and has been religiously paying the real estate taxes therefor since its acquisition on November 29, 1974. Respondent claimed that he is a resident of California, USA, and that during his vacation in the Philippines, he discovered that a new certificate of title to the subject property was issued by the RD in the name of Victorino married to Isabel Amparo (Isabel), *i.e.*, TCT No. 262218, by virtue of a falsified **Deed of Absolute Sale**[9] **dated February 16, 1978** (February 16, 1978 deed of sale) purportedly executed by him and his wife, Amelia U. Lagrosa (Amelia). He averred that the falsification of the said deed of sale was a result of the fraudulent, illegal, and malicious acts committed by Sps. Sarili and the RD in order to acquire the subject property and, as such, prayed for the annulment of TCT No. 262218, and that Sps. Sarili deliver to him the possession of the subject property, or, in the alternative, that Sps. Sarili and the RD jointly and severally pay him the amount of ₱1,000,000.00, including moral damages as well as attorney's fees.[10]

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[6] *Id.* at 106-107.

[7] *Id.* at 7.

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

[9] *Id.* at 109.

[10] *Rollo*, pp. 14-16.

In their answer,[11] Sps. Sarili maintained that they are innocent purchasers for value, having purchased the subject property from Ramon B. Rodriguez (Ramon), who possessed and presented a Special Power of Attorney[12] (subject SPA) to sell/dispose of the same, and, in such capacity, executed a **Deed of Absolute Sale**[13] **dated November 20, 1992** (November 20, 1992 deed of sale) conveying the said property in their favor. In this relation, they denied any participation in the preparation of the February 16, 1978 deed of sale, which may have been merely devised by the "fixer" they hired to facilitate the issuance of the title in their names.[14] Further, they interposed a counterclaim for moral and exemplary damages, as well as attorney's fees, for the filing of the baseless suit.[15]

During the pendency of the proceedings, Victorino passed away[16] and was substituted by his heirs, herein petitioners.[17]

The RTC Ruling

On May 27, 2002, the RTC rendered a Decision[18] finding respondent's signature on the subject SPA as "the same and exact replica"[19] of his signature in the November 25, 1999 SPA in favor of Lourdes.[20] Thus, with Ramon's authority having been established, it declared the November 20, 1992 deed of

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[11] Records, pp. 20-24.

[12] The subject SPA appears to have been executed in December 1988, but the notarial certificate shows that it was notarized on September 4, 1992; see *id*. at 312-313.

[13] *Id*. at 314-315.

[14] *Rollo*, p. 16.

[15] *Id*.

[16] See Certificate of Death; Records, p. 325.

[17] See Order dated May 20, 2002; *id*. at 326.

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

[19] *Id*. at 75.

[20] *Id*.

sale[21] executed by the latter as "valid, genuine, lawful and binding"[22] and, as such, had validly conveyed the subject property in favor of Sps. Sarili. It further found that respondent "acted with evident bad faith and malice" and was, therefore, held liable for moral and exemplary damages.[23] Aggrieved, respondent appealed to the CA.

The CA Ruling

In a Decision[24] dated May 20, 2010, the CA granted respondent's appeal and held that the RTC erred in its ruling since the November 20, 1992 deed of sale, which the RTC found "as valid and genuine," was not the source document for the transfer of the subject property and the issuance of TCT No. 262218 in the name of Sps. Sarili[25] but rather the February 16, 1978 deed of sale, the fact of which may be gleaned from the A ffidavit of Late Registration[26] executed by Isabel (affidavit of Isabel). Further, it found that respondent was "not only able to preponderate his claim over the subject property, but [has] likewise proved that his and his wife's signatures in the [February 16, 1978 deed of sale] x x x were forged."[27] "[A] comparison by the naked eye of the genuine signature of [respondent] found in his [November 25, 1999 SPA] in favor of [Lourdes], and those of his falsified signatures in [the February 16, 1978 deed of sale] and [the subject SPA] shows that they are not similar."[28] It also observed that "[t]he testimony of [respondent] denying

[21] Erroneously referred to by the RTC as "the deed of absolute sale dated January 26, 1993" (see id.) and "the deed of absolute sale executed by Ramon Rodriguez on January 26, 1992" (see id. at 76); see also CA decision, *id*. at 26.

[22] *Id*. at 76.

[23] *Id*.

[24] *Id*. at 13-30.

[25] *Id*. at 25.

[26] Records, p. 112.

[27] *Id*. at 25.

[28] *Id*. at 23.

the authenticity of his purported signature with respect to the [February 16, 1978 deed of sale] was not rebutted x x x."[29] In fine, the CA declared the deeds of sale dated February 16, 1978 and November 20, 1992, as well as the subject SPA as void, and consequently ordered the RD to cancel TCT No. 262218 in the name of Victorino married to Isabel, and consequently reinstate TCT No. 55979 in respondent's name. Respondent's claims for moral damages and attorney's fees/ litigation expenses were also granted by the CA.[30]

Dissatisfied, petitioners moved for reconsideration which was, however, denied in a Resolution[31] dated August 26, 2010, hence, the instant petition.

The Issues Before the Court

The main issue in this case is whether or not there was a valid conveyance of the subject property to Sps. Sarili. The resolution of said issue would then determine, among others, whether or not: (*a*) TCT No. 262218 in the name of Victorino married to Isabel should be annulled; and (*b*) TCT No. 55979 in respondent's name should be reinstated.

The Court's Ruling

The petition lacks merit.

Petitioners essentially argue that regardless of the fictitious February 16, 1978 deed of sale, there was still a valid conveyance of the subject property to Sps. Sarili who relied on the authority of Ramon (as per the subject SPA) to sell the same. They posit that the due execution of the subject SPA between respondent and Ramon and, subsequently, the November 20, 1992 deed of sale between Victorino and Ramon were duly established facts and that from the authenticity and genuineness of these

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[29] *Id*. at 24.

[30] *Id*. at 27.

[31] *Id*. at 32-33.

documents, a valid conveyance of the subject land from respondent to Victorino had leaned upon.[32]

The Court is not persuaded.

It is well-settled that even if the procurement of a certificate of title was tainted with fraud and misrepresentation, **such defective title may be the source of a completely legal and valid title in the hands of an innocent purchaser for value**. Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and order the total cancellation of the certificate. The effect of such an outright cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance whether the title has been regularly or irregularly issued. This is contrary to the evident purpose of the law.[33]

The general rule is that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto.[34]

However, **a higher degree of prudence is required from one who buys from a person who is not the registered owner, although the land object of the transaction is registered**. In such a case, the buyer is expected to examine not only the

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[32] See *id*. at 7-9.

[33] *Cabuhat v. CA,* 418 Phil. 451, 456 (2001); emphasis supplied.

[34] *Sigaya v. Mayuga,* G.R. No. 143254, August 18, 2005, 467 SCRA 341, 355.

certificate of title but all factual circumstances necessary for him to determine if there are any flaws in the title of the transferor.[35] The buyer also has the duty to ascertain the identity of the person with whom he is dealing with and the latter's legal authority to convey the property.[36]

The strength of the buyer's inquiry on the seller's capacity or legal authority to sell **depends on the proof of capacity of the seller**. If the proof of capacity consists of a special power of attorney duly notarized, mere inspection of the face of such public document already constitutes sufficient inquiry. **If no such special power of attorney is provided or there is one but there appears to be flaws in its notarial acknowledgment, mere inspection of the document will not do**; **the buyer must show that his investigation went beyond the document and into the circumstances of its execution.**[37]

In the present case, it is undisputed that Sps. Sarili purchased the subject property from Ramon on the strength of the latter's ostensible authority to sell under the subject SPA. The said document, however, readily indicates flaws in its notarial acknowledgment since the respondent's community tax certificate (CTC) number was not indicated thereon. Under the governing rule on notarial acknowledgments at that time,[38] *i.e.*, Section 163(*a*) of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991," when an individual subject to the community tax acknowledges any document before a notary public, it shall be the duty of the administering officer to require such individual to exhibit the community tax certificate.[39] Despite

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[35] *Bautista v. CA,* G.R. No. 106042, February 28, 1994, 230 SCRA 446, 456; emphasis supplied.

[36] *Abad v. Guimba,* G.R. No. 157002, July 29, 2005, 465 SCRA 356, 368.

[37] *Sps. Bautista v. Silva,* 533 Phil. 627, 631-632 (2006).

[38] The 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC, was promulgated on July 6, 2004, whereas the subject SPA was notarized on September 4, 1992 (see records, pp. 312-313).

[39] Section 163. *Presentation of Community Tax Certificate on Certain Occasions*. —

this irregularity, however, Sps. Sarili failed to show that they conducted an investigation beyond the subject SPA and into the circumstances of its execution as required by prevailing jurisprudence. Hence, Sps. Sarili cannot be considered as innocent purchasers for value.

The defective notarization of the subject SPA also means that the said document should be treated as a private document and thus examined under the parameters of Section 20, Rule 132 of the Rules of Court which provides that "[b]efore any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either: (*a*) by anyone who saw the document executed or written; or (*b*) by evidence of the genuineness of the signature or handwriting of the maker x x x." Settled is the rule that a defective notarization will strip the document of its public character and reduce it to a private instrument, and the evidentiary standard of its validity shall be based on preponderance of evidence.[40]

The due execution and authenticity of the subject SPA are of great significance in determining the validity of the sale entered into by Victorino and Ramon since the latter only claims to be the agent of the purported seller (*i.e.*, respondent). Article 1874 of the Civil Code provides that "[w]hen 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**." In other words, if the subject SPA was not proven to be

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(a) **When an individual subject to the community tax acknowledges any document before a notary public,** takes the oath of office upon election or appointment to any position in the government service; receives any license, certificate, or permit from any public authority; pays any tax or fee; receives any money from any public fund; transacts other official business; or receives any salary or wage from any person or corporation, **it shall be the duty** of any person, officer, or corporation with whom such transaction is made or business done or from whom any salary or wage is received **to require such individual to exhibit the community tax certificate.** (Emphases supplied)

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[40] *Martires v. Chua,* G.R. No. 174240, March 20, 2013, 694 SCRA 38, 48-49, citing *Meneses v. Venturozo,* G.R. No. 172196, October 19, 2011, 659 SCRA 577, 586.

duly executed and authentic, then it cannot be said that the foregoing requirement had been complied with; hence, the sale would be void.

After a judicious review of the case, taking into consideration the divergent findings of the RTC and the CA on the matter,[41] the Court holds that the due execution and authenticity of the subject SPA were not sufficiently established under Section 20, Rule 132 of the Rules of Court as above-cited.

While Ramon identified the signature of respondent on the subject SPA based on his alleged familiarity with the latter's signature,[42] he, however, stated no basis for his identification of the signatures of respondent's wife Amelia and the witness, Evangeline F. Murral,[43] and even failed to identify the other witness,[44] who were also signatories to the said document. In other words, no evidence was presented to authenticate the signatures of the other signatories of the subject SPA outside from respondent.[45]

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[41] "As a general rule, only questions of law can be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Since this Court is not a trier of facts, findings of fact of the appellate court are binding and conclusive upon this Court. There are, however, several recognized exceptions to this rule, namely:

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(5) When the findings of fact are conflicting;

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(7) When the findings are contrary to those of the trial court;

x x x x x x x x x

(*Office of the President v. Cataquiz,* G.R. No. 183445, September 14, 2011, 657 SCRA 681, 694.)

[42] Records, p. 212.

[43] *Id*. at 213.

[44] *Id*. at 214.

[45] Section 22, Rule 132 of the Rules of Court states that "[t]he handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and

Besides, as the CA correctly observed, respondent's signature appearing on the subject SPA is not similar[46] to his genuine signature appearing in the November 25, 1999 SPA in favor of Lourdes,[47] especially the signature appearing on the left margin of the first page.[48]

Unrebutted too is the testimony of respondent who, during trial, attested to the fact that he and his wife, Amelia, had immigrated to the USA since 1968 and therefore could not have signed the subject SPA due to their absence.[49]

Further, records show that the notary public, Atty. Ramon S. Untalan, failed to justify why he did not require the presentation of respondent's CTC or any other competent proof of the identity of the person who appeared before him to acknowledge the subject SPA as respondent's free and voluntary act and deed despite the fact that he did not personally know the latter and that he met him for the first time during the notarization.[50] He merely relied on the representations of the person before him[51] and the bank officer who accompanied the latter to his office,[52] and further explained that the reason for the omission of the CTC was "because in [a] prior document, [respondent] has probably given us already his residence certificate."[53] This "prior

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has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge."

[46] *Rollo*, p. 23.

[47] Records, p. 7. Respondent identified the signature appearing above his name as his (*id*. at 119).

[48] *Id*. at 312.

[49] *Rollo*, pp. 23-24.

[50] Records, pp. 280-281.

[51] *Id*.

[52] *Id*. at 281.

[53] *Id*.

document," was not, however, presented during the proceedings below, nor the CTC number ever identified.

Thus, in light of the totality of evidence at hand, the Court agrees with the CA's conclusion that respondent was able to preponderate his claims of forgery against the subject SPA.[54] In view of its invalidity, the November 20, 1992 sale relied on by Sps. Sarili to prove their title to the subject property is therefore void.

At this juncture, it is well to note that it was, in fact, the February 16, 1978 deed of sale which – as the CA found – was actually the source of the issuance of TCT No. 262218. Nonetheless, this document was admitted to be also a forgery.[55] Since Sps. Sarili's claim over the subject property is based on forged documents, no valid title had been transferred to them (and, in turn, to petitioners). Verily, when the instrument presented is forged, **even if accompanied by the owner's duplicate certificate of title**, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed acquire any right or title to the property.[56] Accordingly, TCT No. 262218 in the name of Victorino married to Isabel should be annulled, while TCT No. 55979 in the name of respondent should be reinstated.

Anent the award of moral damages, suffice it to say that the dispute over the subject property had caused respondent serious anxiety, mental anguish and sleepless nights, thereby justifying the aforesaid award.[57] Likewise, since respondent was constrained to engage the services of counsel to file this suit and defend his interests, the awards of attorney's fees and litigation expenses are also sustained.[58]

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[54] *Rollo*, p. 25.

[55] See Complaint and Answer; records, pp. 2 and 22, respectively.

[56] *Bernales v. Heirs of Julian Sambaan,* G.R. No. 163271, January 15, 2010, 610 SCRA 90, 106.

[57] See Article 2217 of the Civil Code.

[58] See Article 2208 (2) of the Civil Code.

The Court, however, finds a need to remand the case to the court *a quo* in order to determine the rights and obligations of the parties with respect to the house Sps. Sarili had built[59] on the subject property in bad faith in accordance with Article 449 in relation to Articles 450, 451, 452, and the first paragraph of Article 546 of the Civil Code which respectively read as follows:

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.

ART. 450. The owner of the land on which anything has been built, planted or sown in bad faith **may demand the demolition of the work**, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; **or** he **may compel the builder or planter to pay the price of the land**, and the sower the proper rent.

ART. 451. In the cases of the two preceding articles, the landowner is entitled to damages from the builder, planter or sower.

ART. 452. The builder, planter or sower in bad faith is entitled to **reimbursement for the necessary expenses of preservation of the land**.

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ART. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor. (Emphases and underscoring supplied)

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To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, *i.e.*, that he be a possessor in concept of owner, and that **he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it**.[60] Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence

[59] See Victorino's testimony during the June 7, 2001 hearing in Civil Case No. C-19152 which, with respect to such fact (i.e., the construction of the house), remained undisputed; records, p. 182.

[60] *Mercado v. CA,* G.R. No. L-44001, June 10, 1988, 162 SCRA 75, 85.

of malice and the absence of design to defraud or to seek an unconscionable advantage. It implies honesty of intention, and **freedom from knowledge of circumstances which ought to put the holder upon inquiry**.[61] As for Sps. Sarili, they knew – or at the very least, should have known – from the very beginning that they were dealing with a person who possibly had no authority to sell the subject property considering the palpable irregularity in the subject SPA's acknowledgment. Yet, relying solely on said document and without any further investigation on Ramon's capacity to sell, Sps. Sarili still chose to proceed with its purchase and even built a house thereon. Based on the foregoing, it cannot be seriously doubted that Sps. Sarili were actually aware of a flaw or defect in their title or mode of acquisition and have consequently built the house on the subject property in bad faith under legal contemplation. The case is therefore remanded to the court *a quo* for the proper application of the above-cited Civil Code provisions.

WHEREFORE, the petition is **DENIED**. The Decision dated May 20, 2010 and Resolution dated August 26, 2010 of the Court of Appeals in CA -G.R. CV No. 76258 are **AFFIRMED**. However, the case is **REMANDED** to the court *a quo* for the proper application of A rticle 449 in relation to Articles 450, 451, 452 and the first paragraph of Article 546 of the Civil Code with respect to the house Spouses Victorino Sarili and Isabel Amparo had built on the subject property as herein discussed.

SO ORDERED.

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

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[61] *Ochoa v. Apeta,* 559 Phil. 650, 656 (2007).

FIRST DIVISION

[G.R. No. 193986. January 15, 2014]

EASTERN SHIPPING LINES, INC., *petitioner, vs.* **BPI/MS INSURANCE CORP., and MITSUI SUMITOMO INSURANCE CO., LTD.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE PUT IN ISSUE THEREIN.—** Well entrenched in this jurisdiction is the rule that factual questions may not be raised before this Court in a petition for review on *certiorari* as this Court is not a trier of facts. This is clearly stated in Section 1, Rule 45 of the 1997 Rules of Civil Procedure. x x x Thus, it is settled that in petitions for review on *certiorari*, only questions of law may be put in issue. Questions of fact cannot be entertained.

2. **ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.—** A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts, or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

3. **CIVIL LAW; COMMON CARRIERS; PRESUMED TO HAVE BEEN AT FAULT OR NEGLIGENT FOR LOSS OR DAMAGE OF GOODS THEY TRANSPORTED UNLESS THEY PROVE THAT THEY EXERCISED EXTRAORDINARY DILIGENCE IN TRANSPORTING THE GOODS.—** [I]t is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier. As hereinbefore found by the RTC and affirmed by the CA based on the evidence presented, the goods

were damaged even before they were turned over to ATI. Such damage was even compounded by the negligent acts of petitioner and ATI which both mishandled the goods during the discharging operations. Thus, it bears stressing unto petitioner that 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. Owing to this high degree of diligence required of them, common carriers, as a general rule, are presumed to have been at fault or negligent if the goods they transported deteriorated or got lost or destroyed. That is, unless they prove that they exercised extraordinary diligence in transporting the goods. In order to avoid responsibility for any loss or damage, therefore, they have the burden of proving that they observed such high level of diligence. In this case, petitioner failed to hurdle such burden.

APPEARANCES OF COUNSEL

Contreras & Limqueco Law Offices for petitioner.
Astorga & Repol Law Offices for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before this Court is a petition[1] for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking the reversal of the Decision[2] of the Court of Appeals

[1] *Rollo*, pp. 3-41.

[2] *Id.* at 45-59. Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Isaias P. Dicdican and Japar B. Dimaampao concurring.

(CA) in CA-G.R. CV No. 88361, which affirmed with modification the Decision[3] of the Regional Trial Court (RTC), of Makati City, Branch 138 in Civil Case No. 04-1005.

The facts follow:

On August 29, 2003, Sumitomo Corporation (Sumitomo) shipped through MV Eastern Challenger V-9-S, a vessel owned by petitioner Eastern Shipping Lines, Inc. (petitioner), 31 various steel sheets in coil weighing 271,828 kilograms from Yokohama, Japan for delivery in favor of the consignee Calamba Steel Center Inc. (Calamba Steel).[4] The cargo had a declared value of US$125,417.26 and was insured against all risk by Sumitomo with respondent Mitsui Sumitomo Insurance Co., Ltd. (Mitsui). On or about September 6, 2003, the shipment arrived at the port of Manila. Upon unloading from the vessel, nine coils were observed to be in bad condition as evidenced by the Turn Over Survey of Bad Order Cargo No. 67327. The cargo was then turned over to Asian Terminals, Inc. (ATI) for stevedoring, storage and safekeeping pending Calamba Steel's withdrawal of the goods. When ATI delivered the cargo to Calamba Steel, the latter rejected its damaged portion, valued at US$7,751.15, for being unfit for its intended purpose.[5]

Subsequently, on September 13, 2003, a second shipment of 28 steel sheets in coil, weighing 215,817 kilograms, was made by Sumitomo through petitioner's MV Eastern Challenger V-10-S for transport and delivery again to Calamba Steel.[6] Insured by Sumitomo against all risk with Mitsui,[7] the shipment had a declared value of US$121,362.59. This second shipment arrived at the port of Manila on or about September 23, 2003. However, upon unloading of the cargo from the said vessel, 11 coils were

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[3] *Id.* at 153-159. Penned by Judge Jenny Lind R. Aldecoa-Delorino (now Deputy Court Administrator).

[4] CA *rollo*, p. 111.

[5] *Rollo*, p. 46.

[6] CA *rollo*, p. 60.

[7] *Id.* at 388.

found damaged as evidenced by the Turn Over Survey of Bad Order Cargo No. 67393. The possession of the said cargo was then transferred to ATI for stevedoring, storage and safekeeping pending withdrawal thereof by Calamba Steel. When ATI delivered the goods, Calamba Steel rejected the damaged portion thereof, valued at US$7,677.12, the same being unfit for its intended purpose.[8]

Lastly, on September 29, 2003, Sumitomo again shipped 117 various steel sheets in coil weighing 930,718 kilograms through petitioner's vessel, MV Eastern Venus V-17-S, again in favor of Calamba Steel.[9] This third shipment had a declared value of US$476,416.90 and was also insured by Sumitomo with Mitsui. The same arrived at the port of Manila on or about October 11, 2003. Upon its discharge, six coils were observed to be in bad condition. Thereafter, the possession of the cargo was turned over to ATI for stevedoring, storage and safekeeping pending withdrawal thereof by Calamba Steel. The damaged portion of the goods being unfit for its intended purpose, Calamba Steel rejected the damaged portion, valued at US$14,782.05, upon ATI's delivery of the third shipment.[10]

Calamba Steel filed an insurance claim with Mitsui through the latter's settling agent, respondent BPI/MS Insurance Corporation (BPI/MS), and the former was paid the sums of US$7,677.12, US$14,782.05 and US$7,751.15 for the damage suffered by all three shipments or for the total amount of US$30,210.32. Correlatively, on August 31, 2004, as insurer and subrogee of Calamba Steel, Mitsui and BPI/MS filed a Complaint for Damages against petitioner and ATI.[11]

As synthesized by the RTC in its decision, during the pre-trial conference of the case, the following facts were established, *viz*:

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[8] *Rollo*, pp. 46-47.

[9] CA *rollo*, p. 108.

[10] *Rollo*, pp. 47-48.

[11] *Id.* at 48.

1. The fact that there were shipments made on or about August 29, 2003, September 13, 2003 and September 29, 2003 by Sumitomo to Calamba Steel through petitioner's vessels;
2. The declared value of the said shipments and the fact that the shipments were insured by respondents;
3. The shipments arrived at the port of Manila on or about September 6, 2003, September 23, 2003 and October 11, 2003 respectively;
4. Respondents paid Calamba Steel's total claim in the amount of US$30,210.32.[12]

Trial on the merits ensued.

On September 17, 2006, the RTC rendered its Decision,[13] the dispositive portion of which provides:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendants Eastern Shipping Lines, Inc. and Asian Terminals, Inc., jointly and severally, ordering the latter to pay plaintiffs the following:
>
> 1. Actual damages amounting to US$30,210.32 plus 6% legal interest thereon commencing from the filing of this complaint, until the same is fully paid;
> 2. Attorney's fees in a sum equivalent to 25% of the amount claimed;
> 3. Costs of suit.
>
> The defendants' counterclaims and ATI's crossclaim are DISMISSED for lack of merit.
>
> SO ORDERED.[14]

Aggrieved, petitioner and ATI appealed to the CA. On July 9, 2010, the CA in its assailed Decision affirmed with modification

[12] *Id.* at 155.

[13] *Id.* at 153-159.

[14] *Id.* at 159.

the RTC's findings and ruling, holding, among others, that both petitioner and ATI were very negligent in the handling of the subject cargoes. Pointing to the affidavit of Mario Manuel, Cargo Surveyor, the CA found that "*during the unloading operations, the steel coils were lifted from the vessel but were not carefully laid on the ground. Some were even 'dropped' while still several inches from the ground while other coils bumped or hit one another at the pier while being arranged by the stevedores and forklift operators of ATI and [petitioner].*" The CA added that such finding coincides with the factual findings of the RTC that both petitioner and ATI were both negligent in handling the goods. However, for failure of the RTC to state the justification for the award of attorney's fees in the body of its decision, the CA accordingly deleted the same.[15] Petitioner filed its Motion for Reconsideration[16] which the CA, however, denied in its Resolution[17] dated October 6, 2010.

Both petitioner and ATI filed their respective separate petitions for review on *certiorari* before this Court. However, ATI's petition, docketed as G.R. No. 192905, was denied by this Court in our Resolution[18] dated October 6, 2010 for failure of ATI to show any reversible error in the assailed CA decision and for failure of ATI to submit proper verification. Said resolution had become final and executory on March 22, 2011.[19] Nevertheless, this Court in its Resolution[20] dated September 3, 2012, gave due course to this petition and directed the parties to file their respective memoranda.

In its Memorandum,[21] petitioner essentially avers that the CA erred in affirming the decision of the RTC because the

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[15] *Id.* at 54-59.

[16] CA *rollo*, pp. 319-341.

[17] *Rollo*, p. 61.

[18] CA *rollo*, p. 420.

[19] *Id.* at 419.

[20] *Rollo*, pp. 340-341.

[21] Dated December 5, 2012; *id.* at 342-370.

survey reports submitted by respondents themselves as their own evidence and the pieces of evidence submitted by petitioner clearly show that the cause of the damage was the rough handling of the goods by ATI during the discharging operations. Petitioner attests that it had no participation whatsoever in the discharging operations and that petitioner did not have a choice in selecting the stevedore since ATI is the only arrastre operator mandated to conduct discharging operations in the South Harbor. Thus, petitioner prays that it be absolved from any liability relative to the damage incurred by the goods.

On the other hand, respondents counter, among others, that as found by both the RTC and the CA, the goods suffered damage while still in the possession of petitioner as evidenced by various Turn Over Surveys of Bad Order Cargoes which were unqualifiedly executed by petitioner's own surveyor, Rodrigo Victoria, together with the representative of ATI. Respondents assert that petitioner would not have executed such documents if the goods, as it claims, did not suffer any damage prior to their turn-over to ATI. Lastly, respondents aver that petitioner, being a common carrier is required by law to observe extraordinary diligence in the vigilance over the goods it carries.[22]

Simply put, the core issue in this case is whether the CA committed any reversible error in finding that petitioner is solidarily liable with ATI on account of the damage incurred by the goods.

The Court resolves the issue in the negative.

Well entrenched in this jurisdiction is the rule that factual questions may not be raised before this Court in a petition for review on *certiorari* as this Court is not a trier of facts. This is clearly stated in Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended, which provides:

SECTION 1. *Filing of petition with Supreme Court*.—A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file

[22] Respondents' Memorandum dated November 27, 2012; *id.* at 371-388.

with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Thus, it is settled that in petitions for review on *certiorari*, only questions of law may be put in issue. Questions of fact cannot be entertained.[23]

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts, or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[24]

In this petition, the resolution of the question as to who between petitioner and ATI should be liable for the damage to the goods is indubitably factual, and would clearly impose upon this Court the task of reviewing, examining and evaluating or weighing all over again the probative value of the evidence presented[25] – something which is not, as a rule, within the functions of this Court and within the office of a petition for review on *certiorari*.

While it is true that the aforementioned rule admits of certain exceptions,[26] this Court finds that none are applicable in this

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[23] *Philippine National Railways Corporation v. Vizcara*, G.R. No. 190022, February 15, 2012, 666 SCRA 363, 375.

[24] *Santos v. Committee on Claims Settlement*, G.R. No. 158071, April 2, 2009, 583 SCRA 152, 159-160.

[25] *Asian Terminals, Inc. v. Malayan Insurance Co., Inc.,* G.R. No. 171406, April 4, 2011, 647 SCRA 111, 126.

[26] The exceptions are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based

case. This Court finds no cogent reason to disturb the factual findings of the RTC which were duly affirmed by the CA. Unanimous with the CA, this Court gives credence and accords respect to the factual findings of the RTC – a special commercial court[27] which has expertise and specialized knowledge on the subject matter[28] of maritime and admiralty – highlighting the solidary liability of both petitioner and ATI. The RTC judiciously found:

x x x **The Turn Over Survey of Bad Order Cargoes (TOSBOC, for brevity) No. 67393 and Request for Bad Order Survey No. 57692 show that prior to the turn over of the first shipment to the custody of ATI, eleven (11) of the twenty-eight (28) coils were already found in bad order condition. Eight (8) of the said eleven coils were already "*partly dented/crumpled*" and the remaining three (3) were found "*partly dented, scratches on inner hole, crumple* (sic)". On the other hand, the TOSBOC No. 67457 and Request for Bad Order Survey No. 57777 also show that prior to the turn over of the second shipment to the custody of ATI, a total of six (6) coils thereof were already "*partly dented on one side, crumpled/cover detach* (sic)". These documents were issued by ATI. The said TOSBOC's were jointly executed by ATI, vessel's representative and surveyor while the Requests for Bad Order Survey were jointly executed by ATI, consignee's representative and the Shed Supervisor**. The aforementioned documents were corroborated by the Damage Report dated 23

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on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. [*International Container Terminal Services, Inc. v. FGU Insurance Corporation*, 578 Phil. 751, 756 (2008); see also *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86.]

[27] Per A.M. No. 05-4-05-SC dated April 12, 2005.

[28] *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*, G.R. No. 175844, July 29, 2013, p. 8.

September 2003 and Turn Over Survey No. 15765 for the first shipment, Damage Report dated 13 October 2003 and Turn Over Survey No. 15772 for the second shipment and, two Damage Reports dated 6 September 2003 and Turn Over Survey No. 15753 for the third shipment.

It was shown to this Court that a Request for Bad Order Survey is a document which is requested by an interested party that incorporates therein the details of the damage, if any, suffered by a shipped commodity. Also, a **TOSBOC, usually issued by the arrastre contractor (ATI in this case), is a form of certification that states therein the bad order condition of a particular cargo, as found prior to its turn over to the custody or possession of the said arrastre contractor.**

The said Damage Reports, Turn Over Survey Reports and Requests for Bad Order Survey led the Court to conclude that before the subject shipments were turned over to ATI, the said cargo were already in bad order condition due to damage sustained during the sea voyage. Nevertheless, this Court cannot turn a blind eye to the fact that there was also negligence on the part of the employees of ATI and [Eastern Shipping Lines, Inc.] in the discharging of the cargo as observed by plaintiff's witness, Mario Manuel, and [Eastern Shipping Lines, Inc.'s] witness, Rodrigo Victoria.

In ascertaining the cause of the damage to the subject shipments, Mario Manuel stated that the "*coils were roughly handled during their discharging from the vessel to the pier of (sic) ASIAN TERMINALS, INC. and even during the loading operations of these coils from the pier to the trucks that will transport the coils to the consignee's warehouse.* ***During the aforesaid operations, the employees and forklift operators of EASTERN SHIPPING LINES and ASIAN TERMINALS, INC. were very negligent in the handling of the subject cargoes****. Specifically, "during unloading, the steel coils were lifted from the vessel and not carefully laid on the ground, sometimes were even 'dropped' while still several inches from the ground. The tine (forklift blade) or the portion that carries the coils used for the forklift is improper because it is pointed and sharp and the centering of the tine to the coils were negligently done such that the pointed and sharp tine touched and caused scratches, tears and dents to the coils. Some of the coils were also dragged by the forklift instead of being carefully lifted from one place to another.* ***Some coils bump/hit one another at the***

pier while being arranged by the stevedores/forklift operators of ASIAN TERMINALS, INC. and EASTERN SHIPPING LINES.[29] (Emphasis supplied.)

Verily, it is settled in maritime law jurisprudence that cargoes while being unloaded generally remain under the custody of the carrier.[30] As hereinbefore found by the RTC and affirmed by the CA based on the evidence presented, the goods were damaged even before they were turned over to ATI. Such damage was even compounded by the negligent acts of petitioner and ATI which both mishandled the goods during the discharging operations. Thus, it bears stressing unto petitioner that 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[31] 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.[32] Owing to this high

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[29] *Rollo*, pp. 155-156.

[30] *Philippines First Insurance Co., Inc. v. Wallem Phils. Shipping, Inc.*, G.R. No. 165647, March 26, 2009, 582 SCRA 457, 472.

[31] ART. 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;

(2) Act of the public enemy in war, whether international or civil;

(3) Act or omission of the shipper or owner of the goods;

(4) The character of the goods or defects in the packing or in the containers;

(5) Order or act of competent public authority.

[32] *Asian Terminals, Inc. v. Philam Insurance Co., Inc. (now Chartis Philippines Insurance, Inc.)*, G.R. Nos. 181163, 181262 & 181319, July 24, 2013, p. 14.

degree of diligence required of them, common carriers, as a general rule, are presumed to have been at fault or negligent if the goods they transported deteriorated or got lost or destroyed. That is, unless they prove that they exercised extraordinary diligence in transporting the goods. In order to avoid responsibility for any loss or damage, therefore, they have the burden of proving that they observed such high level of diligence.[33] In this case, petitioner failed to hurdle such burden.

In sum, petitioner failed to show any reversible error on the part of the CA in affirming the ruling of the RTC as to warrant the modification, much less the reversal of its assailed decision.

WHEREFORE, the petition is **DENIED**. The Decision dated July 9, 2010 of the Court of Appeals in CA-G.R. CV No. 88361 is hereby **AFFIRMED**.

With costs against the petitioner.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 195064. January 15, 2014]

NARI K. GIDWANI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[33] *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.,* 432 Phil. 567, 579 (2002).

SYLLABUS

1. **CRIMINAL LAW; VIOLATION OF *BATAS PAMBANSA BLG.* 22; ELEMENTS.—** The elements of a violation of B.P. 22 are the following: "1) making, drawing and issuing any check to apply on account or for value; 2) knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and 3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor of the check for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment."

2. **ID.; ID.; PRESENTMENT FOR PAYMENT; NOT PROPER IF MADE AFTER THE ISSUANCE OF A LAWFUL ORDER FROM THE SECURITIES AND EXCHANGE COMMISSION SUSPENDING ALL PAYMENTS OF CLAIMS; CASE AT BAR.—** [I]t is clear that prior to the presentment for payment and the subsequent demand letters to petitioner, there was already a lawful Order from the SEC suspending all payments of claims. It was incumbent on him to follow that SEC Order. He was able to sufficiently establish that the accounts were closed pursuant to the Order, without which a different set of circumstances might have dictated his liability for those checks. Considering that there was a lawful Order from the SEC, the contract is deemed suspended. When a contract is suspended, it temporarily ceases to be operative; and it again becomes operative when a condition occurs - or a situation arises - warranting the termination of the suspension of the contract. In other words, the SEC Order also created a suspensive condition. When a contract is subject to a suspensive condition, its birth takes place or its effectivity commences only if and when the event that constitutes the condition happens or is fulfilled. Thus, at the time private respondent presented the September and October 1997 checks for encashment, it had no right to do so, as there was yet no obligation due from petitioner.

3. **ID.; PENAL LAWS; ANY AMBIGUITY IN THE INTERPRETATION OR APPLICATION OF THE LAW MUST BE MADE IN FAVOR OF THE ACCUSED.—** [I]t is a basic principle in criminal law that any ambiguity in the

interpretation or application of the law must be made in favor of the accused. Surely, our laws should not be interpreted in such a way that the interpretation would result in the disobedience of a lawful order of an authority vested by law with the jurisdiction to issue the order.

APPEARANCES OF COUNSEL

L.M. Gangoso Law Office for petitioner.
The Solicitor General for public respondent.
Emiliano S. Samson for private respondent.

D E C I S I O N

SERENO, *C.J.*:

Before us is a Petition[1] under Rule 45 of the Rules of Court, assailing the Decision[2] and the subsequent Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 32642 dated 17 September 2010 and 6 January 2011, respectively.

The facts are as follows:

Petitioner is the president of G.G. Sportswear Manufacturing Corporation (GSMC), which is engaged in the export of ready-to-wear clothes. GSMC secured the embroidery services of El Grande Industrial Corporation (El Grande) and issued on various dates from June 1997 to December 1997 a total of 10 Banco de Oro (BDO) checks as payment for the latter's services worth an aggregate total of ₱1,626,707.62.

Upon presentment, these checks were dishonored by the drawee bank for having been drawn against a closed account.

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[1] *Rollo*, pp. 8-27.

[2] *Id.* at 28-36; Penned by Associate Justice Estela M. Perlas-Bernabe (now a member of this Court), with Associate Justices Bienvenido L. Reyes (now also a member of this Court) and CA Associate Justice Elihu A. Ybañez concurring.

[3] *Id.* at 37.

Thus, El Grande, through counsel, sent three demand letters regarding 8 of the 10 issued checks:[4]

Date of letter	BDO Check No.	Date of Check	Amount
24 September 1997	0000063646	4 September 1997	₱ 130,000.00
24 September 1997	0000059552	12 June 1997	412,000.00
	0000063643	24 July 1997	138,859.69
	0000063644	7 August 1997	138,859.69
	0000063650	7 August 1997	144,457.56
	0000063645	28 August 1997	138,859.68
8 October	0000063647	25 September 1997	130,000.00
	0000063648	2 October 1997	130,000.00

On 15 October 1997,[5] petitioner wrote to El Grande's counsel acknowledging receipt of the 8 October demand letter[6] and informing the latter that, on 29 August 1997, GSMC had filed a Petition with the Securities and Exchange Commission (SEC). It was a Petition for the Declaration of a State of Suspension of Payments, for the Approval of a Rehabilitation Plan and Appointment of a Management Committee.[7] Acting on the Petition, the SEC issued an Order[8] on 3 September 1997 ordering the suspension of all actions, claims, and proceedings against GSMC until further order from the SEC Hearing Panel. Petitioner attached this SEC Order to the 15 October 1997 letter. In short, GSMC did not pay El Grande.

Despite its receipt on 16 October 1997 of GSMC's letter and explanation, El Grande still presented to the drawee bank

[4] *Id.* at 51-53.

[5] *Id.* at 56.

[6] *Id.* at 55.

[7] *Id.* at 105-112.

[8] *Id.* at 46-49.

for payment BDO Check Nos. 0000063652 and 0000063653 dated November and December 1997, respectively.

Thereafter, sometime in November 1997, El Grande filed a Complaint with the Office of the City Prosecutor of Manila charging petitioner with eight counts of violation of *Batas Pambansa Blg.* 22 (B.P. 22) for the checks covering June to October 1997. El Grande likewise filed a similar Complaint in December 1997, covering the checks issued in November and December 1997.

