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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. P-12-3069. January 20, 2014]

ATTY. VIRGILIO P. ALCONERA, *complainant, vs.* **ALFREDO T. PALLANAN,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GRAVE MISCONDUCT.—** Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, all of which must be established by substantial evidence, and must necessarily be manifest in a charge of grave misconduct.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; RULINGS OF THE COURTS ARE IMMEDIATELY EXECUTORY; EXCEPTIONS.—** In ejectment cases, the rulings of the courts are immediately executory and can only be stayed via compliance with Section 19, Rule 70 of the Rules of Court. x x x [Thus,] under said Sec. 19, Rule 70, a judgment on a forcible entry and detainer action is made immediately executory to avoid further injustice to a lawful possessor. The defendant in such a case may have such judgment stayed only by (a) perfecting an appeal; (b) filing a supersedeas bond; and (c) making a periodic deposit of the rental or reasonable compensation for

the use and occupancy of the property 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 has perfected the appeal but failed to file a supersedeas bond, the immediate execution of the judgment would 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. x x x Because of the non-compliance with the requirements under the above-quoted rule, the execution of the judgment was not effectively stayed. The only exceptions to non-compliance are the existence of fraud, accident, mistake or excusable negligence which prevented the defendant from posting the supersedeas bond or making the monthly deposit, or the occurrence of supervening events which brought about a material change in the situation of the parties and which would make the execution inequitable. But whether or not these obtain in the case at bar is an issue best left to the court that issued the writ of execution.

3. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SHERIFFS; DUTY IN THE EXECUTION OF WRIT IS PURELY MINISTERIAL.— Well-settled is that the sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. When the writ is placed in his hands, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is only by doing so could he ensure that the order is executed without undue delay. This holds especially true herein where the nature of the case requires immediate execution. Absent a TRO, an order of quashal, or compliance with Sec. 19, Rule 70 of the Rules of Court, respondent sheriff has no alternative but to enforce the writ. Immediacy of the execution, however, does not mean instant execution. The sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action.

4. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENTS; EXECUTION OF JUDGMENTS FOR SPECIFIC ACT; DELIVERY OR RESTITUTION OF REAL PROPERTY.— Sec. 10 (c), Rule 39 of the Rules provides: **Section 10**. Execution of judgments for specific act. — x x x (c) Delivery or restitution of real property. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money. Based on this provision, enforcement in ejectment cases requires the sheriff to give notice of such writ and to demand from defendant to vacate the property within three days. Only after such period can the sheriff enforce the writ by the bodily removal of the defendant in the ejectment case and his personal belongings. Even in cases wherein decisions are immediately executory, the required three-day notice cannot be dispensed with. A sheriff who enforces the writ without the required notice or before the expiry of the three-day period is running afoul with the Rules.

5. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; DISCOURTESY IN THE PERFORMANCE OF OFFICIAL DUTIES WARRANTS PENALTY.— [T]he Court adopts in part the recommendation of the investigating judge that respondent should nonetheless be penalized for discourtesy in the performance of his official duties. As a public officer and a trustee for the public, it is the ever existing responsibility of respondent to demonstrate courtesy and civility in his official actuations with the public.

D E C I S I O N

VELASCO, JR., *J.*:

Before Us is an administrative complaint for Grave Misconduct and Making Untruthful Statements filed by Atty. Virgilio P. Alconera against Alfredo Pallanan, Sheriff IV, assigned at the Regional Trial Court (RTC), Branch 36 in General Santos City.

The antecedent facts are as follows:

Complainant was the counsel for Morito Rafols, the defendant in Civil Case No. 5967-2, an unlawful detainer case entitled *Cua Beng a.k.a. Manuel Sy and Ka Kieng v. Morito Rafols, et al.*, filed before the Municipal Trial Court in Cities (MTCC), Branch 2 in General Santos City, South Cotabato. After trial, the MTCC ruled against Rafols and his co-defendants in a Judgment[1] dated March 12, 2009, disposing as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendant MORITO RAFOLS, his privies, assigns, heirs, transferee, sublessee, co-lessee or agents if any to vacate from the subject lots and deliver possession thereof to the plaintiffs and for defendant to pay back rentals of ₱5,000.00 per month from June 2008 and every succeeding months thereafter until he vacate the premises and to jointly and severally, together with all other defendants, pay attorney's fees in the amount of ₱20,000.00 with the other defendants and costs of litigation.
>
> SO ORDERED.

Therefrom, Rafols, through complainant Alconera, appealed the case to the RTC, Branch 36, docketed as Civil Case No. 675. Pending appeal, the court issued an Order dated February 18, 2011 granting Cua Beng's motion for execution she filed in Civil Case No. 5967-2, the unlawful detainer case. Alconera sought reconsideration but the motion was denied through another Order[2] dated March 14, 2011.

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[1] Penned by Judge Jose A. Bersales; Exhibit "F" of the Judicial Affidavit of Virgilio Alconera.

[2] *Rollo*, p. 14.

On March 17, 2011, a troubled Evelyn Rafols, Rafols' daughter-in-law, called up Alconera, who at that time was in Manila, to report that the sheriff, respondent Pallanan, was about to implement the adverted writ of execution. Evelyn Rafols informed Alconera that respondent sheriff arrived along with the lawyer of the opposing party and 30 other men to enforce the writ. Respondent sheriff then allegedly demanded payment of PhP 720,000 to settle Rafols' obligation to which the latter protested on the ground that the amount is too exorbitant when they have been religiously depositing monthly rentals in court to satisfy the judgment.

After explaining the matter to Alconera, Evelyn Rafols passed her phone to respondent sheriff. Over the phone, a verbal disagreement between the two ensued. Alconera claims that he has a pending motion for reconsideration on the issuance of the writ of execution, but the respondent said that the motion has already been denied. And since no Temporary Restraining Order (TRO) has been issued enjoining the implementation, respondent claimed that he is legally mandated to perform his ministerial duty of enforcing the writ. Complainant countered that he has not yet received a copy of the denial of the motion, rendering the execution premature and, at the same time, preventing him from securing a TRO from the higher courts. Nevertheless, respondent still pushed through with the execution of the judgment.

On March 18, 2011, complainant returned to General Santos City and, at his law office, found a copy of the Order denying his Motion for Reconsideration, which was only served that very same day. The RTC ruled that there was no pending Motion to Approve Supersedeas Bond filed with it. Instead, what was filed not with the RTC but with the MTCC was a "NOTICE OF APPEAL – and – MOTION TO APPROVE PROPERTY SUPERSEDEAS BOND," which was not granted.

That afternoon, Alconera went to RTC Br. 36 with his daughter to confront respondent sheriff. The face-off escalated into a heated argument caught on video. It was complainant's daughter, Shyla Mae Zapanta, who is coincidentally his office clerk, who filmed the incident and transcribed the dialogue during the

altercation. As hereunder translated in English, the exchanges went:

> *ATTY. ALCONERA: Pag hatod nimo didto sa demolition order, kabalo ka na wala pa ko kadawat ug denial?* (When you served the demolition order, you know that I did not yet receive a copy of the denial order?)
>
> *SHERIFF PALLANAN: Denial sa unsa, motion?* (Denial of what, motion?)
>
> *ATTY. ALCONERA: Oo. (Yes.)*
>
> *SHERIFF PALLANAN: Attorney, ang motion inyoha nang kuan diri sa korte, and akoa sa writ ko. As long as the sheriff did not receive a TRO or any order from the court restraining him to implement the writ, I have to go. So in case, just in case, na may resolution si judge na ireconsider and iyang order after they declare, ideliver na sa area kung asa gi-execute so the sheriff will move out.* (Attorney, the motion, that is your… what do you call this, here in court. Mine is the writ. As long as the sheriff did not receive a TRO or any order from the court restraining him to implement the writ, I have to go. So in case, just in case, the judge reconsiders his order, they will declare, deliver it to the area where the writ if executed so the sheriff will move out.)
>
> *ATTY. ALCONERA: Mo execute diay ka? Dili diay ka mangutana kung duna pa bay motion for recon ani?* (So you will execute? You will not inquire whether a motion for reconsideration has been filed?)
>
> *SHERIFF PALLANAN: Bisag may motion for recon na, Attorney, I have to go gyud.* (Even if there is a motion for reconsideration, I really have to go.)
>
> *ATTY. ALCONERA: Uy, di man na ingon ana, uy! Ana imong natun-an as sheriff?*
>
> *SHERIFF PALLANAN: Oo mao na sya. Mao na sya – sa akoa ha, mao na sya.* (Yes, that is it. That is it – to me ha, that is it.)
>
> *ATTY. ALCONERA: Kita ra ta sa Supreme Court ani.* (Let us see each other in the Supreme Court.)

SHERIFF PALLANAN: …(unintelligible) Ang imoha ana…imong motion ana… and imong motion ana, delaying tactic. (Your motion is a delaying tactic.)

ATTY. ALCONERA: Ah, sige lang, atubang lang ta sa Supreme Court. (Ok, let's just see each other in the Supreme Court.)

SHERIFF PALLANAN: Oo, atubangon nako ko na siya, pero mag-review pud ka.

ATTY. ALCONERA: Unsay mag-review? (What review?)

SHERIFF PALLANAN: Motion nang imoha, Dong. (Yours is motion, Dong.) ("Dong" is equivalent to the Filipino term "Totoy"; if used by one to address someone older than him, it is an insult.)

ATTY. ALCONERA: Naunsa man ka, Dong. (What happened to you, Dong?)

SHERIFF PALLANAN: Motion na imoha… Dapat diri ka mag file, dili ka didto mag-file. Ayaw ko awaya. (Yours is motion. You should file it here, you do not file it there. Don't quarrel with me.)

ATTY. ALCONERA: Lahi imong tono sa akoa sa telepono Dong ba. (You were rude in the telephone, Dong.)

SHERIFF PALLANAN: Oo, kay lain man pud ka mag sulti. Ang imong venue kay diri, dili sa area. (Yes, because you also talked bad, your venue is here in court, not in the area.)

ATTY. ALCONERA: Ingon nako sa imo nakadawat ka ba.. nakadawat ba ug… (I was just asking you whether you received…)

SHERIFF PALLANAN: Dili nako na concern. (That is not my concern.)

ATTY. ALCONERA: O, ngano nag ingon man ka nga "Ayaw ko diktahe, Attorney?" (Why did you say, "Don't dictate on me, Attorney?")

SHERIFF PALLANAN: Yes, do not dictate me. Kay abogado ka, sheriff ko. Lahi tag venue. Trabaho akoa, magtrabaho pud ka. (Yes, do not dictate me. Because you are a lawyer, and I am a sheriff. I do my job, you do yours.)

ATTY. ALCONERA: Bastos kaayo ka manulti ba. (You are very rude!)

SHERIFF PALLANAN: Ikaw ang bastos! (You are the one who is rude!)

ATTY. ALCONERA: Magkita ta sa Supreme Court. (I will see you in the Supreme Court.)

SHERIFF PALLANAN: Magkita ta, eh! Ikaw lang akong hadlukan nga wala man ka sa area. (As you wish, I am not afraid of you, you were not in the area.)

ATTY. ALCONERA: Unsa nang inyong style diri, Kempeta? (What is your style here, Kempetai?)

SHERIFF PALLANAN: Dili man! Na may order. Why can't you accept? (No! There is an order. Why can't you accept?)

ATTY. ALCONERA: Naay proseso, Dong. Mao ning proseso: ang MR, proseso ang MR. (There is a process, Dong. This is the process: MR.)

SHERIFF PALLANAN: Oo, proseso pud na ang akong pagimplement. Naa'y writ. (Yes, my implementing the writ is also a process. There is a writ.)

ATTY. ALCONERA: Nabuang, ka Dong? (What is going on with you, Dong?)

SHERIFF PALLANAN: Ka dugay na nimo nga abogado, wala ka kabalo! (You have been a lawyer for a long time now, yet you do not know!)

ATTY. ALCONERA: Dugay na bitaw. Ikaw bago ka lang na sheriff. (Yes, I have been a lawyer for a long time now, you, you are new in your job as sheriff).

SHERIFF PALLANAN: Pero kabalo ko. (But I know.)

ATTY. ALCONERA: Susmaryosep!

SHERIFF PALLANAN: O, di ba? Wala sa padugayay. Naa sa kahibalo. (Isn't that true? It is not the length of time one has spent on his job. It is the knowledge that one possesses.)

ATTY. ALCONERA: Tanawa imong pagka sheriff, Dong. (Know you job as a sheriff, Dong.)

SHERIFF PALLANAN: Tanawa pud imong pagka abogado kung sakto. Pilde! Sige mo pangulekta didto ibayad sa imo! (Know your job also as a lawyer, see if you are correct. Loser! You [and

the Rafols] are always collecting [from the other defendants] so your fees can be paid!)

ATTY. ALCONERA: Ngano wala man lagi nimo kuhaa ang mga butang didto, Dong? (Why did you not bring with you the things that you had gathered, Dong.)

SHERIFF PALLANAN: Oo, kay hulaton ta ka pag demotion. (Yes, because I will wait for you on demotion day.)

ATTY. ALCONERA: Nahadlok ka, Dong. (You were afraid, Dong.)

SHERIFF PALLANAN: Wala ko nahadlok, Doy. Sa demotion adto didto, Attorney. Sulayi ko! Sulayan nato imong pagkaabogado! (I'm not afraid of you, Doy. On demotion day, you go there, Attorney. You try me! Let us see how good a lawyer you are.) ("Doy" is the same as "Dong.")

ATTY. ALCONERA: March 22 pa ang hearing sa imong abogado, Dong. (The hearing of the motion of your lawyer, is on March 22 yet, Dong.)

SHERIFF PALLANAN: Asus, Pinobre na imong style, Attorney. Bulok! (Your style is that of an impoverished lawyer, Attorney. Dullard!)

It is against the foregoing backdrop of events that Alconera filed a Complaint-Affidavit[3] against the respondent sheriff for grave misconduct before this Court on April 6, 2011. The case was referred to the Office of the Court Administrator (OCA) and was docketed as AM No. 11-3634-P. As directed by the OCA, respondent filed his comment.[4] In it, he averred that the duty of a court sheriff in enforcing a writ of execution is ministerial, and without a TRO enjoining it, a sheriff is duty bound to implement it.

On July 14, 2011, respondent filed his own Affidavit of Complaint[5] against herein complainant for Grave Misconduct and for violating the Code of Ethics. Respondent alleged that

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[3] *Id.* at 1.

[4] *Id.* at 173.

[5] Exhibit "J" of the Judicial Affidavit of Virgilio Alconera.

during the enforcement of the writ, a second phone conversation took place. Complainant allegedly called up Evelyn Rafols who put him on loudspeaker for the respondent to hear his words. Alconera then allegedly made a threat that there will be bloodshed if respondent's party pushes through with the implementation of the writ. Respondent likewise claimed that complainant berated him at his office on March 18, 2011 and that the incident was orchestrated by the complainant. His (respondent sheriff's) complaint affidavit avers:

> 6. GRAVE MISCONDUCT OF ATTY. VIRGILIO ALCONERA – The planned attack happened in our office on March 18, 2011 in the afternoon, after lunch, in the presence of his lady companion (believed to [be] his daughter), who is so delighted in taking videos. He is so angry and at rage as if he is the boss in our office, yelling and nagging at me with NO RESPECT as a nomad. THE ONLY PERSON AROUND WAS ME, THE GIRL HE BROUGHT THERE (who is taking videos), AND THE NAGGING ATTY. VIRGILIO ALCONERA (JUST THREE OF US), while pointing his finger into his MOTION for Reconsideration that he is holding [sic] almost an inch to my face. Saying *"KITA NIMO NI, KITA NIMO NI?" NA INSULTO KO NIMO NGANO WALA KA NI PATOO NAKO PAYLAN TAKA UG KASO HULATA SA SUPREME COURT!* (DO YOU SEE THIS? DO YOU SEE THIS? YOU INSULTED ME WHY DID YOU NOT FOLLOW MY ORDER I WILL FILE CHARGES AGAINST YOU WAIT FOR IT IN THE SUPREME COURT!) HE wants me to shiver in scare and expect me to beg. No, GO I said. I ALWAYS REPEATED THE WORDS "WHERE IS YOUR T.R.O. Just present it." Because he is too loud, Mrs. Nenita Paredes, our stenographer, ARRIVED and middle on us our arguments. On the mid part of the arguments, he recorded the events; he and his companion, cohort in designing the plan of the attack, orchestrated it. IT'S AN ASSAULT TO THE OFFICER OF THE LAW. He told me – *SHERIFF KA LANG WALA KAY NABAL AN. NGANON NADAWAT MAN KA DIRI BOGO KA.* (YOU ARE JUST A SHERIFF. WHAT DO YOU KNOW? WHY ARE YOU ADMITTED HERE YOU DUMB, WHO TAUGHT YOU THAT?) *Ana mo diri IPINATAY! KINSA NAG TUDLO SA IMOHA ANA.* While he almost struck his motion papers into my face, I was caught unaware.