Corresponding Informations for the Complaints were subsequently filed on 1 October 2001.

For his part, petitioner raised the following defenses: (1) the SEC Order of Suspension of Payment legally prevented him from honoring the checks; (2) there was no consideration for the issuance of the checks, because the embroidery services of El Grande were of poor quality and, hence, were rejected; and (3) he did not receive a notice of dishonor of the checks.

On 24 March 2008, after trial on the merits, the Metropolitan Trial Court (MTC) of Manila found petitioner guilty beyond reasonable doubt of ten counts of violation of B.P. 22. It ordered him to pay the face value of the checks amounting to ₱1,626,707.60 with interest at the legal rate *per annum* from the filing of the case and to pay a fine of ₱200,000 with subsidiary imprisonment in case of insolvency.[9] The MTC held that the Petition for voluntary insolvency or a SEC Order for the suspension of payment of all claims are not defenses under the law regarding violations of B.P. 22, since an order suspending payments involves only the obligations of the corporation and does not affect criminal proceedings.

On appeal, the Regional Trial Court (RTC) affirmed the findings of the MTC and likewise denied the Motion for Reconsideration of petitioner.[10]

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[9] *Id.* at 176-186.

[10] *Id.* at 66-73.

Thereafter, petitioner filed with the CA a Petition for Review under Rule 42.

In its Decision dated 17 September 2010, the CA found that the prosecution was able to establish that petitioner had received only the 8 October 1997 Notice of Dishonor and not the others. The CA further held that the prosecution failed to establish that the account was closed prior to or at the time the checks were issued, thus proving knowledge of the insufficiency of funds.

Thus, the CA partly granted the appeal and acquitted petitioner of eight counts of violation of B.P. 22, while sustaining his conviction for the two remaining counts and ordering him to pay the total civil liability due to El Grande. The dispositive portion of the Decision reads:

> **WHEREFORE,** premises considered, the instant petition is **PARTLY GRANTED** and the assailed RTC Decision dated January 29, 2009 and its Order dated June 5, 2009 are **AFFIRMED with modifications**: (a) sustaining accused-appellant's conviction in Criminal Case Nos. 301888 and 301889; (b) acquitting him in Criminal Case Nos. 371112-13, 301883-87 and 301890; and (c) ordering him to pay private complainant, El Grande Industrial Corporation, the aggregate amount of ₱1,626,707.62 representing the value of the ten (10) BDO checks with interest at 12% per annum reckoned from the date of the filing of the Information until finality of this Decision, and thereafter, the total amount due, inclusive of interest, shall be subject to 12% annual interest until fully paid.
>
> The rest of the Decision stands.
>
> **SO ORDERED**.[11]

Petitioner filed his Motion for Partial Reconsideration on 11 October 2010,[12] raising the following as his defenses: (1) there was no clear evidence showing that he acknowledged the Notice of Dishonor of the two remaining checks; (2) the suspension Order of the SEC was a valid reason for stopping the payment of the checks; and, (3) as a corporate officer, he could only be held civilly liable.

[11] *Rollo*, pp. 28-36.

[12] *Id.* at 77-89.

On 6 January 2011, the CA denied the motion through its assailed Resolution.[13]

Hence, this Petition.

Petitioner raises these two issues in the present Petition:

A. THE COURT OF APPEALS ERRED IN RULING THAT THE ORDER FOR THE SUSPENSION OF PAYMENT ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION IS NOT A VALID REASON TO STOP PAYMENT OF A CHECK EVEN IF SUCH ORDER WAS ISSUED PRIOR TO THE PRESENTMENT OF THE SUBJECT CHECKS FOR PAYMENT;

B. THE COURT OF APPEALS ERRED IN FINDING A CORPORATE OFFICER PERSONALLY LIABLE FOR THE CIVIL OBLIGATION OF THE CORPORATION.[14]

We find the appeal to be meritorious.

The elements of a violation of B.P. 22 are the following:[15]

1) making, drawing and issuing any check to apply on account or for value;

2) knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and

3) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor of the check for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.

In convicting petitioner of two counts of violation of B.P. 22, the CA applied *Tiong v. Co*,[16] in which we said:

The purpose of suspending the proceedings under P.D. No. 902-A is to prevent a creditor from obtaining an advantage or preference

[13] *Id.* at 37.

[14] *Id.* at 15.

[15] *Josef v. People*, 512 Phil. 65, 69 (2005).

[16] G.R. No. 133608, 26 August 2008, 563 SCRA 239, 249-251.

over another and to protect and preserve the rights of party litigants as well as the interest of the investing public or creditors. It is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again, without having to divert attention and resources to litigations in various fora. The suspension would enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company. To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.

Whereas, the gravamen of the offense punished by B.P. Blg. 22 is the act of making and issuing a worthless check; that is, a check that is dishonored upon its presentation for payment. It is designed to prevent damage to trade, commerce, and banking caused by worthless checks. In *Lozano v. Martinez*, this Court declared that it is not the nonpayment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making and circulation of worthless checks. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order. The prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, to reform and rehabilitate him or, in general, to maintain social order. Hence, the criminal prosecution is designed to promote the public welfare by punishing offenders and deterring others.

Consequently, the filing of the case for violation of B.P. Blg. 22 is not a "claim" that can be enjoined within the purview of P.D. No. 902-A. True, although conviction of the accused for the alleged crime could result in the restitution, reparation or indemnification of the private offended party for the damage or injury he sustained by reason of the felonious act of the accused, nevertheless, prosecution for violation of B.P. Blg. 22 is a criminal action. (Emphasis supplied.)

The CA furthermore cited *Tiong* in this wise:[17]

> Hence, accused-appellant cannot be deemed excused from honoring his duly issued checks by the mere filing of the petition for suspension of payments before the SEC. Otherwise, an absurdity will result such that "**one who has engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer**." (Emphasis supplied.)

However, what the CA failed to consider was that the facts of *Tiong* were not on all fours with those of the present case and must be put in the proper context. In *Tiong*, the presentment for payment and the dishonor of the checks took place before the Petition for Suspension of Payments for Rehabilitation Purposes was filed with the SEC. There was already an obligation to pay the amount covered by the checks. The criminal action for the violations of B.P. 22 was filed for failure to meet this obligation. The criminal proceedings were already underway when the SEC issued an Omnibus Order creating a Management Committee and consequently suspending all actions for claims against the debtor therein. Thus, in *Tiong*, this Court took pains to differentiate the criminal action, the civil liability and the administrative proceedings involved.

In contrast, it is clear that prior to the presentment for payment and the subsequent demand letters to petitioner, there was already a lawful Order from the SEC suspending all payments of claims. It was incumbent on him to follow that SEC Order. He was able to sufficiently establish that the accounts were closed pursuant to the Order, without which a different set of circumstances might have dictated his liability for those checks.

Considering that there was a lawful Order from the SEC, the contract is deemed suspended. When a contract is suspended, it temporarily ceases to be operative; and it again becomes operative when a condition - occurs or a situation arises - warranting the termination of the suspension of the contract.[18]

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[17] *Rollo*, p. 33.

[18] *Nielson & Company, Inc. v. Lepanto Consolidated Mining Company*, 135 Phil. 532 (1968).

In other words, the SEC Order also created a suspensive condition. When a contract is subject to a suspensive condition, its birth takes place or its effectivity commences only if and when the event that constitutes the condition happens or is fulfilled.[19] Thus, at the time private respondent presented the September and October 1997 checks for encashment, it had no right to do so, as there was yet no obligation due from petitioner.

Moreover, it is a basic principle in criminal law that any ambiguity in the interpretation or application of the law must be made in favor of the accused. Surely, our laws should not be interpreted in such a way that the interpretation would result in the disobedience of a lawful order of an authority vested by law with the jurisdiction to issue the order.

Consequently, because there was a suspension of GSMC's obligations, petitioner may not be held liable for the civil obligations of the corporation covered by the bank checks at the time this case arose. However, it must be emphasized that her non-liability should not prejudice the right of El Grande to pursue its claim through remedies available to it, subject to the SEC proceedings regarding the application for corporate rehabilitation.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Decision dated 17 September 2010 and the Resolution dated 6 January 2011 of the Court of Appeals in CA-G.R. CR No. 32642 are **REVERSED** and **SET ASIDE**. Criminal Case Nos. 301888 and 301889 are **DISMISSED**, without prejudice to the right of El Grande Industrial Corporation to file the proper civil action against G.G. Sportswear Manufacturing Corporation for the value of the ten (10) checks.

SO ORDERED.

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

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[19] 360 Phil. 891 (1998).

[*] Designated as additional member per Raffle dated 8 November 2011 in lieu of Associate Justice Bienvenido L. Reyes, who took no part due to prior action in the Court of Appeals.

FIRST DIVISION

[G.R. No. 196047. January 15, 2014]

LEPANTO CONSOLIDATED MINING CORPORATION, *petitioner, vs.* **BELIO ICAO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN APPEAL IS A MERE STATUTORY PRIVILEGE WHICH MAY BE AVAILED OF ONLY IN THE MANNER PROVIDED BY LAW AND THE RULES.—** [A]n appeal is not a matter of right, but is a mere statutory privilege. It may be availed of only in the manner provided by law and the rules. Thus, a party who seeks to exercise the right to appeal must comply with the requirements of the rules; otherwise, the privilege is lost.

2. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; APPEAL BOND; THE POSTING OF AN APPEAL BOND IS MANDATORY IN APPEALS FROM ANY DECISION OR ORDER OF THE LABOR ARBITER INVOLVING A MONETARY AWARD.—** In appeals from any decision or order of the labor arbiter, the posting of an appeal bond is required under Article 223 of the Labor Code x x x. The 2011 NLRC Rules of Procedure (NLRC Rules) incorporates this requirement in Rule VI, Section 6 x x x. In *Viron Garments Manufacturing Co., Inc. v. NLRC*, the Court explained the mandatory nature of this requirement as follows: "x x x The word 'only' makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the **exclusive means** by which an employer's appeal may be perfected."

3. **ID.; ID.; ID.; ID.; THE MANDATORY REQUIREMENT OF POSTING AN APPEAL BOND IS SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.—** We x x x turn to the main question of whether petitioner's Consolidated Motion to release the cash bond it posted in a previous case, for application to the present case, constitutes compliance with the appeal bond requirement. While it is true that the procedure

undertaken by petitioner is not provided under the Labor Code or in the NLRC Rules, we answer the question in the affirmative. We reiterate our pronouncement in *Araneta v. Rodas,* where the Court said that when the law does not clearly provide a rule or norm for the tribunal to follow in deciding a question submitted, but leaves to the tribunal the discretion to determine the case in one way or another, the judge must decide the question in conformity with justice, reason and equity, in view of the circumstances of the case. Applying this doctrine, we rule that petitioner substantially complied with the mandatory requirement of posting an appeal bond for the reasons explained below. First, there is no question that the appeal was filed within the 10-day reglementary period. x x x Second, it is also undisputed that petitioner has an unencumbered amount of money in the form of cash in the custody of the NLRC. To reiterate, petitioner had posted a *cash* bond of 401,610.84 in the separate case *Dangiw Siggaao,* which was earlier decided in its favor. As claimed by petitioner and confirmed by the Judgment Division of the Judicial Records Office of this Court, the Decision of the Court in *Dangiw Siggaao* had become final and executory as of 28 April 2008, or more than seven months before petitioner had to file its appeal in the present case. This fact is shown by the Entry of Judgment on file with the aforementioned office. Hence, the cash bond in that case ought to have been released to petitioner then. x x x Third, the cash bond in the amount of ₱401,610.84 posted in *Dangiw Siggaao* is more than enough to cover the appeal bond in the amount of ₱345,879.45 required in the present case. Fourth, this ruling remains faithful to the spirit behind the appeal bond requirement which is to ensure that workers will receive the money awarded in their favor when the employer's appeal eventually fails. There was no showing at all of any attempt on the part of petitioner to evade the posting of the appeal bond. On the contrary, petitioner's move showed a willingness to comply with the requirement. Hence, the welfare of Icao is adequately protected.

4. ID.; ID.; 2005 NATIONAL LABOR RELATIONS COMMISSION RULES; APPEALS; CASH OR SURETY BOND; SHOULD BE AUTOMATICALLY RELEASED ONCE THE APPEAL IS FINALLY DECIDED AND NO AWARD NEEDS TO BE SATISFIED.— Under the Rule VI,

Section 6 of the 2005 NLRC Rules, "[a] cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied." Hence, it is clear that a bond is encumbered and bound to a case only for as long as 1) the case has not been finally decided, resolved or terminated; or 2) the award has not been satisfied. Therefore, once the appeal is finally decided and no award needs to be satisfied, the bond is automatically released. Since the money is now unencumbered, the employer who posted it should now have unrestricted access to the cash which he may now use as he pleases – as appeal bond in another case, for instance. This is what petitioner simply did.

5. ID.; LABOR CODE AND NATIONAL LABOR RELATIONS COMMISSION RULES; APPEALS; APPEAL BOND; PROVISIONS ON THE POSTING OF AN APPEAL BOND HAVE BEEN LIBERALLY APPLIED IN EXCEPTIONAL CASES.— [T]his Court has liberally applied the NLRC Rules and the Labor Code provisions on the posting of an appeal bond in exceptional cases. In *Your Bus Lines v. NLRC*, the Court excused the appellant's failure to post a bond, because it relied on the notice of the decision. While the notice enumerated all the other requirements for perfecting an appeal, it did not include a bond in the list. In *Blancaflor v. NLRC*, the failure of the appellant therein to post a bond was partly caused by the labor arbiter's failure to state the exact amount of monetary award due, which would have been the basis of the amount of the bond to be posted. In *Cabalan Pastulan Negrito Labor Association v. NLRC*, petitioner-appellant was an association of Negritos performing trash-sorting services in the American naval base in Subic Bay. The plea of the association that its appeal be given due course despite its non-posting of a bond, on account of its insolvency and poverty, was granted by this Court. In *UERM-Memorial Medical Center v. NLRC*, we allowed the appellant-employer to post a property bond in lieu of a cash or surety bond. The assailed judgment involved more than 17 million; thus, its execution could adversely affect the economic survival of the employer, which was a medical center.

APPEARANCES OF COUNSEL

Vladimir B. Bumatay for petitioner.
Federico B. Bunao for respondent.

D E C I S I O N

SERENO, *C.J.*:

This Petition under Rule 45 of the Rules of Court seeks to annul and set aside the Court of Appeals (CA) Decision dated 27 September 2010 and the Resolution dated 11 March 2011 in CA-G.R. SP. No. 113095.[1] In the assailed Decision and Resolution, the CA upheld the Order of the National Labor Relations Commission (NLRC) First Division dismissing petitioner's appeal for allegedly failing to post an appeal bond as required by the Labor Code. Petitioner had instead filed a motion to release the cash bond it posted in another NLRC case which had been decided with finality in its favor with a view to applying the bond to the appealed case before the NLRC First Division. Hence, the Court is now asked to rule whether petitioner had complied with the appeal bond requirement. If it had, its appeal before the NLRC First Division should be reinstated.

THE FACTS

We quote the CA's narration of facts as follows:

The instant petition stemmed from a complaint for illegal dismissal and damages filed by private respondent Belio C. Icao [Icao] against petitioners Lepanto Consolidated Mining Company (LCMC) and its Chief Executive Officer [CEO] Felipe U. Yap [Yap] before the Arbitration Branch of the NLRC.

Private respondent essentially alleged in his complaint that he was an employee of petitioner LCMC assigned as a lead miner in its underground mine in Paco, Mankayan, Benguet. On January 4,

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[1] Both the Decision and the Resolution in CA-G.R. SP. No. 113095 were penned by CA Associate Justice Ramon R. Garcia, and concurred in by Associate Justices Rosmari D. Carandang and Manuel M. Barrios.

2008, private respondent reported for the 1st shift of work (11:00 p.m. to 7:00 a.m.) and was assigned at 248-8M2, 750 Level of the mining area. At their workplace, private respondent did some barring down, installed five (5) rock bolt support, and drilled eight (8) blast holes for the mid-shift blast. They then had their meal break. When they went back to their workplace, they again barred down loose rocks and drilled eight (8) more blast holes for the last round of blast. While waiting for the time to ignite their round, one of his co-workers shouted to prepare the explosives for blasting, prompting private respondent to run to the adjacent panels and warn the other miners. Thereafter, he decided to take a bath and proceeded at [sic] the bathing station where four (4) of his co-workers were also present. Before he could join them, he heard a voice at his back and saw Security Guard (SG) Larry Bulwayan instructing his companion SG Dale Papsa-ao to frisk him. As private respondent was removing his boots, SG Bulwayan forcibly pulled his skullguard from his head causing it to fall down [sic] to the ground including its harness and his detergent soap which was inserted in the skullguard harness. A few minutes later, private respondent saw SG Bulwayan [pick] up a wrapped object at the bathing station and gave it to his companion. SGs Bulwayan and Papsa-ao invited the private respondent to go with them at the investigation office to answer questions regarding the wrapped object. He was then charged with "highgrading" or the act of concealing, possessing or unauthorized extraction of highgrade material/ore without proper authority. Private respondent vehemently denied the charge. Consequently, he was dismissed from his work.

Private respondent claimed that his dismissal from work was without just or authorized cause since petitioners failed to prove by ample and sufficient evidence that he stole gold bearing highgrade ores from the company premises. If private respondent was really placing a wrapped object inside his boots, he should have been sitting or bending down to insert the same, instead of just standing on a muckpile as alleged by petitioners. Moreover, it is beyond imagination that a person, knowing fully well that he was being chased for allegedly placing wrapped ore inside his boots, will transfer it to his skullguard. The tendency in such situation is to throw the object away. As such, private respondent prayed that petitioners be held liable for illegal dismissal, to reinstate him to his former position without loss of seniority rights and benefits, and to pay his full backwages, damages and attorney's fees.

For their defense, petitioners averred that SG Bulwayan saw private respondent standing on a muckpile and inserting a wrapped object inside his right rubber boot. SG Bulwayan immediately ran towards private respondent, but the latter ran away to escape. He tried to chase private respondent but failed to capture him. Thereafter, while SG Bulwayan was on his way to see his co-guard SG Papsa-ao, he saw private respondent moving out of a stope. He then shouted at SG Papsa-ao to intercept him. When private respondent was apprehended, SG Bulwayan ordered him to remove his skullguard for inspection and saw a wrapped object placed inside the helmet. SG Bulwayan grabbed it, but the harness of the skullguard was also detached causing the object to fall on the ground. Immediately, SG Bulwayan recovered and inspected the same which turned out to be pieces of stone ores. Private respondent and the stone ores were later turned over to the Mankayan Philippine National Police where he was given a written notice of the charge against him. On January 9, 2008, a hearing was held where private respondent, together with the officers of his union as well as the apprehending guards appeared. On February 4, 2008, private respondent received a copy of the resolution of the company informing him of his dismissal from employment due to breach of trust and confidence and the act of highgrading.[2]

THE LABOR ARBITER'S RULING THAT PETITIONER LCMC IS LIABLE FOR ILLEGAL DISMISSAL

On 30 September 2008, the labor arbiter rendered a Decision holding petitioner and its CEO liable for illegal dismissal and ordering them to pay respondent Icao ₱345,879.45, representing his full backwages and separation pay.[3] The alleged highgrading attributed by LCMC's security guards was found to have been fabricated; consequently, there was no just cause for the dismissal of respondent. The labor arbiter concluded that the claim of the security guards that Icao had inserted ores in his boots while in a standing position was not in accord with normal human physiological functioning.[4]

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[2] *Rollo*, pp. 58-61.

[3] *Id.* at 124-133.

[4] *Id.* at 129.

The labor arbiter also noted that it was inconsistent with normal human behavior for a man, who knew that he was being chased for allegedly placing wrapped ore inside his boots, to then transfer the ore to his skullguard, where it could be found once he was apprehended.[5] To further support the improbability of the allegation of highgrading, the labor arbiter noted that throughout the 21 years of service of Icao to LCMC, he had never been accused of or penalized for highgrading or any other infraction involving moral turpitude - until this alleged incident.[6]

THE NLRC ORDER DISMISSING THE APPEAL OF PETITIONER LCMC FOR FAILURE TO POST THE APPEAL BOND

On 8 December 2008, petitioner and its CEO filed an Appearance with Memorandum of Appeal[7] before the NLRC. Instead of posting the required appeal bond in the form of a cash bond or a surety bond in an amount equivalent to the monetary award of ₱345,879.45 adjudged in favor of Icao, they filed a Consolidated Motion For Release Of Cash Bond And To Apply Bond Subject For Release As Payment For Appeal Bond (Consolidated Motion).[8] They requested therein that the NLRC release the cash bond of ₱401,610.84, which they had posted in the separate case *Dangiw Siggaao v. LCMC*,[9] and

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[5] *Id.*

[6] *Id.* at 131.

[7] *Id.* at 134-150.

[8] *Id.* at 151-153.

[9] Docketed as G.R. No. 179013, the unrelated case of *Dangiw Siggaao* involved a different employee who filed his Complaint for illegal dismissal against LCMC (docketed as NLRC Case No. RAB-CAR-05-0250-03) several years before the employee in the instant case filed his. In any case, the *Dangiw Siggaao* Complaint was decided by the labor arbiter in favor of the complainants. Consequently LCMC filed an appeal to the NLRC (docketed as NLRC NCR CA No. 03767-04) which in a Decision dated 18 May 2005, reversed the labor arbiter's Decision. The CA (where the appeal was docketed as CA-GR SP No. 91681) affirmed the NLRC in CA Decision dated 30 March 2007. The CA Decision was brought to this Court through a Petition for Review on *Certiorari* which the Court dismissed on technical grounds in a Resolution

apply that same cash bond to their present appeal bond liability. They reasoned that since this Court had already decided *Dangiw Siggaao* in their favor, and that the ruling therein had become final and executory, the cash bond posted therein could now be released.[10] They also cited financial difficulty as a reason for resorting to this course of action and prayed that, in the interest of justice, the motion be granted.

In its Order dated 27 February 2009, the NLRC First Division dismissed the appeal of petitioner and the latter's CEO for non-perfection.[11] It found that they had failed to post the required appeal bond equivalent to the monetary award of ₱345,879.45. It explained that their Consolidated Motion for the release of the cash bond in another case (*Dangiw Siggaao*), for the purpose of applying the same bond to the appealed case before it, could not be considered as compliance with the requirement to post the required appeal bond. Consequently, it declared the labor arbiter's Decision to be final and executory. The pertinent portions of the assailed Order are quoted below:

> The rules are clear. Appeals from decision involving a monetary award maybe [sic] perfected only upon posting of a cash or surety-bond within the ten (10) day reglementary period for filing an appeal. Failure to file and post the required appeal bond within the said period results in the appeal not being perfected and the appealed judgment becomes final and executory. Thus, the Commission loses authority to entertain or act on the appeal much less reverse the decision of the Labor Arbiter (*Gaudia vs. NLRC*, 318 SCRA 439).
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> **In this case, respondents failed to post the required appeal bond equivalent to the monetary award of ₱345,879.45. The Consolidated Motion for Release of Cash Bond (posted as appeal bond in another case) with prayer to apply the bond to be released as appeal bond may not be considered as compliance with the**

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dated 3 October 2007. *See* Consolidated Motion for Release of Cash Bond dated 8 December 2008 and Entry of Judgment, *Dangiw Siggaao v. LCMC,* dated 28 April 2008 and sent to the parties on 10 July 2008, Annex "O" of the instant Petition; *rollo,* pp.151-156.

[10] *Id.* at 151.

[11] *Id.* at 157-159.

jurisdictional requirement, as the application or posting is subject to the condition that the cash bond would be released. Besides, even if the motion for release is approved, the ten (10) day period has long expired, rendering the statutory right to appeal forever lost.

WHEREFORE, respondents' appeal is hereby DISMISSED for non-perfection and the questioned decision is declared as having become final and executory. Let the Motion for Release of Cash bond be forwarded to the Third Division, this Commission, for appropriate action.

SO ORDERED.[12] (Emphasis supplied)

Petitioner and its CEO filed a Motion for Reconsideration. They emphasized therein that they had tried to comply in good faith with the requisite appeal bond by trying to produce a cash bond anew and also to procure a new surety bond. However, after canvassing several bonding companies, the costs have proved to be prohibitive.[13] Hence, they resorted to using the cash bond they posted in *Dangiw Siggaao* because the bond was now free, unencumbered and could rightfully be withdrawn and used by them.[14] Their motion was denied in a Resolution dated 27 November 2009. Hence, they filed a Petition for *Certiorari* with the CA.

THE CA RULING AFFIRMING THE ORDER OF THE NLRC

On 27 September 2010, the CA issued its assailed Decision[15] affirming the Order of the NLRC First Division, which had dismissed the appeal of petitioner and the latter's CEO. According to the CA, they failed to comply with the requirements of law and consequently lost the right to appeal.[16]

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[12] *Id.* at 158-159.

[13] *Id.* at 162.

[14] *Id.*

[15] *Id.* at 57-71.

[16] *Id.* at 65.

The CA explained that under Article 223 of the Labor Code, an appeal from the labor arbiter's Decision must be filed within 10 calendar days from receipt of the decision. In case of a judgment involving a monetary award, the posting of a cash or surety bond in an amount equivalent to the monetary award is mandatory for the perfection of an appeal. In the instant case, the CA found that petitioner and its CEO did not pay the appeal fees and the required appeal bond equivalent to ₱345,879.45. Instead, it filed a Consolidated Motion praying that the cash bond it had previously posted in another labor case be released and applied to the present one. According to the CA, this arrangement is not allowed under the rules of procedure of the NLRC.[17]

Furthermore, the CA said that since the payment of appeal fees and the posting of an appeal bond are indispensable jurisdictional requirements, noncompliance with them resulted in petitioner's failure to perfect its appeal. Consequently, the labor arbiter's Decision became final and executory and, hence, binding upon the appellate court.[18]

Nevertheless, the CA ruled that the CEO of petitioner LCMC should be dropped as a party to this case.[19] No specific act was alleged in private respondent's pleadings to show that he had a hand in Icao's illegal dismissal; much less, that he acted in bad faith. In fact, the labor arbiter did not cite any factual or legal basis in its Decision that would render the CEO liable to respondent. The rule is that in the absence of bad faith, an officer of a corporation cannot be made personally liable for corporate liabilities.

THE ISSUE

The sole issue before the Court is whether or not petitioner complied with the appeal bond requirement under the Labor

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[17] *Id.* at 68.

[18] *Id.*

[19] *Id.* at 69.

Code and the NLRC Rules by filing a Consolidated Motion to release the cash bond it posted in another case, which had been decided with finality in its favor, with a view to applying the same cash bond to the present case.

OUR RULING

The Petition is *meritorious*. The Court finds that petitioner substantially complied with the appeal bond requirement.

Before discussing its ruling, however, the Court finds it necessary to emphasize the well-entrenched doctrine that an appeal is not a matter of right, but is a mere statutory privilege. It may be availed of only in the manner provided by law and the rules. Thus, a party who seeks to exercise the right to appeal must comply with the requirements of the rules; otherwise, the privilege is lost.[20]

In appeals from any decision or order of the labor arbiter, the posting of an appeal bond is required under Article 223 of the Labor Code, which reads:

Article 223. APPEAL. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

x x x x x x x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a

[20] *BPI Family Savings Bank, Inc. v. Pryce Gases, Inc.*, G.R. No. 188365, 29 June 2011, 653 SCRA 42, 51; *National Power Corporation v. Spouses Laohoo*, G.R. No. 151973, 23 July 2009, 593 SCRA 564; *Philux, Inc. v. National Labor Relations Commission*, G.R. No. 151854, 3 September 2008, 564 SCRA 21, 33; *Cu-unjieng v. Court of Appeals,* 515 Phil. 568 (2006); *Stolt-Nielsen Services, Inc. v. NLRC,* 513 Phil. 642 (2005); *Producers Bank of the Philippines v. Court of Appeals*, 430 Phil. 812 (2002); *Villanueva v. Court of Appeals,* G.R. No. 99357, 27 January 1992, 205 SCRA 537; *Trans International v. Court of Appeals*, 348 Phil. 830 (1998); *Acme Shoe, Rubber & Plastic Corporation v. Court of Appeals*, 329 Phil. 531 (1996); and *Ozaeta v. Court of Appeals*, 259 Phil. 428 (1989).

cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from. (Emphasis and underlining supplied)

The 2011 NLRC Rules of Procedure (NLRC Rules) incorporates this requirement in Rule VI, Section 6, which provides:

SECTION 6. *Bond.* — **In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond**, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees. (Emphases and underlining supplied)

In *Viron Garments Manufacturing Co., Inc. v. NLRC*,[21] the Court explained the mandatory nature of this requirement as follows:

The intention of the lawmakers to make the bond an **indispensable requisite** for the perfection of an appeal by the employer, is clearly limned in the provision that an appeal by the employer may be perfected "only upon the posting of a cash or surety bond." The word "only" makes it perfectly clear, that the lawmakers intended the posting of a cash or surety bond by the employer to be the **exclusive means** by which an employer's appeal may be perfected. (Emphases supplied)

We now turn to the main question of whether petitioner's Consolidated Motion to release the cash bond it posted in a previous case, for application to the present case, constitutes compliance with the appeal bond requirement. While it is true that the procedure undertaken by petitioner is not provided under the Labor Code or in the NLRC Rules, we answer the question in the affirmative.

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[21] G.R. No. 97357, 18 March 1992, 207 SCRA 339, 342. See also *Accessories Specialist, Inc. v. Alabanza*, G.R. No. 168985, 23 July 2008, 559 SCRA 550; *Cordova v. Keysa's Boutique*, 507 Phil. 147 (2005); *Gaudia v. NLRC*, 376 Phil. 548 (1999); and *Garais v. NLRC*, 326 Phil. 568 (1996).

We reiterate our pronouncement in *Araneta v. Rodas,*[22] where the Court said that when the law does not clearly provide a rule or norm for the tribunal to follow in deciding a question submitted, but leaves to the tribunal the discretion to determine the case in one way or another, the judge must decide the question in conformity with justice, reason and equity, in view of the circumstances of the case. Applying this doctrine, we rule that petitioner substantially complied with the mandatory requirement of posting an appeal bond for the reasons explained below.

First, there is no question that the appeal was filed within the 10-day reglementary period.[23] Except for the alleged failure to post an appeal bond, the appeal to the NLRC was therefore in order.

Second, it is also undisputed that petitioner has an unencumbered amount of money in the form of cash in the custody of the NLRC. To reiterate, petitioner had posted a *cash* bond of ₱401,610.84 in the separate case *Dangiw Siggaao,* which was earlier decided in its favor. As claimed by petitioner and confirmed by the Judgment Division of the Judicial Records Office of this Court, the Decision of the Court in *Dangiw Siggaao* had become final and executory as of 28 April 2008, or more than seven months before petitioner had to file its appeal in the present case. This fact is shown by the Entry of Judgment on file with the aforementioned office. Hence, the cash bond in that case ought to have been released to petitioner then.

Under the Rule VI, Section 6 of the 2005 NLRC Rules, "[a] cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied." Hence, it is clear that a bond is encumbered and bound to a case only for as long as 1) the case has not been finally decided, resolved or terminated; or 2) the award has not been satisfied. Therefore, once the appeal is finally decided and no award needs to be satisfied, the bond is automatically released. Since the money is now unencumbered, the employer who posted it should now have

[22] 81 Phil. 506 (1948).

[23] NLRC Records, p. 95.

unrestricted access to the cash which he may now use as he pleases – as appeal bond in another case, for instance. This is what petitioner simply did.

Third, the cash bond in the amount of ₱401,610.84 posted in *Dangiw Siggaao* is more than enough to cover the appeal bond in the amount of ₱345,879.45 required in the present case.

Fourth, this ruling remains faithful to the spirit behind the appeal bond requirement which is to ensure that workers will receive the money awarded in their favor when the employer's appeal eventually fails.[24] There was no showing at all of any attempt on the part of petitioner to evade the posting of the appeal bond. On the contrary, petitioner's move showed a willingness to comply with the requirement. Hence, the welfare of Icao is adequately protected.

Moreover, this Court has liberally applied the NLRC Rules and the Labor Code provisions on the posting of an appeal bond in exceptional cases. In *Your Bus Lines v. NLRC*,[25] the Court excused the appellant's failure to post a bond, because it relied on the notice of the decision. While the notice enumerated all the other requirements for perfecting an appeal, it did not include a bond in the list. In *Blancaflor v. NLRC*,[26] the failure of the appellant therein to post a bond was partly caused by the labor arbiter's failure to state the exact amount of monetary award due, which would have been the basis of the amount of the bond to be posted. In *Cabalan Pastulan Negrito Labor Association v. NLRC*,[27] petitioner-appellant was an association of Negritos performing trash-sorting services in the American naval base in Subic Bay. The plea of the association that its appeal be given due course despite its non-posting of a bond, on account of its insolvency and poverty, was granted by this

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[24] *Accessories Specialist, Inc. v. Alabanza*, 581 Phil. 517 (2008), *Roos Industrial Construction, Inc. v. National Labor Relations Commission,* 567 Phil. 631 (2008), *Borja Estate v. Ballad*, 498 Phil. 694 (2005).

[25] 268 Phil. 169, 172 (1990).

[26] G.R. No. 101013, 2 February 1993, 218 SCRA 366, 371.

[27] 311 Phil. 744 (1995).

Court. In *UERM-Memorial Medical Center v. NLRC*,[28] we allowed the appellant-employer to post a property bond in lieu of a cash or surety bond. The assailed judgment involved more than ₱17 million; thus, its execution could adversely affect the economic survival of the employer, which was a medical center.

If in the above-cited cases, the Court found exceptional circumstances that warranted an extraordinary exercise of its power to exempt a party from the rules on appeal bond, there is all the more reason in the present case to find that petitioner substantially complied with the requirement. We emphasize that in this case we are not even exempting petitioner from the rule, as in fact we are enforcing compliance with the posting of an appeal bond. We are simply liberally applying the rules on what constitutes compliance with the requirement, given the special circumstances surrounding the case as explained above.

Having complied with the appeal bond requirement, petitioner's appeal before the NLRC must therefore be reinstated.

Finally, a word of caution. Lest litigants be misled into thinking that they may now wantonly disregard the rules on appeal bond in labor cases, we reiterate the mandatory nature of the requirement. The Court will liberally apply the rules only in very highly exceptional cases such as this, in keeping with the dictates of justice, reason and equity.

WHEREFORE, premises considered, the instant Rule 45 Petition is **GRANTED**. The Court of Appeals Decision dated 27 September 2010 and its Resolution dated 11 March 2011 in CA-G.R. SP. No. 113095, which dismissed petitioner's Rule 65 Petition, are hereby **REVERSED**. Finally, the National Labor Relations Commission Resolutions dated 27 February 2009 and 27 November 2009 are **SET ASIDE,** and the appeal of petitioner before it is hereby **REINSTATED.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr. and *Reyes, JJ.,* concur.

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[28] 336 Phil. 66 (1997).

SPECIAL FIRST DIVISION

[G.R. No. 196156. January 15, 2014]

VISAYAS COMMUNITY MEDICAL CENTER (VCMC), Formerly known as METRO CEBU COMMUNITY HOSPITAL (MCCH), *petitioner, vs.* **ERMA YBALLE, NELIA ANGEL, ELEUTERIA CORTEZ and EVELYN ONG,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; STRIKES AND LOCKOUTS; ILLEGAL STRIKE; DISTINCTION BETWEEN UNION MEMBERS AND UNION OFFICERS.— We stress that the law makes a distinction between union members and union officers. A worker merely participating in an illegal strike may not be terminated from employment. It is only when he commits illegal acts during a strike that he may be declared to have lost employment status. In contrast, a union officer may be terminated from employment for knowingly participating in an illegal strike or participates in the commission of illegal acts during a strike. The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. It possesses the right and prerogative to terminate the union officers from service.

2. ID.; LABOR RELATIONS; ILLEGAL DISMISSAL; BACKWAGES; NOT PROPER IN CASE OF ILLEGAL STRIKE.— As a general rule, back wages are granted to indemnify a dismissed employee for his loss of earnings during the whole period that he is out of his job. Considering that an illegally dismissed employee is not deemed to have left his employment, he is entitled to all the rights and privileges that accrue to him from the employment. The grant of back wages to him is in furtherance and effectuation of the public objectives of the *Labor Code*, and is in the nature of a command to the employer to make a public reparation for his illegal dismissal of the employee in violation of the *Labor Code*. Are respondents then entitled to back wages? This Court, in *G & S Transport Corporation v.*

Infante, ruled in the negative: With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. x x x In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, **the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar**.

3. ID.; ID.; ID.; RULE THAT UNION MEMBERS WHO WERE DISMISSED FOR HAVING PARTICIPATED IN AN ILLEGAL STRIKE ARE ENTITLED TO THE PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT; WHEN PROPER.— The alternative relief for union members who were dismissed for having participated in an illegal strike is the payment of separation pay in lieu of reinstatement under the following circumstances: (*a*) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (*b*) reinstatement is inimical to the employer's interest; (*c*) reinstatement is no longer feasible; (*d*) reinstatement does not serve the best interests of the parties involved; (*e*) the employer is prejudiced by the workers' continued employment; (*f*) facts that make execution unjust or inequitable have supervened; or (*g*) strained relations between the employer and employee.

APPEARANCES OF COUNSEL

Jaime L. Aviola for Heirs of Gloria Arguilles and Romulo Alforque.

Fatima H. Asjali for Amelia Aragon.

Arguedo Pineda & Associates Law Offices for Visayas Community Medical Center.

Armando M. Alforque for NFL and for himself.

Noel O. Bacalla for Nolan Alvin Panal, *et al.*

Jose Vicente M. Arnado for Perla Nava, *et al.*

Cesar A.M. Tabotabo for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

The present petition was included in the four consolidated cases previously decided by this Court.[1] However, its reinstatement and separate disposition became necessary due to oversight in the issuance of the order of consolidation.

The Facts

Respondents were hired as staff nurses (Ong and Angel) and midwives (Yballe and Cortez) by petitioner Visayas Community Medical Center (VCMC), formerly the Metro Cebu Community Hospital, Inc. (MCCHI). MCCHI is a non-stock, non-profit corporation which operates the Metro Cebu Community Hospital (MCCH), a tertiary medical institution owned by the United Church of Christ in the Philippines (UCCP).