In view of respondent's counter-charge, Alconera supplemented his affidavit-complaint[6] to include a charge against the former for False Testimony. Complainant belied the claims of respondent sheriff, and showed that the respondent's allegations can nowhere be seen in the transcript of the altercation.

On March 2, 2012, this Court, upon the OCA's recommendation, resolved to re-docket Alconera's complaint as a regular administrative case with docket No. A.M. No. P-12-3069 and referred the same to the Executive Judge of the Regional Trial Court, General Santos City, South Cotabato, for investigation, report, and recommendation.

After due proceedings, the investigating judge submitted a report, styled as Order[7] dated August 6, 2013, with the following recommendation:

> Based on the findings and evaluation, the herein Executive Judge hereby recommends the respondent Sheriff be ADMONISHED. The respondent must be reminded that as a Court Employee, he must exercise utmost patience and humility in the performance of his duties amidst all the pressures and personal attacks against his person because he carried with him the image of the entire judiciary.
>
> SO ORDERED.

The Executive Judge adopted the transcript of the altercation as appearing in the affidavit of Shyla Mae Zapanta and based his recommendation mainly thereon.

The Issues

The main issue in this case is whether or not respondent can be held administratively liable for grave misconduct and false testimony. In fine, the controversy stems from the propriety of the implementation of the writ of execution, and the altercation between complainant and respondent. While the investigating judge made a recommendation based on how respondent conducted

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[6] *Rollo*, p. 188.

[7] Penned by Judge Oscar P. Noel, Jr.

himself as an officer of the court in the afternoon of March 18, 2013, there was no discussion regarding the propriety of the implementation of the writ, which is the main issue in the case for grave misconduct. It then behooves this Court to sift through the arguments and records to rule on this point.

The Court's Ruling

Grave Misconduct

Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, all of which must be established by substantial evidence, and must necessarily be manifest in a charge of grave misconduct.[8] In this case, complainant imputes grave misconduct on the respondent for the following acts:

1. For enforcing the writ despite the fact that complainant has yet to receive the copy of the order denying his motion for reconsideration on the issuance of the writ of execution;
2. For allegedly leaking to the opposing counsel the issuance of the order denying the motion for reconsideration;
3. For allegedly demanding ₱720,000 from Rafols for a ₱165,000.00 obligation; and
4. For allegedly being arrogant and disrespectful.

Complainant admits that there is no TRO enjoining the enforcement of the writ, nor allegation in his pleadings that a motion to quash the writ of execution was ever filed. However, complainant asserts that respondent committed grave misconduct when the latter implemented the writ prior to serving the complainant a copy of the order denying the motion for reconsideration. According to complainant, said motion stayed the execution, and the writ could not have been validly executed

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[8] *Tan v. Quitorio*, A.M. No. P-11-2919, May 31, 2011.

without first informing the parties concerned of the motion's denial.

We rule against complainant on this point.

It must be borne in mind that the case at bar traces its roots to an unlawful detainer case wherein the MTCC ruled against Rafols, complainant's client. In ejectment cases, the rulings of the courts are immediately executory and can only be stayed via compliance with Section 19, Rule 70 of the Rules of Court, to wit:

> **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 other papers, to the clerk of the Regional Trial Court to which the action is appealed.

Clearly then under said Sec. 19, Rule 70, a judgment on a forcible entry and detainer action is made immediately executory to avoid further injustice to a lawful possessor. The defendant in such a case may have such judgment stayed only by (a) perfecting an appeal; (b) filing a supersedeas bond; and (c) making a periodic deposit of the rental or reasonable compensation for the use and occupancy of the property during the pendency of the appeal.[9] The failure of the defendant to comply with **any**

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[9] *Lim v. Uni-Tan Marketing Corporation*, G.R. No. 147328, February 20, 2002, 377 SCRA 491, 499.

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 has perfected the appeal but failed to file a supersedeas bond, the immediate execution of the judgment would 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.[10]

In the case at bar, complainant lost his client's case and appealed to the RTC. His client has also been periodically depositing rental with the court for the use of the property pending appeal. However, as ruled by the RTC, the bond filed did not meet the legal requirements because first and foremost, the bond posted was a property bond, not cash nor surety. Furthermore, Rafols did not own the property he posted as bond and besides, it was also not issued in favour of the plaintiff in the ejectment case. Because of the non-compliance with the requirements under the above-quoted rule, the execution of the judgment was not effectively stayed. The only exceptions to non-compliance are the existence of fraud, accident, mistake or excusable negligence which prevented the defendant from posting the supersedeas bond or making the monthly deposit, or the occurrence of supervening events which brought about a material change in the situation of the parties and which would make the execution inequitable.[11] But whether or not these obtain in the case at bar is an issue best left to the court that issued the writ of execution.

Given the above circumstances, there was no legal impediment preventing respondent sheriff from performing his responsibility of enforcing the writ of execution. Since Rafols failed to comply with the requirements under the Rules, Cua Beng who prevailed

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[10] *Chua v. Court of Appeals*, G.R. No. 113886, February 24, 1998, 286 SCRA 437, 444-445.

[11] *De Laureano v. Adil*, No. L-43345, July 29, 1976, 72 SCRA 149, 157.

in the unlawful detainer case is entitled as a matter of right to the immediate execution of the court's judgment both as to the restoration of possession and the payment of the accrued rentals or compensation for the use and occupation of the premises.[12]

Well-settled is that the sheriff's duty in the execution of a writ is purely ministerial; he is to execute the order of the court strictly to the letter. He has no discretion whether to execute the judgment or not. When the writ is placed in his hands, it is his duty, in the absence of any instructions to the contrary, to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. It is only by doing so could he ensure that the order is executed without undue delay.[13] This holds especially true herein where the nature of the case requires immediate execution. Absent a TRO, an order of quashal, or compliance with Sec. 19, Rule 70 of the Rules of Court, respondent sheriff has no alternative but to enforce the writ.

Immediacy of the execution, however, does not mean instant execution. The sheriff must comply with the Rules of Court in executing a writ. Any act deviating from the procedure laid down in the Rules of Court is a misconduct and warrants disciplinary action. In this case, Sec. 10(c), Rule 39 of the Rules prescribes the procedure in the implementation of the writ. It provides:

Section 10. Execution of judgments for specific act. —

x x x x x x x x x

(c) Delivery or restitution of real property. — The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee, otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace officers, and employing

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[12] *Id.* at 156.

[13] *Cebu International Finance Corporation v. Cabigon*, A.M. No. P-06-2107, February 14, 2007, 515 SCRA 616, 622.

such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money.

Based on this provision, enforcement in ejectment cases requires the sheriff to give notice of such writ and to demand from defendant to vacate the property within three days. Only after such period can the sheriff enforce the writ by the bodily removal of the defendant in the ejectment case and his personal belongings.[14] Even in cases wherein decisions are immediately executory, the required three-day notice cannot be dispensed with. A sheriff who enforces the writ without the required notice or before the expiry of the three-day period is running afoul with the Rules.[15]

In the present controversy, the Order denying the motion for reconsideration was allegedly served, according to the respondent, on the same day the writ was executed on March 17, 2011. Complainant, however, avers that his office was only able to receive the denial the day after the execution or on March 18, 2011. At first blush, one might hastily conclude that the three-day notice rule was apparently not observed. This Court, however, is not prepared to make such a finding. We are mindful of the possibility that a demand to vacate has already been given when complainant and Rafols were first served the Order granting the issuance of a writ of execution, before the motion for reconsideration was filed. More importantly, complainant failed to allege con-compliance with Sec. 10(c) of Rule 39.

Thus far, no deviation from the Rules has been properly ascribed to respondent. As an officer of the court, he is accorded the presumption of regularity in the performance of his duties. The burden was on complainant to adduce evidence that would

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[14] *San Manuel Wood Products, Inc. v. Tupas*, A.M. No. MTJ-93-892, October 25, 1995, 249 SCRA 466, 476.

[15] *Mendoza v. Doroni*, A.M. No. P-04-1872, January 31, 2006, 481 SCRA 41, 52-53.

prove the respondent's culpability, if any. Without evidence of any departure from well established rules, any unlawful behaviour, or any gross negligence on his part, the presumption remains applicable and respondent cannot be held administratively liable for the offense of grave misconduct.

Discourtesy in the Performance of Official Duties

The foregoing notwithstanding, the Court adopts in part the recommendation of the investigating judge that respondent should nonetheless be penalized for discourtesy in the performance of his official duties.

As a public officer and a trustee for the public, it is the ever existing responsibility of respondent to demonstrate courtesy and civility in his official actuations with the public.[16] In *Court Personnel of the Office of the Clerk of Court of the Regional Trial Court – San Carlos City v. Llamas*,[17] this Court has held that:

> Public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, they must faithfully adhere to, hold sacred and render inviolate the constitutional principle that a public office is a public trust; that all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.
>
> x x x x x x x x x
>
> At all times, employees of the judiciary are expected to accord respect to the person and the rights of another, even a co-employee. Their every act and word should be characterized by prudence, restraint, courtesy and dignity. Government service is people-oriented; high-strung and belligerent behavior has no place therein.
>
> Rude and hostile behavior often translates a personal conflict into a potent pollutant of an otherwise peaceful work environment;

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[16] *Abenojar v. Lopez*, A.M. No. P-2221, November 2, 1982, 118 SCRA 1, 4.

[17] A.M. No. P-04-1925, December 16, 2004, 447 SCRA 69.

ultimately, it affects the quality of service that the office renders to the public. Letting personal hatred affect public performance is a violation of the principle enshrined in the Code of Conduct and Ethical Standards for Public Officials and Employees, a principle that demands that public interest be upheld over personal ones.

Improper behavior especially during office hours exhibits not only a paucity of professionalism at the workplace, but also great disrespect for the court itself. Such demeanor is a failure of circumspection demanded of every public official and employee. Thus, the Court looks "with great disfavor upon any display of animosity by any court employee" and exhorts every court personnel to act with strict propriety and proper decorum to earn public trust for the judiciary. Colleagues in the judiciary, including those occupying the lowliest position, are entitled to basic courtesy and respect.

In discharging its constitutional duty of supervising lower courts and their personnel, this Court cannot ignore the fact that the judiciary is composed essentially of human beings who have differing personalities, outlooks and attitudes; and who are naturally vulnerable to human weaknesses. Nevertheless, the Code of Judicial Ethics mandates that court personnel must not only be, but also be perceived to be, free from any impropriety — with respect not only to their duties in the judicial branch, but also to their behavior anywhere else.

Based on the transcript of the altercation, it is readily apparent that respondent has indeed been remiss in this duty of observing courtesy in serving the public. He should have exercised restraint in dealing with the complainant instead of allowing the quarrel to escalate into a hostile encounter. The balm of a clean conscience should have been sufficient to relieve any hurt or harm respondent felt from complainant's criticisms in the performance of his duties. On the contrary, respondent's demeanour tarnished the image not only of his office but that of the judiciary as a whole, exposing him to disciplinary measure.

Making Untruthful Statements

Lastly, the charge of making untruthful statements must also fail. While the statements mentioned in respondent's complaint-affidavit were not reflected in the transcript submitted by the

complainant, this actuality is not conclusive evidence that such event did not take place. As claimed by respondent, complainant's clerk was only able to record a part of the argument. We cannot then discount the probability that there is more to the argument than what was caught on video and there remains the possibility that what respondent narrated and what complainant recorded both actually transpired.

WHEREFORE, respondent Alfredo T. Pallanan is **ADMONISHED** and **WARNED** to be always courteous in dealing with the public in the performance of official duties. A repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 159926. January 20, 2014]

PINAUSUKAN SEAFOOD HOUSE, ROXAS BOULEVARD, INC., *petitioner, vs.* **FAR EAST BANK & TRUST COMPANY, NOW BANK OF THE PHILIPPINE ISLANDS and HECTOR I. GALURA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT/FINAL ORDER; ELUCIDATED.— The objective of the remedy of annulment of judgment or final order is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. If the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without

prejudice to the original action being refiled in the proper court. If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein. The remedy is by no means an appeal whereby the correctness of the assailed judgment or final order is in issue; hence, the CA is not called upon to address each error allegedly committed by the trial court. Given the extraordinary nature and the objective of the remedy of annulment of judgment or final order, [one] must be mindful of and should closely comply with the following statutory requirements for the remedy as set forth in Rule 47 of the *Rules of Court*.

2. ID.; ID.; ID.; REQUIREMENTS; THAT THE REMEDY IS AVAILABLE ONLY WHEN ORDINARY OR OTHER REMEDIES CAN NO LONGER BE RESORTED TO THROUGH NO FAULT OF PETITIONER; ELUCIDATED.— The first requirement prescribes that the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner. This means that the remedy, although seen as "a last remedy," is not an alternative to the ordinary remedies of new trial, appeal and petition for relief. The petition must aver, therefore, that the petitioner failed to move for a new trial, or to appeal, or to file a petition for relief without fault on his part. But this requirement to aver is not imposed when the ground for the petition is lack of jurisdiction (whether alleged singly or in combination with extrinsic fraud), simply because the judgment or final order, being void, may be assailed at any time either collaterally or by direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless the ground of lack of jurisdiction is meanwhile barred by laches.

3. ID.; ID.; ID.; ID.; THAT THE GROUND FOR ANNULMENT OF JUDGMENT IS LIMITED TO EITHER EXTRINSIC FRAUD OR LACK OF JURISDICTION; EXTRINSIC FRAUD, ELUCIDATED AND DISTINGUISHED FROM INTRINSIC FRAUD.— The second requirement limits the ground for the action of annulment of judgment to either extrinsic fraud or lack of jurisdiction. Not every kind of fraud

justifies the action of annulment of judgment. Only extrinsic fraud does. Fraud is extrinsic, according to *Cosmic Lumber Corporation v. Court of Appeals*, "where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing." The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented the petitioner from having his day in court. Nonetheless, extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. In contrast, intrinsic fraud refers to the acts of a party at a trial that prevented a fair and just determination of the case, but the difference is that the acts or things, like falsification and false testimony, could have been litigated and determined at the trial or adjudication of the case. In other words, intrinsic fraud does not deprive the petitioner of his day in court because he can guard against that kind of fraud through so many means, including a thorough trial preparation, a skillful cross-examination, resorting to the modes of discovery, and proper scientific or forensic applications. Indeed, forgery of documents and evidence for use at the trial and perjury in court testimony have been regarded as not preventing the participation of any party in the proceedings, and are not, therefore, constitutive of extrinsic fraud.

4. ID.; ID.; ID.; ID.; ID.; LACK OF JURISDICTION, ELUCIDATED.— Lack of jurisdiction on the part of the trial court in rendering the judgment or final order is either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the petitioner. The former is a matter of substantive law because statutory law defines the jurisdiction of the courts over the subject matter or nature of the action. The latter is a matter of procedural law, for it involves the service of summons or other process on the petitioner. A judgment or final order issued by the trial

court without jurisdiction over the subject matter or nature of the action is always void, and, in the words of Justice Street in *Banco Español-Filipino v. Palanca*, "in this sense it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head." But the defect of lack of jurisdiction over the person, being a matter of procedural law, may be waived by the party concerned either expressly or impliedly.