Considering the similar factual setting, we quote the relevant portions of the narration of facts in our Decision dated December 7, 2011 in *Abaria v. NLRC*:[2]

> The National Federation of Labor (NFL) is the exclusive bargaining representative of the rank-and-file employees of MCCHI. Under the 1987 and 1991 Collective Bargaining Agreements (CBAs), the signatories were Ciriaco B. Pongasi, Sr. for MCCHI, and Atty. Armando M. Alforque (NFL Legal Counsel) and Paterno A. Lumapguid as President of NFL-MCCH Chapter. In the CBA effective from January 1994 until December 31, 1995, the signatories were Sheila E. Buot as Board of Trustees Chairman, Rev. Iyoy as MCCH Administrator and Atty. Fernando Yu as Legal Counsel of NFL, while Perla Nava, President of Nagkahiusang Mamumuo sa MCCH (NAMA-MCCH-NFL) signed the Proof of Posting.
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> On December 6, 1995, Nava wrote Rev. Iyoy expressing the union's desire to renew the CBA, attaching to her letter a statement of

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[1] *Abaria v. National Labor Relations Commission,* G.R. Nos. 154113, 187778, 187861 & 196156, December 7, 2011, 661 SCRA 686.

[2] *Id.*

proposals signed/endorsed by 153 union members. Nava subsequently requested that the following employees be allowed to avail of one-day union leave with pay on December 19, 1995: Celia Sabas, Jesusa Gerona, Albina Bañez, Eddie Villa, Roy Malazarte, Ernesto Canen, Jr., Guillerma Remocaldo, Catalina Alsado, Evelyn Ong, Melodia Paulin, Sofia Bautista, Hannah Bongcaras, Ester Villarin, Iluminada Wenceslao and Perla Nava. However, MCCHI returned the CBA proposal for Nava to secure first the endorsement of the legal counsel of NFL as the official bargaining representative of MCCHI employees.

Meanwhile, Atty. Alforque informed MCCHI that the proposed CBA submitted by Nava was never referred to NFL and that NFL has not authorized any other legal counsel or any person for collective bargaining negotiations. By January 1996, the collection of union fees (check-off) was temporarily suspended by MCCHI in view of the existing conflict between the federation and its local affiliate. Thereafter, MCCHI attempted to take over the room being used as union office but was prevented to do so by Nava and her group who protested these actions and insisted that management directly negotiate with them for a new CBA. MCCHI referred the matter to Atty. Alforque, NFL's Regional Director, and advised Nava that their group is not recognized by NFL.

In his letter dated February 24, 1996 addressed to Nava, Ernesto Canen, Jr., Jesusa Gerona, Hannah Bongcaras, Emma Remocaldo, Catalina Alsado and Albina Bañez, Atty. Alforque suspended their union membership for serious violation of the Constitution and By-Laws. Said letter states:

x x x x x x x x x

On February 26, 1996, upon the request of Atty. Alforque, MCCHI granted one-day union leave with pay for 12 union members. The next day, several union members led by Nava and her group launched a series of mass actions such as wearing black and red armbands/ headbands, marching around the hospital premises and putting up placards, posters and streamers. Atty. Alforque immediately disowned the concerted activities being carried out by union members which are not sanctioned by NFL. MCCHI directed the union officers led by Nava to submit within 48 hours a written explanation why they should not be terminated for having engaged in illegal concerted activities amounting to strike, and placed them under immediate preventive suspension. Responding to this directive, Nava and her group denied there was a temporary stoppage of work, explaining

that employees wore their armbands only as a sign of protest and reiterating their demand for MCCHI to comply with its duty to bargain collectively. Rev. Iyoy, having been informed that Nava and her group have also been suspended by NFL, directed said officers to appear before his office for investigation in connection with the illegal strike wherein they reportedly uttered slanderous and scurrilous words against the officers of the hospital, threatening other workers and forcing them to join the strike. Said union officers, however, invoked the grievance procedure provided in the CBA to settle the dispute between management and the union.

On March 13 and 19, 1996, the Department of Labor and Employment (DOLE) Regional Office No. 7 issued certifications stating that there is nothing in their records which shows that NAMA-MCCH-NFL is a registered labor organization, and that said union submitted only a copy of its Charter Certificate on January 31, 1995. MCCHI then sent individual notices to all union members asking them to submit within 72 hours a written explanation why they should not be terminated for having supported the illegal concerted activities of NAMA-MCCH-NFL which has no legal personality as per DOLE records. In their collective response/statement dated March 18, 1996, it was explained that the picketing employees wore armbands to protest MCCHI's refusal to bargain; it was also contended that MCCHI cannot question the legal personality of the union which had actively assisted in CBA negotiations and implementation.

On March 13, 1996, NAMA-MCCH-NFL filed a Notice of Strike but the same was deemed not filed for want of legal personality on the part of the filer. The National Conciliation and Mediation Board (NCMB) Region 7 office likewise denied their motion for reconsideration on March 25, 1996. Despite such rebuff, Nava and her group still conducted a strike vote on April 2, 1996 during which an overwhelming majority of union members approved the strike.

Meanwhile, the scheduled investigations did not push through because the striking union members insisted on attending the same only as a group. MCCHI again sent notices informing them that their refusal to submit to investigation is deemed a waiver of their right to explain their side and management shall proceed to impose proper disciplinary action under the circumstances. On March 30, 1996, MCCHI sent termination letters to union leaders and other members who participated in the strike and picketing activities. On April 8, 1996, it also issued a cease-and-desist order to the rest of the striking

employees stressing that the wildcat concerted activities spearheaded by the Nava group is illegal without a valid Notice of Strike and warning them that non-compliance will compel management to impose disciplinary actions against them. For their continued picketing activities despite the said warning, more than 100 striking employees were dismissed effective April 12 and 19, 1996.

Unfazed, the striking union members held more mass actions. The means of ingress to and egress from the hospital were blocked so that vehicles carrying patients and employees were barred from entering the premises. Placards were placed at the hospital's entrance gate stating: "Please proceed to another hospital" and "we are on protest." Employees and patients reported acts of intimidation and harassment perpetrated by union leaders and members. With the intensified atmosphere of violence and animosity within the hospital premises as a result of continued protest activities by union members, MCCHI suffered heavy losses due to low patient admission rates. The hospital's suppliers also refused to make further deliveries on credit.

With the volatile situation adversely affecting hospital operations and the condition of confined patients, MCCHI filed a petition for injunction in the NLRC (Cebu City) on July 9, 1996 (Injunction Case No. V-0006-96). A temporary restraining order (TRO) was issued on July 16, 1996. MCCHI presented 12 witnesses (hospital employees and patients), including a security guard who was stabbed by an identified sympathizer while in the company of Nava's group. MCCHI's petition was granted and a permanent injunction was issued on September 18, 1996 enjoining the Nava group from committing illegal acts mentioned in Art. 264 of the Labor Code.

On August 27, 1996, the City Government of Cebu ordered the demolition of the structures and obstructions put up by the picketing employees of MCCHI along the sidewalk, having determined the same as a public nuisance or nuisance *per se*.

Thereafter, several complaints for illegal dismissal and unfair labor practice were filed by the terminated employees against MCCHI, Rev. Iyoy, UCCP and members of the Board of Trustees of MCCHI.[3]

On August 4, 1999, Executive Labor Arbiter Reynoso A. Belarmino rendered his Decision[4] in the consolidated cases which

[3] *Id.* at 691-697.

[4] CA *rollo*, pp. 216-247.

included NLRC Case No. RAB-VII-02-0309-98 filed by herein respondents. The dispositive portion of said decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the claim of unfair labor practice and illegal dismissal and declaring the termination of the following as an offshoot of the illegal strike: Perla Nava, Catalina Alsado, Albina Bañez, Hannah Bongcaras, Ernesto Canen, Jesusa Gerona and Guillerma Remocaldo but directing the respondent Metro Cebu Community Hospital to pay the herein complainants separation pay in the sum of THREE MILLION EIGHTY FIVE THOUSAND EIGHT HUNDRED NINETY SEVEN and [40]/100 (₱3,085,897.40) detailed as follows:
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> x x x x x x x x x
>
> 79. Erma Yballe
> 6/11/83 – 4/19/96: 12 years, 10 mos. (13 years)
> ₱5,000.00 ÷ 2 x 13 = 32,500.00
>
> 80. Eleuteria Cortez
> 12/13/[74][5] – 4/12/96: 21 years, 4 mos. (21 years)
> ₱5,000.00 ÷ 2 x 21 = 52,500.00
>
> 81. Nelia Angel
> 6/01/88 – 4/12/96: 7 years, 10 mos. (8 years)
> ₱5,000.00 ÷ 2 x 8 = 20,000.00
>
> 82. Evelyn Ong
> 7/07/86 – 4/12/96: 9 years, 9 mos. (10 years)
> ₱5,000.00 ÷ 2 x 10 = 25,000.00
>
> x x x x x x x x x
>
> SO ORDERED.[6]

Executive Labor Arbiter Belarmino ruled that MCCHI and its administrators were not guilty of unfair labor practice. He likewise upheld the termination of complainants union officers who conducted the illegal strike. The rest of the complainants were found to have been illegally dismissed, thus:

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[5] *Rollo*, p. 368.

[6] CA *rollo*, pp. 238-239, 246-247.

We, however, see that the NAMA members deserve a different treatment. As the Court said, members of a union cannot be held responsible for an illegal strike on the sole basis of such membership, or even on an account of their affirmative vote authorizing the same. They become liable only if they actually participated therein (ESSO Phil., Inc. vs. Malayang Manggagawa sa Esso 75 SCRA 73). But the illegality of their participation is placed in a state of doubt they, being merely followers. Under the circumstances, We resort to Art. 4 of the Labor Code favoring the workingman in case of doubt in the interpretation and implementation of laws.

Obviously swayed by the actuations of their leaders, herein complainants ought to be reinstated as a matter of policy but without backwages for they cannot be compensated having skipped work during the illegal strike (*National Federation of Sugar Workers vs. Overseas et al.* 114 SCRA 354). But with their positions already taken over by their replacements and with strained relations between the parties having taken place, We deem it fair that complainants except for the seven officers, should be paid separation pay of one-half (1/2) month for every year of service by the respondent hospital.[7]

Respondents and their co-complainants filed their respective appeals before the National Labor Relations Commission (NLRC) Cebu City. On February 15, 2001, respondents and MCCHI jointly moved to defer resolution of their appeal (NLRC Case No. V-001042-99) in view of a possible compromise. Consequently, in its Decision[8] dated March 14, 2001, the NLRC's Fourth Division (Cebu City) resolved only the appeals filed by respondents' co-complainants. The dispositive portion of said decision reads:

WHEREFORE, premises considered, the decision of the Executive Labor Arbiter dismissing the complaint for unfair labor practice and illegal dismissal is **AFFIRMED with MODIFICATIONS** declaring the dismissal of all the complainants in RAB Case No. 07-02-0394-98 and RAB Case No. 07-03-0596-

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[7] *Id.* at 238.

[8] NLRC records (Vol. II), pp. 617-647. Penned by Commissioner Bernabe S. Batuhan and concurred in by Commissioner Edgardo M. Enerlan. Presiding Commissioner Irenea E. Ceniza took no part.

98 valid and legal. Necessarily, the award of separation pay and attorney's fees are hereby Deleted.

Resolution on RAB Case No. 07-02-0309-98 is hereby Deferred upon Joint Motion of the parties.

SO ORDERED.[9]

The NLRC denied the motion for reconsideration of the above decision under its Resolution[10] dated July 2, 2001.

Having failed to reach a settlement, respondents' counsel filed a motion to resolve their appeal on January 2, 2003. Thus, on March 12, 2003, the NLRC-Cebu City Fourth Division rendered its Decision,[11] as follows:

WHEREFORE, premises considered, the decision of the Executive Labor Arbiter dismissing the complaint for unfair labor practice and illegal dismissal is **AFFIRMED with MODIFICATIONS** declaring all the complainants to have been validly dismissed. Necessarily, the award of separation pay and attorney's fees are hereby Deleted.

SO ORDERED.[12]

In deleting the award of separation pay and attorney's fees, the NLRC emphasized that respondents and their co-complainants are guilty of insubordination, having persisted in their illegal concerted activities even after MCCHI had sent them individual notices that the strike was illegal as it was filed by NAMA-MCCH-NFL which is not a legitimate labor organization. It held that under the circumstances where the striking employees harassed, threatened and prevented non-striking employees and doctors from entering hospital premises, blocked vehicles carrying patients to the hospital premises and caused anxiety to recuperating patients by displaying placards along the corridors of the hospital,

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[9] *Id.* at 647.

[10] *Id.* at 690-691.

[11] CA *rollo*, pp. 156-185. Penned by Commissioner Oscar S. Uy with Commissioner Edgardo M. Enerlan concurring.

[12] *Id.* at 185.

and the resulting decrease in hospital admission, refusal of suppliers to make further deliveries due to fears of violence erupting as a result of picketing, and diminished income due to low admission rates, it would be unfair to saddle MCCHI with the burden of paying separation pay to complainants who were validly dismissed.

Respondents' motion for reconsideration was denied by the NLRC under its Resolution[13] dated April 13, 2004.

Meanwhile, the petition for *certiorari* filed by respondents' co-complainants in the Court of Appeals (CA) Cebu Station (CA-G.R. SP No. 66540) was initially dismissed by the CA's Eighth Division on the ground that out of 88 petitioners only 47 have signed the certification against forum shopping. On motion for reconsideration filed by said petitioners, the petition was reinstated but only with respect to the 47 signatories. Said ruling was challenged by complainants before this Court *via* a petition for review on *certiorari*, docketed as G.R. No. 154113 (*Abaria, et al. v. NLRC, et al.*).[14]

On October 17, 2008, the CA dismissed the petition in CA-G.R. SP No. 66540, as follows:

> **WHEREFORE**, premises considered, judgment is hereby rendered **AFFIRMING** the Decision of the National Labor Relations Commission (NLRC) – Fourth Division dated March 14, 2001 in NLRC Case No. V-001042-99, **WITH MODIFICATIONS** to the effect that (1) the petitioners, except the union officers, shall be awarded separation pay equivalent to one-half (1/2) month pay for every year of service, and (2) petitioner Cecilia Sabas shall be awarded overtime pay amounting to sixty-three (63) hours.
>
> **SO ORDERED**.[15]

The motion for reconsideration and motion for partial reconsideration respectively filed by the complainants and MCCHI

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[13] *Id.* at 187-189.

[14] *Abaria v. National Labor Relations Commission*, *supra* note 1, at 698-699.

[15] *Rollo,* p. 546.

in CA-G.R. SP No. 66540 were likewise denied by the CA.[16] Both parties elevated the case to this Court in separate petitions: G.R. No. 187778 (*Perla Nava, et al. v. NLRC, et al.*) and G.R. No. 187861 (*Metro Cebu Community Hospital v. Perla Nava, et al.*).

Herein respondents also filed in the CA a petition for *certiorari* assailing the March 12, 2003 Decision and April 13, 2004 Resolution of the NLRC, docketed as CA-G.R. SP No. 84998 (Cebu City). By Decision[17] dated November 7, 2008, the CA granted their petition, as follows:

> **WHEREFORE**, the challenged Decision of public respondent dated March 12, 2003 and its Resolution dated April 13, 2004 are hereby **REVERSED AND SET ASIDE**. Private respondent Metro Cebu Community Hospital is ordered to reinstate petitioners Erma Yballe, Eleuteria Cortes, Nelia Angel and Evelyn Ong without loss of seniority rights and other privileges; to pay them their full backwages inclusive of their allowances and other benefits computed from the time of their dismissal up to the time of their actual reinstatement.
>
> No pronouncement as to costs.
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> SO ORDERED.[18]

Petitioner filed a motion for reconsideration which the CA denied in its February 22, 2011 Resolution.[19]

The Case

The present petition (G.R. No. 196156) was filed on April 27, 2011.

Records showed that as early as August 3, 2009, G.R. Nos. 187861 and 187778 were consolidated with G.R. No. 154113

[16] *Id.* at 548-559.

[17] *Id.* at 64-76. Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Franchito N. Diamante and Edgardo L. Delos Santos concurring.

[18] *Id.* at 75.

[19] *Id.* at 62-63. Penned by Associate Justice Edgardo L. Delos Santos with Associate Justices Agnes Reyes-Carpio and Eduardo B. Peralta, Jr. concurring.

pending with the Third Division.[20] As to the present petition, it was initially denied under the June 8, 2011 Resolution[21] issued by the Second Division for failure to show any reversible error committed by the CA. Petitioner filed a motion for reconsideration to which respondents filed an opposition. Said motion for reconsideration of the earlier dismissal (June 8, 2011) remained unresolved by the Second Division which, on June 29, 2011, issued a resolution ordering the transfer of the present case to the Third Division.[22]

It is further recalled that on June 23, 2011, petitioner moved to consolidate the present case with G.R. Nos. 154113, 187861 and 187778 which was opposed by respondents. Under Resolution dated August 1, 2011, the Third Division denied the motion for consolidation, citing the earlier dismissal of the petition on June 8, 2011.[23] However, on motion for reconsideration filed by petitioner, said resolution was set aside on October 19, 2011 and the present case was ordered consolidated with G.R. Nos. 154113, 187778 and 187861 and transferred to the First Division where the latter cases are pending.[24]

On December 7, 2011, the Decision[25] in the consolidated cases (G.R. Nos. 154113, 187778, 187861 and 196156) was rendered, the dispositive portion of which states:

WHEREFORE, the petition for review on *certiorari* in G.R. No. 187861 is DENIED while the petitions in G.R. Nos. 154113, 187778 and 196156 are PARTLY GRANTED. The Decision dated October 17, 2008 of the Court of Appeals in CA-G.R. SP No. 66540 is hereby AFFIRMED with MODIFICATIONS in that MCCHI is ordered to pay the petitioners in G.R. Nos. 154113 and 187778, except the petitioners who are union officers, separation pay

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[20] *Id.* at 500.

[21] *Id.* at 476-477.

[22] *Id.* at 485.

[23] *Id*. at 479-484.

[24] *Id.* at 687.

[25] *Abaria v. National Labor Relations Commission, supra* note 1.

equivalent to one month pay for every year of service, and reasonable attorney's fees in the amount of ₱50,000.00. The Decision dated November 7, 2008 is likewise AFFIRMED with MODIFICATIONS in that MCCHI is ordered to pay the private respondents in G.R. No. 196156 separation pay equivalent to one month pay for every year of service, and that the award of back wages is DELETED.

The case is hereby remanded to the Executive Labor Arbiter for the recomputation of separation pay due to each of the petitioners union members in G.R. Nos. 154113, 187778 and 196156 except those who have executed compromise agreements approved by this Court.

No pronouncement as to costs.

SO ORDERED.[26]

On February 7, 2012, respondents filed a Motion for Reconsideration with Motion for Severance and Remand[27] asserting that they were denied due process as they had no opportunity to file a comment on the petition prior to the rendition of the Decision dated December 7, 2011. They also point out that the issues in the present case are different from those raised in the petitions filed by their co-complainants.

On June 18, 2012, this Court issued a Resolution (1) reinstating the petition and requiring the respondents to file their comment on the petition; and (2) denying the motion for remand to the Second Division.[28] Respondents thus filed their Comment, to which petitioner filed its Reply. Thereafter, the parties submitted their respective memoranda.

Issues

In their Memorandum, respondents submit that since the Decision dated December 7, 2011 in the consolidated cases of *Abaria v. NLRC* have already declared the dismissal of

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[26] *Id.* at 716-717.

[27] *Rollo*, pp. 668-683.

[28] *Id.* at 717-A.

complainants union members as illegal but awarded separation pay and reasonable attorney's fees, the remaining issue to be resolved in this case is whether respondents are entitled to back wages and damages.

Petitioner, however, further assail the CA in (a) allowing respondents to change their theory on appeal, (b) finding that respondents did not commit illegal acts during the strike and (c) increasing the award of separation pay to one month pay for every year of service as held in the December 7, 2011 Decision in view of the damages suffered by petitioner.

Respondents' Argument

Respondents maintain that there was no iota of evidence presented by petitioner that they took part in the illegal strike conducted by the Nava group or committed illegal acts like the blocking of ingress and egress in the hospital premises. They claim that they were never involved in work stoppage but instead were locked out by petitioner as they were unable to resume work because hospital security personnel prevented them from entering the hospital upon petitioner's instructions.

Claiming that they have consistently manifested their non-participation in the illegal strike before the regional arbitration branch, NLRC and the CA, respondents argue that there is absolutely no reason to delete the awards of back wages and separation pay in lieu of reinstatement.

Petitioner's Argument

Petitioner contends that respondents have surreptitiously changed their position from admitting in their pleadings before the NLRC their participation in the illegal strike to that of mere wearing of arm bands and alleged non-receipt of the notices in their appeal before the CA. They stress the established facts on record that: (1) respondents signed the March 18, 1996 collective reply of the union officers and members to the notices sent by petitioner regarding their illegal concerted activities, thus proving that they received the said notices; (2) acknowledged Perla Nava

as their union leader which belies respondents' belated attempt to distance themselves from the Nava group who led the illegal strike; and (3) respondents did not, in their motion for reconsideration of the NLRC Decision dated March 12, 2003, make any denial of their participation in the illegal strike but even justified their resort thereto due to the prevailing labor dispute.

With the Decision in the consolidated cases (*Abaria v. NLRC)* having already upheld the consistent rule that dismissed employees who participated in an illegal strike are not entitled to back wages, petitioner prays that the previous rulings in *Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union,*[29] *G & S Transport Corporation v. Infante*,[30] *Philippine Marine Officers' Guild v. Compañia Maritima, et al.,*[31] and *Escario v. National Labor Relations Commission (Third Division)*[32] be likewise applied in this case.

Our Ruling

The petition is partly meritorious.

Paragraph 3, Article 264(a) of the Labor Code provides that ". . .[a]ny *union officer* who knowingly participates in an illegal strike and any *worker* or union officer who knowingly participates in the commission of *illegal act*s during a strike may be declared to have lost his employment status . . ."

In the Decision dated December 7, 2011, we declared as invalid the dismissal of MCCH employees who participated in the illegal strike conducted by NAMA-MCCH-NFL which is not a legitimate labor organization. Since there was no showing that the complainants committed any illegal act during the strike,

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[29] 526 Phil. 679 (2006).

[30] 559 Phil. 701 (2007).

[31] 131 Phil. 218 (1968).

[32] G.R. No. 160302, September 27, 2010, 631 SCRA 261.

they may not be deemed to have lost their employment status by their mere participation in the illegal strike. On the other hand, the union leaders (Nava group) who conducted the illegal strike despite knowledge that NAMA-MCCH-NFL is not a duly registered labor union were declared to have been validly terminated by petitioner.

We stress that the law makes a distinction between union members and union officers. A worker merely participating in an illegal strike may not be terminated from employment. It is only when he commits illegal acts during a strike that he may be declared to have lost employment status.[33] In contrast, a union officer may be terminated from employment for knowingly participating in an illegal strike or participates in the commission of illegal acts during a strike. The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. It possesses the right and prerogative to terminate the union officers from service.[34]

In this case, the NLRC affirmed the finding of the Labor Arbiter that respondents supported and took part in the illegal strike and further declared that they were guilty of insubordination. It noted that the striking employees were determined to force management to negotiate with their union and proceeded with the strike despite knowledge that NAMA-MCCH-NFL is not a legitimate labor organization and without regard to the consequences of their acts consisting of displaying placards and marching noisily inside the hospital premises, and blocking the entry of vehicles and persons.

On appeal, the CA reversed the rulings of the Labor Arbiter and NLRC, ordered the reinstatement of respondents and the payment of their full back wages. The CA found that respondents' participation was limited to the wearing of armband and thus, citing *Bascon v. CA*,[35] declared respondents' termination as

[33] *Sta. Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc.,* 541 Phil. 421, 440-441 (2007).

[34] *Id.* at 441.

[35] 466 Phil. 719 (2004).

invalid in the absence of any evidence that they committed any illegal act during the strike.

In the Decision dated December 7, 2011, we likewise ruled that the mass termination of complainants was illegal, notwithstanding the illegality of the strike in which they participated. However, since reinstatement was no longer feasible, we ordered MCCHI to pay the dismissed employees separation pay equivalent to one month pay for every year of service. The claim for back wages was denied, consistent with existing law and jurisprudence.

Respondents argue that the CA correctly awarded them back wages because while they "supported the protest action" they were not part of the Nava group who were charged with blocking the free ingress and egress of the hospital, threatening and harassing persons entering the premises, and making boisterous and unpleasant remarks. They deny any participation in the illegal strike and assert that no evidence of their actual participation in the strike was shown by petitioner.

We are not persuaded by respondents' attempt to dissociate themselves from the Nava group who led the illegal strike. In their motion for reconsideration filed before the NLRC, respondents no longer denied having participated in the strike but simply argued that no termination of employment in connection with the strike "staged by complainants" cannot be legally sustained because MCCHI "did not file a complaint or petition to declare the strike of complainants illegal or declare that illegal acts were committed in the conduct of the strike." Respondents further assailed the NLRC's finding that they were guilty of insubordination since "the proximate cause of the acts of complainants was the prevailing labor dispute and the consequent resort by complainants of *[sic]* a strike action."[36] When the case was elevated to the CA, respondents shifted course and again insisted that they did *not* participate in the strike nor receive the March 15, 1996 individual notices sent by petitioner to the striking employees.

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[36] CA *rollo*, pp. 259-260.

Respondents' inconsistent posture cannot be sanctioned. While there was indeed no evidence of any illegal act committed by respondents during the strike, the Labor Arbiter and NLRC were one in finding that respondents actively supported the concerted protest activities, signed the collective reply of union members manifesting that they launched the mass actions to protest management's refusal to negotiate a new CBA, refused to appear in the investigations scheduled by petitioner because it was the union's stand that they would only attend these investigations as a group, and failed to heed petitioner's final directive for them to desist from further taking part in the illegal strike. The CA, on the other hand, found that respondents' participation in the strike was limited to the wearing of armbands. Since an ordinary striking worker cannot be dismissed for such mere participation in the illegal strike, the CA correctly ruled that respondents were illegally dismissed. However, the CA erred in awarding respondents full back wages and ordering their reinstatement despite the prevailing circumstances.

As a general rule, back wages are granted to indemnify a dismissed employee for his loss of earnings during the whole period that he is out of his job. Considering that an illegally dismissed employee is not deemed to have left his employment, he is entitled to all the rights and privileges that accrue to him from the employment.[37] The grant of back wages to him is in furtherance and effectuation of the public objectives of the *Labor Code*, and is in the nature of a command to the employer to make a public reparation for his illegal dismissal of the employee in violation of the *Labor Code*.[38]

Are respondents then entitled to back wages? This Court, in *G & S Transport Corporation v. Infante,*[39] ruled in the negative:

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[37] *Escario v. National Labor Relations Commission (Third Division), supra* note 32, at 272-273, citing *Gold City Integrated Port Service, Inc. v. NLRC*, 315 Phil. 698 (1995) and *Cristobal v. Melchor*, 189 Phil. 658 (1980).

[38] *Id.* at 273, citing *Imperial Textile Mills, Inc. v. National Labor Relations Commission*, G.R. No. 101527, January 19, 1993, 217 SCRA 237, 247.

[39] *Supra* note 30, at 714.

With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working. x x x In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, **the Court stressed that for this exception to apply, it is required that the strike be legal, a situation that does not obtain in the case at bar**. (Emphasis supplied)

The alternative relief for union members who were dismissed for having participated in an illegal strike is the payment of separation pay in lieu of reinstatement under the following circumstances: (*a*) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (*b*) reinstatement is inimical to the employer's interest; (*c*) reinstatement is no longer feasible; (*d*) reinstatement does not serve the best interests of the parties involved; (*e*) the employer is prejudiced by the workers' continued employment; (*f*) facts that make execution unjust or inequitable have supervened; or (*g*) strained relations between the employer and employee.[40]

In the Decision dated December 7, 2011, we held that the grant of separation pay to complainants is the appropriate relief under the circumstances, thus:

Considering that 15 years had lapsed from the onset of this labor dispute, and in view of strained relations that ensued, in addition to the reality of replacements already hired by the hospital which had apparently recovered from its huge losses, and with many of the petitioners either employed elsewhere, already old and sickly, or otherwise incapacitated, separation pay without back wages is the appropriate relief. x x x[41]

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[40] *Escario v. National Labor Relations Commission (Third Division*), *supra* note 32, at 275.

[41] *Supra* note 1, at 715.

In fine, we sustain the CA in ruling that respondents who are mere union members were illegally dismissed for participating in the illegal strike conducted by the Nava group. However, we set aside the order for their reinstatement and payment of full back wages.

WHEREFORE, the petition is **PARTLY GRANTED.** The Decision dated November 7, 2008 and Resolution dated February 22, 2011 of the Court of Appeals in CA-G.R. SP No. 84998 are hereby **AFFIRMED** with **MODIFICATIONS**. In lieu of reinstatement, petitioner Visayas Community Medical Center (formerly known as the Metro Cebu Community Hospital) is ordered to **PAY** respondents Erma Yballe, Evelyn Ong, Nelia Angel and Eleuteria Cortez separation pay equivalent to one month pay for every year of service. The award of back wages to the said respondents is **DELETED.**

The case is hereby remanded to the Executive Labor Arbiter for the recomputation of separation pay due to each of the respondents.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Bersamin, del Castillo,* and *Leonen,*[**] *JJ.,* concur.

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[*] Designated Acting Chairperson per Special Order No. 1226 dated May 30, 2012.

[**] Designated additional member pursuant to the third paragraph, Section 7, Rule 2 of the Internal Rules of the Supreme Court.

FIRST DIVISION

[G.R. No. 196171. January 15, 2014]

RCBC CAPITAL CORPORATION, *petitioner, vs.* **BANCO DE ORO UNIBANK, INC. (now BDO UNIBANK, INC.),** *respondent.*

[G.R. No. 199238. January 15, 2014]

BANCO DE ORO UNIBANK, INC., *petitioner, vs.* **COURT OF APPEALS and RCBC CAPITAL CORPORATION,** *respondents.*

[G.R. No. 200213. January 15, 2014]

BANCO DE ORO UNIBANK, INC., *petitioner, vs.* **RCBC CAPITAL CORPORATION and THE ARBITRAL TRIBUNAL IN ICC ARBITRATION REF. NO. 13290/ MS/JEM AND/OR RICHARD IAN BARKER, NEIL KAPLAN and SANTIAGO KAPUNAN, in their official capacity as Members of THE ARBITRATION TRIBUNAL,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; THREE PETITIONS DISMISSED WITH PREJUDICE AND DEEMED CLOSED AND TERMINATED IN VIEW OF THEIR CONSOLIDATION.— Before the Court are x x x three petitions emanated from arbitration proceedings commenced by RCBC Capital pursuant to the arbitration clause under its Share Purchase Agreement (SPA) with EPCIB involving the latter's shares in Bankard, Inc. In the course of arbitration conducted by the Tribunal constituted and administered by the International Chamber of Commerce-International Commercial Arbitration (ICC-ICA), EPCIB was merged with BDO which assumed all its liabilities and obligations. x x x Under this Court's Resolution dated November 27, 2013, G.R. No. 200213 is ordered consolidated with G.R. Nos. 196171 & 199238.

IN VIEW OF THE FOREGOING and as prayed for, G.R. Nos. 196171, 199238 and 200213 are hereby ordered **DISMISSED** with prejudice and are deemed **CLOSED** and **TERMINATED.**

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for RCBC.
Divina Law for Go and the individual shareholders.
Kapunan Tamano Villadolid & Associates for Arbital Tribunal.
Belo Gozon Parel Asuncion & Lucila for BDO Unibank.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

Before the Court are: (1) the *Joint Motion and Manifestation* dated October 1, 2013 filed in **G.R. Nos. 196171** & **199238** by RCBC Capital Corporation ("RCBC Capital"), BDO Unibank, Inc. ("BDO"), and George L. Go, in his personal capacity and as attorney-in-fact of the individual stockholders as listed in the Share Purchase Agreement dated May 27, 2000 ("Go/ Shareholders"), thru their respective counsels; and (2) the *Joint Motion and Manifestation* dated October 1, 2013 filed in **G.R. No. 200213** by BDO and RCBC Capital thru their respective counsel.

All three petitions emanated from arbitration proceedings commenced by RCBC Capital pursuant to the arbitration clause under its Share Purchase Agreement (SPA) with EPCIB involving the latter's shares in Bankard, Inc. In the course of arbitration conducted by the Tribunal constituted and administered by the International Chamber of Commerce-International Commercial Arbitration (ICC-ICA), EPCIB was merged with BDO which assumed all its liabilities and obligations.

G.R. No. 196171 is a petition for review under Rule 45 seeking to reverse the Court of Appeals (CA) Decision dated December 23, 2010 in CA-G.R. SP No. 113525 which reversed and set aside the June 24, 2009 Order of the Regional Trial Court (RTC)

of Makati City, Branch 148 in SP Proc. Case No. M-6046. The RTC confirmed the Second Partial Award issued by the Arbitration Tribunal ordering BDO to pay RCBC Capital proportionate share in the advance costs and dismissing BDO's counterclaims.

G.R. No. 199238 is a petition for *certiorari* under Rule 65 assailing the September 13, 2011 Resolution in CA-G.R. SP No. 120888 which denied BDO's application for the issuance of a stay order and/or temporary restraining order (TRO)/ preliminary injunction against the RTC of Makati City, Branch 148 in Sp. Proc. Case No. M-6046. Acting upon RCBC Capital's urgent motion, the RTC issued on August 22, 2011 a writ of execution for the implementation of the court's order confirming the Final Award rendered by the Arbitration Tribunal on June 16, 2010.

On the other hand, G.R. No. 200213, filed on February 6, 2012, is a petition for review under Rule 45 praying for the reversal of the CA's Decision dated February 24, 2011 and Resolution dated January 13, 2012 in CA-G.R. SP No. 113402. The CA denied BDO's petition for *certiorari* and prohibition with application for issuance of a TRO and/or writ of preliminary injunction against the RTC of Makati City, Branch 148 in Sp. Proc. Case No. M-6046. By Order dated June 24, 2009, the RTC denied BDO's motion for access of the computerized accounting system of Bankard, Inc. after Chairman Richard Ian Barker had denied BDO's request that it be given access to the said source of facts or data used in preparing the accounting summaries submitted in evidence before the Arbitration Tribunal.

G.R. Nos. 196171 & 199238 were consolidated and a Decision was rendered by this Court on December 10, 2012, the dispositive portion of which states:

WHEREFORE, premises considered, the petition in G.R. No. 199238 is DENIED. The Resolution dated September 13, 2011 of the Court of Appeals in CA-G.R. SP No. 120888 is AFFIRMED.

The petition in G.R. No. 196171 is DENIED. The Decision dated December 23, 2010 of the Court of Appeals in CA-G.R. SP No. 113525 is hereby AFFIRMED.

SO ORDERED.[1]

Both RCBC Capital and BDO filed motions for partial reconsideration of the above decision.

Meanwhile, in G.R. No. 200213, RCBC Capital filed its Comment, to which a Reply was filed by BDO. By Resolution dated July 22, 2013, both parties were directed to submit their respective memoranda within 30 days from notice.

In their Joint Motion and Manifestation filed in G.R. Nos. 196171 & 199238, the parties submit and pray that –

5. After negotiations, the Parties have mutually agreed that it is in their best interest and general benefit to settle their differences with respect to their respective causes of action, claims or counterclaims in the RCBC Capital Petition and the BDO Petition, with a view to a renewal of their business relations.

6. Thus, the parties have reached a complete, absolute and final settlement of their claims, demands, counterclaims and causes of action arising, directly or indirectly, from the facts and circumstances giving rise to, surrounding or arising from both Petitions, and have agreed to jointly terminate and dismiss the same in accordance with their agreement.

7. In view of the foregoing compromise between the Parties, BDO, RCBC Capital and Go/Shareholders, with the assistance of their respective counsels, have decided to jointly move for the termination and dismissal of the above-captioned cases with prejudice.

PRAYER

WHEREFORE, RCBC CAPITAL CORPORATION, BDO UNIBANK, INC. and GEORGE L. GO, IN HIS PERSONAL CAPACITY AND AS ATTORNEY-IN-FACT OF THE INDIVIDUAL STOCKHOLDERS AS LISTED IN THE SHARE PURCHASE AGREEMENT DATED 27 MAY 2000 respectfully pray that this

[1] *RCBC Capital Corporation v. Banco de Oro Unibank, Inc.*, 687 SCRA 583, 629-630.

Honorable Court order the termination and dismissal of the above-captioned cases, with prejudice.

RCBC Capital BDO and Go/Shareholders respectfully pray for such other relief as may be deemed just or equitable under the premises.[2]

BDO and RCBC Capital likewise submit and pray in their Joint Motion and Manifestation in G.R. No. 200213 that –

3. After negotiations, the Parties have mutually agreed that it is in their best interest and general benefit to settle their differences with respect to their respective causes of action, claims or counterclaims in the above-captioned case, with a view to a renewal of their business relations.

4. Thus, the Parties have reached a complete, absolute and final settlement of their claims, demands, counterclaims and causes of action arising, directly or indirectly, from the facts and circumstances giving rise to, surrounding or arising from the present Petition, and have agreed to jointly terminate and dismiss the present Petition in accordance with their agreement.

5. In view of the foregoing compromise between the Parties, BDO and RCBC Capital, with the assistance of their respective counsels, have decided to jointly move for the termination and dismissal of the above-captioned case with prejudice.

PRAYER

WHEREFORE, BDO UNIBANK, INC. and RCBC CAPITAL CORPORATION respectfully pray that this Honorable Court order the termination and dismissal of the above-captioned case, with prejudice.

BDO and RCBC Capital respectfully pray for such other relief as may be deemed just or equitable under the premises.[3]

Under this Court's Resolution dated November 27, 2013, G.R. No. 200213 is ordered consolidated with G.R. Nos. 196171 & 199238.

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[2] *Rollo* (G.R. No. 196171), pp. 3403-3404.

[3] *Rollo* (G.R. No. 200213), p. 3581.

IN VIEW OF THE FOREGOING and as prayed for, G.R. Nos. 196171, 199238 and 200213 are hereby ordered **DISMISSED** with prejudice and are deemed **CLOSED** and **TERMINATED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 198729-30. January 15, 2014]

CBK POWER COMPANY LIMITED, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; REFUNDS OR TAX CREDITS OF INPUT TAX; PETITIONER'S SALES TO NPC ARE EFFECTIVELY SUBJECT TO ZERO PERCENT (0%) VAT.— [P]etitioner filed its claim for refund [under] SEC. 112 [on] Refunds or Tax Credits of Input Tax of the NIRC. x x x As aptly ruled by the CTA Special Second Division, petitioner's sales to NPC are effectively subject to zero percent (0%) VAT. The NPC is an entity with a special charter, which categorically exempts it from the payment of any tax, whether direct or indirect, including VAT. Thus, services rendered to NPC by a VAT-registered entity are effectively zero-rated. In fact, the BIR itself approved the application for zero-rating on 29 December 2004, filed by petitioner for its sales to NPC covering January to October 2005. As a consequence, petitioner claims for the

refund of the alleged excess input tax attributable to its effectively zero-rated sales to NPC. In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, this Court ruled: Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer. x x x [W]e are constrained to apply the dispositions therein to the facts herein which are similar.