5. ID.; ID.; ID.; ID.; ON THE TIME AND FILING OF THE ACTION; THE ACTION BASED ON EXTRINSIC FRAUD MUST BE FILED WITHIN FOUR YEARS FROM THE DISCOVERY AND THAT THE ACTION BASED ON INTRINSIC FRAUD MUST BE BROUGHT BEFORE IT IS BARRED BY LACHES AND ESTOPPEL; LACHES AND ESTOPPEL, ELUCIDATED.— The third requirement sets the time for the filing of the action. The action, if based on extrinsic fraud, must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel. Laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. Its other name is stale demands, and it is based upon grounds of public policy that requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted. The existence of four elements must be shown in order to validate laches as a defense, to wit: (*a*) conduct on the part of the defendant, or of one under whom a claim is made, giving rise to a situation for which a complaint is filed and a remedy sought; (*b*) delay in asserting the rights of the complainant, who has knowledge or notice of the defendant's conduct and has been afforded an opportunity to institute a suit; (*c*) lack of knowledge or notice on the part of the defendant that the complainant will assert the right on which the latter has based the suit; and (*d*) injury or prejudice to the defendant in the event that the complainant is granted a relief or the suit is not deemed barred. Estoppel precludes a person who has

admitted or made a representation about something as true from denying or disproving it against anyone else relying on his admission or representation. Thus, our law on evidence regards estoppel as conclusive by stating that "[w]henever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."

6. ID.; ID.; ID.; ID.; THE PETITION SHOULD BE VERIFIED AND SHOULD ALLEGE WITH PARTICULARITY THE FACTS AND THE LAW RELIED UPON, AND THOSE SUPPORTING THE PETITIONER'S GOOD AND SUBSTANTIAL CAUSE OF ACTION OR DEFENSE.— The fourth requirement demands that the petition should be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be. The need for particularity cannot be dispensed with because averring the circumstances constituting either fraud or mistake with particularity is a universal requirement in the rules of pleading. The petition is to be filed in seven clearly legible copies, together with sufficient copies corresponding to the number of respondents, and shall contain essential submissions, specifically: (*a*) the certified true copy of the judgment or final order or resolution, to be attached to the original copy of the petition intended for the court and indicated as such by the petitioner; (*b*) the affidavits of witnesses or documents supporting the cause of action or defense; and (*c*) the sworn certification that the petitioner has not theretofore commenced any other action involving the same issues in the Supreme Court, the CA or the different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same, and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the CA, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the said courts and other tribunal or agency thereof within five days therefrom. The purpose of these requirements of the sworn verification and the particularization of the allegations of the extrinsic fraud in the petition, of the submission of the certified true copy of

the judgment or final order or resolution, and of the attachment of the affidavits of witnesses and documents supporting the cause of action or defense is to forthwith bring all the relevant facts to the CA's cognizance in order to enable the CA to determine whether or not the petition has substantial merit. Should it find *prima facie* merit in the petition, the CA shall give the petition due course and direct the service of summons on the respondent; otherwise, the CA has the discretion to outrightly dismiss the petition for annulment.

APPEARANCES OF COUNSEL

Gina C. Garcia and *R.A.V. Saguisag* for petitioner.

Benedicto Verzosa Gealogo & Burkley for respondent FEBTC/BPI.

D E C I S I O N

BERSAMIN, *J.*:

Extrinsic fraud, as a ground for the annulment of a judgment, must emanate from an act of the adverse party, and the fraud must be of such nature as to have deprived the petitioner of its day in court. The fraud is not extrinsic if the act was committed by the petitioner's own counsel.

The Case

This appeal seeks to undo the dismissal by the Court of Appeals (CA) of the petitioner's action for annulment of judgment through the assailed resolution promulgated on July 31, 2003,[1] as well as the denial of its motion for reconsideration on September 12, 2003.[2]

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[1] *Rollo*, pp. 37-38; penned by Associate Justice Arturo D. Brion (now a Member of this Court), with the concurrence of Associate Justice Roberto A. Barrios (retired/deceased) and Associate Justice Josefina Guevara-Salonga (retired).

[2] *Id.* at 41-45.

Antecedents

On various dates in 1993, Bonier de Guzman (Bonier), then the President of petitioner corporation (Pinausukan, for short), executed four real estate mortgages involving the petitioner's 517 square meter parcel of land situated in Pasay City [3] in favor of Far East Bank and Trust Company (now Bank of Philippine Islands), to be referred to herein as the Bank. The parcel of land was registered in Transfer Certificate of Title No. 126636 of the Register of Deeds of Pasay City under the name of Pinausukan.[4] When the unpaid obligation secured by the mortgages had ballooned to ₱15,129,303.67 as of June 2001, the Bank commenced proceedings for the extrajudicial foreclosure of the mortgages on August 13, 2001 in the Office of the *Ex Officio* Sheriff, Regional Trial Court (RTC), in Pasay City.[5] Two weeks thereafter, the sheriff issued the notice of sheriff's sale, setting the public auction on October 8, 2001 at the main entrance of the Hall of Justice of Pasay City.[6]

Learning of the impending sale of its property by reason of the foreclosure of the mortgages, Pinausukan, represented by Zsae Carrie de Guzman, brought against the Bank and the sheriff an action for the annulment of real estate mortgages in the RTC on October 4, 2001 (Civil Case No. 01-0300), averring that Bonier had obtained the loans only in his personal capacity and had constituted the mortgages on the corporate asset without Pinausukan's consent through a board resolution. The case was assigned to Branch 108.[7] Pinausukan applied for the issuance of a temporary restraining order or writ of preliminary injunction

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[3] *Id.* at 164-183 (The real estate mortgages were to secure the payment of the following loans, to wit: ₱2,000,000.00 dated February 19, 1993; ₱1,500,000.00 dated May 4, 1993; ₱262,500.00 dated June 25, 1993; and ₱2,000,000.00 dated September 2, 1993).

[4] *Id.* at 161-162.

[5] *Id.* at 184-187.

[6] *Id.* at 188.

[7] *Id.* at 52-65.

to enjoin the Bank and the sheriff from proceeding with the extrajudicial foreclosure and the public auction.

In the ensuing trial of Civil Case No. 01-0300, Pinausukan presented Zsae Carrie de Guzman as its first witness on May 30, 2002. However, the subsequent hearing dates were reset several times. In August 2002, the parties informed the RTC about their attempts to settle the case.

The counsels of the parties did not appear in court on the hearing scheduled on September 5, 2002 despite having agreed thereto. Accordingly, on October 31, 2002, the RTC dismissed Civil Case No. 01-0300 for failure to prosecute.[8] The order of dismissal attained finality.[9]

On June 24, 2003, the sheriff issued a notice of extrajudicial sale concerning the property of Pinausukan.[10] The notice was received by Pinausukan a week later.

Claiming surprise over the turn of events, Pinausukan inquired from the RTC and learned that Atty. Michael Dale Villaflor (Atty. Villaflor), its counsel of record, had not informed it about the order of dismissal issued on October 31, 2002.

On July 24, 2003, Pinausukan brought the petition for annulment in the CA seeking the nullification of the order of October 31, 2002 dismissing Civil Case No. 01-0300. Its petition, under the verification of Roxanne de Guzman-San Pedro (Roxanne), who was one of its Directors, and concurrently its Executive Vice President for Finance and Treasurer, stated that its counsel had been guilty of gross and palpable negligence in failing to keep track of the case he was handling, and in failing to apprise Pinausukan of the developments on the case. It further pertinently stated as follows:

6. Inquiry from counsel, Atty. Michael Dale T. Villaflor disclosed that although the Registry Return Receipt indicated that he received

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[8] *Id.* at 48.

[9] *Id.* at 190.

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

the Order on November 28, 2002, according to him, as of said date, he no longer holds office at 12th Floor, Ever Gotesco Corporate Center, 1958 C.M. Recto Avenue, Manila but has transferred to Vecation (sic) Club, Inc., with office address 10th Floor Rufino Tower, Ayala Avenue, Makati City. Petitioner was never notified of the change of office and address of its attorney.

7. The palpable negligence of counsel to keep track of the case he was handling constituted professional misconduct amounting to extrinsic fraud properly warranting the annulment of the Order dated October 31, 2003 as petitioner was unduly deprived of its right to present evidence in Civil Case No. 01-0300 through no fault of its own.[11]

On July 31, 2003, the CA dismissed the petition for annulment,[12] citing the failure to attach the affidavits of witnesses attesting to and describing the alleged extrinsic fraud supporting the cause of action as required by Section 4, Rule 47 of the *Rules of Court*; and observing that the verified petition related only to the correctness of its allegations, a requirement entirely different and separate from the affidavits of witnesses required under Rule 47 of the *Rules of Court*.

On September 12, 2003,[13] the CA denied Pinausukan's motion for reconsideration.

Issue

Pinausukan posits that the requirement for attaching the affidavits of witnesses to the petition for annulment should be relaxed; that even if Roxanne had executed the required affidavit as a witness on the extrinsic fraud, she would only repeat therein the allegations already in the petition, thereby duplicating her allegations under her oath; that the negligence of Atty. Villaflor, in whom it entirely relied upon, should not preclude it from obtaining relief; and that it needed a chance to prove in the RTC that Bonier had no right to mortgage its property.

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[11] CA *rollo*, pp. 4-5.

[12] *Supra* note 1.

[13] *Supra* note 2.

Ruling

The appeals lacks merit.

1.
Nature and statutory requirements for an action to annul a judgment or final order

The remedy of annulment of judgment has been long authorized and sanctioned in the Philippines. In *Banco Español-Filipino v. Palanca*,[14] of 1918 vintage, the Court, through Justice Street, recognized that there were only two remedies available under the rules of procedure in force at the time to a party aggrieved by a decision of the Court of First Instance (CFI) that had already attained finality, namely: that under Sec. 113, *Code of Civil Procedure*, which was akin to the petition for relief from judgment under Rule 38, *Rules of Court*; and that under Sec. 513, *Code of Civil Procedure*, which stipulated that the party aggrieved under a judgment rendered by the CFI "upon default" and who had been "deprived of a hearing by fraud, accident, mistake or excusable negligence" and the CFI had "finally adjourned so that no adequate remedy exists in that court" could "present his petition to the Supreme Court within sixty days after he first learns of the rendition of such judgment, and not thereafter, setting forth the facts and praying to have judgment set aside."[15] It categorically ruled out a mere motion filed for that purpose in the same action as a proper remedy.

The jurisdiction over the action for the annulment of judgment had been lodged in the CFI as a court of general jurisdiction on the basis that the subject matter of the action was not capable of pecuniary estimation. Section 56, paragraph 1, of Act No. 136 (*An Act providing for the Organization of Courts in the Philippine Islands*), effective on June 11, 1901, vested original jurisdiction in the CFI over "all civil actions in which the subject of litigations is not capable of pecuniary estimation." The CFI retained its jurisdiction under Section 44(a) of Republic Act

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[14] 37 Phil. 921 (1918).

[15] *Id.* at 948.

No. 296 (*The Judiciary Act of 1948*), effective on June 17, 1948, which contained a similar provision vesting original jurisdiction in the CFI over "all civil actions in which the subject of the litigation is not capable of pecuniary estimation."

In the period under the regimes of Act No. 136 and Republic Act No. 296, the issues centered on which CFI, or branch thereof, had the jurisdiction over the action for the annulment of judgment. It was held in *Mas v. Dumara-og*[16] that "the power to open, modify or vacate a judgment is not only possessed by, *but is restricted to the court in which the judgment was rendered*." In *J.M. Tuason & Co., Inc. v. Torres*,[17] the Court declared that "the jurisdiction to annul a judgment of a branch of the Court of First Instance belongs *solely* to the very same branch which rendered the judgment." In *Sterling Investment Corporation v. Ruiz*,[18] the Court enjoined a branch of the CFI of Rizal from taking cognizance of an action filed with it to annul the judgment of another branch of the same court.

In *Dulap v. Court of Appeals*,[19] the Court observed that the philosophy underlying the pronouncements in these cases was the policy of judicial stability, as expressed in *Dumara-og*, to the end that the judgment of a court of competent jurisdiction could not be interfered with by any court of concurrent jurisdiction. Seeing that the pronouncements in *Dumara-og, J.M. Tuason & Co., Inc.* and *Sterling Investment* confining the jurisdiction to annul a judgment to the court or its branch rendering the judgment would "practically amount to judicial legislation," the Court found the occasion to re-examine the pronouncements. Observing that the plaintiff's cause of action in an action to annul the judgment of a court "springs from the alleged nullity of the judgment based on one ground or another, particularly fraud, which fact affords the plaintiff a right to judicial interference in his behalf," and that that the two cases were

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[16] No. L-16252, September 29, 1964, 12 SCRA 34, 37.

[17] No. L-24717, December 4, 1967, 21 SCRA 1169, 1172.

[18] No. L-30694, October 31, 1969, 30 SCRA 318, 322.

[19] No. L-28306, December 18, 1971, 42 SCRA 537.

distinct and separate from each other because "the cause of action (to annul judgment) is entirely different from that in the action which gave rise to the judgment sought to be annulled, for a direct attack against a final and executory judgment is not incidental to, but is the main object of, the proceeding," the Court concluded that "there is no plausible reason why the venue of the action to annul the judgment should necessarily follow the venue of the previous action" if the outcome was not only to violate the existing rule on venue for personal actions but also to limit the opportunity for the application of such rule on venue for personal actions.[20] The Court observed that the doctrine under *Dumara-og, J.M. Tuason & Co., Inc.* and *Sterling Investment* could then very well "result in the difficulties precisely sought to be avoided by the rules; for it could be that at the time of the filing of the second action for annulment, neither the plaintiff nor the defendant resides in the same place where either or both of them did when the first action was commenced and tried," thus unduly depriving the parties of the right expressly given them by the *Rules of Court* "to change or transfer venue from one province to another by written agreement – a right conferred upon them for their own convenience and to minimize their expenses in the litigation – and renders innocuous the provision on waiver of improper venue in Section 4 (of Rule 4 of the *Revised Rules of Court*)."[21] The Court eventually ruled:

> Our conclusion must therefore be that a court of first instance or a branch thereof has the authority and jurisdiction to take cognizance of, and to act in, a suit to annul a final and executory judgment or order rendered by another court of first instance or by another branch of the same court. The policy of judicial stability, which underlies the doctrine laid down in the cases of *Dumara-og, J.M. Tuason & Co., Inc.* and *Sterling Investment Corporation, et al., supra,* should be held subordinate to an orderly administration of justice based on the existing rules of procedure and the law.[22] x x x

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[20] *Id.* at 541-543.

[21] *Id.* at 542.

[22] *Id.* at 545.

In 1981, the Legislature enacted *Batas Pambansa Blg.* 129 (*Judiciary Reorganization Act of 1980*).[23] Among several innovations of this legislative enactment was the formal establishment of the annulment of a judgment or final order as an action independent from the generic classification of litigations in which the subject matter was not capable of pecuniary estimation, and expressly vested the exclusive original jurisdiction over such action in the CA.[24] The action in which the subject of the litigation was incapable of pecuniary estimation continued to be under the exclusive original jurisdiction of the RTC, which replaced the CFI as the court of general jurisdiction.[25] Since then, the RTC no longer had jurisdiction over an action to annul the judgment of the RTC, eliminating all concerns about judicial stability. To implement this change, the Court introduced a new procedure to govern the action to annul the judgment of the RTC in the 1997 revision of the *Rules of Court* under Rule 47, directing in Section 2 thereof that "[t]he annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction."[26]

The Court has expounded on the nature of the remedy of annulment of judgment or final order in *Dare Adventure Farm Corporation v. Court of Appeals*,[27] *viz*:

> A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions.

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[23] Approved on August 14, 1981.

[24] *Batas Pambansa Blg.* 129, Section 9, (2).