2. ID.; ID.; ID.; PRESCRIPTIVE PERIOD; CLAIM FOR REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE MUST BE APPLIED AFTER THE CLOSE OF THE TAXABLE QUARTER WHEN THE RELEVANT SALES WERE MADE, *REGARDLESS OF WHEN THE INPUT VAT WAS PAID*.— Section 112(A) provides that after the close of the taxable quarter when the sales were made, there is a two-year prescriptive period within which a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax. Our VAT Law provides for a mechanism that would allow VAT-registered persons to recover the excess input taxes over the output taxes they had paid in relation to their sales. For the refund or credit of excess or unutilized input tax, Section 112 is the governing law. Given the distinctive nature of creditable input tax, the law under Section 112 (A) provides for a different reckoning point for the two-year prescriptive period, specifically for the refund or credit of that tax only. x x x The reckoning frame would always be the end of the quarter when the pertinent sale or transactions were made, regardless of when the input VAT was paid.

3. ID.; ID.; ID.; CIR HAS 120 DAYS TO DECIDE AN ADMINISTRATIVE CLAIM FROM THE DATE OF SUBMISSION OF COMPLETE DOCUMENTS; CIR's DECISION OR INACTION MAY BE APPEALED TO THE

CTA WITHIN 30 DAYS; ELUCIDATED.— Section 112(D) further provides that the CIR has to decide on an administrative claim within one hundred twenty (120) days from the date of submission of complete documents in support thereof. x x x Thereafter, the taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or from the expiration of the 120-day period within which the claim has not been acted upon. Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, compliance with both periods is jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA.

4. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-CONTRACTS; PRINCIPLE OF *SOLUTIO INDEBITI*; NOT APPLICABLE TO A REFUND OF EXCESS INPUT VAT.— According to the principle of *solutio indebiti*, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In that situation, a creditor-debtor relationship is created under a quasi-contract, whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive the payment becomes obligated to return it. The quasi-contract of *solutio indebiti* is based on the ancient principle that no one shall enrich oneself unjustly at the expense of another. There is *solutio indebiti* when: (1) Payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) Payment is made through mistake, and not through liberality or some other cause. Though the principle of *solutio indebiti* may be applicable to some instances of claims for a refund, the elements thereof are wanting in this case. *First*, there exists a binding relation between petitioner and the CIR, the former being a taxpayer obligated to pay VAT. *Second*, the payment of input tax was not made through mistake, since petitioner was legally obligated to pay for that liability. The entitlement to a refund or credit of excess input tax is solely based on the distinctive nature of the VAT system. At the time of payment of the input VAT, the amount paid was correct and proper. Finally, equity, which has been aptly described as "a justice outside legality," is applied only in the absence of, and

never against, statutory law or judicial rules of procedure. Section 112 is a positive rule that should preempt and prevail over all abstract arguments based only on equity. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit.

APPEARANCE OF COUNSEL

V.C. Mamalateo & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by CBK Power Company Limited (petitioner). The Petition assails the Decision[2] dated 27 June 2011 and Resolution[3] dated 16 September 2011 of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in C.T.A. EB Nos. 658 and 659. The assailed Decision and Resolution reversed and set aside the Decision[4] dated 3 March 2010 and Resolution[5] dated 6 July 2010 rendered by the CTA Special Second Division in C.T.A. Case No. 7621, which partly granted the claim of petitioner for the issuance of a tax credit certificate representing the latter's alleged unutilized input taxes on local

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[1] *Rollo*, pp. 94-160.

[2] *Id.* at 11-36; penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda Jr., Erlinda P. Uy and Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia Contangco-Manalastas with Associate Justice Lovell R. Bautista dissenting.

[3] *Id.* at 39-42.

[4] *Id.* at 63-83; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda Jr. and Olga Palanca-Enriquez.

[5] *Id.* at 85-92.

purchases of goods and services attributable to effectively zero-rated sales to National Power Corporation (NPC) for the second and third quarters of 2005.

THE FACTS

Petitioner is engaged, among others, in the operation, maintenance, and management of the Kalayaan II pumped-storage hydroelectric power plant, the new Caliraya Spillway, Caliraya, Botocan; and the Kalayaan I hydroelectric power plants and their related facilities located in the Province of Laguna.[6]

On 29 December 2004, petitioner filed an Application for VAT Zero-Rate with the Bureau of Internal Revenue (BIR) in accordance with Section 108(B)(3) of the National Internal Revenue Code (NIRC) of 1997, as amended. The application was duly approved by the BIR. Thus, petitioner's sale of electricity to the NPC from 1 January 2005 to 31 October 2005 was declared to be entitled to the benefit of effectively zero-rated value added tax (VAT).[7]

Petitioner filed its administrative claims for the issuance of tax credit certificates for its alleged unutilized input taxes on its purchase of capital goods and alleged unutilized input taxes on its local purchases and/or importation of goods and services, other than capital goods, pursuant to Sections 112(A) and (B) of the NIRC of 1997, as amended, with BIR Revenue District Office (RDO) No. 55 of Laguna, as follows:[8]

Period Covered	Date Of Filing
1st quarter of 2005	30-Jun-05
2nd quarter of 2005	15-Sep-05
3rd quarter of 2005	28-Oct-05

[6] *Id.* at 98-99; Petition for Review on *Certiorari* Under Rule 45 of the Revised Rules of Court.

[7] *Id.* at 220; CTA Special Second Division Decision.

[8] *Id.* at 221.

Alleging inaction of the Commissioner of Internal Revenue (CIR), petitioner filed a Petition for Review with the CTA on 18 April 2007.

THE CTA SPECIAL SECOND DIVISION RULING

After trial on the merits, the CTA Special Second Division rendered a Decision on 3 March 2010.

Applying *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation* (*Mirant*),[9] the court *a quo* ruled that petitioner had until the following dates within which to file both administrative and judicial claims:

Taxable Quarter		**Last Day to File Claim for Refund**
2005	**Close of the quarter**	
1st quarter	31-Mar-05	31-Mar-07
2nd quarter	30-Jun-05	30-Jun-07
3rd quarter	30-Sep-05	30-Sep-07

Accordingly, petitioner timely filed its administrative claims for the three quarters of 2005. However, considering that the judicial claim was filed on 18 April 2007, the CTA Division denied the claim for the first quarter of 2005 for having been filed out of time.

After an evaluation of petitioner's claim for the second and third quarters of 2005, the court *a quo* partly granted the claim and ordered the issuance of a tax credit certificate in favor of petitioner in the reduced amount of ₱27,170,123.36.

The parties filed their respective Motions for Partial Reconsideration, which were both denied by the CTA Division.

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[9] G.R. No. 172129, 12 September 2008, 565 SCRA 154.

THE CTA *EN BANC* RULING

On appeal, relying on *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.* (*Aichi*),[10] the CTA *En Banc* ruled that petitioner's judicial claim for the first, second, and third quarters of 2005 were belatedly filed.

The CTA Special Second Division Decision and Resolution were reversed and set aside, and the Petition for Review filed in CTA Case No. 7621 was dismissed. Petitioner's Motion for Reconsideration was likewise denied for lack of merit.

Hence, this Petition.

ISSUE

Petitioner's assigned errors boil down to the principal issue of the applicable prescriptive period on its claim for refund of unutilized input VAT for the first to third quarters of 2005.[11]

THE COURT'S RULING

The pertinent provision of the NIRC at the time when petitioner filed its claim for refund provides:

SEC. 112. Refunds or Tax Credits of Input Tax. –

(A) Zero-rated or Effectively Zero-rated Sales. - Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1),(2) and (B) and Section 108 (B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-

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[10] G.R. No. 184823, 6 October 2010, 632 SCRA 422.

[11] *Supra* note 6, at 116-117.

rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Petitioner's sales to NPC are effectively zero-rated

As aptly ruled by the CTA Special Second Division, petitioner's sales to NPC are effectively subject to zero percent (0%) VAT. The NPC is an entity with a special charter, which categorically exempts it from the payment of any tax, whether direct or indirect, including VAT. Thus, services rendered to NPC by a VAT-registered entity are effectively zero-rated. In fact, the BIR itself approved the application for zero-rating on 29 December 2004, filed by petitioner for its sales to NPC covering January to October 2005.[12] As a consequence, petitioner claims for the refund of the alleged excess input tax attributable to its effectively zero-rated sales to NPC.

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[12] *Supra* note 7, at 220, 231-233.

In *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*,[13] this Court ruled:

> Under the 1997 NIRC, if at the end of a taxable quarter the seller charges output taxes equal to the input taxes that his suppliers passed on to him, no payment is required of him. It is when his output taxes exceed his input taxes that he has to pay the excess to the BIR. If the input taxes exceed the output taxes, however, the excess payment shall be carried over to the succeeding quarter or quarters. Should the input taxes result from zero-rated or effectively zero-rated transactions or from the acquisition of capital goods, any excess over the output taxes shall instead be refunded to the taxpayer.

The crux of the controversy arose from the proper application of the prescriptive periods set forth in Section 112 of the NIRC of 1997, as amended, and the interpretation of the applicable jurisprudence.

Although the *ponente* in this case expressed a different view on the mandatory application of the 120+30 day period as prescribed in Section 112, with the finality of the Court's pronouncement on the consolidated tax cases *Commissioner of Internal Revenue v. San Roque Power Corporation, Taganito Mining Corporation v. Commissioner of Internal Revenue, and Philex Mining Corporation v. Commissioner of Internal Revenue* [14] (hereby collectively referred as *San Roque*), we are constrained to apply the dispositions therein to the facts herein which are similar.

Administrative Claim

Section 112(A) provides that after the close of the taxable quarter when the sales were made, there is a two-year prescriptive period within which a VAT-registered person whose sales are zero-rated or effectively zero-rated may apply for the issuance of a tax credit certificate or refund of creditable input tax.

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[13] G.R. No. 178090, 8 February, 2010, 612 SCRA 28, 34, citing *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317, 333 (2005).

[14] G.R. Nos. 187485, 196113 and 197156, 12 February 2013.

Our VAT Law provides for a mechanism that would allow VAT-registered persons to recover the excess input taxes over the output taxes they had paid in relation to their sales. For the refund or credit of excess or unutilized input tax, Section 112 is the governing law. Given the distinctive nature of creditable input tax, the law under Section 112 (A) provides for a different reckoning point for the two-year prescriptive period, specifically for the refund or credit of that tax only.

We agree with petitioner that *Mirant* was not yet in existence when their administrative claim was filed in 2005; thus, it should not retroactively be applied to the instant case.

However, the fact remains that Section 112 is the controlling provision for the refund or credit of input tax during the time that petitioner filed its claim with which they ought to comply. It must be emphasized that the Court merely clarified in *Mirant* that Sections 204 and 229, which prescribed a different starting point for the two-year prescriptive limit for filing a claim for a refund or credit of excess input tax, were not applicable. Input tax is neither an erroneously paid nor an illegally collected internal revenue tax.[15]

Section 112(A) is clear that for VAT-registered persons whose sales are zero-rated or effectively zero-rated, a claim for the refund or credit of creditable input tax that is due or paid, and that is attributable to zero-rated or effectively zero-rated sales, must be filed within two years after the close of the taxable quarter when such sales were made. The reckoning frame would always be the end of the quarter when the pertinent sale or transactions were made, regardless of when the input VAT was paid.[16]

Pursuant to Section 112(A), petitioner's administrative claims were filed well within the two-year period from the close of the taxable quarter when the effectively zero-rated sales were made, to wit:

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[15] *Supra* note 9.

[16] *Id*.

Period Covered	Close of the Taxable Quarter	Last day to File Administrative Claim	Date of Filing
1st quarter 2005	31-Mar-05	31-Mar-07	30-Jun-05
2nd quarter 2005	30-Jun-05	30-Jun-07	15-Sep-05
3rd quarter 2005	30-Sep-05	30-Sep-07	28-Oct-05

Judicial Claim

Section 112(D) further provides that the CIR has to decide on an administrative claim within one hundred twenty (120) days from the date of submission of complete documents in support thereof.

Bearing in mind that the burden to prove entitlement to a tax refund is on the taxpayer, it is presumed that in order to discharge its burden, petitioner had attached complete supporting documents necessary to prove its entitlement to a refund in its application, absent any evidence to the contrary.

Thereafter, the taxpayer affected by the CIR's decision or inaction may appeal to the CTA within 30 days from the receipt of the decision or from the expiration of the 120-day period within which the claim has not been acted upon.

Considering further that the 30-day period to appeal to the CTA is dependent on the 120-day period, compliance with both periods is jurisdictional. The period of 120 days is a prerequisite for the commencement of the 30-day period to appeal to the CTA.

Prescinding from *San Roque* in the consolidated case *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue and Mindanao I Geothermal Partnership v. Commissioner of Internal Revenue*,[17] this Court has ruled thus:

> Notwithstanding a strict construction of any claim for tax exemption or refund, **the Court in San Roque recognized that BIR Ruling**

[17] G.R. Nos. 193301 and 194637, 11 March 2013.

No. DA-489-03 constitutes equitable estoppel in favor of taxpayers. **BIR Ruling No. DA-489-03 expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."** This Court discussed BIR Ruling No. DA-489-03 and its effect on taxpayers, thus:

> Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the Atlas doctrine by Mirant and Aichi is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the Atlas doctrine did not result in Atlas, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under Atlas prior to its abandonment. This Court is applying Mirant and Aichi prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. x x x.
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> x x x x x x x x x
>
> Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer. BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency asked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.
>
> Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December

> 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional. (Emphasis supplied)

In applying the foregoing to the instant case, we consider the following pertinent dates:

Period Covered	Administrative Claim Filed	Expiration of 120-days	Last day to file Judicial Claim	Judicial Claim Filed
1st quarter 2005	30-Jun-05	28-Oct-05	27-Nov-05	18-Apr-07
2nd quarter 2005	15-Sep-05	13-Jan-06	13-Feb-06	
3rd quarter 2005	28-Oct-05	26-Feb-06	28-Mar-06	

It must be emphasized that this is not a case of premature filing of a judicial claim. Although petitioner did not file its judicial claim with the CTA prior to the expiration of the 120-day waiting period, it failed to observe the 30-day prescriptive period to appeal to the CTA counted from the lapse of the 120-day period.

Petitioner is similarly situated as *Philex* in the same case, *San Roque,*[18] in which this Court ruled:

> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim **long after** the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. **In any event, whether governed by jurisprudence before, during, or after the *Atlas* case, Philex's judicial claim will have to be rejected because of late filing.** Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.

[18] *Supra* note 14.

The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The **inaction** of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences. (Emphases in the original)

Likewise, while petitioner filed its administrative and judicial claims during the period of applicability of BIR Ruling No. DA-489-03, it cannot claim the benefit of the exception period as it did not file its judicial claim prematurely, but did so long after the lapse of the 30-day period following the expiration of the 120-day period. Again, BIR Ruling No. DA-489-03 allowed premature filing of a judicial claim, which means non-exhaustion of the 120-day period for the Commissioner to act on an administrative claim,[19] but not its late filing.

As this Court enunciated in *San Roque*, petitioner cannot rely on *Atlas* either, since the latter case was promulgated only on 8 June 2007. Moreover, the doctrine in *Atlas* which reckons the two-year period from the date of filing of the return and payment of the tax, does not interpret " expressly or impliedly " the 120+30 day periods.[20] Simply stated, *Atlas* referred only to the reckoning of the prescriptive period for filing an administrative claim.

For failure of petitioner to comply with the 120+30 day mandatory and jurisdictional period, petitioner lost its right to claim a refund or credit of its alleged excess input VAT.

With regard to petitioner's argument that *Aichi* should not be applied retroactively, we reiterate that even without that

[19] *Id.*

[20] *Id.*

ruling, the law is explicit on the mandatory and jurisdictional nature of the 120+30 day period.

Also devoid of merit is the applicability of the principle of *solutio indebiti* to the present case. According to this principle, if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In that situation, a creditor-debtor relationship is created under a quasi-contract, whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive the payment becomes obligated to return it.[21] The quasi-contract of *solutio indebiti* is based on the ancient principle that no one shall enrich oneself unjustly at the expense of another.[22]

There is *solutio indebiti* when:

(1) Payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and

(2) Payment is made through mistake, and not through liberality or some other cause.[23]

Though the principle of *solutio indebiti* may be applicable to some instances of claims for a refund, the elements thereof are wanting in this case.

First, there exists a binding relation between petitioner and the CIR, the former being a taxpayer obligated to pay VAT.

Second, the payment of input tax was not made through mistake, since petitioner was legally obligated to pay for that liability. The entitlement to a refund or credit of excess input tax is solely based on the distinctive nature of the VAT system. At

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[21] *Siga-an v. Villanueva*, G.R. No. 173227, 20 January 2009, 576 SCRA 696, 708.

[22] *Id.*, citing *Moreño-Lentfer v. Wolff*, 484 Phil. 552, 559-560 (2004).

[23] *BPI v. Sarmiento*, 519 Phil. 247, 256 (2006).

the time of payment of the input VAT, the amount paid was correct and proper.[24]

Finally, equity, which has been aptly described as "a justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure.[25] Section 112 is a positive rule that should preempt and prevail over all abstract arguments based only on equity.

Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer.[26] The burden is on the taxpayer to show strict compliance with the conditions for the grant of the tax refund or credit.[27]

WHEREFORE, premises considered, the instant Petition is **DENIED**.

SO ORDERED.

Leonardo-de Castro, Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[24] *Supra* note 14.

[25] *Mendiola v. Court of Appeals,* 327 Phil. 1156, 1166 (1996), citing *Causapin v. Court of Appeals,* 233 SCRA 615, 625 (1994).

[26] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, 7 July 2009, 592 SCRA 219, 235; *Commissioner of Internal Revenue v. Rio Tuba Nickel Mining Corp.*, G.R. Nos. 83583-84, 25 March 1992, 207 SCRA 549, 552; *La Carlota Sugar Central v. Jimenez,* 112 Phil. 232, 235 (1961).

[27] *Supra* note 14.

FIRST DIVISION

[G.R. No. 199226. January 15, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROEL VERGARA *y* CLAVERO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; DEFINED.—** Under Article 266-A(1) of the Revised Penal Code, as amended by Republic Act No. 8353, the crime of rape is committed by a man having carnal knowledge of a woman under any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and **(d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present**.

2. **ID.; ID.; STATUTORY RAPE; ELEMENTS, ELUCIDATED.—** In *People v. Teodoro*, the Court clearly explained the elements of statutory rape committed under Article 266-A(1)(d): Rape under paragraph 3 of this article is termed *statutory rape* as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman *below twelve (12) years old*. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF CHILD-VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT.—** It is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.

4. ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSE THAT CANNOT PREVAIL OVER POSITIVE TESTIMONY.— [A]ccused-appellant's bare denial and uncorroborated alibi deserve scant consideration. The defense of alibi should be considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated. Denial and alibi constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness. x x x Moreover, for alibi to prosper, accused-appellant must not only prove that he was somewhere else when the crime was committed, he must also convincingly demonstrate the physical impossibility of his presence at the *locus criminis* at the time of the incident.

5. CRIMINAL LAW; STATUTORY RAPE; PENALTY.— The sentence of *reclusion perpetua* imposed upon accused-appellant by the RTC, affirmed by Court of Appeals, for the crime of statutory rape, without any aggravating or qualifying circumstance, is in accordance with Article 266-B of the Revised Penal Code, as amended. The awards of civil indemnity and moral damages in favor of AAA by the trial and appellate courts, in the amounts of ₱50,000.00 each, are also proper. However, the Court increases the amount of exemplary damages awarded to AAA from ₱25,000.00 to ₱30,000.00, in line with the latest jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03772, which affirmed

[1] *Rollo*, pp. 2-13; penned by Associate Justice Ricardo R. Rosario with Associate Justices Hakim S. Abdulwahid and Danton Q. Bueser, concurring.

in toto the Decision[2] dated November 26, 2008 of the Regional Trial Court (RTC), Branch 17, Cavite City, in Criminal Case No. 297-04, finding accused-appellant Roel Clavero Vergara guilty beyond reasonable doubt of the crime of simple statutory rape.

Consistent with the ruling in *People v. Cabalquinto*[3] and *People v. Guillermo*,[4] the Court withholds the real names of the private offended party and her immediate family members, as well as such other personal circumstances or any other information tending to establish or compromise their identity. The initials AAA shall represent the private offended party.

In the Information dated September 15, 2004, accused-appellant was charged before the RTC with the rape of AAA, thus:

> That on or about September 12, 2004, in the City of Cavite, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the stepfather of one [AAA], a minor, 9 years of age, with force and intimidation, did, then and there, willfully, unlawfully and feloniously had carnal knowledge with said minor, [AAA], without her consent and against her will.[5]

When arraigned on October 13, 2004, accused-appellant pleaded not guilty to the charge.[6]

The prosecution presented the testimonies of AAA,[7] the private offended party herself, and Dr. Remigio R. Camerino (Camerino),[8] the physician who physically examined AAA for signs of sexual

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[2] CA *rollo*, pp. 22-28A; penned by Judge Melchor Q.C. Sadang.

[3] 533 Phil. 703 (2006).

[4] 550 Phil. 176 (2007).

[5] Records, p. 1.

[6] *Id.* at 9.

[7] TSN, June 30 and December 7, 2005.

[8] TSN, June 21, 2006 and January 17, 2007.

abuse. The prosecution also submitted several documentary exhibits, particularly: AAA's Certificate of Live Birth,[9] issued by the Office of the City Civil Registrar of Cavite City, stating that AAA was born on October 20, 1994; AAA's Sworn Statement[10] dated September 14, 2004 in which AAA recounted how, where, and when accused-appellant raped her; the Letter-Request[11] for AAA's Medico-Legal Examination dated September 14, 2004; Dr. Camerino's Medico-Legal Report[12] dated September 15, 2004; the result of AAA's Pregnancy Test[13] conducted on September 15, 2004 confirming her pregnancy at only nine years of age; the Certificate of Live Birth[14] of AAA's son, issued by the Office of the City Civil Registrar of Manila, stating that AAA's son was born on January 16, 2005; and a picture[15] of AAA's son.

The totality of the prosecution's evidence established the following version of events:

AAA was born on 20 October, 1994. Her parents were not married and got separated when she was five (5) years old. Her mother then lived-in, and begot a child, with [accused-appellant]. Unlike her two other siblings by her biological father, AAA lived with her mother and [accused-appellant].

[Accused-appellant] began abusing AAA as soon as she had her first menstruation in May 2003. By the time AAA was nine (9) years old, [accused-appellant] had sexually molested her five (5) times.

The last incident of rape, which is the subject of this case, happened around 3:00 o'clock in the afternoon of 12 September 2004. The 9-year old AAA was left alone in the house with [accused-appellant] and the latter's 2-year old daughter because AAA's mother was away working as a cook in a restaurant in a nearby place. [Accused-appellant]

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[9] Records, p. 86.

[10] *Id.* at 88.

[11] *Id.* at 91.

[12] *Id.* at 65.

[13] *Id.* at 89.

[14] *Id.* at 90.

[15] *Id.* at 90A.

ordered AAA to go inside his bedroom. When there, he ordered her to embrace him and remove her shirt, pants and panty. Afraid, AAA complied. [Accused-appellant] forced himself on AAA, who pleaded, "*Tama na po*!" (Enough, please). Despite AAA's pleas, however, [accused-appellant] persisted, telling her, "*Eto na ang huli, pumayag ka na*." (Do as I say because this will be the last.) [Accused-appellant] inserted his penis into AAA's vagina and made a pumping motion for twenty (20) minutes. AAA cried and resisted by punching [accused-appellant] on his shoulders, but to no avail. After satisfying his lust, [accused-appellant] ordered AAA to put on her clothes and warned her not to tell anyone about what happened.

AAA confided her ordeal to her mother's friend, Tita, who helped her report the incident to the police authorities. AAA was also examined by Dr. Remigion R. Camerino, whose findings revealed the following:

> ">Thin circular hymen with rough edges and previous healed lacerations.
>
> >(-) vaginal lacerations
>
> >(-) bleeding/discharge
>
> >positive pregnancy test (9/15/04)
>
> >uterus enlarged to 4 months age of gestation."

On 16 January 2005, AAA gave birth to a baby boy.[16] (Citations omitted.)

Accused-appellant[17] took the witness stand in his own defense, denying that he raped AAA and offering an alibi for the afternoon of September 12, 2004. Accused-appellant's testimony, in sum, was as follows:

In his defense, [accused-appellant] interposed the lone defense of *alibi,* alleging that he was not in their house on the day of the incident but was at work as a cook in a restaurant, less than a kilometer or about a 30-minute walk away from their house. [Accused-appellant] testified that he never had the chance to be with the victim on the day in question since his work was from 3:00 o'clock in the afternoon to 2:00 o'clock in the morning of the following day.

[16] *Rollo*, pp. 3-5.

[17] TSN, August 2, 2007.

On cross-examination, [accused-appellant] denied having any previous misunderstanding with the victim and admitted that he could not think of a reason why AAA would impute such a serious accusation against him.[18] (Citations omitted.)

In its Decision dated November 26, 2008, the RTC convicted accused-appellant for simple statutory rape, and not for qualified rape as charged. The trial court reasoned that it could not appreciate the aggravating or qualifying circumstance of relationship alleged in the Information, particularly, accused-appellant being AAA's stepfather, because, as admitted by the parties and proved during trial, accused-appellant was not legally AAA's stepfather, but merely the common-law spouse of AAA's mother. Hence, the RTC decreed:

WHEREFORE, premises considered, judgment is hereby rendered finding accused ROEL VERGARA *y* CLAVERO guilty beyond reasonable doubt of the crime of RAPE as defined and punished under paragraph (1), (d) Article 266-A of the Revised Penal Code, as amended by RA 8363, and accordingly sentencing him to suffer the penalty of *reclusion perpetua* and to indemnify the victim [AAA] in the amount of ₱50,000.00 as civil indemnity, the amount of ₱50,000.00 as moral damages, and the amount of ₱25,000 as exemplary damages.[19]

Accused-appellant sought recourse from the Court of Appeals, anchoring his appeal on a lone assignment of error, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[20]

The Court of Appeals promulgated its Decision on March 31, 2011, wholly affirming the judgment of conviction rendered by the RTC against accused-appellant. The appellate court upheld the assessment by the RTC of the witnesses' credibility, as

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[18] *Rollo*, p. 5.

[19] CA *rollo*, p. 28A.

[20] *Id.* at 42.

well as the conclusion of said trial court that the prosecution was able to establish, beyond reasonable doubt, accused-appellant's guilt for the crime of simple statutory rape.

Aggrieved, accused-appellant comes before this Court through the instant appeal.

The appeal is bereft of merit.

Under Article 266-A(1) of the Revised Penal Code, as amended by Republic Act No. 8353,[21] the crime of rape is committed by a man having carnal knowledge of a woman under any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and **(d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present**.

In *People v. Teodoro*,[22] the Court clearly explained the elements of statutory rape committed under Article 266-A(1)(d):

> Rape under paragraph 3 of this article is termed *statutory rape* as it departs from the usual modes of committing rape. What the law punishes in statutory rape is carnal knowledge of a woman *below twelve (12) years old*. Thus, force, intimidation and physical evidence of injury are not relevant considerations; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern good from evil. (Citations omitted.)

In the case at bar, the prosecution was able to establish beyond reasonable doubt that accused-appellant had carnal knowledge of AAA in the afternoon of September 12, 2004, when AAA was just nine years old.

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[21] An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as a Crime Against Persons, Amending for the Purpose Act No. 3815, As Amended, Otherwise Known as the Revised Penal Code, and for Other Purposes.

[22] G.R. No. 172372, December 4, 2009, 607 SCRA 307, 314-315.

In her Sworn Statement dated September 15, 2004 to Senior Police Officer 4 Eloisa B. Ocava, AAA narrated how accused-appellant had been raping her since 2003, and described in great detail the last rape that occurred on September 12, 2004.

AAA subsequently took the witness stand during trial and personally recounted her ordeal in accused-appellant's hands, particularly, the last incident of rape on September 12, 2004. AAA, who was already starting to feel pregnant, finally gained courage soon after the last rape to tell her mother's friend about what accused-appellant was doing to her.

It is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.[23]

Herein, AAA's testimony is not only consistent and straightforward, but is further corroborated by other evidence. According to AAA's birth certificate, she was born on October 20, 1994, thus, establishing that she was nine years old on September 12, 2004. Dr. Camerino, after physical examination of AAA on September 15, 2004, found that AAA had "previous[ly] healed lacerations" in her vagina and that AAA's "uterus [was] enlarged to [four (4)] months age of gestation." AAA's pregnancy test, also conducted on September 15, 2004, confirmed that she was pregnant. AAA later gave birth to a son on January 16, 2005, which was evidenced by her son's birth certificate.

Accused-appellant challenged AAA's credibility by pointing out that AAA often giggled and smiled while testifying before the trial court; AAA testified during direct examination that she was raped by accused-appellant on September 12, 2004 at home but later inconsistently declared during cross-examination that the rape took place in a room at accused-appellant's place of work; Dr. Camerino, who examined AAA on September 15,

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[23] *People v. Oliva*, G.R. No. 187043, September 18, 2009, 600 SCRA 834, 839.

2004, only three days after AAA's purported rape on September 12, 2004, did not find fresh lacerations on AAA's vagina, hence, indicating that AAA had no recent sexual activity; and AAA could not have been just nine years old at the time of her alleged raped as pre-teen ovulation was rare and as Dr. Camerino himself observed, AAA already had the built of an adolescent woman. Accused-appellant further denied raping AAA and insisted that he was at some other place at the time AAA was supposedly raped.

Accused-appellant's arguments were already considered and thoroughly addressed by the Court of Appeals. As the appellate court appropriately held:

> Time-honored is the doctrine that the trial court's assessment of the credibility of a witness, is entitled to great weight on appeal. The reason therefor is that the trial judge enjoys the peculiar advantage of observing first-hand the deportment of the witnesses while testifying and is, therefore, in a better position to form accurate impressions and conclusions on the basis thereof.
>
> AAA's seemingly inconsistent behavior, such as smiling while narrating in open court about the rape, was properly explained by her, as follows:
>
> Q (PROS. GARCIA): Now, a while ago, while you were testifying you kept smiling, could you please tell this Hon. Court why you were smiling?
>
> A: I was just trying to be brave, sir.
>
> Moreover, We consider the alleged inconsistency on the place where the crime happened as a minor inconsistency which should generally be given liberal appreciation considering that the place of the commission of the crime in rape cases is after all not an essential element thereof. What is decisive is that [accused-appellant's] commission of the crime charged has been sufficiently proved.
>
> The alleged inconsistency is also understandable considering that AAA was only ten (10) years old at the time she testified before the trial court. Courts expect minor inconsistencies when a child-victim narrates the details of a harrowing experience like rape. Such inconsistencies on minor details are in fact badges of truth, candidness and the fact that the witness is unrehearsed. These discrepancies as

to minor matters, irrelevant to the elements of the crime, cannot thus be considered a ground for acquittal. In this case, the alleged inconsistency in AAA's testimony regarding the exact place of the commission of rape does not make her otherwise straightforward and coherent testimony on material points, less worthy of belief.

Significantly also, AAA's testimony is supported by the medical evidence on record, which showed that she had scars in her hymen and was thus in a non-virgin state. That no fresh lacerations were found in her hymen is no indication that she was not raped on 12 September 2004. Contrary to [accused-appellant's] contention, the old lacerations on AAA's hymen confirm and strengthen her allegation that she had been repeatedly raped by [accused-appellant] not only on 12 September 2004, but even before. As the victim was no longer a virgin when she was raped on 12 September 2004, no new injury on her hymen could be expected. It is settled that healed lacerations do not negate rape. In fact, lacerations, whether healed or fresh, are the best physical evidence of defloration.

On the issue of AAA's age, We quote the Supreme Court's consistent ruling that "*in this era of modernism and rapid growth, the victim's mere physical appearance is not enough to gauge her exact age*." Hence, the best evidence to prove AAA's age is her Certificate of Live Birth, which indicates that she was born on 20 October 1994 and was thus nine (9) years of age on 12 September 2004, when she was raped by [accused-appellant].

In *People v. Pruna*, the Supreme Court stated that in appreciating age, either as an element of the crime or as a qualifying circumstance, *"[t]he 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."*

A certificate of live birth is a public document that consists of entries (regarding the facts of birth) in public records (Civil Registry) made in the performance of a duty by a public officer (Civil Registrar). As such, it is *prima facie* evidence of the fact of one's birth and can only be rebutted by clear and convincing evidence to the contrary. Obviously in this case, no such controverting evidence was adduced by the defense to question AAA's Certificate of Live Birth.[24] (Citations omitted.)

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[24] *Rollo*, pp. 7-10.

In contrast, accused-appellant's bare denial and uncorroborated alibi deserve scant consideration. The defense of alibi should be considered with suspicion and always received with caution, not only because it is inherently weak and unreliable, but also because it is easily fabricated.[25] Denial and alibi constitute self-serving negative evidence which cannot be accorded greater evidentiary weight than the positive declaration of a credible witness.[26] AAA's positive testimony that she was sexually ravished by accused-appellant, coupled with the appalling fact that she got pregnant at her tender age, certainly deserve more credence and greater evidentiary weight than that of accused-appellant's uncorroborated defenses.

Moreover, for alibi to prosper, accused-appellant must not only prove that he was somewhere else when the crime was committed, he must also convincingly demonstrate the physical impossibility of his presence at the *locus criminis* at the time of the incident.[27] In the present case, however, accused-appellant himself admitted that his place of work was less than a kilometer or a mere 30-minute walk away from his house, where AAA was raped. Given the short distance between these two places, it was not physically impossible for accused-appellant, in the afternoon of September 12, 2004, to have left his work for a short while to go home and commit the rape of AAA.

The sentence of *reclusion perpetua* imposed upon accused-appellant by the RTC, affirmed by Court of Appeals, for the crime of statutory rape, without any aggravating or qualifying circumstance, is in accordance with Article 266-B of the Revised Penal Code, as amended. The awards of civil indemnity and moral damages in favor of AAA by the trial and appellate courts, in the amounts of ₱50,000.00 each, are also proper. However, the Court increases the amount of exemplary damages awarded

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[25] *People v. Carpio*, 538 Phil. 451, 476 (2006).

[26] *People v. Nachor*, G.R. No. 177779, December 14, 2010, 638 SCRA 317, 333.

[27] *People v. Carpio*, *supra* note 25.

to AAA from ₱25,000.00 to ₱30,000.00, in line with the latest jurisprudence.[28]

WHEREFORE, in view of the foregoing, the Decision dated March 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03772 is **AFFIRMED** with **MODIFICATION**, increasing the award of exemplary damages to ₱30,000.00 and ordering accused-appellant to pay the private offended party interest on all damages awarded at the legal rate of 6% per annum from the date of finality of this judgment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 200304. January 15, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DONALD VASQUEZ *y* SANDIGAN @ "DON,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; VALIDITY THEREOF MUST BE ASSAILED BEFORE ENTERING A PLEA ON ARRAIGNMENT.— [T]he Court rules that the appellant can no longer assail the validity of his arrest. We reiterated in *People v. Tampis* that "[a]ny objection, defect or irregularity attending an arrest must be made before

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[28] *People v. Pacheco*, G.R. No. 187742, April 20, 2010, 618 SCRA 606, 618.

the accused enters his plea on arraignment. Having failed to move for the quashing of the information against them before their arraignment, appellants are now estopped from questioning the legality of their arrest. Any irregularity was cured upon their voluntary submission to the trial court's jurisdiction." Be that as it may, the fact of the matter is that the appellant was caught *in flagrante delicto* of selling illegal drugs to an undercover police officer in a buy-bust operation. His arrest, thus, falls within the ambit of Section 5(a), Rule 113 of the Revised Rules on Criminal Procedure when an arrest made without warrant is deemed lawful.

2. **ID.; ID.; ID.; WARRANTLESS SEARCH AND SEIZURE OF ILLEGAL DRUGS VALID AS AN INCIDENT TO A LAWFUL ARREST *IN FLAGRANTE DELICTO*.—** Having established the validity of the warrantless arrest in this case, the Court holds that the warrantless seizure of the illegal drugs from the appellant is likewise valid. We held in *People v. Cabugatan* that: This interdiction against warrantless searches and seizures, however, is not absolute and such warrantless searches and seizures have long been deemed permissible by jurisprudence in instances of (1) search of moving vehicles, (2) seizure in plain view, (3) customs searches, (4) waiver or consented searches, (5) stop and frisk situations (Terry search), and **search incidental to a lawful arrest**. The last includes a valid warrantless arrest, for, while as a rule, an arrest is considered legitimate [if] effected with a valid warrant of arrest, the Rules of Court recognize permissible warrantless arrest, to wit: (1) **arrest *in flagrante delicto***, (2) arrest effected in hot pursuit, and (3) arrest of escaped prisoners.

3. **CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE AND ILLEGAL POSSESSION OF PROHIBITED DRUGS; ELEMENTS.—** To secure a conviction for the crime of illegal sale of regulated or prohibited drugs, the following elements should be satisfactorily proven: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. As held in *People v. Chua Tan Lee*, in a prosecution of illegal sale of drugs, "what is material is proof that the accused peddled illicit drugs, coupled with the presentation in court of the *corpus delicti*." On the other hand, the elements of illegal possession of drugs are: (1) the accused is in possession of an item or

object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; UPHELD IN THE ABSENCE OF ILL MOTIVE.— In *People v. Ting Uy*, the Court explains that "credence shall be given to the narration of the incident by prosecution witnesses especially so when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary." In the instant case, the appellant failed to ascribe, much less satisfactorily prove, any improper motive on the part of the prosecution witnesses as to why they would falsely incriminate him. The appellant himself even testified that, not only did he not have any misunderstanding with P/Insp. Fajardo and PO2 Trambulo prior to his arrest, he in fact did not know them at all. In the absence of evidence of such ill motive, none is presumed to exist.

5. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF PROHIBITED DRUGS; PENALTY IN CASE AT BAR.— Anent the proper imposable penalties, Section 15 and Section 16, Article III, in relation to Section 20(3) of Republic Act No. 6425, as amended by Republic Act No. 7659 [apply]. In Criminal Case No. 98-164174 involving the crime of illegal sale of regulated drugs, the appellant was found to have sold to the poseur-buyer in this case a total of 247.98 grams of *shabu*, which amount is more than the minimum of 200 grams required by the law for the imposition of either *reclusion perpetua* or, if there be aggravating circumstances, the death penalty. Pertinently, Article 63 of the Revised Penal Code mandates that when the law prescribes a penalty composed of two indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be applied. Thus, in this case, considering that no mitigating or aggravating circumstances attended the appellant's violation of Section 15, Article III of Republic Act No. 6425, as amended, the Court of Appeals correctly affirmed the trial court's imposition of *reclusion perpetua*. The ₱5,000,000.00 fine imposed by the RTC on the appellant is also in accord with Section 15, Article III of Republic Act No. 6425, as amended.

6. ID.; ID.; ILLEGAL POSSESSION OF PROHIBITED DRUGS; PENALTY IN CASE AT BAR.— As to the charge of illegal possession of regulated drugs in Criminal Case No. 98-164175, the Court of Appeals properly invoked our ruling in *People v. Tira* in determining the proper imposable penalty. x x x Given that the additional 12 plastic sachets of *shabu* found in the possession of the appellant amounted to 4.03 grams, the imposable penalty for the crime is *prision correccional*. Applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstance in this case, the imposable penalty on the appellant should be the indeterminate sentence of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum. The penalty imposed by the Court of Appeals, thus, falls within the range of the proper imposable penalty. In Criminal Case No. 98-164175, no fine is imposable considering that in Republic Act No. 6425, as amended, a fine can be imposed as a conjunctive penalty only if the penalty is *reclusion perpetua* to death.

7. ID.; SPECIAL AGGRAVATING CIRCUMSTANCES; PROPERLY DISREGARDED WHEN NOT ALLEGED IN THE INFORMATION.— Incidentally, the Court notes that both parties in this case admitted that the appellant was a regular employee of the NBI Forensics Chemistry Division. Such fact, however, cannot be taken into consideration to increase the penalties in this case to the maximum, in accordance with Section 24 of Republic Act No. 6425, as amended. Such a special aggravating circumstance, *i.e.*, one that which arises under special conditions to increase the penalty for the offense to its maximum period, was not alleged and charged in the informations. Thus, the same was properly disregarded by the lower courts.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The case before this Court is an appeal from the Decision[1] dated May 31, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04201. Said decision affirmed with modification the Joint Decision[2] dated August 6, 2009 of the Regional Trial Court (RTC) of Manila, Branch 41, in Criminal Case Nos. 98-164174 and 98-164175, which convicted the appellant Donald Vasquez *y* Sandigan of the crimes of illegal sale and illegal possession of regulated drugs under Sections 15 and 16, Article III of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972.

Criminal Case No. 98-164174 stemmed from a charge of violation of Section 15, Article III of Republic Act No. 6425, as amended,[3] which was allegedly committed as follows:

That on or about April 3, 1998 in the City of Manila, Philippines, the said accused not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there [willfully], unlawfully and knowingly sell or offer for sale, dispense,

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[1] *Rollo*, pp. 2-23; penned by Associate Justice Elihu A. Ybañez with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Estela M. Perlas-Bernabe (now a member of this Court), concurring.

[2] CA *rollo*, pp. 39-47; penned by Acting Presiding Judge Teresa P. Soriaso.

[3] Section 15 of Republic Act No. 6425 as amended by Section 14 of Republic Act No. 7659 (An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as amended, Other Special Penal Laws, and for Other Purposes), states:

"SEC. 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs*. - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty therein provided shall be imposed."

deliver, transport or distribute 45.46 grams, 44.27 grams, 45.34 grams, 51.45 grams, 41.32 grams and 20.14 grams or with a total weight of TWO HUNDRED FORTY-SEVEN POINT NINETY-EIGHT (247.98) grams contained in six (6) transparent plastic sachets of white crystalline substance known as "Shabu" containing methamphetamine hydrochloride, which is a regulated drug.[4]

Criminal Case No. 98-164175, on the other hand, arose from an alleged violation of Section 16, Article III of Republic Act No. 6425, as amended,[5] which was said to be committed in this manner:

That on or about April 3, 1998 in the City of Manila, Philippines, the said accused without being authorized by law to possess or use any regulated drug, did then and there [willfully], unlawfully and knowingly have in his possession and under his custody and control 1.61 grams, 0.58 grams, 0.29 grams, 0.09 [grams], 0.10 grams, 0.17 grams, 0.21 grams, 0.24 grams, 0.12 grams, 0.06 grams, 0.04 grams, [0].51 grams or all with a total weight of four point zero three grams of white crystalline substance contained in twelve (12) transparent plastic sachets known as "SHABU" containing methamphetamine hydrochloride, a regulated drug, without the corresponding license or prescription thereof.[6]

Initially, Criminal Case No. 98-164175 was raffled to the RTC of Manila, Branch 23. Upon motion[7] of the appellant, however, said case was allowed to be consolidated with Criminal Case No. 98-164174 in the RTC of Manila, Branch 41.[8] On

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[4] Records, p. 1.

[5] Section 16 of Republic Act No. 6425 as amended by Republic Act No. 7659, provides:

"SEC. 16. *Possession or Use of Regulated Drugs*. - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof."

[6] Records, p. 16.

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

[8] *Id.* at 62.

arraignment, the appellant pleaded not guilty to both charges.[9] The pre-trial conference of the cases was held on July 27, 1998, but the same was terminated without the parties entering into any stipulation of facts.[10]

During the trial of the cases, the prosecution presented the testimonies of the following witnesses: (1) Police Inspector (P/Insp.) Jean Fajardo,[11] (2) P/Insp. Marilyn Dequito,[12] and (3) Police Officer (PO) 2 Christian Trambulo.[13] Thereafter, the defense presented in court the testimonies of: (1) the appellant Donald Vasquez *y* Sandigan,[14] (2) Angelina Arejado,[15] and (3) Anatolia Caredo.[16]

The Prosecution's Case

The prosecution's version of the events was primarily drawn from the testimonies of P/Insp. Fajardo and PO2 Trambulo.

P/Insp. Fajardo testified that in the morning of April 1, 1998, a confidential informant went to their office and reported that a certain Donald Vasquez was engaged in illegal drug activity. This *alias* Don supposedly claimed that he was an employee of the National Bureau of Investigation (NBI). According to the informant, *alias* Don promised him a good commission if he (the informant) would present a potential buyer of drugs. P/Insp. Fajardo relayed the information to Police Superintendent (P/Supt.) Pepito Domantay, the commanding officer of their office. P/Insp. Fajardo was then instructed to form a team and conduct a possible buy-bust against *alias* Don. She formed a

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[9] *Id.* at 19, 52.

[10] *Id.* at 69.

[11] TSN, August 11, 1998; TSN, October 6, 1998.

[12] TSN, September 15, 1998.

[13] TSN, December 2, 1999.

[14] TSN, September 20, 2001; TSN, August 10, 2006.

[15] TSN, April 21, 2005.

[16] TSN, March 9, 2006.

team on the same day, which consisted of herself, PO2 Trambulo, PO1 Agravante, PO1 Pedrosa, PO1 Sisteno, and PO1 De la Rosa. P/Insp. Fajardo was the team leader. With the help of the informant, she was able to set up a meeting with *alias* Don. The meeting was to be held at around 9:00 p.m. on that day at Cindy's Restaurant located in Welcome Rotonda. She was only supposed to meet *alias* Don that night but she decided to bring the team along for security reasons.[17]

At about 9:00 p.m. on even date, P/Insp. Fajardo and her team went to the meeting place with the informant. The members of her team positioned themselves strategically inside the restaurant. The informant introduced P/Insp. Fajardo to *alias* Don as the buyer of *shabu*. She asked *alias* Don if he was indeed an employee of the NBI and he replied in the affirmative. They agreed to close the deal wherein she would buy 250 grams of *shabu* for ₱250,000.00. They also agreed to meet the following day at Cindy's Restaurant around 10:00 to 11:00 p.m.[18]

In the evening of April 2, 1998, P/Insp. Fajardo and her team went back to Cindy's Restaurant. *Alias* Don was already waiting for her outside the establishment when she arrived. He asked for the money and she replied that she had the money with her. She brought five genuine ₱500.00 bills, which were inserted on top of five bundles of play money to make it appear that she had ₱250,000.00 with her. After she showed the money to *alias* Don, he suggested that they go to a more secure place. They agreed for the sale to take place at around 1:30 to 2:00 a.m. on April 3, 1998 in front of *alias* Don's apartment at 765 Valdez St., Sampaloc, Manila. The team proceeded to the Western Police District (WPD) Station along U.N. Avenue for coordination. Afterwards, the team held their final briefing before they proceeded to the target area. They agreed that the pre-arranged signal was for P/Insp. Fajardo to scratch her hair, which would signify that the deal had been consummated and the rest of the team

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[17] TSN, August 11, 1998, pp. 5-7.

[18] *Id.* at 7-9.

would rush up to the scene. The team then travelled to the address given by *alias* Don.[19]

When the team arrived at the target area around 1:15 a.m. on April 3, 1998, the two vehicles they used were parked along the corner of the street. P/Insp. Fajardo and the informant walked towards the apartment of *alias* Don and stood in front of the apartment gate. Around 1:45 a.m., *alias* Don came out of the apartment with a male companion. *Alias* Don demanded to see the money, but P/Insp. Fajardo told him that she wanted to see the drugs first. *Alias* Don gave her the big brown envelope he was carrying and she checked the contents thereof. Inside she found a plastic sachet, about 10x8 inches in size, which contained white crystalline substance. After checking the contents of the envelope, she assumed that the same was indeed *shabu*. She then gave the buy-bust money to *alias* Don and scratched her hair to signal the rest of the team to rush to the scene. P/Insp. Fajardo identified herself as a narcotics agent. The two suspects tried to flee but PO2 Trambulo was able to stop them from doing so. P/Insp. Fajardo took custody of the *shabu*. When she asked *alias* Don if the latter had authority to possess or sell *shabu*, he replied in the negative. P/Insp. Fajardo put her initials "JSF" on the genuine ₱500.00 bills below the name of Benigno Aquino. After the arrest of the two suspects, the buy-bust team brought them to the police station. The suspects' rights were read to them and they were subsequently booked.[20]

P/Insp. Fajardo said that she found out that *alias* Don was in fact the appellant Donald Vasquez. She learned of his name when he brought out his NBI ID while he was being booked. P/Insp. Fajardo also learned that the name of the appellant's companion was Reynaldo Siscar, who was also arrested and brought to the police station. P/Insp. Fajardo explained that after she gave the buy-bust money to the appellant, the latter handed the same to Siscar who was present the entire time the sale was being consummated. Upon receiving the buy-bust money

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[19] *Id.* at 9-14.

[20] *Id.* at 15-25.

placed inside a green plastic bag, Siscar looked at the contents thereof and uttered "*okey na to*." P/Insp. Fajardo marked the drug specimen and brought the same to the Crime Laboratory. She was accompanied there by PO2 Trambulo and PO1 Agravante. She handed over the drug specimen to PO1 Agravante who then turned it over to P/Insp. Taduran, the forensic chemist on duty. The police officers previously weighed the drug specimen. Thereafter, the personnel at the crime laboratory weighed the specimen again. P/Insp. Fajardo and her team waited for the results of the laboratory examination.[21]

P/Insp. Fajardo further testified that the six plastic bags of *shabu* seized during the buy-bust operation were actually contained in a self-sealing plastic envelope placed inside a brown envelope. When the brown envelope was confiscated from the appellant, she put her initials "JSF" therein and signed it. She noticed that there were markings on the envelope that read "DD-93-1303 re Antonio Roxas *y* Sunga" but she did not bother to check out what they were for or who made them. When she interrogated the appellant about the brown envelope, she found out that the same was submitted as evidence to the NBI Crime Laboratory. She also learned that the appellant worked as a Laboratory Aide at the NBI Crime Laboratory. She identified in court the six plastic sachets of drugs that her team recovered, which sachets she also initialed and signed. P/Insp. Fajardo also stated that after the appellant was arrested, PO2 Trambulo conducted a body search on the two suspects. The search yielded 12 more plastic sachets of drugs from the appellant. The 12 sachets were varied in sizes and were contained in a white envelope. P/Insp. Fajardo placed her initials and signature on the envelope. As to the 12 sachets, the same were initialed by P/Insp. Fajardo and signed by PO2 Trambulo.[22]

The testimony of PO2 Trambulo corroborated that of P/Insp. Fajardo's. PO2 Trambulo testified that in the morning of April 1, 1998, a confidential informant reported to them

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[21] *Id.* at 25-33.

[22] TSN, October 6, 1998, pp. 4-19.

about the illegal drug activities of *alias* Don. P/Supt. Domantay then tasked P/Insp. Fajardo to form a buy-bust team. P/Insp. Fajardo was able to set up a meeting with *alias* Don at Cindy's Restaurant in Welcome Rotonda, Quezon City. At that meeting, PO2 Trambulo saw P/Insp. Fajardo talk to *alias* Don. P/Insp. Fajardo later told the members of the team that she convinced *alias* Don that she was a good buyer of *shabu* and the latter demanded a second meeting to see the money. After the initial meeting, P/Insp. Fajardo briefed P/Supt. Domantay about what happened. PO2 Trambulo stated that on April 2, 1998, P/Insp. Fajardo was furnished with five genuine ₱500.00 bills together with the boodle play money. P/Insp. Fajardo placed her initials in the genuine bills below the name "Benigno Aquino, Jr." Afterwards, the team left the office. When they arrived at Cindy's Restaurant past 10:00 p.m., *alias* Don was waiting outside. P/Insp. Fajardo showed the boodle money to *alias* Don and after some time, they parted ways. P/Insp. Fajardo later told the team that *alias* Don decided that the drug deal would take place in front of *alias* Don's rented apartment on Valdez St., Sampaloc, Manila. After an hour, the team went to Valdez St. to familiarize themselves with the area. They then proceeded to the WPD station to coordinate their operation. Thereafter, P/Insp. Fajardo conducted a final briefing wherein PO2 Trambulo was designated as the immediate back-up arresting officer. The agreed pre-arranged signal was for P/Insp. Fajardo to scratch her hair to indicate the consummation of the deal. PO2 Trambulo was to signal the same to the other members of the team.[23]

The buy-bust team went to the target area at around 1:30 to 2:00 a.m. on April 3, 1998. P/Insp. Fajardo and the informant walked towards the direction of *alias* Don's apartment, while PO2 Trambulo positioned himself near a parked jeepney about 15 to 20 meters from the apartment gate. The rest of the team parked their vehicles at the street perpendicular to Valdez St. Later, *alias* Don went out of the gate with another person. PO2 Trambulo saw *alias* Don gesturing to P/Insp. Fajardo as if asking for something but P/Insp. Fajardo gestured that she

[23] TSN, December 2, 1999, pp. 5-12.

wanted to see something first. *Alias* Don handed P/Insp. Fajardo a big brown envelope, which the latter opened. P/Insp. Fajardo then handed to *alias* Don a green plastic bag containing the buy-bust money and gave the pre-arranged signal. When PO2 Trambulo saw this, he immediately summoned the rest of the team and rushed to the suspects. He was able to recover the buy-bust money from *alias* Don's male companion. Upon frisking *alias* Don, PO2 Trambulo retrieved 12 pieces of plastic sachets of suspected drugs. The same were placed inside a white envelope that was tucked inside *alias* Don's waist. PO2 Trambulo marked each of the 12 sachets with his initials "CVT" and the date. The police officers then informed the suspects of their rights and they proceeded to the police headquarters in Fort Bonifacio.[24]

As regards the brown envelope that *alias* Don handed to P/Insp. Fajardo, the latter retained possession thereof. The envelope contained six pieces of plastic bags of white crystalline substance. When they got back to their office, the team reported the progress of their operation to P/Supt. Domantay. The arrested suspects were booked and the required documentations were prepared. Among such documents was the Request for Laboratory Examination of the drug specimens seized. PO2 Trambulo said that he was the one who brought the said request to the PNP Crime Laboratory, along with the drug specimens.[25]

P/Insp. Marilyn Dequito, the forensic chemist, testified on the results of her examination of the drug specimens seized in this case. She explained that P/Insp. Macario Taduran, Jr. initially examined the drug specimens but the latter was already assigned to another office. The results of the examination of P/Insp. Taduran were laid down in Physical Science Report No. D-1071-98. P/Insp. Dequito first studied the data contained in Physical Science Report No. D-1071-98 and retrieved the same from their office. She entered that fact in their logbook RD-17-98. She then weighed the drug specimens and examined the white crystalline substance from each of the plastic sachets. She examined first the specimens

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[24] *Id.* at 13-19.

[25] *Id.* at 19-21, 27-29.

marked as "A-1", "A-2", "A-3", "A-4", "A-5" and "A-6". P/Insp. Dequito's examination revealed that the white crystalline substances were positive for methamphetamine hydrochloride.[26] She also examined the contents of 12 heat-sealed transparent plastic sachets that also contained crystalline substances. The 12 plastic sachets were marked "B-1" to "B-12". The white crystalline powder inside the 12 plastic sachets also tested positive for methamphetamine hydrochloride. P/Insp. Dequito's findings were contained in Physical Science Report No. RD-17-98.[27]

The prosecution, thereafter, adduced the following object and documentary evidence: (1) photocopies of the five original ₱500.00 bills[28] used as buy-bust money (Exhibits A-E); (2) Request for Laboratory Examination[29] dated April 3, 1998 (Exhibit F); (3) Initial Laboratory Report[30] dated April 3, 1998, stating that the specimen submitted for examination tested positive for *methylamphetamine hydrochloride* (Exhibit G); (4) Court Order[31] dated September 2, 1998 (Exhibit H); (5) Physical Sciences Report No. D-1071-98[32] dated April 3, 1998 (Exhibit I); (6) Drug specimens A-1 to A-6 (Exhibits J-O); (7) Big brown envelope (Exhibit P); (8) Small white envelope (Exhibit Q); (9) Drug specimens B-1 to B-12 (Exhibits R-CC); (10) Physical Sciences Report No. RD-17-98[33] (Exhibit DD); (11) Joint Affidavit of Arrest[34] (Exhibit EE); (12) Play money (Exhibit FF); (13) Booking Sheet and Arrest Report[35] (Exhibit GG); (14) Request for Medical

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[26] TSN, September 15, 1998, pp. 6-19.

[27] *Id.* at 21-26.

[28] Records, p. 177.

[29] *Id.* at 178-179.

[30] *Id.* at 180.

[31] *Id.* at 79.

[32] *Id.* at 181.

[33] *Id.* at 182.

[34] *Id.* at 4-6.

[35] *Id.* at 8.

Examination[36] (Exhibit HH); (15) Medico Legal Slip[37] of Donald Vasquez (Exhibit II); and (16) Medico Legal Slip[38] of Reynaldo Siscar (Exhibit JJ).

The Defense's Case

As expected, the defense belied the prosecution's version of events. The appellant's brief[39] before the Court of Appeals provides a concise summary of the defense's counter-statement of facts. According to the defense:

Donald Vasquez was a regular employee of the NBI, working as a Laboratory Aide II at the NBI Forensics Chemistry Division. His duties at the time included being a subpoena clerk, receiving chemistry cases as well as requests from different police agencies to have their specimens examined by the chemist. He also rendered day and night duties, and during regular office hours and in the absence of the laboratory technician, he would weigh the specimens. As subpoena clerk, he would receive subpoenas from the trial courts. When there is no chemist, he would get a Special Order to testify, or bring the drug specimens, to the courts.

On 1 April 1998, Donald Vasquez took his examination in Managerial Statistics between 6:00 to 9:00 o'clock p.m. Thereafter, he took a jeepney and alighted at Stop and Shop at Quiapo. From there, he took a tricycle to his house, arriving at 9:45 o'clock that evening, where he saw Reynaldo Siscar and Sonny San Diego, the latter a confidential informant of the narcotics agents.

On 3 April 1998, at 1:45 o'clock in the morning, Donald's household help, **Anatolia Caredo**, who had just arrived from Antipolo that time, was eating while Donald was asleep. She heard a knock on the door. Reynaldo Siscar opened the door and thereafter two (2) men entered, poking guns at Reynaldo. They were followed by three (3) others. The door to Donald's room was kicked down and they entered his room. Donald, hearing noise, woke up to see P./Insp. Fajardo pointing

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[36] *Id.* at 9.

[37] *Id.* at 10.

[38] *Id.*

[39] CA *rollo*, pp. 66-78.

a gun at him. He saw that there were six (6) policemen searching his room, picking up what they could get. One of them opened a cabinet and got drug specimens in [Donald's] possession in relation to his work as a laboratory aide. The drugs came from two (2) cases and marked as DD-93-1303 owned by Antonio Roxas, and DD-96-5392 owned by SPO4 Emiliano Anonas. The drug specimen contained in the envelope marked as DD-93-1303 was intended for presentation on 3 April 1998. Aside from the drug specimens, the policemen also took his jewelry, a VHS player, and his wallet containing ₱2,530.00.

Angelina Arejado, Donald's neighbor, witnessed the policemen entering the apartment and apprehending Donald and Reynaldo from the apartment terrace.[40] (Citations omitted.)

The defense then offered the following evidence: (1) NBI Disposition Form[41] dated April 3, 1998 (Exhibit 1); (2) Sworn Statement of Idabel Bernabe Pagulayan[42] (Exhibit 2); (3) Photocopy of the buy-bust money[43] (Exhibit 3); (4) List of Hearings[44] attended by Donald Vasquez (Exhibit 4); (5) Authorization Letter[45] prepared by Acting Deputy Director Arturo A. Figueras dated March 27, 1998 (Exhibit 5); and (6) List of Evidence[46] taken by Donald Vasquez from 1996-1998 (Exhibit 6).

The Decision of the RTC

On August 6, 2009, the RTC convicted the appellant of the crimes charged. The RTC gave more credence to the prosecution's evidence given that the presumption of regularity in the performance of official duty on the part of the police officers was not overcome. The trial court held that the appellant did

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[40] *Id.* at 70-71.

[41] Records, p. 402.

[42] *Id.* at 403-405.

[43] *Id.* at 406.

[44] *Id.* at 407-411.

[45] *Id.* at 412.

[46] *Id.* at 413-420.

not present any evidence that would show that the police officers in this case were impelled by an evil motive to charge him of very serious crimes and falsely testify against him. Also, the trial court noted that the volume of the *shabu* involved in this case was considerable, *i.e.*, 247.98 grams and 4.03 grams for illegal sale and illegal possession, respectively. To the mind of the trial court, such fact helped to dispel the possibility that the drug specimens seized were merely planted by the police officers. Furthermore, the RTC ruled that the positive testimonies of the police officers regarding the illegal drug peddling activities of the appellant prevailed over the latter's bare denials.

Assuming for the sake of argument that the appellant was merely framed up by the police, the trial court pointed out that:

> [T]he accused should have reported the said incident to the proper authorities, or asked help from his Acting Chief [Idabel] Pagulayan from the NBI to testify and identify in Court the xerox copy of the Disposition Form which she issued to the accused and the Affidavit dated April 17, 1998 (xerox copy) executed by her or from Mr. Arturo A. Figueras, Acting Deputy Director, Technical Services of the NBI to testify and identify the Letter issued by the said Acting Deputy Director in order to corroborate and strengthen his testimony that he was indeed authorized to keep in his custody the said *shabu* to be presented or turned over to the Court as evidence, and he should have filed the proper charges against those police officers who were responsible for such act. But the accused did not even bother to do the same. Further, the pieces of evidence (Disposition Form, Affidavit of [Idabel] Pagulayan and Letter dated March 27, 1998 issued by Acting Deputy Director) presented by the accused in Court could not be given weight and credence considering that the said persons were not presented in Court to identify the said documents and that the prosecution has no opportunity to cross-examine the same, thus, it has no probative value.[47]

The trial court, thus, decreed:

> WHEREFORE, judgment is hereby rendered as follows:
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> 1. In Crim. Case No. 98-164174, finding accused, DONALD VASQUEZ *y* SANDIGAN @ "DON" guilty beyond reasonable doubt

[47] CA *rollo*, p. 46.

of the crime of Violation of Sec. 15, Art. III in Relation to Sec. 2 (e), (f), (m), (o), Art. I of R.A. No. 6425 and hereby sentences him to suffer the penalty of *reclusion perpetua* and a fine of ₱5,000,000.00; and

2. In Crim. Case No. 98-164175, judgment is hereby rendered finding the accused, DONALD VASQUEZ y SANDIGAN @ "DON" guilty beyond reasonable doubt of the crime of Violation of Sec. 16, Art. III in Relation to Sec. 2 (e-2) Art. I of R.A. 6425 as Amended by Batas Pambansa Bilang 179 and hereby sentences him to suffer the penalty of SIX (6) MONTHS and ONE (1) DAY to FOUR (4) YEARS and a fine of FOUR THOUSAND (₱4,000.00) PESOS.

The subject shabu (247.98 grams and 4.03 grams, respectively) are hereby forfeited in favor of the government and the Branch Clerk of Court is hereby directed to deliver and/or cause the delivery of the said shabu to the Philippine Drug Enforcement Agency (PDEA), upon the finality of this Decision.[48]

The Judgment of the Court of Appeals

On appeal,[49] the Court of Appeals affirmed the conviction of the appellant. The appellate court ruled that the prosecution sufficiently proved the elements of the crimes of illegal sale and illegal possession of *shabu*. The testimony of P/Insp. Fajardo on the conduct of the buy-bust operation was found to be clear and categorical. As the appellant failed to adduce any evidence that tended to prove any ill motive on the part of the police officers to falsely charge the appellant, the Court of Appeals held that the presumption of regularity in the performance of official duties on the part of the police officers had not been controverted in this case.

The dispositive portion of the Court of Appeals decision stated:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The August 6, 2009 Decision of the Regional Trial Court, Branch 41 of the City of Manila in Criminal Cases No. 98-164174-75, finding appellant Donald Vasquez *y* Sandigan guilty beyond reasonable

[48] *Id.* at 47.

[49] *Id.* at 50.

doubt for the crimes of Violation of Section 15 and Section 16, Article III of Republic Act No. 6425 is **AFFIRMED with the MODIFICATION** that in Criminal Case No. 98-164175, appellant is hereby sentenced to suffer the indeterminate penalty of six months of *arresto mayor*, as minimum, to two years, four months and one day of *prision correccional* in its medium period, as maximum.[50]

The Ruling of the Court

The appellant appealed his case to this Court to once again impugn his conviction on two grounds: (1) the purported illegality of the search and the ensuing arrest done by the police officers and (2) his supposed authority to possess the illegal drugs seized from him.[51] He argues that the police officers did not have a search warrant or a warrant of arrest at the time he was arrested. This occurred despite the fact that the police officers allegedly had ample time to secure a warrant of arrest against him. Inasmuch as his arrest was illegal, the appellant avers that the evidence obtained as a result thereof was inadmissible in court. As the *corpus delicti* of the crime was rendered inadmissible, the appellant posits that his guilt was not proven beyond reasonable doubt. Appellant further insists that he was able to prove that he was authorized to keep the drug specimens in his custody, given that he was an employee of the NBI Forensic Chemistry Laboratory who was tasked with the duty to bring drug specimens in court.

After an assiduous review of the evidence adduced by both parties to this case, we resolve to deny this appeal.

At the outset, the Court rules that the appellant can no longer assail the validity of his arrest. We reiterated in *People v. Tampis*[52] that "[a]ny objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment. Having failed to move for the quashing of the information against them before their arraignment, appellants are now estopped

[50] *Rollo*, p. 22.

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

[52] 455 Phil. 371 (2003).

from questioning the legality of their arrest. Any irregularity was cured upon their voluntary submission to the trial court's jurisdiction."[53] Be that as it may, the fact of the matter is that the appellant was caught *in flagrante delicto* of selling illegal drugs to an undercover police officer in a buy-bust operation. His arrest, thus, falls within the ambit of Section 5(a), Rule 113[54] of the Revised Rules on Criminal Procedure when an arrest made without warrant is deemed lawful.

Having established the validity of the warrantless arrest in this case, the Court holds that the warrantless seizure of the illegal drugs from the appellant is likewise valid. We held in *People v. Cabugatan*[55] that:

> This interdiction against warrantless searches and seizures, however, is not absolute and such warrantless searches and seizures have long been deemed permissible by jurisprudence in instances of (1) search of moving vehicles, (2) seizure in plain view, (3) customs searches, (4) waiver or consented searches, (5) stop and frisk situations (Terry search), and **search incidental to a lawful arrest**. The last includes a valid warrantless arrest, for, while as a rule, an arrest is considered legitimate [if] effected with a valid warrant of arrest, the Rules of

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[53] *Id.* at 382.

[54] Section 5, Rule 113 of the Revised Rules of Criminal Procedure provide:

SEC. 5. *Arrest without warrant; when lawful*. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

[55] 544 Phil. 468, 485 (2007).

Court recognize permissible warrantless arrest, to wit: (1) **arrest *in flagrante delicto***, (2) arrest effected in hot pursuit, and (3) arrest of escaped prisoners. (Citation omitted.)

Thus, the appellant cannot seek exculpation by invoking belatedly the invalidity of his arrest and the subsequent search upon his person.

We now rule on the substantive matters.

To secure a conviction for the crime of illegal sale of regulated or prohibited drugs, the following elements should be satisfactorily proven: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[56] As held in *People v. Chua Tan Lee*,[57] in a prosecution of illegal sale of drugs, "what is material is proof that the accused peddled illicit drugs, coupled with the presentation in court of the *corpus delicti*."

On the other hand, the elements of illegal possession of drugs are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[58]

In the case at bar, the testimonies of P/Insp. Fajardo and PO2 Trambulo established that a buy-bust operation was legitimately carried out in the wee hours of April 3, 1998 to entrap the appellant. P/Insp. Fajardo, the poseur-buyer, positively identified the appellant as the one who sold to her six plastic bags of *shabu* that were contained in a big brown envelope for the price of ₱250,000.00. She likewise identified the six plastic bags of *shabu*, which contained the markings she placed thereon after the same were seized from the appellant. When subjected to laboratory examination, the white crystalline powder contained in the plastic bags tested positive for *shabu*. We find that

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[56] *People v. Tiu*, 469 Phil. 163, 173 (2004).

[57] 457 Phil. 443, 449 (2003).

[58] *People v. Ting Uy*, 430 Phil. 516, 530 (2002).

P/Insp. Fajardo's testimony on the events that transpired during the conduct of the buy-bust operation was detailed and straightforward. She was also consistent and unwavering in her narration even in the face of the opposing counsel's cross-examination.

Apart from her description of the events that led to the exchange of the drug specimens seized and the buy-bust money, P/Insp. Fajardo further testified as to the recovery from the appellant of another 12 pieces of plastic sachets of *shabu*. After the latter was arrested, P/Insp. Fajardo stated that PO2 Trambulo conducted a body search on the appellant. This search resulted to the confiscation of 12 more plastic sachets, the contents of which also tested positive for *shabu*. The testimony of P/Insp. Fajardo was amply corroborated by PO2 Trambulo, whose own account dovetailed the former's narration of events. Both police officers also identified in court the twelve plastic sachets of *shabu* that were confiscated from the appellant.

In *People v. Ting Uy*,[59] the Court explains that "credence shall be given to the narration of the incident by prosecution witnesses especially so when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary." In the instant case, the appellant failed to ascribe, much less satisfactorily prove, any improper motive on the part of the prosecution witnesses as to why they would falsely incriminate him. The appellant himself even testified that, not only did he not have any misunderstanding with P/Insp. Fajardo and PO2 Trambulo prior to his arrest, he in fact did not know them at all.[60] In the absence of evidence of such ill motive, none is presumed to exist.[61]

The records of this case are also silent as to any measures undertaken by the appellant to criminally or administratively charge the police officers herein for falsely framing him up for

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[59] *Id.* at 526.

[60] TSN, September 20, 2001, p. 53.

[61] *People v. Butch Bucao Lee*, 407 Phil. 250, 260 (2001).

selling and possessing illegal drugs. Such a move would not have been a daunting task for the appellant under the circumstances. Being a regular employee of the NBI, the appellant could have easily sought the help of his immediate supervisors and/or the chief of his office to extricate him from his predicament. Instead, what the appellant offered in evidence were mere photocopies of documents that supposedly showed that he was authorized to keep drug specimens in his custody. That the original documents and the testimonies of the signatories thereof were not at all presented in court did nothing to help the appellant's case. To the mind of the Court, the evidence offered by the appellant failed to persuade amid the positive and categorical testimonies of the arresting officers that the appellant was caught red-handed selling and possessing a considerable amount of prohibited drugs on the night of the buy-bust operation.

It is apropos to reiterate here that where there is no showing that the trial court overlooked or misinterpreted some material facts or that it gravely abused its discretion, the Court will not disturb the trial court's assessment of the facts and the credibility of the witnesses since the RTC was in a better position to assess and weigh the evidence presented during trial. Settled too is the rule that the factual findings of the appellate court sustaining those of the trial court are binding on this Court, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[62]

On the basis of the foregoing, the Court is convinced that the prosecution was able to establish the guilt of the appellant of the crimes charged.

The Penalties

Anent the proper imposable penalties, Section 15 and Section 16, Article III, in relation to Section 20(3) of Republic Act No. 6425, as amended by Republic Act No. 7659, state:

SEC. 15. *Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs*. - The penalty

[62] *People v. Musa*, G.R. No. 199735, October 24, 2012, 684 SCRA 622, 634.

of ***reclusion perpetua*** **to death and a fine ranging from five hundred thousand pesos to ten million pesos** shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

SEC. 16. *Possession or Use of Regulated Drugs*. - The penalty of ***reclusion perpetua*** **to death and a fine ranging from five hundred thousand pesos to ten million pesos** shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

SEC. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*. - The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;

2. 40 grams or more of morphine;

3. 200 grams or more of *shabu* or methylamphetamine hydrochloride;

4. 40 grams or more of heroin;

5. 750 grams or more of Indian hemp or marijuana;

6. 50 grams or more of marijuana resin or marijuana resin oil;

7. 40 grams or more of cocaine or cocaine hydrocholoride; or

8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from *prision correccional* to *reclusion perpetua* depending upon the quantity. (Emphases supplied.)

In Criminal Case No. 98-164174 involving the crime of illegal sale of regulated drugs, the appellant was found to have sold to the poseur-buyer in this case a total of 247.98 grams of *shabu*, which amount is more than the minimum of 200 grams required by the law for the imposition of either *reclusion perpetua* or, if there be aggravating circumstances, the death penalty.

Pertinently, Article 63[63] of the Revised Penal Code mandates that when the law prescribes a penalty composed of two indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be applied. Thus, in this case, considering that no mitigating or aggravating circumstances attended the appellant's violation of Section 15, Article III of Republic Act No. 6425, as amended, the Court of Appeals correctly affirmed the trial court's imposition of *reclusion perpetua*. The ₱5,000,000.00 fine imposed by the RTC on the appellant is also in accord with Section 15, Article III of Republic Act No. 6425, as amended.

[63] Article 63 of the Revised Penal Code states:

ART. 63. *Rules for the application of indivisible penalties*. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

As to the charge of illegal possession of regulated drugs in Criminal Case No. 98-164175, the Court of Appeals properly invoked our ruling in *People v. Tira*[64] in determining the proper imposable penalty. Indeed, we held in *Tira* that:

> Under Section 16, Article III of Rep. Act No. 6425, as amended, the imposable penalty of possession of a regulated drug, less than 200 grams, in this case, *shabu*, is *prision correccional* to *reclusion perpetua*. Based on the quantity of the regulated drug subject of the offense, the imposable penalty shall be as follows:

QUANTITY	IMPOSABLE PENALTY
Less than one (1) gram to 49.25 grams	***prision correccional***
49.26 grams to 98.50 grams	*prision mayor*
98.51 grams to 147.75 grams	*reclusion temporal*
147.76 grams to 199 grams	*reclusion perpetua*

(Emphases ours.)

Given that the additional 12 plastic sachets of *shabu* found in the possession of the appellant amounted to 4.03 grams, the imposable penalty for the crime is *prision correccional*. Applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstance in this case, the imposable penalty on the appellant should be the indeterminate sentence of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum. The penalty imposed by the Court of Appeals, thus, falls within the range of the proper imposable penalty. In Criminal Case No. 98-164175, no fine is imposable considering that in Republic Act No. 6425, as amended, a fine can be imposed as a conjunctive penalty only if the penalty is *reclusion perpetua* to death.[65]

Incidentally, the Court notes that both parties in this case admitted that the appellant was a regular employee of the NBI Forensics Chemistry Division. Such fact, however, cannot be taken into consideration to increase the penalties in this case to

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[64] G.R. No. 139615, May 28, 2004, 430 SCRA 134, 155.

[65] *People v. Simon*, G.R. No. 93028, July 29, 1994, 234 SCRA 555, 573.

the maximum, in accordance with Section 24 of Republic Act No. 6425, as amended.[66] Such a special aggravating circumstance, *i.e.*, one that which arises under special conditions to increase the penalty for the offense to its maximum period,[67] was not alleged and charged in the informations. Thus, the same was properly disregarded by the lower courts.

All told, the Court finds no reason to overturn the conviction of the appellant.

WHEREFORE, the Court of Appeals Decision dated May 31, 2011 in CA-G.R. CR.-H.C. No. 04201 is **AFFIRMED**. No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, del Castillo,[*] and *Villarama, Jr., JJ.,* concur.

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[66] Section 24 of Republic Act No. 6425, as amended by Section 19 of Republic Act No. 7659, states:

SEC. 24. *Penalties for Government Officials and Employees and Officers and Members of Police Agencies and the Armed Forces; Planting of Evidence*. – The maximum penalties provided for in Sections 3, 4(1), 5(1), 6, 7, 8, 9, 11, 12 and 13 of Article II and Sections 14,14-A, 15(1), 15-A(1), 16 and 19 of Article III shall be imposed, if those found guilty of any of the said offenses are government officials, employees or officers including members of police agencies and the armed forces.

Any such above government official, employee or officer who is found guilty of "planting" any dangerous drugs punished in Sections 3, 4, 7, 8, 9 and 13 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act in the person or in the immediate vicinity of another as evidence to implicate the latter, shall suffer the same penalty as therein provided.

[67] *Palaganas v. People*, 533 Phil. 169, 196 (2006).

[*] Per Raffle dated December 5, 2012.

FIRST DIVISION

[G.R. No. 201092. January 15, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL AQUINO *y* CENDANA @ "AKONG,"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** It is settled in jurisprudence that, absent any showing that the lower court overlooked circumstances which would overturn the final outcome of the case, due respect must be made to its assessment and factual findings, moreover, such findings, when affirmed by the Court of Appeals, are generally binding and conclusive upon this Court. After a thorough examination of the records of this case, we find no compelling reason to doubt the veracity of the findings and conclusions made by the trial court.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** With regard to appellant's inquiry into the credibility of the lone eyewitness of the prosecution, we depend upon the principle that the trial court is in a better position to adjudge the credibility of a witness. x x x Jurisprudence also tells us that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth.