[25] *Id.*, Section 19, (1).

[26] The *1997 Rules of Civil Procedure*, which was adopted by the Court in Baguio City on April 8, 1997 in Bar Matter No. 803, took effect on July 1, 1997.

[27] G.R. No. 161122, September 24, 2012, 681 SCRA 580, 586-587.

The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the *Rules of Court* that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid corner stone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

The objective of the remedy of annulment of judgment or final order is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. If the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without prejudice to the original action being refiled in the proper court.[28] If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.[29] The remedy is by no means an appeal

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[28] *Rules of Court*, Rule 47, Section 7.

[29] *Id.*

whereby the correctness of the assailed judgment or final order is in issue; hence, the CA is not called upon to address each error allegedly committed by the trial court.[30]

Given the extraordinary nature and the objective of the remedy of annulment of judgment or final order, Pinausukan must be mindful of and should closely comply with the following statutory requirements for the remedy as set forth in Rule 47 of the *Rules of Court*.

The first requirement prescribes that the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner.[31] This means that the remedy, although seen as "a last remedy,"[32] is not an alternative to the ordinary remedies of new trial, appeal and petition for relief. The petition must aver, therefore, that the petitioner failed to move for a new trial, or to appeal, or to file a petition for relief without fault on his part. But this requirement to aver is not imposed when the ground for the petition is lack of jurisdiction (whether alleged singly or in combination with extrinsic fraud), simply because the judgment or final order, being void, may be assailed at any time either collaterally or by direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless the ground of lack of jurisdiction is meanwhile barred by laches.[33]

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[30] *Republic v. Heirs of Sancho Magdato*, G.R. No. 137857, September 11, 2000, 340 SCRA 115, 124.

[31] *Rules of Court*, Rule 47, Section 1.

[32] 2 Feria & Noche, *Civil Procedure, Annotated*, 2001 Edition, Central Lawbook Publishing, Quezon City, p. 219.

[33] *Ancheta v. Ancheta*, G.R. No. 145370. March 4, 2004, 424 SCRA 725, 735 (The respondent therein knew that the petitioner was already residing at another address, but he nevertheless alleged in his petition that the petitioner was residing at a different address. The sheriff served the summons and a copy of the petition by substituted service on the address stated in the petition. The petitioner was compelled to file a petition under

The second requirement limits the ground for the action of annulment of judgment to either extrinsic fraud or lack of jurisdiction.

Not every kind of fraud justifies the action of annulment of judgment. Only extrinsic fraud does. Fraud is extrinsic, according to *Cosmic Lumber Corporation v. Court of Appeals*,[34] "where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing."

The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented the petitioner from having his day in court.[35] Nonetheless, extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.[36]

Rule 47 to assail the decision rendered despite lack of summons. The CA denied the petition on the ground that there was no "clear and specific averment by petitioner that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner. Neither is there any averment or allegation that the present petition is based only on the grounds of extrinsic fraud and lack of jurisdiction. Nor yet that, on the assumption that extrinsic fraud can be a valid ground therefor, that it was not availed of, or could not have been availed of, in a motion for new trial, or petition for relief.")

[34] G.R. No. 114311, November 29, 1996, 265 SCRA 168, 180.

[35] *Tolentino v. Leviste*, G.R. No. 156118, November 19, 2004, 443 SCRA 274, 282.

[36] *Arcenas v. Queen City Development Bank*, G.R. No. 166819, June 16, 2010, 621 SCRA 11, 18.

In contrast, intrinsic fraud refers to the acts of a party at a trial that prevented a fair and just determination of the case, but the difference is that the acts or things, like falsification and false testimony, could have been litigated and determined at the trial or adjudication of the case.[37] In other words, intrinsic fraud does not deprive the petitioner of his day in court because he can guard against that kind of fraud through so many means, including a thorough trial preparation, a skillful cross-examination, resorting to the modes of discovery, and proper scientific or forensic applications. Indeed, forgery of documents and evidence for use at the trial and perjury in court testimony have been regarded as not preventing the participation of any party in the proceedings, and are not, therefore, constitutive of extrinsic fraud.[38]

Lack of jurisdiction on the part of the trial court in rendering the judgment or final order is either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the petitioner. The former is a matter of substantive law because statutory law defines the jurisdiction of the courts over the subject matter or nature of the action. The latter is a matter of procedural law, for it involves the service of summons or other process on the petitioner. A judgment or final order issued by the trial court without jurisdiction over the subject matter or nature of the action is always void, and, in the words of Justice Street in *Banco Español-Filipino v. Palanca*,[39] "in this sense it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."[40] But the defect of

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[37] *Ybañez v. Court of Appeals*, G.R. No. 117499, February 9, 1996, 253 SCRA 540, 551.

[38] *Strait Times, Inc. v. Court of Appeals*, G.R. No. 126673, August 28, 1998, 294 SCRA 714, 723.

[39] *Supra* note 14, at 949.

[40] In his dissent in the same case (*id.*, at 950-951), Justice Malcolm was equally expressive of the lack of value of a void judgment, quoting from the decision of the U.S. Supreme Court in *Mills v. Dickson* (6 Rich.

lack of jurisdiction over the person, being a matter of procedural law, may be waived by the party concerned either expressly or impliedly.

The third requirement sets the time for the filing of the action. The action, if based on extrinsic fraud, must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel.

Laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[41] Its other name is stale demands, and it is based upon grounds of public policy that requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.[42] The existence of four elements must be shown in order to validate laches as a defense, to wit: (*a*) conduct on the part of the defendant, or of one under whom a claim is made, giving rise to a situation for which a complaint is filed and a remedy sought; (*b*) delay in asserting the rights of the complainant, who has knowledge or notice of the defendant's conduct and has been afforded an

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[S.C.], 487), to wit: "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its want of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power so to do exists. It can bear no fruit to the plaintiff, but is a constant menace to the defendant."

[41] *Olizon v. Court of Appeals*, G.R. No. 107075, September 1, 1994, 236 SCRA 148, 157-158, citing *Tejido v. Zamacoma*, G.R. No. 63040, August 7, 1985, 138 SCRA 78; *Tijam v. Sibonghanoy*, No. L-21450, April 15, 1968, 23 SCRA 29; *Sotto v. Teves*, No. L-38018, October 31, 1978, 86 SCRA 154, 183.

[42] *Pangilinan v. Court of Appeals*, G. R. No. 83588, September 29, 1997, 279 SCRA 590, 601.

opportunity to institute a suit; (*c*) lack of knowledge or notice on the part of the defendant that the complainant will assert the right on which the latter has based the suit; and (*d*) injury or prejudice to the defendant in the event that the complainant is granted a relief or the suit is not deemed barred.[43]

Estoppel precludes a person who has admitted or made a representation about something as true from denying or disproving it against anyone else relying on his admission or representation.[44] Thus, our law on evidence regards estoppel as conclusive by stating that "[w]henever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."[45]

The fourth requirement demands that the petition should be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.[46] The need for particularity cannot be dispensed with because averring the circumstances constituting either fraud or mistake with particularity is a universal requirement in the rules of pleading.[47] The petition is to be filed in seven clearly legible copies, together with sufficient copies corresponding to the number of respondents, and shall contain essential submissions, specifically: (*a*) the certified true copy of the judgment or final order or resolution, to be attached to the original

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[43] *Go Chi Gun v. Co Cho, et al.,* 96 Phil. 622, 637 (1955); *Maneclang v. Baun*, G.R. No. L-27876, April 22, 1992, 208 SCRA 179, 198.

[44] The *Civil Code* provides:

Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

[45] *Rules of Court*, Rule 131, Section 2(*a*).

[46] *Id.,* Rule 47, Section 4.