3. **ID.; ID.; ALIBI; THE REQUIREMENTS AS TO TIME AND PLACE MUST BE STRICTLY MET AND THE SAME CORROBORATED BY DISINTERESTED WITNESSES.—** In the face of this serious accusation, appellant puts forward the defense of alibi. We have held that for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. These requirements of time and place must be strictly met. x x x Furthermore, the only person that could corroborate appellant's alibi is his friend

and former co-worker, Paul Maglaque. However, we have consistently assigned less probative weight to a defense of alibi when it is corroborated by friends and relatives since we have established in jurisprudence that, in order for corroboration to be credible, the same must be offered preferably by disinterested witnesses.

4. **ID.; ID.; ID.; ILL-MOTIVE FAILS IN THE ABSENCE OF EVIDENCE THEREFOR.—** [I]t is jurisprudentially settled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable. It is likewise settled 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. In the case at bar, no allegation was made nor proven to show that Jefferson had any ill motive to falsely testify against appellant.

5. **CRIMINAL LAW; MURDER; ELEMENTS.—** According to jurisprudence, to be convicted of murder, the following must be established: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances under Article 248 of the Revised Penal Code; and (4) the killing neither constitutes parricide nor infanticide.

6. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN PRESENT.—** We have consistently held that treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.

7. **ID.; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; ABSORBED IN THE PRESENCE OF TREACHERY.—** [W]e cannot consider abuse of superior strength as an aggravating circumstance in this case. As per jurisprudence, when the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.

8. **ID.; MURDER; PROPER PENALTY.—** Since there is no aggravating or mitigating circumstance present, the proper

penalty is *reclusion perpetua*, in accordance with Article 63 paragraph 2 of the Revised Penal Code, it being the lesser penalty between the two indivisible penalties for the felony of murder which is *reclusion perpetua* to death.

9. ID.; PENALTIES; WHEN DEATH OCCURS DUE TO A CRIME, DAMAGES MAY BE AWARDED.— It is enshrined in jurisprudence that when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages. There being no aggravating circumstance since, as discussed earlier, abuse of superior strength is absorbed in the qualifying circumstance of treachery, the award of ₱75,000.00 as moral damages should be decreased to ₱50,000.00. Such an amount is granted even in the absence of proof of mental and emotional suffering of the victim's heirs. Pursuant to current jurisprudence, the award of civil indemnity in the amount of ₱75,000.00 and exemplary damages in the amount of ₱30,000.00 is correct. The amount of actual damages duly proven in court in the sum of ₱60,100.00 is likewise upheld. Finally, we impose interest at the rate of 6% per annum on all damages from the date of finality of this ruling until fully paid.

10. ID.; SIMPLE CARNAPPING; PROPER PENALTY.— [W]e concur with the modification made by the Court of Appeals with respect to the penalty of life imprisonment for carnapping originally imposed by the trial court. Life imprisonment has long been replaced with the penalty of *reclusion perpetua* to death by virtue of Republic Act No. 7659. Furthermore, the said penalty is applicable only to the special complex crime of carnapping with homicide which is not obtaining in this case. Jurisprudence tells us that to prove the special complex crime of carnapping with homicide, there must be proof not only of the essential elements of carnapping, but also that it was the original criminal design of the culprit and the killing was perpetrated in the course of the commission of the carnapping or on the occasion thereof. The appellate court correctly observed that the killing of Jesus cannot qualify the carnapping into a special complex crime because the carnapping was merely an afterthought when the victim's death was already *fait accompli*. Thus, appellant is guilty only of simple carnapping. [Thus, for] appellant's conviction for simple carnapping, we

affirm the penalty of imprisonment imposed by the Court of Appeals which is fourteen (14) years and eight (8) months, as minimum, to seventeen (17) years and four (4) months, as maximum. Likewise, we uphold the order upon appellant to pay the sum of ₱65,875.00 representing the total amount of the installment payments made on the motorcycle.

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 a Decision[1] dated July 29, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04265, entitled *People of the Philippines v. Joel Aquino y Cendana alias "Akong,"* which affirmed with modifications the Decision[2] dated September 18, 2009 of the Regional Trial Court of Malolos, Bulacan, Branch 12, which convicted appellant Joel Aquino *y* Cendana *alias* "Akong" for the felony of Murder under Article 248 of the Revised Penal Code in Criminal Case No. 483-M-2003 and for the crime of violation of Republic Act No. 6539 otherwise known as the Anti-Carnapping Act of 1972 in Criminal Case No. 484-M-2003.

The pertinent portion of the Information[3] dated December 9, 2002 charging appellant with Murder in Criminal Case No. 483-M-2003 is reproduced here:

That on or about the 6th day of September, 2002, in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed

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[1] *Rollo*, pp. 2-19; penned by Associate Justice Magdangal M. de Leon with Associate Justices Mario V. Lopez and Socorro B. Inting, concurring.

[2] CA *rollo*, pp. 41-55.

[3] Records (Vol. 1), pp. 1-2.

with an ice pick and with intent to kill one Jesus O. Lita, with evident premeditation, treachery and abuse of superior strength, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said ice pick the said Jesus O. Lita, hitting him on the different parts of his body, thereby inflicting upon him mortal wounds which directly caused his death.

On the other hand, the accusatory portion of the Information[4] also dated December 9, 2002 accusing appellant with violating Republic Act No. 6539 in Criminal Case No. 484-M-2003 reads:

That on or about the 6th day of September, 2002, in San Jose del Monte City, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an ice pick and by means of force, violence and intimidation, conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent [to] gain and without the knowledge and consent of the owner thereof, take, steal and carry away with them one (1) tricycle with Plate No. TP-9198 valued at ₱120,500.00, belonging to Jesus Lita and Sisinio Contridas, to the damage and prejudice of the said owners in the said amount of ₱120,500.00; and that on the occasion or by reason of said carnapping, the said accused, pursuant to their conspiracy and with intent to kill, attack, assault and stab Jesus Lita, owner and driver of the said tricycle, hitting him on the different parts of his body which directly caused his death.

Arraignment for the two criminal cases was jointly held on February 13, 2004 wherein appellant pleaded "NOT GUILTY" to both charges.[5]

As indicated in the Appellee's Brief, the following narration constitutes the prosecution's summation of this case:

On September 5, 2005, at around 8:30 in the evening, the victim Jesus Lita, accompanied by his ten[-]year old son, Jefferson, went out aboard the former's black Kawasaki tricycle. Upon reaching San Jose del Monte Elementary School, appellant Joel Aquino together

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[4] Records (Vol. 2), pp. 2-3.

[5] Records (Vol. 1), pp. 60-61.

with Noynoy Almoguera a.k.a. Negro, Rodnal, Bing, John Doe and Peter Doe boarded the tricycle. Noynoy Almoguera instructed the victim to proceed to the nipa hut owned by appellant.

Upon reaching the said nipa hut, Jesus Lita, appellant and his companions had a shabu session while Jefferson was watching TV. After using shabu, Noynoy Almoguera demanded from the victim to pay Five Hundred Pesos (₱500.00), but the victim said that he had no money. Appellant shouted at the victim demanding him to pay. Bing suggested to her companions that they leave the nipa hut. Thus, the victim mounted his tricycle and started the engine. Noynoy Almoguera and John Doe rode in the tricycle behind the victim while appellant and Rodnal rode in the sidecar with Jefferson [sitting] at the toolbox of the tricycle. Inside the tricycle, appellant pointed a knife at Jefferson while Noynoy Almoguera stabbed the victim's side. After the victim was stabbed, he was transferred inside the tricycle while appellant drove the tricycle to his friend's house where they again stabbed the victim using the latter's own knife. Then they loaded the victim to the tricycle and drove to a grassy area where appellant and his companions dumped the body of the victim. Thereafter, they returned to appellant's residence. Jefferson told the sister of appellant about the death of his father but the sister of appellant only told him to sleep.

The next day, Jefferson was brought to the jeepney terminal where he rode a jeepney to get home. Jefferson told his mother, Ma. Theresa Calitisan-Lita, about the death of his father.

In the meantime, SPO3 Servillano Lactao Cabading received a call from Barangay Captain Danilo Rogelio of Barangay San Rafael IV, San Jose Del Monte City, Bulacan thru the two (2) way radio, that the body of a male person with several stab wounds was found dead on a grassy area beside the road of the said barangay. Immediately, SPO3 Cabading together with a police aide proceeded to the area. Thereat, they found the dead body whom they identified thru his Driver's License in his wallet as Jesus Lita, the victim. Also recovered were a big stainless ice pick about 18 inches long including the handle and a tricycle key. The police officers brought the body of the victim to the Sapang Palay District Hospital. Thereafter, they proceeded to the address of the victim.

Ma. Theresa Calitisan-Lita and Jefferson were about to leave for the morgue when they met SPO3 Cabading outside their residence. SPO3 Cabading informed Ma. Theresa that the body of the victim

was found in Barangay San Rafael IV. Jefferson told SPO3 Cabading that he was with his father at the time of his death and he brought the police officers to the place where his father was stabbed and to the hut owned by appellant. Thereat, the police officers recovered a maroon colored knife case and the sandals of the victim. Appellant was invited to the police station for questioning but he refused alleging that he does not know anything about the incident. The police officers were able to obtain a picture of appellant which was shown to Jefferson and he positively identified the same as "Akong" one of those who stabbed his father. Likewise, a video footage of Noynoy Almoguera *alias* "Negro" was shown to Jefferson and he likewise identified the person in the video footage as the same "Negro" who also stabbed his father.

Dr. Richard Ivan Viray, medico-legal, who conducted an autopsy on the victim, concluded that cause of death is Hemorrhagic Shock due to multiple stab wounds.[6]

However, appellant held a different version of the events of this case. In his Appellant's Brief, the succeeding account is entered:

[Appellant] denied the accusations against him. On September 6, 2002, he was working as a laborer/mason in the construction of his uncle's (Rene Cendana) house located at Area C, Acacia Homes, Cavite, together with Paul Maglaque, Eman Lozada, Raul Lozada and Lorenzo Cendana. They worked from 7:30 x x x in the morning until 4:30 x x x in the afternoon, with lunch and "merienda" breaks from 11:30 x x x to 12:00 o'clock noon and 3:00 o'clock to 3:15 x x x in the afternoon, respectively. After work, they just stayed in their barracks located within their workplace. They would prepare their food and take supper at around 7:00 o'clock to 7:30 x x x in the evening, after which, they would smoke cigarettes. They would go to bed at around 8:00 o'clock to 9:00 o'clock in the evening.

He goes home to Sapang Palay, San Jose Del Monte City, Bulacan every Saturday. During Mondays, he would leave their house at around 4:00 o'clock to 5:00 o'clock in the morning and would arrive at his workplace at around 8:00 o'clock or 9:00 o'clock in the morning.

[Appellant] does not know either Ma. Theresa Lita, his son Jefferson, or the victim Jesus Lita. Also, he does not know a certain

[6] CA *rollo*, pp. 115-117.

Noynoy Almoguera and *alias* Rodnal. Likewise, he denied using illegal drugs (*i.e.*, shabu).

[Appellant] knew SPO3 Cabading because the former had served as a police aide to him since he was seventeen (17) years old. He had no misunderstanding with the police officer. He cannot think of any reason why Ma. Theresa Lita and Jefferson pointed to him as one of the perpetrators of the subject crimes.

Paul Maglague (Paul) corroborated [appellant's] testimony. On September 6, 2002, a Friday, [appellant] was working with him, together with Roldan Lozada and Oweng Cendana, at Area C, Dasmariñas, Cavite, in the construction of Boy Cendana's house, Paul's brother-in-law. Paul was the cement mixer while [appellant], being his partner, carries it to wherever it is needed. Their work ends at 5:00 o'clock in the afternoon. After their work, they just stayed in their barracks located within their workplace. [Appellant] was their cook. They usually sleep at around 8:00 o'clock to 9:00 o'clock in the evening. They get their pay only during Saturdays. Hence, they would go home to Bulacan every Saturday.

At around 6:00 o'clock to 7:00 o'clock in the evening of September 7, 2002, they left Cavite and went to their respective homes in Bulacan.

On the night of September 5, 2002, [appellant] slept together with Paul and their other co-workers inside their barracks. Paul woke up in the middle of the night to urinate and was not able to see whether the accused was there, as there were no lights in the place where they were sleeping. The following morning, [appellant] was the one who cooked their food.[7] (Citations omitted.)

At the conclusion of trial, a guilty verdict was handed down by the trial court on both criminal charges. The dispositive portion of the assailed September 18, 2009 Decision states:

WHEREFORE, in Criminal Case No. 483-M-2003, the Court finds the Accused JOEL AQUINO *alias* "Akong" guilty beyond reasonable doubt of the crime of Murder and hereby sentences him to suffer the penalty of *Reclusion Perpetua*. The Court hereby orders the accused JOEL AQUINO to pay the heirs of Jesus Lita, the expenses incurred in his burial and funeral services in the total amount of

[7] *Id.* at 79-82.

Sixty Thousand One Hundred (₱60,100.00) Pesos as actual damages, the sum of Fifty Thousand (₱50,000.00) Pesos as moral damages, and ₱30,000.00 as exemplary damages.

In Criminal Case No. 484-M-2003, the Court likewise finds the accused JOEL AQUINO *alias* "Akong" guilty beyond reasonable doubt of violating R.A. 6539, otherwise known as the Anti-Carnapping Law, and hereby sentences him to suffer the penalty of Life Imprisonment pursuant to Section 14 of the said R.A. 6539. The said accused is also ordered to pay the amount of Sixty[-]Five Thousand Eight Hundred Seventy[-]Five (₱65,875.00) Pesos representing the total installment payments of the Motorcycle.

The accused is also ordered to pay costs of this suit.[8]

Insisting on his innocence, appellant filed an appeal with the Court of Appeals. However, the appellate court upheld the judgment of the trial court along with some modifications. The dispositive portion of the assailed July 29, 2011 Decision of the Court of Appeals, in turn, reads:

WHEREFORE, the appealed *Decision* is hereby **MODIFIED**, as follows:

a) In Criminal Case No. 483-M-2003, appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. Appellant is ordered to pay the heirs of the victim actual damages in the sum of ₱60,100.00, duly proven during the trial, ₱75,000.00 civil indemnity, ₱75,000.00 moral damages and ₱30,000.00 exemplary damages.

b) In Criminal Case No. 484-M-2003, appellant is sentenced to suffer the penalty of imprisonment of Fourteen (14) years and Eight (8) months, as minimum, to Seventeen (17) years and Four (4) months, as maximum and to pay the sum of ₱65,875.00 representing the total installment payments of the motorcycle.[9]

Hence, appellant seeks the Court's favorable action on the instant appeal. In his Brief, appellant reiterated the following

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[8] *Id.* at 54-55.

[9] *Rollo*, p. 18.

errors allegedly committed by the trial court when it adjudged him guilty of the charges leveled against him:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES CHARGED.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ALLEGED LONE EYEWITNESS POSITIVELY IDENTIFIED THE ACCUSED-APPELLANT AS ONE OF THE PERPETRATORS OF THE CRIMES.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT TREACHERY ATTENDED THE KILLING.[10]

Appellant challenges his conviction by arguing that the trial court was not able to prove his guilt beyond reasonable doubt because it only relied on the incredible and inconsistent testimony of Jefferson Lita – the sole eyewitness presented by the prosecution. He contends that if Jefferson was indeed present during the murder of his father, Jesus Lita, then it would be highly inconceivable that Jefferson would have lived to tell that tale since he would most likely be also killed by the perpetrators being an eyewitness to the crime. Furthermore, appellant maintains that he cannot possibly have committed the crimes attributed to him because, on the night that Jesus was murdered, he was asleep in the barracks of a construction site somewhere in Dasmariñas City, Cavite.

We are not persuaded.

It is settled in jurisprudence that, absent any showing that the lower court overlooked circumstances which would overturn the final outcome of the case, due respect must be made to its assessment and factual findings, moreover, such findings, when

[10] CA *rollo*, pp. 72-73.

affirmed by the Court of Appeals, are generally binding and conclusive upon this Court.[11] After a thorough examination of the records of this case, we find no compelling reason to doubt the veracity of the findings and conclusions made by the trial court.

With regard to appellant's inquiry into the credibility of the lone eyewitness of the prosecution, we depend upon the principle that the trial court is in a better position to adjudge the credibility of a witness. In *People v. Vergara*,[12] we elaborated on this premise in this wise:

> When it comes to the matter of credibility of a witness, settled are the guiding rules some of which are that (1) the [a]ppellate court will not disturb the factual findings of the lower [c]ourt, 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, which showing is absent herein; (2) the findings of the [t]rial [c]ourt pertaining to the credibility of a witness is entitled to great respect since it had the opportunity to examine his demeanor as he testified on the witness stand, and, therefore, can discern if such witness is telling the truth or not; and (3) a witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent on cross-examination is a credible witness.[13]

Jurisprudence also tells us that when a testimony is given in a candid and straightforward manner, there is no room for doubt that the witness is telling the truth.[14] A perusal of the testimony of Jefferson indicates that he testified in a manner that satisfies the aforementioned test of credibility. More importantly, during his time at the witness stand, Jefferson positively and categorically identified appellant as one of the individuals who stabbed his father.

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[11] *People v. Roman*, G.R. No. 198110, July 31, 2013.

[12] G.R. No. 177763, July 3, 2013.

[13] *Id.*; citing *People v. Clores*, 263 Phil. 585, 591 (1990).

[14] *People v. Jalbonian*, G.R. No. 180281, July 1, 2013.

We quote the relevant portions of Jefferson's detailed testimony:

[PROSECUTOR CARAIG]

Q Why do you know that your father died on the early morning of September 6, 2002, in Sapang Palay, San Jose del Monte?

x x x x x x x x x

A Because we left the house together at 8:30 in the evening, and my father looked at the calendar.

Q You said you were with your father. Do you know where were you going at that time?
A To the house of Akong.

Q And what mode of transportation did you take, as you said, you were going to the house of Akong?
A Our tricycle, sir.

Q Do you know the trade mark of that tricycle of your father?
A Kawasaki, sir.

Q Do you know the color of that tricycle?
A Black, sir.

Q While on your way to the residence of Akong, could you please tell us if there was any unusual incident that took place?
A Yes, sir, there was.

Q What was that?
A My father was being stabbed.

x x x x x x x x x

Q Did you see who stabbed your father?
A Yes, sir.

Q How many?
A There were three (3) of them.

Q If you will see those three (3) persons again, can you still identify them?
A Yes, sir.

Q Are they inside the courtroom?
A Yes, sir.

Q Will you please look around and point to them.

INTERPRETER

Witness pointed to accused Joel Aquino inside the courtroom.

[PROSECUTOR CARAIG]

Q Who else?
A The others are not here.

Q Now, prior to the stabbing incident and you were able to recognize the three, one of them you identified here inside the courtroom. What was Joel Aquino doing when you first saw him?
A He was inside our tricycle sitting.

Q You are referring to the sidecar of your tricycle?
A Yes, sir.

Q You said a while ago that you and your father were only the one[s] on board the tricycle. Why was he, that Joel, now inside the tricycle?
A They rode in our tricycle.

Q You are referring to Aquino together with his two (2) companions?
A Yes, sir.

Q Where in particular did these three (3) persons ride in your tricycle?
A Joel Aquino was inside the sidecar of our tricycle while the other two (2) rode at the back of my father.

Q At that precise moment, where were you seated?
A Also inside the sidecar, sir.

Q You are sitting side by side with Aquino? Is that what you mean?
A No, sir.

Q While inside the tricycle, what did Aquino do, if any?
A He pointed his knife at me.

Q What else?
A Nothing else.

Q What about the two (2) companions, what did they do, if any?
A *Inunahan nila agad ang Tatay ko sa tagiliran.*

Q What do you mean by "*inunahan*"?
A They stabbed my father on his side.

Q Did you see what part of the body of your father was stabbed?

COURT:

Witness pointing to the right side of his stomach.

[PROSECUTOR CARAIG]

Q What happened to your father when he was stabbed?
A He appeared dizzy and he was placed inside the sidecar.

Q And who brought your father inside the sidecar?
A The two (2) other persons previously at the back of my father.

Q And at that time, what did Joel do?
A He started driving the tricycle.

Q Did Aquino drive the tricycle after he started it?
A Yes, sir.

x x x x x x x x x

Q And did you come to know where did Joel Aquino proceed?
A To their house, sir.

Q How far was that house of Aquino from the place where your father was stabbed?
A Quite far, sir.

Q Were you able to reach the house of Joel Aquino?
A Yes, sir.

Q What did Aquino and these two (2) persons do to your father when you reached his house?
A They brought him down from the tricycle.

Q Where did these three (3) persons bring your father?
A They brought my father to their friend.

Q Did you come to know who was that friend where your father was brought?
A I do not know the name of their friend.

Q What happened to your father when he was brought to their friend?
A My father was already dying and they went back to him and stabbed him several times.

Q How many times was your father stabbed at that time?
A I do not know, sir.

Q Did you see who stabbed him again?
A Yes, sir.

Q Who?
A The three (3) of them.

Q Do you mean to say that Aquino at that time stabbed your father?
A Yes, sir.

Q Did you see what kind of weapon did these three (3) persons use in stabbing your father?
A My father's own knife.

Q Who among the three (3) used your father's knife?
A *Akong po*.

Q That Akong was the friend of the three (3) persons to where these three (3) persons brought your father?
A No, sir.

Q You are referring to one of the two (2) companions of Joel?
A Yes, sir.

Q And after that what else transpired next?
A They boarded my father to the tricycle.

Q How about you?
A While they were boarding my father to the tricycle, Akong pointed his knife at my stomach.

Q Were the three (3) persons able to board your father inside your tricycle?
A Yes, sir.

Q And what did the three (3) persons do after your father was already inside the tricycle?
A They started the tricycle.

Q And then what happened next?
A After they started the motorcycle, they drove the tricycle and threw away my father.

Q Did you see the act of these three (3) persons throwing your father away from the tricycle?
A Yes, sir.

Q How far were you from them when they threw your father?
A More or less about 5 to 6 meters, sir.

Q Describe the place where your father was thrown.
A It was a grassy area.

Q The grass are tall?
A Short grass, sir.

Q And after your father was thrown away, what did the three (3) persons do?
A They started our tricycle and left my father.[15]

In the face of this serious accusation, appellant puts forward the defense of alibi. We have held that for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.[16] These requirements of time and place must be strictly met. A review of the evidence presented by appellant reveals that it falls short of the standard set by jurisprudence. Appellant failed to establish by clear and convincing evidence that it was physically impossible for him to be at San Jose Del Monte City, Bulacan when Jesus was murdered. His own testimony revealed that the distance between the *locus delicti* and Dasmariñas City, Cavite is only a four to five hour regular commute.[17] Thus, it would not be physically

[15] TSN, June 29, 2004, pp. 6-12.

[16] *People v. Hatsero,* G.R. No. 192179, July 3, 2013.

[17] TSN, August 24, 2006, p. 8.

impossible for him to make the round trip between those two points from dusk till dawn of September 5-6, 2002 and still have more than enough time to participate in the events surrounding the murder of Jesus.

Furthermore, the only person that could corroborate appellant's alibi is his friend and former co-worker, Paul Maglaque. However, we have consistently assigned less probative weight to a defense of alibi when it is corroborated by friends and relatives since we have established in jurisprudence that, in order for corroboration to be credible, the same must be offered preferably by disinterested witnesses.[18] Clearly, due to his friendship with appellant, Maglaque cannot be considered as a disinterested witness.

Nevertheless, it is jurisprudentially settled that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.[19] It is likewise settled 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.[20] In the case at bar, no allegation was made nor proven to show that Jefferson had any ill motive to falsely testify against appellant.

With regard to appellant's argument that Jefferson would surely have also been killed by his father's murderers had he indeed witnessed the crime, we can only surmise and speculate on this point. Whatever may be the killers' motivation to spare Jefferson's life remains a mystery. Nonetheless, it does not adversely affect what has been clearly established in this case and that is the cold-blooded murder of Jesus by a group of assailants which includes herein appellant.

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[18] *People v. Basallo*, G.R. No. 182457, January 30, 2013, 689 SCRA 616, 644.

[19] *People v. Ramos*, G.R. No. 190340, July 24, 2013.

[20] *People v. Zapuiz*, G.R. No. 199713, February 20, 2013, 691 SCRA 510, 520.

According to jurisprudence, to be convicted of murder, the following must be established: (1) a person was killed; (2) the accused killed him; (3) the killing was with the attendance of any of the qualifying circumstances under Article 248 of the Revised Penal Code; and (4) the killing neither constitutes parricide nor infanticide.[21]

Contrary to appellant's assertion, the qualifying circumstance of treachery did attend the killing of Jesus. We have consistently held that treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution, which tend directly and specially to insure its execution, without risk to the offender arising from the defense which the offended party might make.[22] On this point, we quote with approval the Court of Appeals' discussion of this aspect of the case, to wit:

> The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving him of any real chance to defend himself. Even when the victim was forewarned of the danger to his person, treachery may still be appreciated since what is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. Records disclose that Jesus was stabbed by the group on the lateral part of his body while he was under the impression that they were simply leaving the place where they had [a] *shabu* session. Judicial notice can be taken that when the tricycle driver is seated on the motorcycle, his head is usually higher or at the level of the roof of the side car which leaves his torso exposed to the passengers who are seated in the side car. Hence, there was no way for Jesus to even be forewarned of the intended stabbing of his body both from the people seated in the side car and those seated behind him. Thus, the trial court's finding of treachery should be affirmed. There is treachery when the means, methods, and forms of execution gave the person attacked no opportunity to defend himself or to retaliate; and such means, methods, and forms of execution were deliberately and consciously adopted by the accused

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[21] *People v. Peteluna*, G.R. No. 187048, January 23, 2013, 689 SCRA 190, 196-197.

[22] *People v. Rarugal*, G.R. No. 188603, January 16, 2013, 688 SCRA 646, 656.

without danger to his person. What is decisive in an appreciation of treachery is that the execution of the attack made it impossible for the victim to defend himself.[23] (Citations omitted.)

However, in contrast to the pronouncements of both the trial court and the Court of Appeals, we cannot consider abuse of superior strength as an aggravating circumstance in this case. As per jurisprudence, when the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.[24] Since there is no aggravating or mitigating circumstance present, the proper penalty is *reclusion perpetua*, in accordance with Article 63 paragraph 2 of the Revised Penal Code,[25] it being the lesser penalty between the two indivisible penalties for the felony of murder which is *reclusion perpetua* to death.

However, we concur with the modification made by the Court of Appeals with respect to the penalty of life imprisonment for carnapping originally imposed by the trial court. Life imprisonment has long been replaced with the penalty of *reclusion perpetua* to death by virtue of Republic Act No. 7659. Furthermore, the said penalty is applicable only to the special complex crime of carnapping with homicide which is not obtaining in this case. Jurisprudence tells us that to prove the special complex crime of carnapping with homicide, there must be proof not only of the essential elements of carnapping, but also that it was the original criminal design of the culprit and the killing was perpetrated in the course of the commission of the carnapping or on the occasion thereof.[26] The appellate court correctly observed that

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[23] *Rollo*, p. 13.

[24] *People v. Cabtalan*, G.R. No. 175980, February 15, 2012, 666 SCRA 174, 195.

[25] Art. 63. *Rules for the application of indivisible penalties*. – x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof:

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[26] *People v. Mallari*, G.R. No. 179041, April 1, 2013, 694 SCRA 284, 296.

the killing of Jesus cannot qualify the carnapping into a special complex crime because the carnapping was merely an afterthought when the victim's death was already *fait accompli*. Thus, appellant is guilty only of simple carnapping.

It is enshrined in jurisprudence that when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[27]

There being no aggravating circumstance since, as discussed earlier, abuse of superior strength is absorbed in the qualifying circumstance of treachery, the award of ₱75,000.00 as moral damages should be decreased to ₱50,000.00. Such an amount is granted even in the absence of proof of mental and emotional suffering of the victim's heirs.[28]

Pursuant to current jurisprudence, the award of civil indemnity in the amount of ₱75,000.00[29] and exemplary damages in the amount of ₱30,000.00[30] is correct. The amount of actual damages duly proven in court in the sum of ₱60,100.00 is likewise upheld. Finally, we impose interest at the rate of 6% per annum on all damages from the date of finality of this ruling until fully paid.[31]

With regard to appellant's conviction for simple carnapping, we affirm the penalty of imprisonment imposed by the Court of Appeals which is fourteen (14) years and eight (8) months, as minimum, to seventeen (17) years and four (4) months, as maximum. Likewise, we uphold the order upon appellant to pay the sum of ₱65,875.00 representing the total amount of the installment payments made on the motorcycle.

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[27] *People v. De la Rosa*, G.R. No. 201723, June 13, 2013.

[28] *People v. Vergara*, *supra* note 12.

[29] *People v. Corpuz*, G.R. No. 191068, July 17, 2013.

[30] *People v. Alawig*, G.R. No. 187731, September 18, 2013.

[31] *Avelino v. People*, G.R. No. 181444, July 17, 2013.

WHEREFORE, premises considered, the Decision dated July 29, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04265, affirming the conviction of appellant Joel Aquino *y* Cendana *alias* "Akong" in Criminal Cases No. 483-M-2003 and 484-M-2003, is hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) The amount of moral damages to be paid by appellant Joel Aquino *y* Cendana *alias* "Akong" in Criminal Case No. 483-M-2003, is decreased from Seventy-Five Thousand Pesos (₱75,000.00) to Fifty Thousand Pesos (₱50,000.00); and

(2) Appellant Joel Aquino *y* Cendana *alias* "Akong" is ordered to pay 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. 202122. January 15, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNABE PAREJA *y* CRUZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DETERMINING GUIDELINES.— When the issue of credibility of witnesses is presented before this Court,

we follow certain guidelines that have overtime been established in jurisprudence. In *People v. Sanchez*, we enumerated them as follows: ***First***, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. ***Second***, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded. ***And third***, the rule is even more stringently applied if the CA concurred with the RTC. The recognized rule in this jurisdiction is that the "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts-and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court."

2. ID.; ID.; ID.; INACCURACIES AND INCONSISTENCIES IN A RAPE VICTIM'S TESTIMONY ARE GENERALLY EXPECTED.— [I]naccuracies and inconsistencies in a rape victim's testimony are generally expected. As this Court stated in *People v. Saludo*: Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. Since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.

3. CRIMINAL LAW; RAPE; DATE AND TIME OF RAPE RELEVANT ONLY WHEN THE ACCURACY AND TRUTHFULNESS OF THE COMPLAINANT'S

NARRATION PRACTICALLY HINGE ON THE DATE OF THE COMMISSION OF THE CRIME.— The date and time of the commission of the crime of rape becomes important only when it creates serious doubt as to the commission of the rape itself or the sufficiency of the evidence for purposes of conviction. In other words, the "date of the commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of the commission of the crime." Moreover, the date of the commission of the rape is not an essential element of the crime.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; LONE TESTIMONY OF RAPE VICTIM MAY BE THE BASIS OF CONVICTION.—** As regards Pareja's concern about AAA's lone testimony being the basis of his conviction, this Court has held: Furthermore, settled is the rule that the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused. No law or rule requires the corroboration of the testimony of a single witness in a rape case.

5. **CRIMINAL LAW; RAPE; MAY BE COMMITTED IN A SMALL HOUSE IN THE PRESENCE OF THE VICTIM'S SLEEPING SIBLINGS.—** Pareja argues that it was improbable for him to have sexually abused AAA, considering that their house was so small that they had to sleep beside each other, that in fact, when the alleged incidents happened, AAA was sleeping beside her younger siblings, who would have noticed if anything unusual was happening. This Court is not convinced. Pareja's living conditions could have prevented him from acting out on his beastly desires, but they did not. This Court has observed that many of the rape cases appealed to us were not always committed in seclusion. Lust is no respecter of time or place, and rape defies constraints of time and space.

6. **ID.; ID.; NOT NEGATED BY FAILURE OF THE VICTIM TO SHOUT FOR HELP AT THE TIME OF RAPE AND LACK OF RESISTANCE WHEN THE RAPE VICTIM WAS INTIMIDATED INTO SUBMISSION.—** A person accused of a serious crime such as rape will tend to escape liability by

shifting the blame on the victim for failing to manifest resistance to sexual abuse. However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help do not negate rape. Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused. In cases where the rape is committed by a relative such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of violence. In this case, AAA's lack of resistance was brought about by her fear that Pareja would make good on his threat to kill her if she ever spoke of the incident.

7. **ID.; ID.; NOT NEGATED BY THE ALLEGED INDIFFERENT REACTION OF THE VICTIM AFTER THE RAPE.—** AAA's conduct, *i.e.*, acting like nothing happened, after being sexually abused by Pareja is also not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim. One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress. Moreover, it is wrong to say that there is a standard reaction or behavior among victims of the crime of rape since each of them had to cope with different circumstances.

8. **ID.; ID.; NOT NEGATED BY DELAY IN REPORTING THE CRIME.—** AAA's delay in reporting the incidents to her mother or the proper authorities is insignificant and does not affect the veracity of her charges. It should be remembered that Pareja threatened to kill her if she told anyone of the incidents. In *People v. Ogarte*, we explained why a rape victim's deferral in reporting the crime does not equate to falsification of the accusation. x x x Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims.

9. ID.; ID.; MEDICAL EXAMINATION IS NOT INDISPENSABLE IN A RAPE CHARGE.— This Court has time and again held that an accused can be convicted of rape on the basis of the sole testimony of the victim. In *People v. Colorado*, we said: [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. Expert testimony is merely corroborative in character and not essential to conviction.

10. ID.; ANTI-RAPE LAW OF 1997 (RA 8353); INCORPORATION OF RAPE BY SEXUAL ASSAULT; DISTINGUISHED FROM RAPE BY CARNAL KNOWLEDGE.— In Criminal Case No. 04-1557-CFM or the December 2003 incident, Pareja was charged and convicted of the crime of rape by sexual assault. The enactment of Republic Act No. 8353 or the Anti-Rape Law of 1997, revolutionized the concept of rape with the recognition of sexual violence on "sex-related" orifices other than a woman's organ is included in the crime of rape; and the crime's expansion to cover gender-free rape. "The transformation mainly consisted of the reclassification of rape as a crime against persons and the introduction of rape by 'sexual assault' as differentiated from the traditional 'rape through carnal knowledge' or 'rape through sexual intercourse.'" Republic Act No. 8353 amended Article 335, the provision on rape in the Revised Penal Code and incorporated therein Article 266-A. x x x Thus, under the new provision, rape can be committed in two ways: 1. Article 266-A paragraph 1 refers to Rape through sexual intercourse, also known as "organ rape" or "penile rape." The central element in rape through sexual intercourse is carnal knowledge, which must be proven beyond reasonable doubt. 2. Article 266-A paragraph 2 refers to rape by sexual assault, also called "instrument or object rape," or "gender-free rape." It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1. In *People v. Abulon*, this Court differentiated the two modes of committing rape as follows: (1) In the first mode, the offender is always a man, while in the second, the offender may be a man or a woman; (2) In the first mode, the offended party is always a woman, while in the second, the offended party may be a man or a woman; (3) In the first mode, rape is committed through penile

penetration of the vagina, while the second is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and (4) The penalty for rape under the first mode is higher than that under the second. Under Article 266-A, paragraph 2 of the Revised Penal Code, as amended, rape by sexual assault is "[b]y 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."

11. **ID.; ID.; ACCUSED CHARGED WITH RAPE BY CARNAL KNOWLEDGE, WHILE CANNOT BE CONVICTED OF RAPE BY SEXUAL ASSAULT, CAN BE CONVICTED OF THE LESSER CRIME OF ACTS OF LASCIVIOUSNESS; CASE AT BAR.—** AAA positively and consistently stated that Pareja, in December 2003, inserted his penis into her anus. While she may not have been certain about the details of the February 2004 incident, she was positive that Pareja had anal sex with her in December 2003, thus, clearly establishing the occurrence of rape by sexual assault. In other words, her testimony on this account was, as the Court of Appeals found, clear, positive, and probable. **However,** since the charge in the Information for the December 2003 incident is **rape through carnal knowledge**, Pareja cannot be found guilty of rape by sexual assault even though it was proven during trial. This is due to the material differences and substantial distinctions between the two modes of rape; thus, the first mode is not necessarily included in the second, and vice-versa. Consequently, to convict Pareja of rape by sexual assault when what he was charged with was rape through carnal knowledge, would be to violate his constitutional right to be informed of the nature and cause of the accusation against him. Nevertheless, Pareja may be convicted of the lesser crime of acts of lasciviousness under the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure. x x x [H]e can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.

12. ID.; ACTS OF LASCIVIOUSNESS; ELEMENTS.— Article 336 of the Revised Penal Code provides: Art. 336. Acts of lasciviousness. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prisión correccional.* The elements of the above crime are as follows: (1) That the offender commits any act of lasciviousness or lewdness; (2) That 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) That the offended party is another person of either sex.

13. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; DILIGENCE IN THE CRAFTING OF INFORMATION ACCENTUATED AS FAULTY AND DEFECTIVE INFORMATION DOES NOT RENDER FULL JUSTICE TO THE STATE, THE OFFENDED PARTY AND THE OFFENDER.— The Court takes this case as an opportunity to remind the State, the People of the Philippines, as represented by the public prosecutor, to exert more diligence in crafting the Information, which contains the charge against an accused. The primary duty of a lawyer in public prosecution is to see that justice is done – to the State, that its penal laws are not broken and order maintained; to the victim, that his or her rights are vindicated; and to the offender, that he is justly punished for his crime. A faulty and defective Information, such as that in Criminal Case No. 04-1556-CFM, does not render full justice to the State, the offended party, and even the offender. Thus, the public prosecutor should always see to it that the Information is accurate and appropriate.

14. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ALLEGATION OF RESENTMENT, HATRED OR REVENGE BY RAPE VICTIM, NOT APPRECIATED.— Pareja sought to escape liability by denying the charges against him, coupled with the attribution of ill motive against AAA. He claims that AAA filed these cases against him because she was angry that he caused her parents' separation. Pareja added that these cases were initiated by AAA's father, as revenge against him. Such contention is untenable. "AAA's credibility

cannot be diminished or tainted by such imputation of ill motives. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge." Furthermore, motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.

15. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS; PENALTY.— The penalty for acts of lasciviousness under Article 336 of the Revised Penal Code is *prisión correccional* in its full range. Applying the Indeterminate Sentence Law, the minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree, *i.e.*, *arresto mayor*, which ranges from 1 month and 1 day to 6 months. The maximum of the indeterminate penalty shall come from the proper penalty that could be imposed under the Revised Penal Code for Acts of Lasciviousness, which, in this case, absent any aggravating or mitigating circumstance, is the medium period of *prisión correccional*, ranging from 2 years, 4 months and 1 day to 4 years and 2 months. In line with prevailing jurisprudence, the Court modifies the award of damages as follows: ₱20,000.00 as civil indemnity; ₱30,000.00 as moral damages; and ₱10,000.00 as exemplary damages, for each count of acts of lasciviousness. All amounts shall bear legal interest at the rate of 6% per annum from the date of finality of this judgment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The accused-appellant Bernabe Pareja *y* Cruz (Pareja) is appealing the January 19, 2012 **Decision**[1] of the Court of Appeals

[1] *Rollo*, pp. 2-15; penned by Associate Justice Isaias P. Dicdican with Associate Justices Jane Aurora C. Lantion and Rodil V. Zalameda, concurring.

in **CA-G.R. CR.-H.C. No. 03794**, which affirmed *in toto* the conviction for Rape and Acts of Lasciviousness meted out by Branch 113, Regional Trial Court (RTC) of Pasay City in Criminal Case Nos. 04-1556-CFM and 04-1557-CFM.[2]

On May 5, 2004, Pareja was charged with two counts of Rape and one Attempted Rape. The Informations for the three charges read as follows:

I. For the two counts of Rape:

Criminal Case No. 04-1556-CFM

That on or about and sometime in the month of February, 2004, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Bernabe Pareja *y* Cruz, being the common law spouse of the minor victim's mother, through force, threats and intimidation, did then and there wil[l]fully, unlawfully and feloniously commit an act of sexual assault upon the person of [AAA],[3] a minor 13 years of age, by then and there mashing her breast and inserting his finger inside her vagina against her will.[4]

Criminal Case No. 04-1557-CFM

That on or about and sometime in the month of December, 2003, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Bernabe Pareja y Cruz, being the stepfather of [AAA], a minor 13 years of age, through force, threats and intimidation, did then and there wil[l]fully, unlawfully and feloniously have carnal knowledge of said minor against her will.[5]

II. For the charge of Attempted Rape:

Criminal Case No. 04-1558-CFM

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

[3] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

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

[5] *Id.* at 11.

That on or about the 27th day of March, 2004, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, BERNABE PAREJA *Y* CRUZ, being the common law spouse of minor victim's mother by means of force, threats and intimidation, did then and there willfully, unlawfully and feloniously commence the commission of the crime of Rape against the person of minor, [AAA], a 13 years old minor by then and there crawling towards her direction where she was sleeping, putting off her skirt, but did not perform all the acts of execution which would have produce[d] the crime of rape for the reason other than his own spontaneous desistance, that is the timely arrival of minor victim's mother who confronted the accused, and which acts of child abuse debased, degraded and demeaned the intrinsic worth and dignity of said minor complainant as a human being.[6]

On June 17, 2004, Pareja, during his arraignment, pleaded not guilty to the charges filed against him.[7] After the completion of the pre-trial conference on September 16, 2004,[8] trial on the merits ensued.

The antecedents of this case, as narrated by the Court of Appeals, are as follows:

AAA was thirteen (13) years of age when the alleged acts of lasciviousness and sexual abuse took place on three (3) different dates, particularly [in December 2003], February 2004, and March 27, 2004.

AAA's parents separated when she was [only eight years old].[9] At the time of the commission of the aforementioned crimes, AAA was living with her mother and with herein accused-appellant Bernabe Pareja who, by then, was cohabiting with her mother, together with three (3) of their children, aged twelve (12), eleven (11) and nine (9), in x x x, Pasay City.

The first incident took place [i]n December 2003 [the December 2003 incident]. AAA's mother was not in the house and was with

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[6] *Id.* at 53.

[7] Records, p. 20.

[8] *Id.* at 37-38.

[9] TSN, November 4, 2004, p. 3.

her relatives in Laguna. Taking advantage of the situation, [Pareja], while AAA was asleep, placed himself on top of [her]. Then, [Pareja], who was already naked, begun to undress AAA. [Pareja] then started to suck the breasts of [AAA]. Not satisfied, [Pareja] likewise inserted his penis into AAA's anus. Because of the excruciating pain that she felt, AAA immediately stood up and rushed outside of their house.

Despite such traumatic experience, AAA never told anyone about the [December 2003] incident for fear that [Pareja] might kill her. [Pareja] threatened to kill AAA in the event that she would expose the incident to anyone.

AAA further narrated that the [December 2003] incident had happened more than once. According to AAA, [i]n February 2004 [the February 2004 incident], she had again been molested by [Pareja]. Under the same circumstances as the [December 2003 incident], with her mother not around while she and her half-siblings were asleep, [Pareja] again laid on top of her and started to suck her breasts. But this time, [Pareja] caressed [her] and held her vagina and inserted his finger [i]n it.

With regard to the last incident, on March 27, 2004 [the March 2004 incident], it was AAA's mother who saw [Pareja] in the act of lifting the skirt of her daughter AAA while the latter was asleep. Outraged, AAA's mother immediately brought AAA to the *barangay* officers to report the said incident. AAA then narrated to the *barangay* officials that she had been sexually abused by [Pareja] x x x many times x x x.

Subsequently, AAA, together with her mother, proceeded to the Child Protection Unit of the Philippine General Hospital for a medical and genital examination. On March 29, 2004, Dr. Tan issued Provisional Medico-Legal Report Number 2004-03-0091. Her medico-legal report stated the following conclusion:

> Hymen: Tanner Stage 3, hymenal remnant from 5-7 o'clock area, Type of hymen: Crescentic
>
> x x x x x x x x x
>
> Genital findings show Clear Evidence of Blunt Force or Penetrating Trauma.

After the results of the medico-legal report confirmed that AAA was indeed raped, AAA's mother then filed a complaint for rape before the Pasay City Police Station.

To exculpate himself from liability, [Pareja] offered both denial and ill motive of AAA against him as his defense. He denied raping [AAA] but admitted that he knew her as she is the daughter of his live-in partner and that they all stay in the same house.

Contrary to AAA's allegations, [Pareja] averred that it would have been impossible that the alleged incidents happened. To justify the same, [Pareja] described the layout of their house and argued that there was no way that the alleged sexual abuses could have happened.

According to [Pareja], the house was made of wood, only about four (4) meters wide by ten (10) meters, and was so small that they all have to sit to be able to fit inside the house. Further, the vicinity where their house is located was thickly populated with houses constructed side by side. Allegedly, AAA also had no choice but to sleep beside her siblings.

All taken into account, [Pareja] asseverated that it was hard to imagine how he could possibly still go about with his plan without AAA's siblings nor their neighbors noticing the same.

Verily, [Pareja] was adamant and claimed innocence as to the imputations hurled against him by AAA. He contended that AAA filed these charges against him only as an act of revenge because AAA was mad at [him] for being the reason behind her parents' separation.[10]

Ruling of the RTC

On January 16, 2009, the RTC acquitted Pareja from the charge of attempted rape but convicted him of the crimes of rape and acts of lasciviousness in the December 2003 and February 2004 incidents, respectively. The dispositive portion of the Decision[11] reads as follows:

WHEREFORE, the herein accused Bernabe Pareja *y* Cruz is hereby acquitted from the charge of attempted rape in Crim. Case No. 04-1558, for want of evidence.

In Crim. Case No. 04-1556, the said accused is CONVICTED with Acts of Lasciviousness and he is meted out the penalty of

[10] *Rollo*, pp. 4-7.

[11] CA *rollo*, pp. 52-62.

imprisonment, ranging from 2 years, 4 months and 1 day as minimum to 4 years and 2 months of *prision* [*correccional*] as maximum.

In Crim. Case No. 04-1557, the said accused is CONVICTED as charged with rape, and he is meted the penalty of *reclusion perpetua*.

The accused shall be credited in full for the period of his preventive imprisonment.

The accused is ordered to indemnify the offended party [AAA], the sum of ₱50,000.00, without subsidiary imprisonment, in case of insolvency.[12]

The RTC, in convicting Pareja of the crime of Rape and Acts of Lasciviousness, gave more weight to the prosecution's evidence as against Pareja's baseless denial and imputation of ill motive. However, due to the failure of the prosecution to present AAA's mother to testify about what she had witnessed in March 2004, the RTC had to acquit Pareja of the crime of Attempted Rape in the March 2004 incident for lack of evidence. The RTC could not convict Pareja on the basis of AAA's testimony for being hearsay evidence as she had no personal knowledge of what happened on March 27, 2004 because she was sleeping at that time.

Ruling of the Court of Appeals

Wanting to reverse his two convictions, Pareja appealed[13] to the Court of Appeals, which on January 19, 2012, affirmed *in toto* the judgment of the RTC in Criminal Case Nos. 04-1556 and 04-1557, to wit:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby **DENIED** and, consequently, **DISMISSED**. The appealed Decisions rendered by Branch 113 of the Regional Trial Court of the National Capital Judicial Region in Pasay City on January 16, 2009 in Criminal Cases Nos. 04-1556 to 04-1557 are hereby **AFFIRMED *in toto***.[14]

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[12] *Id.* at 62.

[13] *Id.* at 28.

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

Issues

Aggrieved, Pareja elevated his case to this Court[15] and posited before us the following errors as he did before the Court of Appeals:

I

THE TRIAL COURT SERIOUSLY ERRED IN CONVICTING [PAREJA] OF THE CRIMES CHARGED NOTWITHSTANDING THAT HIS GUILT HAS NOT BEEN PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [PAREJA] BASED SOLELY ON THE PROSECUTION WITNESS' TESTIMONY.[16]

In his Supplemental Brief[17] Pareja added the following argument:

The private complainant's actuations after the incident negate the possibility that she was raped.[18]

Pareja's main bone of contention is the reliance of the lower courts on the testimony of AAA in convicting him for rape and acts of lasciviousness. Simply put, Pareja is attacking the credibility of AAA for being inconsistent. Moreover, he claimed, AAA acted as if nothing happened after the alleged sexual abuse.

Ruling of this Court

This Court finds no reason to reverse Pareja's conviction.

Core Issue: Credibility of AAA

Pareja claims that AAA's testimony cannot be the lone basis of his conviction as it was riddled with inconsistencies.[19]

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

[16] CA *rollo*, pp. 45-46.

[17] *Rollo*, pp. 31-35.

[18] *Id.* at 31.

[19] CA *rollo*, pp. 48-49.

We find such argument untenable.

When the issue of credibility of witnesses is presented before this Court, we follow certain guidelines that have overtime been established in jurisprudence. In *People v. Sanchez*,[20] we enumerated them as follows:

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC. (Citations omitted.)

The recognized rule in this jurisdiction is that the "assessment of the credibility of witnesses is a domain best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand; a vantage point denied appellate courts-and when his findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court."[21] While there are recognized exceptions to the rule, this Court has found no substantial reason to overturn the identical conclusions of the trial and appellate courts on the matter of AAA's credibility.

Besides, inaccuracies and inconsistencies in a rape victim's testimony are generally expected.[22] As this Court stated in *People v. Saludo*:[23]

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[20] G.R. No. 197815, February 8, 2012, 665 SCRA 639, 643.

[21] *People v. Manalili*, G.R. No. 191253, August 28, 2013.

[22] *People v. Rubio*, G.R. No. 195239, March 7, 2012, 667 SCRA 753, 762.

[23] G.R. No. 178406, April 6, 2011, 647 SCRA 374, 388.

Rape is a painful experience which is oftentimes not remembered in detail. For such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. (Citation omitted.)

Since human memory is fickle and prone to the stresses of emotions, accuracy in a testimonial account has never been used as a standard in testing the credibility of a witness.[24] The inconsistencies mentioned by Pareja are trivial and non-consequential matters that merely caused AAA confusion when she was being questioned. The inconsistency regarding the year of the December incident is not even a matter pertaining to AAA's ordeal.[25] The date and time of the commission of the crime of rape becomes important only when it creates serious doubt as to the commission of the rape itself or the sufficiency of the evidence for purposes of conviction. In other words, the "date of the commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of the commission of the crime."[26] Moreover, the date of the commission of the rape is not an essential element of the crime.[27]

In this connection, Pareja repeatedly invokes our ruling in *People v. Ladrillo*,[28] implying that our rulings therein are applicable to his case. However, the factual circumstances in *Ladrillo* are prominently missing in Pareja's case. In particular,

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[24] *People v. Zafra*, G.R. No. 197363, June 26, 2013.

[25] *Id.*

[26] *People v. Cantomayor*, 441 Phil. 840, 847 (2002).

[27] *People v. Escultor*, 473 Phil. 717, 727 (2004).

[28] 377 Phil. 904 (1999).

the main factor for Ladrillo's acquittal in that case was because his constitutional right to be informed of the nature and cause of the accusation against him was violated when the Information against him only stated that the crime was committed "on or about the year 1992." We said:

> The peculiar designation of time in the Information clearly violates Sec. 11, Rule 110, of the Rules Court which requires that the time of the commission of the offense must be alleged as near to the actual date as the information or complaint will permit. More importantly, it runs afoul of the constitutionally protected right of the accused to be informed of the nature and cause of the accusation against him. The Information is not sufficiently explicit and certain as to time to inform accused-appellant of the date on which the criminal act is alleged to have been committed.
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> The phrase "on or *about* the year 1992" encompasses not only the twelve (12) months of 1992 but includes the years prior and subsequent to 1992, *e.g.*, 1991 and 1993, for which accused-appellant has to virtually account for his whereabouts. Hence, the failure of the prosecution to allege with particularity the date of the commission of the offense and, worse, its failure to prove during the trial the date of the commission of the offense as alleged in the Information, deprived accused-appellant of his right to intelligently prepare for his defense and convincingly refute the charges against him. At most, accused-appellant could only establish his place of residence in the year indicated in the Information and not for the particular time he supposedly committed the rape.
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> x x x x x x x x x
>
> Indeed, the failure of the prosecution to prove its allegation in the Information that accused-appellant raped complainant in 1992 manifestly shows that the date of the commission of the offense as alleged was based merely on speculation and conjecture, and a conviction anchored mainly thereon cannot satisfy the quantum of evidence required for a pronouncement of guilt, that is, proof beyond reasonable doubt that the crime was committed on the date and place indicated in the Information.[29] (Citation omitted.)

In this case, although the dates of the December 2003 and February 2004 incidents were not specified, the period of time

[29] *Id.* at 911-915.

Pareja had to account for was fairly short, unlike "on or about the year 1992." Moreover, Ladrillo was able to prove that he had only moved in the house where the rape supposedly happened, in 1993, therefore negating the allegation that he raped the victim in that house in 1992.[30]

While it may be true that the inconsistencies in the testimony of the victim in *Ladrillo* contributed to his eventual acquittal, this Court said that they alone were not enough to reverse Ladrillo's conviction, *viz*:

> Moreover, there are discernible defects in the complaining witness' testimony that militates heavily against its being accorded the full credit it was given by the trial court. **Considered independently, the defects might not suffice to overturn the trial court's judgment of conviction**, but assessed and weighed in its totality, and in relation to the testimonies of other witnesses, as logic and fairness dictate, they exert a powerful compulsion towards reversal of the assailed judgment.[31] (Emphasis supplied.)

It is worthy to note that Ladrillo also offered more than just a mere denial of the crime charged against him to exculpate him from liability. He also had an alibi, which, together with the other evidence, produced reasonable doubt that he committed the crime as charged. In contrast, Pareja merely denied the accusations against him and even imputed ill motive on AAA.

As regards Pareja's concern about AAA's lone testimony being the basis of his conviction, this Court has held:

> Furthermore, settled is the rule that the testimony of a single witness may be sufficient to produce a conviction, if the same appears to be trustworthy and reliable. If credible and convincing, that alone would be sufficient to convict the accused. No law or rule requires the corroboration of the testimony of a single witness in a rape case.[32] (Citations omitted.)

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[30] *Id.* at 915.

[31] *Id.* at 912.

[32] *People v. Manalili*, *supra* note 21.

Improbability of sexual abuse in their small house and in the presence of AAA's sleeping siblings

Pareja argues that it was improbable for him to have sexually abused AAA, considering that their house was so small that they had to sleep beside each other, that in fact, when the alleged incidents happened, AAA was sleeping beside her younger siblings, who would have noticed if anything unusual was happening.[33]

This Court is not convinced. Pareja's living conditions could have prevented him from acting out on his beastly desires, but they did not. This Court has observed that many of the rape cases appealed to us were not always committed in seclusion. Lust is no respecter of time or place,[34] and rape defies constraints of time and space. In *People v. Sangil, Sr.*,[35] we expounded on such occurrence in this wise:

> In *People v. Ignacio*, we took judicial notice of the interesting fact that among poor couples with big families living in small quarters, copulation does not seem to be a problem despite the presence of other persons around them. Considering the cramped space and meager room for privacy, couples perhaps have gotten used to quick and less disturbing modes of sexual congresses which elude the attention of family members; otherwise, under the circumstances, it would be almost impossible to copulate with them around even when asleep. It is also not impossible nor incredible for the family members to be in deep slumber and not be awakened while the sexual assault is being committed. One may also suppose that growing children sleep more soundly than grown-ups and are not easily awakened by adult exertions and suspirations in the night. There is no merit in appellant's contention that there can be no rape in a room where other people are present. There is no rule that rape can be committed only in seclusion. We have repeatedly declared that "lust is no respecter of time and place," and rape can be committed in even the unlikeliest of places. (Citations omitted.)

[33] CA *rollo*, p. 46.

[34] *People v. Mangitngit*, 533 Phil. 837, 854 (2006).

[35] 342 Phil. 499, 506-507 (1997).

Demeanor of AAA as a rape victim

Pareja asseverates that AAA's demeanor and conduct belie her claim that she was raped. He said that "the ordinary Filipina [would have summoned] every ounce of her strength and courage to thwart any attempt to besmirch her honor and blemish her purity." Pareja pointed out that they lived in a thickly populated area such that any commotion inside their house would have been easily heard by the neighbors, thus, giving AAA the perfect opportunity to seek their help.[36] Moreover, Pareja said, AAA's delay in reporting the incidents to her mother or the authorities negates the possibility that he indeed committed the crimes. AAA's belated confession, he claimed, "cannot be dismissed as trivial as it puts into serious doubt her credibility."[37]

A person accused of a serious crime such as rape will tend to escape liability by shifting the blame on the victim for failing to manifest resistance to sexual abuse. However, this Court has recognized the fact that no clear-cut behavior can be expected of a person being raped or has been raped. It is a settled rule that failure of the victim to shout or seek help do not negate rape. Even lack of resistance will not imply that the victim has consented to the sexual act, especially when that person was intimidated into submission by the accused. In cases where the rape is committed by a relative such as a father, stepfather, uncle, or common law spouse, moral influence or ascendancy takes the place of violence.[38] In this case, AAA's lack of resistance was brought about by her fear that Pareja would make good on his threat to kill her if she ever spoke of the incident.

AAA's conduct, *i.e.*, acting like nothing happened, after being sexually abused by Pareja is also not enough to discredit her. Victims of a crime as heinous as rape, cannot be expected to

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[36] CA *rollo*, p. 47.

[37] *Rollo*, pp. 31-32.

[38] *People v. Pacheco*, G.R. No. 187742, April 20, 2010, 618 SCRA 606, 615.

act within reason or in accordance with society's expectations. It is unreasonable to demand a standard rational reaction to an irrational experience, especially from a young victim. One cannot be expected to act as usual in an unfamiliar situation as it is impossible to predict the workings of a human mind placed under emotional stress. Moreover, it is wrong to say that there is a standard reaction or behavior among victims of the crime of rape since each of them had to cope with different circumstances.[39]

Likewise, AAA's delay in reporting the incidents to her mother or the proper authorities is insignificant and does not affect the veracity of her charges. It should be remembered that Pareja threatened to kill her if she told anyone of the incidents. In *People v. Ogarte*,[40] we explained why a rape victim's deferral in reporting the crime does not equate to falsification of the accusation, to wit:

> The failure of complainant to disclose her defilement without loss of time to persons close to her or to report the matter to the authorities does not perforce warrant the conclusion that she was not sexually molested and that her charges against the accused are all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims. (Citation omitted.)

Medical examination not indispensable

Pareja avers that the Medico-Legal Report indicating that there is evidence of blunt force or penetrating trauma upon examination of AAA's hymen, "cannot be given any significance, as it failed to indicate how and when the said signs of physical trauma were inflicted." Furthermore, Pareja said, the findings

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[39] *People v. Saludo*, *supra* note 23 at 394.

[40] G.R. No. 182690, May 30, 2011, 649 SCRA 395, 412.

that AAA's hymen sustained trauma cannot be utilized as evidence against him as the alleged sexual abuse that occurred in December, was not by penetration of the vagina.[41]

This Court has time and again held that an accused can be convicted of rape on the basis of the sole testimony of the victim. In *People v. Colorado*,[42] we said:

> [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. Expert testimony is merely corroborative in character and not essential to conviction. x x x.

Therefore, the absence of testimony or medical certificate on the state of AAA's anus at the time she was examined is of no consequence. On the contrary, the medical examination actually bolsters AAA's claim of being raped by Pareja on more than one occasion, and not just by anal penetration. However, as the prosecution failed to capitalize on such evidence and prove the incidence of carnal knowledge, Pareja cannot be convicted of rape under paragraph 1 of Article 266-A of the Revised Penal Code.

In *People v. Perez*,[43] this Court aptly held:

> This Court has held time and again that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. It is highly improbable that a girl of tender years, one not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is not true. (Citations omitted.)

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[41] CA *rollo*, p. 48.

[42] G.R. No. 200792, November 14, 2012, 685 SCRA 660, 673.

[43] G.R. No. 182924, December 24, 2008, 575 SCRA 653, 671.

Criminal Case No. 04-1557-CFM:
The December 2003 Incident

In Criminal Case No. 04-1557-CFM or the December 2003 incident, Pareja was charged and convicted of the crime of rape by sexual assault. The enactment of Republic Act No. 8353 or the Anti-Rape Law of 1997, revolutionized the concept of rape with the recognition of sexual violence on "sex-related" orifices other than a woman's organ is included in the crime of rape; and the crime's expansion to cover gender-free rape. "The transformation mainly consisted of the reclassification of rape as a crime against persons and the introduction of rape by 'sexual assault' as differentiated from the traditional 'rape through carnal knowledge' or 'rape through sexual intercourse.'"[44] Republic Act No. 8353 amended Article 335, the provision on rape in the Revised Penal Code and incorporated therein Article 266-A which reads:

Article 266-A. *Rape, When and How Committed*. – Rape is committed –

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

   a) Through force, threat or intimidation;

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

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

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

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

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[44] *People v. Abulon*, 557 Phil. 428, 452-453 (2007).

Thus, under the new provision, rape can be committed in two ways:

1. Article 266-A paragraph 1 refers to Rape through sexual intercourse, also known as "organ rape" or "penile rape."[45] The central element in rape through sexual intercourse is carnal knowledge, which must be proven beyond reasonable doubt.[46]

2. Article 266-A paragraph 2 refers to rape by sexual assault, also called "instrument or object rape," or "gender-free rape."[47] It must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.[48]

In *People v. Abulon*,[49] this Court differentiated the two modes of committing rape as follows:

(1) In the first mode, the offender is always a man, while in the second, the offender may be a man or a woman;

(2) In the first mode, the offended party is always a woman, while in the second, the offended party may be a man or a woman;

(3) In the first mode, rape is committed through penile penetration of the vagina, while the second is committed by inserting the penis into another person's mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person; and

(4) The penalty for rape under the first mode is higher than that under the second.

Under Article 266-A, paragraph 2 of the Revised Penal Code, as amended, rape by sexual assault is "[b]y any person who, under any of the circumstances mentioned in paragraph 1 hereof,

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[45] *Id.* at 453-454.

[46] *People v. Soria*, G.R. No. 179031, November 14, 2012, 685 SCRA 483, 497.

[47] *People v. Abulon*, *supra* note 44 at 454.

[48] *People v. Soria*, *supra* note 46 at 497.

[49] *Supra* note 44 at 454.

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."

AAA positively and consistently stated that Pareja, in December 2003, inserted his penis into her anus. While she may not have been certain about the details of the February 2004 incident, she was positive that Pareja had anal sex with her in December 2003, thus, clearly establishing the occurrence of rape by sexual assault. In other words, her testimony on this account was, as the Court of Appeals found, clear, positive, and probable.[50]

However, since the charge in the Information for the December 2003 incident is **rape through carnal knowledge**, Pareja cannot be found guilty of rape by sexual assault even though it was proven during trial. This is due to the material differences and substantial distinctions between the two modes of rape; thus, the first mode is not necessarily included in the second, and vice-versa. Consequently, to convict Pareja of rape by sexual assault when what he was charged with was rape through carnal knowledge, would be to violate his constitutional right to be informed of the nature and cause of the accusation against him.[51]

Nevertheless, Pareja may be convicted of the lesser crime of acts of lasciviousness under the variance doctrine embodied in Section 4, in relation to Section 5, Rule 120 of the Rules of Criminal Procedure,[52] to wit:

> SEC. 4. *Judgment in case of variance between allegation and proof.* – When there is a variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.
>
> SEC. 5. *When an offense includes or is included in another.* – An offense charged necessarily includes the offense proved when

[50] *Rollo*, p. 13.

[51] *People v. Abulon*, *supra* note 44 at 455.

[52] *Id.*

some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

Article 336 of the Revised Penal Code provides:

Art. 336. Acts of lasciviousness. — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prisión correccional.*

The elements of the above crime are as follows:

(1) That the offender commits any act of lasciviousness or lewdness;

(2) That 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) That the offended party is another person of either sex.[53] (Citation omitted.)

Clearly, the above-mentioned elements are present in the December 2003 incident, and were sufficiently established during trial. Thus, even though the crime charged against Pareja was for rape through carnal knowledge, he can be convicted of the crime of acts of lasciviousness without violating any of his constitutional rights because said crime is included in the crime of rape.[54]

Nonetheless, the Court takes this case as an opportunity to remind the State, the People of the Philippines, as represented

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[53] *People v. Dominguez, Jr.*, G.R. No. 180914, November 24, 2010, 636 SCRA 134, 158.

[54] *Perez v. Court of Appeals*, 431 Phil. 786, 797 (2002).

by the public prosecutor, to exert more diligence in crafting the Information, which contains the charge against an accused. The primary duty of a lawyer in public prosecution is to see that justice is done[55] – to the State, that its penal laws are not broken and order maintained; to the victim, that his or her rights are vindicated; and to the offender, that he is justly punished for his crime. A faulty and defective Information, such as that in Criminal Case No. 04-1556-CFM, does not render full justice to the State, the offended party, and even the offender. Thus, the public prosecutor should always see to it that the Information is accurate and appropriate.

Criminal Case No. 04-1556-CFM: The February 2004 Incident

It is manifest that the RTC carefully weighed all the evidence presented by the prosecution against Pareja, especially AAA's testimony. In its scrutiny, the RTC found AAA's declaration on the rape in the December 2003 incident credible enough to result in a conviction, albeit this Court had to modify it as explained above. However, it did not find that the same level of proof, *i.e.*, beyond reasonable doubt, was fully satisfied by the prosecution in its charge of attempted rape and a second count of rape against Pareja. In Criminal Case No. 04-1556-CFM, or the February 2004 incident, the RTC considered AAA's confusion as to whether or not she was actually penetrated by Pareja, and eventually resolved the matter in Pareja's favor.

This Court agrees with such findings. AAA, in her *Sinumpaang Salaysay*,[56] stated that aside from sucking her breasts, Pareja also inserted his finger in her vagina. However, she was not able to give a clear and convincing account of such insertion during her testimony. Despite being repeatedly asked by the prosecutor as to what followed after her breasts were sucked, AAA failed to testify, in open court, that Pareja also inserted his finger in her vagina. Moreover, later on, she added that

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[55] Code of Professional Responsibility, Rule 6.01.

[56] Records, pp. 142-143.

Pareja inserted his penis in her vagina during that incident. Thus, because of the material omissions and inconsistencies, Pareja cannot be convicted of rape in the February 2004 incident. Nonetheless, Pareja's acts of placing himself on top of AAA and sucking her breasts, fall under the crime of acts of lasciviousness, which, as we have discussed above, is included in the crime of rape.

Verily, AAA was again positive and consistent in her account of how Pareja sucked both her breasts in the February 2004 incident. Thus, Pareja was correctly convicted by the courts *a quo* of the crime of acts of lasciviousness.

Defense of Denial and Improper Motive

Pareja sought to escape liability by denying the charges against him, coupled with the attribution of ill motive against AAA. He claims that AAA filed these cases against him because she was angry that he caused her parents' separation. Pareja added that these cases were initiated by AAA's father, as revenge against him.[57]

Such contention is untenable. "AAA's credibility cannot be diminished or tainted by such imputation of ill motives. It is highly unthinkable for the victim to falsely accuse her father solely by reason of ill motives or grudge."[58] Furthermore, motives such as resentment, hatred or revenge have never swayed this Court from giving full credence to the testimony of a minor rape victim.[59] In *People v. Manuel*,[60] we held:

> Evidently, no woman, least of all a child, would concoct a story of defloration, allow examination of her private parts and subject herself to public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to

[57] TSN, May 27, 2008, p. 6.

[58] *People v. Zafra*, *supra* note 24.

[59] *People v. Mangitngit*, *supra* note 34 at 852.

[60] 358 Phil. 664, 674 (1998).

her being. It is settled jurisprudence that testimonies of child-victims are given full weight and credit, since when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed.

Liability for Acts of Lasciviousness

The penalty for acts of lasciviousness under Article 336 of the Revised Penal Code is *prisión correccional* in its full range. Applying the Indeterminate Sentence Law,[61] the minimum of the indeterminate penalty shall be taken from the full range of the penalty next lower in degree,[62] *i.e.*, *arresto mayor*, which ranges from 1 month and 1 day to 6 months.[63] The maximum of the indeterminate penalty shall come from the proper penalty[64] that could be imposed under the Revised Penal Code for Acts of Lasciviousness,[65] which, in this case, absent any aggravating or mitigating circumstance, is the medium period of *prisión correccional*, ranging from 2 years, 4 months and 1 day to 4 years and 2 months.[66]

In line with prevailing jurisprudence, the Court modifies the award of damages as follows: ₱20,000.00 as civil indemnity;[67] ₱30,000.00 as moral damages; and ₱10,000.00 as exemplary damages,[68] for each count of acts of lasciviousness. All amounts shall bear legal interest at the rate of 6% per annum from the date of finality of this judgment.

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[61] Republic Act No. 4103, as amended.

[62] *Id.*, Section 1.

[63] Revised Penal Code, Articles 25 and 27.

[64] *Id.*, Article 64(1).

[65] Republic Act No. 4103, as amended, Section 1.

[66] Revised Penal Code, Article 77.

[67] *People v. Garcia*, G.R. No. 200529, September 19, 2012, 681 SCRA 465, 480-481.

[68] *Sombilon, Jr. v. People*, G.R. No. 175528, September 30, 2009, 601 SCRA 405, 421.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03794 is hereby **AFFIRMED with MODIFICATION**. We find accused-appellant Bernabe Pareja *y* Cruz **GUILTY** of two counts of Acts of Lasciviousness, defined and penalized under Article 336 of the Revised Penal Code, as amended. He is sentenced to two (2) indeterminate prison terms of 6 months of *arresto mayor*, as minimum, to 4 years and 2 months of *prisión correccional*, as maximum; and is **ORDERED** to pay the victim, AAA, ₱20,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱10,000.00 as exemplary damages, for each count of acts of lasciviousness, all with interest at the rate of 6% *per annum* from the date of finality of this judgment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 203028. January 15, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSELITO BERAN *y* ZAPANTA @ "Jose",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA NO. 9165); CHAIN OF CUSTODY; EVIDENCE OF THE DANGEROUS DRUG ITSELF MUST BE INDEPENDENTLY ESTABLISHED BEYOND REASONABLE DOUBT.— Evidentiary gaps in the chain of custody of the confiscated

plastic sachet cast reasonable doubt on its integrity. It is well-settled that in the prosecution of cases involving the illegal sale or illegal possession of dangerous drugs, the evidence of the *corpus delicti*, which is the dangerous drug itself, must be independently established beyond reasonable doubt. In *People v. Pagaduan*, we ruled that proof beyond reasonable doubt in criminal prosecution for the sale of illegal drugs demands that unwavering exactitude be observed in establishing the *corpus delicti*, the body of the crime whose core is the confiscated illicit drug. The case of *People v. Tan*, cited in *People of the Philippines v. Datu Not Abdul*, elucidates and reminds us why: x x x Thus, every fact necessary to constitute the crime must be established, and the chain of custody requirement under R.A. No. 9165 performs this function in buy-bust operations as it ensures that any doubts concerning the identity of the evidence are removed.

2. ID.; ID.; ID.; ELUCIDATED.— Although R.A. No. 9165 does not define the meaning of "chain of custody," Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 nonetheless explains the said term, as follows: "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] The purpose of the requirement of proof of the chain of custody is to ensure that the integrity and evidentiary value of the seized drug are preserved, as thus dispel unnecessary doubts as to the identity of the evidence. To be admissible, the prosecution must establish by records or testimony the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers, until it was tested in the laboratory to determine its composition, and all the way to the time it was offered in evidence. x x x It has been held that "[w]hile a perfect chain of custody is almost always impossible to achieve, an *unbroken*

chain becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange."

3. **ID.; ID.; ID.; PROCEDURES REQUIRED TO BE OBSERVED TO PROPERLY PRESERVE THE SEIZED ILLEGAL DRUGS.—** Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides that to properly preserve the integrity and evidentiary value of the illegal drugs seized pursuant to a buy-bust operation, or under a search warrant, the following procedures shall be observed by the apprehending officers, to wit: x x x (a) The apprehending officer/ team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; x x x In *People v. Dela Rosa* we ruled that the prosecution must establish by records or testimony the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers until it was tested in the laboratory to determine its composition, and all the way to the time it is offered in evidence.

4. **ID.; ID.; ID.; ID.; NONCOMPLIANCE THEREWITH WARRANTS ACQUITTAL OF ACCUSED.—** In *People v. Morales*, we acquitted the accused due to the failure of the buy-bust team to photograph and inventory the seized items or to give justifiable grounds for their non-observance of the required procedures. In *People v. Garcia*, the accused was acquitted because "no physical inventory was ever made, and no photograph of the seized items was taken under the

circumstances required by R.A. No. 9165 and its implementing rules." We issued the same ruling in *Bondad, Jr. v. People*, where the police without justifiable grounds did not inventory or photograph the seized items. We reiterated the same ruling in *People v. Gutierrez*, *People v. Denoman*, *People v. Partoza*, *People v. Robles*, and *People v. dela Cruz*. In all these cases, we stressed the importance of complying with the required mandatory procedures in Section 21 of R.A. No. 9165 concerning the preservation of the chain of custody of confiscated drugs in a buy-bust operation. Further, in *Mallillin v. People* we emphasized that the chain of custody rule requires that there be testimony about every link in the chain, from the moment the object seized was picked up to the time it was offered in evidence, in such a way that every person who touched it would describe how and from whom it was received, where it was and what happened to it while in the possession of the witness, the condition in which it was received and the condition in which it was delivered to the next link in the chain.

5. ID.; ID.; ID.; ID.; MARKING OF EVIDENCE SEIZED IN BUY-BUST OPERATION OR UNDER A SEARCH WARRANT *VIS-À-VIS* PHYSICAL INVENTORY AND PHOTOGRAPH.— Concerning the marking of evidence seized in a buy-bust operation or under a search warrant, *vis-á-vis* the physical inventory and photograph, it must be noted that there are distinctions as to time and place under Section 21 of R.A. No. 9165. Thus, whereas in seizures covered by search warrants, the physical inventory and photograph must be conducted in the place of the search warrant, in warrantless seizures such as a buy-bust operation the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable, consistent with the "chain of custody" rule. x x x It needs no elaboration that the immediate marking of the item seized in a buy-bust operation in the presence of the accused is indispensable to establish its identity in court.

6. ID.; ID.; ID.; ID.; ID.; LAPSES THEREIN MUST BE SUFFICIENTLY JUSTIFIED AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE SEIZED MUST HAVE BEEN PRESERVED.— Lapses in the strict compliance with the requirements of Section 21 of R.A. No. 9165 must be explained in terms of their justifiable

grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved. In *People v. Coreche*, we explained that the above-cited rules are intended to narrow the window of opportunity for tampering with evidence, as expressed in Section 21(1) of R.A. No. 9165. x x x In *Sanchez*, we recognized that under varied field conditions the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible, and we ruled that under the implementing guidelines of the said Section "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." But we added that the prosecution bears the burden of proving "justifiable cause." Thus, in *Almorfe*, we stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. In *People v. de Guzman*, we emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

On appeal is the Decision[1] dated March 9, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04466 affirming the conviction of accused-appellant Joselito Beran *y* Zapanta (Beran) rendered by the Regional Trial Court (RTC) of Manila,

[1] Penned by Associate Justice Leoncia R. Dimagiba, with Associate Justice Hakim S. Abdulwahid and Marlene Gonzales-Sison, concurring; CA *rollo*, pp. 96-123.

Branch 13, in a Decision[2] dated April 19, 2010 in Criminal Case No. 03-218039, for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, under an Information which reads, as follows:

> The undersigned accuses JOSELITO BERAN *y* ZAPANTA @ JOSE of Viol. of Sec. 5, Art. II of Rep. Act No. 9165, committed as follows:
>
> That on or about August 26, 2003, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale to a poseur buyer one (1) pc. plastic sachet containing ZERO POINT ZERO THREE ZERO (0.030) gram of white crystalline substance known as SHABU containing meth[yl]amphetamine hydrochloride, which is a dangerous drug.
>
> Contrary to law.[3]

At his arraignment on November 5, 2003, Beran pleaded not guilty to the offense charged, and trial followed.

The Facts

According to the prosecution, between three and four o'clock in the afternoon of August 26, 2003,[4] a confidential informant (CI) went to the District Anti-Illegal Drug (DAID) Office of the Western Police District (WPD) at the United Nations Avenue, Manila, and approached Police Officer 3 (PO3) Rodolfo Enderina (Enderina) to report that a certain Joselito Beran, *alias* "Jose," a pedicab driver, was selling prohibited drugs, particularly "*shabu*," in the vicinity of San Antonio Street in Tondo, Manila. PO3 Enderina relayed the information to Police Colonel Marcelino

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[2] Issued by Acting Presiding Judge Cicero D. Jurado, Jr.; records, pp. 159-163.

[3] *Id.* at 1.

[4] But a second prosecution witness, PO3 Hipolito Francia, said on cross-examination that the time was more or less 2:00 p.m.; TSN, April 26, 2005, p. 3.

Pedroso, Chief of DAID-WPD, who then ordered him to form a buy-bust team to apprehend the suspect. At around 5:00 p.m., the buy-bust team, composed of PO3 Enderina, PO3 Hipolito Francia, PO3 Benito Decorion (Decorion), PO2 Ernie Reyes, PO2 Alexander Delos Santos (Delos Santos) and PO3 Knowme Sia (Sia), who was to act as the poseur-buyer, arrived in Tondo on board an owner-type jeep and two scooters. In the jeep were PO3 Enderina, PO2 Delos Santos, and the CI, while the rest of the team rode in the scooters. They parked near the Gat Andres Hospital and proceeded on foot towards San Antonio Street. As arranged, PO3 Sia and the CI walked ahead of the others. PO3 Sia and the CI reached the target area first, and there the CI saw Beran standing some 10 meters away near a "*poso*" or deep-well.

After recognizing and pointing Beran to PO3 Sia, the CI approached him and the two men conversed briefly. Then the CI signaled to PO3 Sia to join them, and he introduced PO3 Sia to Beran, who then asked the CI how much PO3 Sia was buying. The CI replied, "*piso lang*," or ₱100, and Beran took out something from his pocket, a small, heat-sealed plastic sachet, which he then handed to PO3 Sia. PO3 Sia took the sachet and pretended to examine it discreetly, after which he indicated to Beran that he was satisfied with its content. He then took out a marked ₱100 bill which he handed to Beran; all this time the back-up members of the buy-bust team were watching from strategic locations around the vicinity.

Thereupon, PO3 Sia executed the pre-arranged signal of touching his hair to signify to the back-up cops that the buy-bust sale of *shabu* had been consummated, even as he then placed Beran under arrest. The back-up operatives quickly converged upon Beran, with PO2 Delos Santos arriving first, to whom PO3 Sia then handed over the custody of Beran, while he kept the plastic sachet. The buy-bust team brought Beran to the DAID-WPD office, where PO3 Sia marked the confiscated plastic sachet with the initials of Beran, "JB." He also recorded the incident in the police blotter, and accomplished the Booking

Sheet and Arrest Report (Exhibits F and F-1), and the Request for Laboratory Examination (Exhibits G and G-1). He later brought the seized plastic sachet to the WPD Crime Laboratory for examination, where after testing it was found to contain the prohibited drug methylamphetamine hydrochloride or *shabu*.[5]

In his defense, Beran vehemently denied the above incident. Testifying alone in his defense, he asserted that on August 26, 2003 at around 2:00 p.m., while he was resting alone upstairs in his house, five WPD policemen arrived and ordered him to come with them. He resisted and asked why they were arresting him, but without apprising him of his constitutional rights they handcuffed and forcibly boarded him in an owner-type jeep and brought him to the WPD Headquarters. There, two of his arrestors, PO3 Francia and PO3 Sia, demanded from him the amount of ₱20,000.00 in exchange for his release without any charge. But he could not produce the amount they asked, and they trumped up a charge against him of illegal sale of *shabu*.[6]

The trial of Beran took all of seven years to wind up, mainly on account of many postponements allegedly due to supervening illnesses or reassignments of the subpoenaed arresting officers. The prosecution was able to present two witnesses, PO3 Francia and PO3 Sia, but only PO3 Sia gave a witness account of the drug buy-bust itself. PO3 Francia admitted that he served as a mere look-out to prevent any intruder from interfering in the buy-bust operation, and that he did not witness the buy-bust transaction itself. As for PO3 Decorion, also a member of the buy-bust team, the RTC per its Order[7] dated July 29, 2009 agreed to dispense with his testimony after the parties stipulated that as the designated driver of the buy-bust team, he did not see the actual exchange of drug and money between Beran and PO3 Sia, nor did he witness the actual arrest of Beran by PO3 Sia.

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[5] CA *rollo*, pp. 68-71.

[6] *Id.* at 39.

[7] Records, p. 137.

Ruling of the RTC

On April 19, 2010, the RTC of Manila, Branch 13, rendered its judgment,[8] the dispositive portion of which reads:

> **THEREFORE**, premises considered and the prosecution having established to a moral certainty the guilt of the accused **JOSELITO BERAN *y* ZAPANTA @ JOSE** of the crime charged, this Court in the absence of any aggravating circumstance hereby sentences the Accused to LIFE IMPRISONMENT and to pay the fine of five hundred thousand pesos ([₱]500,000.00), without any subsidiary imprisonment in case of insolvency.
>
> In the service of his sentence, the actual confinement under detention during the pendency of this case shall be deducted from the said prison term in accordance with Article 29 of the Revised Penal Code.
>
> The evidence presented is ordered transferred to the Philippine Drug Enforcement Agency (PDEA) for destruction.
>
> SO ORDERED.[9]

Beran went up to the CA to interpose the following alleged errors in the RTC decision, to wit:

> I.
>
> THE TRIAL COURT GRAVELY ERRED IN CONVICTING [BERAN] DESPITE THE ILLEGALITY OF HIS ARREST AND THE INADMISSIBILITY OF THE ALLEGED CONFISCATED PROHIBITED DRUG.
>
> II.
>
> THE TRIAL COURT GRAVELY ERRED IN FINDING [BERAN] GUILTY BEYOND REASONABLE DOUBT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY OF THE PROHIBITED DRUG.

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[8] *Id.* at 159-163.

[9] *Id.* at 163.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [BERAN] DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165.[10]

Ruling of the CA

In affirming *in toto* the RTC, the CA ruled that Beran was caught *in flagrante delicto* as a result of a valid and legitimate buy-bust operation, an entrapment to apprehend law breakers while in the act of executing their criminal plan.[11] Relying solely on the testimony of PO3 Sia, it found that Beran sold the prohibited drug *shabu* to an undercover buyer, PO3 Sia; that Beran was arrested at the moment of the consummation of the sale transaction and immediately brought to the DAID-WPD along with the sachet of illegal drug confiscated from him; that when the substance was subjected to chemical analysis by the WPD Drug Laboratory, the content thereof was shown to be methylamphetamine hydrochloride or *shabu*.

The CA further held that the arrest of Beran by PO3 Sia without warrant was valid under Section 5(b) of Rule 113 of the Revised Rules on Criminal Procedure, which provides that "a police officer or a private person may, without a warrant arrest a person when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it." It also cited Section 5(a) of Rule 113, wherein it provides that "a police officer can arrest a person without warrant when in his presence the person to be arrested has committed, is actually committing, or is attempting to commit an offense."

Quoted below at length are pertinent portions of the testimony of PO3 Sia which according to the CA have proved beyond

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[10] CA *rollo*, p. 35.

[11] *Cruz v. People*, G.R. No. 164580, February 6, 2009, 578 SCRA 147, 152.

reasonable doubt the material facts attending the buy-bust and establishing the guilt of Beran:

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DIRECT EXAMINATION
CONDUCTED BY
ACP LIBERTAD RASA ON WITNESS
PO3 KNOWME SIA

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Q: How did you know that there was that informant who arrived at your office giving information about drugs activities of a certain Beran?
A: PO3 Rodolfo Enderina formed a team in DAID office, ma'am.

Q: Did you know why Enderina formed a group at DAID?
A: He relayed to us that we have [an] Anti-Illegal [D]rugs [O]peration, ma'am.

Q: That you will have [an] Anti-Illegal Drugs Operation, where and against whom?
A: Against one Joselito Beran *alias* Jose, ma'am.

Q: Where?
A: In the area of San Antonio Street, Tondo, Manila.

Q: Was there anytime that you saw them in front at your office when he relayed the information to Enderina?
A: Yes, ma'am.

Q: What time of the day or the night was that?
A: Between 3-4 pm of August 26, 2003, ma'am.

Q: And what did your team leader Rodolfo Enderina do as soon as he receive[d] that information?
A: He formed his men and then he directed all of us and place[d] the confidential information for interrogation, ma'am.

Q: As a ma[t]ter of standard operating procedure, what does [an] operative of SAID or DAID do before launching a buy-bust operation?
A: First, there must be an information to be received, [then] there was a plan [of] operation and then the documents are

required to [be] accomplished prior to [the] conduct [of] a buy-bust operation, ma'am.

Q: What documents, if any, were you required to prepare prior to your operation?
A: Our dispatch record.

Q: Do you have a copy of this dispatch record?
A: Yes, ma'am.

Q: Can you show it to the Court?
A: It is [with] the custodial of DAID, ma'am.

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ACP Rasa:

Q: Aside from the [dispatch] record, what other documents did you prepare?
A: The buy-bust money, ma'am.

Q: Do you have the buy-bust money with you?
A: I will bring it on the next hearing, ma'am.

Q: How much buy-bust money did you prepare?
A: [₱]100.00, ma'am.

Q: Who supplied that [₱]100.00 buy-bust money?
A: Our team leader, ma'am.

Q: Who is your team leader?
A: PO3 Rodolfo Enderina, ma'am.

Q: Aside from the [dispatch] record, the buy-bust money, what other preparations did you do before launching on the operation of buy-bust against one Joselito Beran *alias* Jose?

A: There was a preparation of Pre-Operation Report and Coordination Sheet, however, we cannot fax to the PDEA because the PDEA [fax] at that time was not fully operational, ma'am.

Q: What other documents aside from those already mentioned did you prepare?
A: That's all, ma'am.

Q: And what were the other instructions given to you by the team leader, Rodolfo Enderina?
A: During our briefing, I was then chosen as the designated poseur-buyer, ma'am.

Q: What else?
A: The marked money was marked by me and then during the briefing, it was agreed that the pre-arranged signal was to touch my hair as indication that the deed was done, ma'am.

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Q: What time did you proceed to San Antonio?
A: Around 5:00 of August 26, 2003, ma'am.

Q: How many vehicles [did you use]?
A: We utilized one (1) owner type jeep and [the] other[s] were on their respective motorcycle or scooter, ma'am.

Q: And the other[s] were [a]board on scooter[s]?
A: Yes, ma'am.

Q: Who were inside the owner type jeep?
A: PO3 Rodolfo End[e]rina, the confidential informant and PO1 (sic) Delos Santos, ma'am.

Q: And who took their scooters?
A: PO3 Benito Decorion and PO2 Ernie Reyes, ma'am.

Q: One scooter?
A: Two (2) scooter[s] ma'am.

Q: Where did you park your vehicle?
A: We parked in the area of Gat Andres Hospital, ma'am.

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Q: As soon as you [had] parked your vehicles, what else happened?
A: When we parked our vehicle, PO3 Enderina grouped us and told us that [at] the area where we [were] going, the vehicles [could] not enter San Antonio Street and after that, the confidential informant was the first who proceeded [to] the target place, ma'am.

Q: You already said that you already parked your vehicles. So how did you arrive at San Antonio Street?
A: [On] foot, ma'am.

Q: How did you scout or identify your target person?
A: Upon arrival in the area of San Antonio, the confidential informant was the first who arrived and then in a few minutes later, the confidential informant pointed [to] one (1) male person in the area of San Antonio, ma'am.

Q: You were saying that, the confidential informant went ahead of you?
A: No, ma'am. We were together, ma'am.

Q: Where did you first notice the presence of the accused?
A: Near the alley, ma'am, in the middle of San Antonio where there is a "poso".

Q: When pointed to you, how far were you from the accused or your target?
A: Approximately 8-10 meters, ma'am.

Q: What was the accused doing when he was pointed at by the confidential informant to you?
A: He was spotted standing, ma'am.

Q: Standing only?
A: Yes, ma'am.

Q: What happened after you saw him standing?
A: The CI went ahead of me to approach the suspect, ma'am.

Q: When you said the CI was ahead of you, about how far away were you following him?
A: 3-4 meters, ma'am.

Q: What else happened?
A: After that, ma'am, the CI and the subject were conversing.

Q: Did you hear what the conversation was all about?
A: No, ma'am.

Q: After that conversation, what happened next?
A: The CI signaled to me to come close to them, ma'am.

Q: As soon as you were already with the group or with the CI and the target person, what else did you do?
A: I approached them, ma'am, then the CI introduced me as the buyer of the prospected illegal drugs.

Q: What was the reply or the action of Beran?
A: He told the CI "*magkano ba*", ma'am.

Q: And what did the CI say?
A: The CI told him "*piso lang*". "*Piso*" means One Hundred Pesos, ma'am.

Q: After knowing that you were only interested to buy "*piso*", what happened after?
A: After that Beran took out something from his pocket, ma'am.

Q: What was that?
A: Beran showed me and the CI [a] small plastic sachet, ma'am.

Q: After showing to you, what else did Beran do with the plastic?
A: The subject handed to me one (1) plastic sachet, ma'am.

Q: What did you do after it was handed to you?
A: I discreetly examined the contents of the plastic sachet and after that, the subject person demanded for the payment of said stuff, ma'am.

Q: What did you do?
A: I gave the marked buy-bust money, ma'am.

Q: What happened after that?
A: After that, the pre-arranged signal was executed, ma'am.

Q: What was the pre-arranged signal agreed upon?
A: Touching of the hair, ma'am.

Q: Who was able to recover that buy-bust money?
A: Me, ma'am.

Q: What happened next?
A: The other back-up operatives arrived and PO2 Delos Santos was the first to respond x x x and I gave the suspect to him for custody, ma'am.

Q: What did you do with that plastic that you bought from the accused Beran?
A: I immediately placed him (sic) in my custody, ma'am, and later on it was marked and forwarded to WPD Drug Laboratory Office for laboratory examination, ma'am.

Q: Who brought that plastic sachet for the laboratory examination?
A: Me, ma'am.

Q: Who placed the marking on that plastic sachet?
A: Me, ma'am.

Q: What marking did you place?
A: JB, ma'am.

Q: Where did you place the marking?
A: At the office, ma'am.

Q: If shown that plastic sachet, will you be able to identify it?
A: Yes, ma'am.

Q: Why?
A: I recognized the markings, ma'am.

Q: What did you use to mark it?
A: I think it was a pentel pen, ma'am.

Q: Aside from this drugs (sic) which you said they requested and [you] personally brought for examination at the WPD Crime Laboratory, what other things did you do as soon as you arrived at the office?
A: It was recorded it (sic) in our police blotter, ma'am, and the pertinent documents were prepared.

Q: Do you have a copy of the police blotter?
A: Yes, ma'am, but it's in the office.

Q: The buy-bust money and the dispatched report are also at your office. Can you bring all of those?
A: Yes, ma'am.

Q: What was the result of the laboratory examination which you said you personally brought to the laboratory?
A: It turned out to be positive for Meth[yl]amphetamine Hydrochloride, ma'am.

Q: What happened next after the examination?
A: After preparing the documents, we presented the case before the inquest fiscal, ma'am.

Q: Did you subject the accused for drug test?
A: I cannot remember, ma'am.

Q: You did not prepare a request for drug test?
A: I prepared the request for drug test, ma'am.

Q: And what was the result of the drug test?
A: I do not know the result, ma'am.

Q: Can you bring the result of [the] drug test?
A: "Sa Crime Lab *na lang po*", ma'am.

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CONTINUATION OF DIRECT EXAMINATION
CONDUCTED BY:
FISCAL PURIFICACION A. BARING-TUVERA

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FISCAL TUVERA:

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Q: Mr. Witness, during your testimony on August 8, 2006, you were asked by former Prosecutor Rasa if you will be able to identify the specimen which you said you bought from accused Joselito Beran, do you remember having said that?
A: Yes, ma'am.

Q: Will you still be able to identify the specimen if it will be shown to you again?
A: Yes, ma'am. I was the one who. . . (interrupted)

Q: Will you be able to identify it?
A: Yes, ma'am.

Q: And how will you be able to identify it, Mr. Witness?
A: I was the one who placed the marking on the alleged shabu.

Q: And what were the markings [that] you place[d] on the plastic sachet?
A: It was marked JB ma'am.

Q: J?
A: JB.

Q: And will you kindly tell us who placed the markings JB on the plastic sachet?
A: I was the one who marked the specimen.

Q: And where did you place the markings Mr. Witness?
A: On the plastic sachet.

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[12] TSN, August 8, 2006, pp. 3-16.

Q: At what time did you place the markings on the plastic sachet?
A: After the arrest of the suspect when he was brought to our office for investigation.

Q: In other words, when did you place the markings?
A: After 5 pm of August 23, 2003.

Q: And at what place Mr. Witness?
A: At the office.

Q: I am showing you Mr. Witness a plastic sachet, by the way, how many plastic sachets did you [buy] from the accused?
A: One (1) plastic sachet.

Q: One plastic sachet only, Mr. Witness, I am showing you a plastic sachet with markings JB, will you kindly tell us if that is the same plastic sachet that you bought from the accused and subsequently marked at the police station?
A: This is the plastic sachet subject of the sale, I marked JB on the said plastic sachet.

FISCAL TUVERA:
We manifest Your Honor that [t]he plastic sachet was already marked as Exhibit B-1 for the prosecution.

Q: What did you use Mr. Witness in buying this shabu?
A: We utilized [₱]100 bill.

Q: Do you have the genuine [₱]100 bill with you now Mr. Witness?

(pause)

Q: *Nasa iyo ba yung* [₱]100 bill?
A: I have it in my custody.

Q: You have it in your custody?
A: But I did not bring it today.

Q: Why did you not bring it today Mr. Witness?
A: I only knew ma'am that I have my hearing on Joselito Beran but I forgot to bring it, next scheduled hearing *nalang po*.

Q: Mr. Witness, before you used that buy-bust money to buy shabu from the accused Mr. Witness, did you place markings on the [₱]100 bill?
A: Yes ma'am

Q: And what were these markings did you place on the [₱]100 bill?
A: I marked DAID at the left po[r]tion of the buy-bust money.

Q: And what else did you do aside from placing markings on the [₱]100 bill?
A: The said money was then xeroxed for five (5) pieces and then the original was kept in our custody.

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(Continuation of Direct-Examination of Witness PO3 Knowme Sia by ACP Baring-Tuvera)

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ACP BARING-TUVERA
Q: Mr. Witness, you are here today for the continuation of your direct-examination. May we know if you already brought with you the buy-bust money in connection with this case?

THE WITNESS
A: Yes, ma'am.

ACP BARING-TUVERA
Q: Will you kindly bring it out and show it to this Honorable Court so that the Court may be able to appreciate it?

THE WITNESS
A: Here, ma'am.

COURT:
Q: The money is attached to a blank sheet of paper. Will you write something about it, the case number?

THE WITNESS
A: Yes, your Honor.

ACP BARING-TUVERA:
Q: May I just have this identified, your Honor? Mr. Witness, you said that you were the one who placed the markings on this One Hundred Peso ([₱]100.00) bill. Will you kindly tell us on what part of this money did you place the markings?

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[13] TSN, pp. 3-6, July 15, 2008.

THE WITNESS
A: I marked DAID at the left center portion of the buy-bust money.

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ACP BARING-TUVERA
Q: Mr. Witness, you said that you were the one – you were the poseur-buyer in this case. If you will be shown the item again, will you be able to identify it again Mr. Witness?

THE WITNESS
A: Yes, ma'am.

Q: I am showing to you Mr. Witness – and how will you be able to identify it?
A: I was the one who marked it.

Q: And what markings did you place on the plastic sachet?
A: JB, ma'am.

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ACP BARING-TUVERA
Q: And who were present when you marked this plastic sachet at the office?

THE WITNESS
A: The arresting officers ma'am, my companions in the conduct of the buy-bust operation, ma'am.

THE COURT:
Q: Who?

THE WITNESS
A: PO3 Rodolfo Enderina, PO2 Hipolito Francia.

THE COURT:
Q: In the presence of your fellow officers?

THE WITNESS
A: Yes, Your Honor.

ACP BARING-TUVERA
Q: How about the police investigator, was he also present when you place this markings?

THE WITNESS
A: In that case ma'am, I was also the investigator.

Q: You were also the investigator. And after you placed the markings on that plastic sachet Mr. Witness, the plastic sachet containing shabu, what else did you do?
A: We prepared the laboratory examination, ma'am.

Q: Who prepared the request for laboratory examination?
A: I prepared it, ma'am.

Q: Okay. And after you prepared the request for laboratory examination, what else happened?
A: And then we submitted the said specimen to the crime laboratory for laboratory examination.

Q: Was the laboratory examination actually conducted on the plastic sachet that you submitted?
A: Yes, ma'am.

Q: And what was the result of the laboratory examination that was conducted on the specimen that you submitted?
A: It yielded positive result for Methylamphetamine hydrochloride, ma'am.

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ACP BARING-TUVERA

Q: After you have arrested or after the buy-bust operation Mr. Witness, do you remember having executed any document?

THE WITNESS
A: I executed the Affidavit of Poseur-Buyer. I also prepared the Referral for Inquest, the Request for Drug Test and the Booking Sheet and Arrest Report.

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On cross-examination, PO3 Sia was asked why he omitted to mention in his affidavit his claimed marking of the confiscated sachet of *shabu*. He could not explain his oversight except to say that he "forgot to include [a mention of the said fact], ma'am."[15]

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[14] TSN, July 16, 2008, pp. 3-10.

[15] *Id.* at 13.

Our Ruling

According to the CA, the following elements are required to sustain Beran's conviction and these have been shown to be present in the case below, namely: the identity of the buyer and the seller; the object of the sale and the consideration; and the delivery of the thing sold and payment therefor.[16] It held that the prosecution was able to establish the following facts: the identities of the poseur-buyer, PO3 Sia, and the seller, Beran; the object of the sale, *shabu*, contained in a heat-sealed plastic sachet handed by Beran to PO3 Sia; and, the consideration which PO3 Sia paid for the staged purchase, a marked ₱100.00 bill confiscated in the possession of Beran. Thus, according to the CA, a complete narrative was built of an illegal sale of *shabu* leading to the arrest of Beran by PO3 Sia.

We disagree.

The crucial issue in this case is whether, to establish the *corpus delicti*, the integrity and evidentiary value of the seized drug have been preserved in an unbroken chain of custody. We find no unbroken chain of custody, and we rule that the prosecution failed to establish the very *corpus delicti* of the crime charged. Beran must be set free.

Evidentiary gaps in the chain of custody of the confiscated plastic sachet cast reasonable doubt on its integrity.[17]

It is well-settled that in the prosecution of cases involving the illegal sale or illegal possession of dangerous drugs, the evidence of the *corpus delicti*, which is the dangerous drug itself, must be independently established beyond reasonable doubt.[18] In *People v. Pagaduan*,[19] we ruled that proof beyond

[16] *People v. Gonzales*, 430 Phil. 504, 513 (2002).

[17] *People v. Abdul,* G.R. No. 186137, June 26, 2013.

[18] *People v. Morales,* G.R. No. 172873, March 19, 2010, 616 SCRA 223, 235.

[19] G.R. No. 179029, August 9, 2010, 627 SCRA 308.

reasonable doubt in criminal prosecution for the sale of illegal drugs demands that unwavering exactitude be observed in establishing the *corpus delicti*, the body of the crime whose core is the confiscated illicit drug.[20] The case of *People v. Tan*,[21] cited in *People of the Philippines v. Datu Not Abdul*,[22] elucidates and reminds us why:

"By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants' guilt. It should have given more serious consideration to the *pros* and *cons* of the evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.

Thus, every fact necessary to constitute the crime must be established, and the chain of custody requirement under R.A. No. 9165 performs this function in buy-bust operations as it ensures that any doubts concerning the identity of the evidence are removed.[23] *Black's Law Dictionary* describes "chain of custody," as follows:

"In evidence, the one who offers real evidence, such as the narcotics in a trial of drug case, must account for the custody of the evidence from the moment in which it reaches his custody until the moment in which it is offered in evidence, and such evidence goes to weight not to admissibility of evidence. *Com. V. White, 353 Mass. 409, 232 N.E.2d 335.*"[24]

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[20] *Id.* at 322.

[21] 401 Phil. 259 (2000).

[22] G.R. No. 186137, June 26, 2013.

[23] *Supra* note 19, at 322.

[24] *Id.* at 323.

Although R.A. No. 9165 does not define the meaning of "chain of custody," Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 nonetheless explains the said term, as follows:

> "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

The purpose of the requirement of proof of the chain of custody is to ensure that the integrity and evidentiary value of the seized drug are preserved, as thus dispel unnecessary doubts as to the identity of the evidence. To be admissible, the prosecution must establish by records or testimony the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers, until it was tested in the laboratory to determine its composition, and all the way to the time it was offered in evidence.[25]

A review of the facts of this case will readily make evident that the appellate decision failed to take note of vital gaps in the recording by the apprehending officers of authorized movements and custody of the seized *shabu*, as we shall point out, and these gaps compel us to rule that reasonable doubt exists as to the identity of the very *corpus* of the offense herein charged, the sachet of *shabu* recovered from Beran. In *People v. Alcuizar*,[26] we reiterated the rule that under R.A. No. 9165 the dangerous drug itself constitutes the very *corpus delicti*, and that to sustain a conviction the identity and integrity of the drug must definitely be shown to have been preserved:

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[25] *People v. Dela Rosa*, G.R. No. 185166, January 28, 2011, 640 SCRA 635, 653.

[26] G.R. No. 189980, April 6, 2011, 647 SCRA 431.

The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession under Republic Act No. 9165 fails.[27] (Citation omitted)

Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provides that to properly preserve the integrity and evidentiary value of the illegal drugs seized pursuant to a buy-bust operation, or under a search warrant, the following procedures shall be observed by the apprehending officers, to wit:

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(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;

[27] *Id.* at 437.

x x x x x x x x x[28]

[28] The entire Section reads:

"Sec. 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precurses and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated and/or surrendered, for proper disposition in the following manner:

(a) 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;

(b) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(c) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, that a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(d) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter, proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board,

In *People v. Dela Rosa*[29] we ruled that the prosecution must establish by records or testimony the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers until it was tested in the laboratory to determine its composition, and all the way to the time it is offered in evidence.[30] In the instant case, from the testimony of PO3 Sia it is clear that the apprehending operatives did not, immediately

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shall be donated, used or recycled for legitimate purposes: Provided, further, that a representative sample, duly weighed and recorded is retained;

(e) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In cases of seizures where no person is apprehended and no criminal case is filed, the PDEA may order the immediate destruction or burning of sized dangerous drugs and controlled precursors and essential chemicals under guidelines set by the Board. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(f) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(g) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(h) Transitory Provision:

h.1) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel; and

h.2) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH."

[29] G.R. No. 185166, January 26, 2011, 640 SCRA 635.

[30] *Id.* at 653.

after seizure and confiscation of the illegal item, physically inventory and photograph the same in the presence of the accused, his representative or counsel, a representative from the media and the Department of Justice, and an elected public official, notwithstanding that they were supposed to have been conducting a planned sting operation. Indeed, it is not gratuitous to state that they took no efforts whatsoever to observe even a modicum of the above procedures. Worse, the prosecution did not bother to explain why they failed to observe them, although they knew these procedures were intended to preserve the integrity and evidentiary value of the item seized.

Moreover, none of the other witnesses of the prosecution could corroborate the culpatory narrative of PO3 Sia at any of its material points to create the successive links in the custody of the seized drug. Of the six-man buy-bust team, only PO3 Sia and PO3 Francia testified in court, and PO3 Francia himself twice stated that he did not witness the actual buy-bust sale as it was taking place:

(On Cross-examination [of PO3 Francia] by Atty. Anne Geraldine Agar)

x x x x x x x x x

Q: And what was your participation in this case, Mr. Witness?
A; I acted as "*alalay*" or back-up, ma'am.

Q: Did you act as "*alalay*" on that day?
A; Yes, ma'am.

COURT:
Did you see what happened while you were acting as "*alalay*" or back-up?

WITNESS:
None, your Honor. "*Malayo po kasi ako*."

COURT:
"*Wala pala, eh*...

ATTY. AGAR:
Nothing further, your Honor.

FISCAL:
Redirect, Your Honor.

COURT:
Proceed Fiscal.

Q: PO3 Francia, you were one of those appointed to form a team?
A: Yes, ma'am.

Q: And you said, you were only as "*alalay*"?
A: Yes, back-up, ma'am.

Q: What does an "*alalay*" or back-up do?
A: We are there to prevent any intruder that may prevent our operation, ma'am.

Q: How far were you positioned from the poseur-buyer?
A: More than 5-7 meters, ma'am.

Q: Was there any incident or intruder that stopped you from arresting the accused?
A: None, ma'am.

Q: From where you were, were you able to see the pre-arranged signal by the poseur-buyer?

x x x x x x x x x

A: No, I did not see, ma'am.

Q: As a back-up, when did you come to see that the deal was consummated?
A: When my companions moved to Knowme Sia to assist him, ma'am.

Q: And what was you[r] last act at that time?
A: "*Umalalay*," ma'am.[31]

Incidentally, neither did PO3 Francia corroborate PO3 Sia's claim that he and PO3 Enderina were present when he marked the subject sachet at the precinct.

In *People v. Morales*,[32] we acquitted the accused due to the failure of the buy-bust team to photograph and inventory the

[31] TSN, April 26, 2005, pp. 4-6.

[32] *Supra* note 18.

seized items or to give justifiable grounds for their non-observance of the required procedures. In *People v. Garcia*,[33] the accused was acquitted because "no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules."[34] We issued the same ruling in *Bondad, Jr. v. People*,[35] where the police without justifiable grounds did not inventory or photograph the seized items. We reiterated the same ruling in *People v. Gutierrez*,[36] *People v. Denoman*,[37] *People v. Partoza*,[38] *People v. Robles*,[39] and *People v. dela Cruz*.[40] In all these cases, we stressed the importance of complying with the required mandatory procedures in Section 21 of R.A. No. 9165 concerning the preservation of the chain of custody of confiscated drugs in a buy-bust operation.

Further, in *Mallillin v. People*[41] we emphasized that the chain of custody rule requires that there be testimony about every link in the chain, from the moment the object seized was picked up to the time it was offered in evidence, in such a way that every person who touched it would describe how and from whom it was received, where it was and what happened to it while in the possession of the witness, the condition in which it was received and the condition in which it was delivered to the next link in the chain.[42]

The RTC and CA both convicted Beran on the basis alone of the uncorroborated testimony of PO3 Sia, and despite the

[33] G.R. No. 173480, February 25, 2009, 580 SCRA 259.

[34] *Id.* at 269.

[35] 594 Phil. 158 (2008).

[36] G.R. No. 179213, September 3, 2009, 598 SCRA 92.

[37] G.R. No. 171732, August 14, 2009, 596 SCRA 257.

[38] G.R. No. 182418, May 8, 2009, 587 SCRA 809.

[39] G.R. No. 177220, April 24, 2009, 586 SCRA 647.

[40] 589 Phil. 259 (2008).

[41] 576 Phil. 576 (2008).

[42] *Id.* at 587.

buy-bust team's unexplained non-observance of the procedures laid down in Article II, Section 21(a) of the IRR of R.A. No. 9165. As the Court of last resort, we are now called upon to correct this error. Unlike in *People of the Philippines v. Erlinda Mali y Quimno a.k.a. "Linda"*,[43] where we found that the prosecution adequately established the unbroken links in the chain of custody of the confiscated drug, and the apprehending officers were able to preserve the integrity and evidentiary value of the item seized and justified their non-compliance with the above procedures, in the instant appeal we rule that the chain of custody has not been established at all, and thus the integrity and evidentiary value of the drug seized has not been preserved.

Contrary to the settled rule in a buy-bust operation, the confiscated *shabu* was not (1) marked in the presence of Beran (2) immediately upon confiscation.

Concerning the marking of evidence seized in a buy-bust operation or under a search warrant, *vis-á-vis* the physical inventory and photograph, it must be noted that there are distinctions as to time and place under Section 21 of R.A. No. 9165. Thus, whereas in seizures covered by search warrants, the physical inventory and photograph must be conducted in the place of the search warrant, in warrantless seizures such as a buy-bust operation the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable, consistent with the "chain of custody" rule. In *People v. Sanchez*[44] the Court held that:

"Physical inventory and photograph requirement under Section 21 *vis-a-vis* "marking" of seized evidence

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[43] G.R. No. 206738, December 11, 2013.

[44] 590 Phil. 214 (2008).

While the first sentence of Section 21(a) of the *Implementing Rules and Regulations* of R.A. No. 9165 states that "the apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same," the second sentence makes a distinction between warrantless seizures and seizures by virtue of a warrant, thus:

> "(a) x x x **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."

Thus, the venues of the physical inventory and photography of the seized items differ and depend on whether the seizure was made by virtue of a search warrant or through a warrantless seizure such as a buy-bust operation.

In **seizures covered by search warrants**, the physical inventory and photograph must be conducted in the place where the search warrant was served. On the other hand, in case of **warrantless seizures such as a buy-bust operation**, the physical inventory and photograph shall be conducted at the nearest police station or office of the apprehending officer/team, whichever is practicable; however, nothing prevents the apprehending officer/team from immediately conducting the physical inventory and photography of the items at the place where they were seized, as it is more in keeping with the law's intent of preserving their integrity and evidentiary value.

What Section 21 of R.A. No. 9165 and its implementing rule do not expressly specify is the matter of "marking" of the seized items in warrantless seizures to ensure that the evidence seized upon apprehension is the same evidence subjected to inventory and photography when these activities are undertaken at the police station rather than at the place of arrest. Consistency with the "chain of custody" rule requires that the "marking" of the seized items—to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence—should be done (1) **in the**

presence of the apprehended violator (2) immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence under Section 29 and on allegations of robbery or theft.[45] (Citations omitted and emphases in the original)

It needs no elaboration that the immediate marking of the item seized in a buy-bust operation in the presence of the accused is indispensable to establish its identity in court. PO3 Sia admitted that he marked the sachet of *shabu* only at the DAID-WPD precinct, several kilometers from the buy-bust scene, as well as impliedly admitted that Beran was not then present. Indeed, none of the buy-bust team attested that they saw him take custody of the confiscated *shabu*, and later mark the sachet at the DAID-WPD office.

Also, the operatives rode in separate vehicles on the trip back to the WPD, and PO3 Sia took a scooter with another teammate, who could then have attested as to his exclusive custody of the subject drug, but that person was not presented to affirm this fact. So even granting that PO3 Sia did mark the same sachet at the precinct, breaks in the chain of custody had already taken place, first, when he confiscated it from Beran without anyone observing him do so and without marking the subject sachet at the place of apprehension, and then as he was transporting it to the precinct, thus casting serious doubt upon the value of the said links to prove the *corpus delicti*.

It has been held that "[w]hile a perfect chain of custody is almost always impossible to achieve, an *unbroken chain* becomes indispensable and essential in the prosecution of drug cases owing to its susceptibility to alteration, tampering, contamination and even substitution and exchange."[46] Moreover, as the investigator of the case, PO3 Sia claimed that he personally took the drug to the laboratory for testing, but there is no showing

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[45] *Id.* at 240-241.

[46] *People v. Almorfe,* G.R. No. 181831, March 29, 2010, 617 SCRA 52, 61-62.

who the laboratory technician was who received the drug from him. The records also show that he submitted the sachet to the laboratory only on the next day, without explaining how he preserved his exclusive custody thereof overnight. All these leave us with no conclusion but that there is serious doubt that the integrity and evidentiary value of the seized item have not been fatally compromised.

Lapses in the strict compliance with the requirements of Section 21 of R.A. No. 9165 must be explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.

In *People v. Coreche*,[47] we explained that the above-cited rules are intended to narrow the window of opportunity for tampering with evidence, as expressed in Section 21(1) of R.A. No. 9165. As noted by the Court which is worth stating:

> RA 9165 is silent on when and where *marking* should be done. On the other hand, its implementing rules provide guidelines on the *inventory* of the seized drugs, thus: "the physical inventory x x x shall be conducted at the place where the search warrant is served; or at the nearest police station or at the office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures" (Section 21(a) of Implementing Rules and Regulations). In *People v. Sanchez* (G.R. No. 175832, 15 October 2008, 569 SCRA 194), we drew a distinction between *marking* and *inventory* and held that consistent with the chain of custody rule, the marking of the drugs seized without warrant must be done "immediately upon confiscation" and in the presence of the accused.
>
> The concern with narrowing the window of opportunity for tampering with evidence found legislative expression in Section 21(1) of RA 9165 on the *inventory* of seized dangerous drugs and paraphernalia by putting in place a three-tiered requirement on the *time*, *witnesses*, and *proof* of inventory by imposing on the apprehending team having

[47] G.R. No. 182528, August 14, 2009, 596 SCRA 350.

initial custody and control of the drugs the duty to "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." Although RA 9165 is silent on the effect of non-compliance with Section 21(1), its implementing guidelines provide 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." We have interpreted this provision to mean that the prosecution bears the burden of proving "justifiable cause" (*People v. Sanchez*, *id*.; *People v. Garcia*, G.R. No. 173480, 25 February 2009, 580 SCRA 259).[48]

In *Sanchez*, we recognized that under varied field conditions the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible, and we ruled that under the implementing guidelines of the said Section "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."[49] But we added that the prosecution bears the burden of proving "justifiable cause."

Thus, in *Almorfe*, we stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved.[50] In *People v. de Guzman*,[51] we emphasized that the justifiable ground for non-

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[48] *See* Footnote 16 in *People v. Coreche*, *id.* at 358.

[49] *Supra* note 44, at 232.

[50] *Supra* note 46, at 60.

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

compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[52]

In the present case, the prosecution did not bother to offer an explanation for why an inventory and photograph of the seized evidence was not made either in the place of seizure and arrest or at the police station, as required by the Implementing Rules in case of warrantless arrests, or why the marking of the seized item was not made at the place of seizure in the presence of Beran. Indeed, the very identity of the subject *shabu* cannot be established with certainty by the testimony alone of PO3 Sia since the rules insist upon independent proof of its identity, such as the immediate marking thereof upon seizure. And as we already noted, PO3 Sia claimed that he personally transported the *shabu* to the WPD station, yet other than his lone testimony there is no other evidence of his exclusive and uninterrupted custody during the interval from seizure and transportation to turn over at the WPD. Then, the record shows that PO3 Sia submitted the sachet of *shabu* for laboratory examination only the next day,[53] and therefore presumably he retained custody of the subject sachet overnight. In view of his self-serving admission that he marked the sachet only at the precinct, but without anyone present, along with his lack of mention of the laboratory technician or officer who received the sachet from him, the charge that the subject drug may have been tampered with or substituted is inevitable.

WHEREFORE, the foregoing premises considered, the Decision dated March 9, 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04466 is **REVERSED** and **SET ASIDE**. For failure of the prosecution to prove his guilt beyond reasonable doubt, Joselito Beran *y* Zapanta is hereby **ACQUITTED** of the charge of violation of Section 5, Article II of Republic Act No. 9165. His immediate **RELEASE** from detention is hereby **ORDERED**, unless he is being held for another lawful cause. Let a copy of this Decision be furnished the Director of the

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[52] *Id.* at 662.

[53] Records, p. 142.

Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from his receipt of this Decision.

SO ORDERED.

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

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