[47] *Id.,* Rule 8, Section 5.

copy of the petition intended for the court and indicated as such by the petitioner;[48] (*b*) the affidavits of witnesses or documents supporting the cause of action or defense; and (*c*) the sworn certification that the petitioner has not theretofore commenced any other action involving the same issues in the Supreme Court, the CA or the different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same, and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the CA, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the said courts and other tribunal or agency thereof within five days therefrom.[49]

The purpose of these requirements of the sworn verification and the particularization of the allegations of the extrinsic fraud in the petition, of the submission of the certified true copy of the judgment or final order or resolution, and of the attachment of the affidavits of witnesses and documents supporting the cause of action or defense is to forthwith bring all the relevant facts to the CA's cognizance in order to enable the CA to determine whether or not the petition has substantial merit. Should it find *prima facie* merit in the petition, the CA shall give the petition due course and direct the service of summons on the respondent; otherwise, the CA has the discretion to outrightly dismiss the petition for annulment.[50]

2.
Pinausukan's petition for annulment was substantively and procedurally defective

A review of the dismissal by the CA readily reveals that Pinausukan's petition for annulment suffered from procedural and substantive defects.

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[48] *Id.*, Rule 47, Section 4.

[49] *Id.*

[50] *Id.*, Rule 47, Section 5.

The procedural defect consisted in Pinausukan's disregard of the fourth requirement mentioned earlier consisting in its failure to submit together with the petition the affidavits of witnesses or documents supporting the cause of action. It is true that the petition, which narrated the facts relied upon, was verified under oath by Roxanne. However, the submission of the affidavits of witnesses together with the petition was not dispensable for that reason. We reiterate with approval the CA's emphatic observation in the resolution of July 31, 2003 dismissing the petition for annulment to the effect that Roxanne's verification related only "to the correctness of the allegations in the petition" and was "not the same [or] equivalent to the affidavit of witnesses that the above-cited Rule requires."[51] To us, indeed, the true office of the verification is merely to secure an assurance that the allegations of a pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[52]

Pinausukan's failure to include the affidavits of witnesses was fatal to its petition for annulment. Worthy to reiterate is that the objective of the requirements of verification and submission of the affidavits of witnesses is to bring all the relevant facts that will enable the CA to immediately determine whether or not the petition has substantial merit. In that regard, however, the requirements are separate from each other, for only by the affidavits of the witnesses who had competence about the circumstances constituting the extrinsic fraud can the petitioner detail the extrinsic fraud being relied upon as the ground for its petition for annulment. This is because extrinsic fraud cannot be presumed from the recitals alone of the pleading but needs to be particularized as to the facts constitutive of it. The distinction between the verification and the affidavits is made more pronounced when an issue is based on facts *not appearing of record*. In that instance, the issue may be heard on affidavits

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[51] *Supra* note 1.

[52] *Oshita v. Republic*, No. L-21180, March 31, 1967, 19 SCRA 700, 702.

or depositions presented by the respective parties, subject to the court directing that the matter be heard wholly or partly on oral testimony or depositions.[53]

The substantive defect related to the supposed neglect of Atty. Villaflor to keep track of the case, and to his failure to apprise Pinausukan of the developments in the case, which the CA did not accept as constituting extrinsic fraud, because –

> Based solely on these allegations, we do not see any basis to give due course to the petition as these allegations do not speak of the extrinsic fraud contemplated by Rule 47. Notably, the petition's own language states that what is involved in this case is mistake and gross negligence of petitioner's own counsel. The petition even suggests that the negligence of counsel may constitute professional misconduct (but this is a matter for lawyer and client to resolve). What is certain, for purposes of the application of Rule 47, is that mistake and gross negligence cannot be equated to the extrinsic fraud that Rule 47 requires to be the ground for an annulment of judgment. By its very nature, extrinsic fraud relates to a cause that is collateral in character, *i.e.*, it relates to any fraudulent act of the prevailing party in litigation which is committed outside of the trial of the case, where the defeated party has been prevented from presenting fully his side of the cause, by fraud or deception practiced on him by his opponent. Even in the presence of fraud, annulment will not lie unless the fraud is committed by the adverse party, not by one's own lawyer. In the latter case, the remedy of the client is to proceed against his own lawyer and not to re-litigate the case where judgment had been rendered.[54]

We concur with the CA. Verily, such neglect of counsel, even if it was true, did not amount to extrinsic fraud because it did not emanate from any act of FEBTC as the prevailing party, and did not occur outside the trial of the case. Moreover, the failure to be fully aware of the developments in the case was Pinausukan's own responsibility. As a litigant, it should not entirely leave the case in the hands of its counsel, for it had

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[53] *Rules of Court*, Rule 133, Section 7.

[54] *Supra* note 2.

the continuing duty to keep itself abreast of the developments if only to protect its own interest in the litigation. It could have discharged its duty by keeping in regular touch with its counsel, but it did not. Consequently, it has only itself to blame.

WHEREFORE, the Court **AFFIRMS** the assailed resolutions of the Court of Appeals promulgated on July 31, 2003 and September 12, 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.

SECOND DIVISION

[G.R. No. 180972. January 20, 2014]

JONAS MICHAEL R. GARZA, *petitioner, vs.* **COCA-COLA BOTTLERS PHILIPPINES, INC. and CHRISTINE BANAL/CALIXTO MANAIG,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; DISHONESTY; FAILURE TO REMIT CASH COLLECTION FROM CUSTOMER; NEGATED BY COMPANY POLICY THAT DOES NOT ALLOW IT TO HAPPEN.— The sole basis for the CA's ruling that petitioner was validly dismissed is that he failed to remit the [October 15, 2003] cash collection of ₱8,160.00 from one of his customers. x x x [However,] one of CCBPI's policies requires that, on a daily basis, CCBPI Salesmen/ Account Specialists must account for their sales/collections and obtain clearance from the company

Cashier before they are allowed to leave company premises at the end of their shift and report for work the next day. If there is a shortage/failure to account, the concerned Salesmen/ Account Specialist is not allowed to leave the company premises until he settles the same. x x x Within the context of said policy, it can be said that since petitioner continued to work for CCBPI until June 2004, this should necessarily mean that he was cleared of daily cash and check accountabilities, including those transactions covered by the charges against him. If not, the company cashier would not have issued the required clearance and petitioner would have been required to settle these shortages as soon as they were incurred. Indeed, he would not have been allowed to leave company premises until they were settled in accordance with company policy. And he would not have been allowed to report for work the following day.

2. ID.; ID.; TERMINATION; GROUND THEREFOR MUST BE SUFFICIENTLY ESTABLISHED BY EMPLOYER.— [T]he burden is on the employer to prove that the termination was for valid cause. Unsubstantiated accusations or baseless conclusions of the employer are insufficient legal justifications to dismiss an employee. "The unflinching rule in illegal dismissal cases is that the employer bears the burden of proof."

3. ID.; ID.; ILLEGAL DISMISSAL; PROPER REMUNERATION IN CASE AT BAR.— Having seen that petitioner is innocent of the charges leveled against him, the Court must order his reinstatement. As a matter of course, the NLRC and CA pronouncements inconsistent with this declaration are necessarily rendered null and void. However, no moral and exemplary damages are forthcoming. Petitioner's failure to appeal the Labor Arbiter's ruling denying his claims for these damages rendered such pronouncement final and executory; he may no longer obtain a modification or reversal of the Decision on the issue. A party who did not appeal from the decision cannot seek any relief other than what is provided in the judgment appealed from. Finally, consistent with the Court's pronouncement in *Nacar v. Gallery Frames*, the awards herein are subject to interest at the rate of six *percent* (6%) *per annum*, to be computed from the finality of the Decision in this case until the total award is fully paid.

APPEARANCES OF COUNSEL

Sentro na Alternatibong Lingap Panligal (Saligan) for petitioner.

Felipe Sibulo Felipe & Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Unsubstantiated accusations or baseless conclusions of the employer are insufficient legal justifications to dismiss an employee. "The unflinching rule in illegal dismissal cases is that the employer bears the burden of proof."[1]

This Petition for Review on *Certiorari*[2] seeks a review and setting aside of the September 26, 2007 Decision[3] and the November 16, 2007 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP Nos. 97915 and 97916.

Factual Antecedents

Respondent Coca-Cola Bottlers Philippines, Inc. (CCBPI) is a manufacturer of soft drink products, employing salesmen and account specialists to sell these products to customers and outlets.

Petitioner Jonas Michael R. Garza (petitioner) became a regular employee of CCBPI on December 16, 1997, designated as its Salesman in Iriga City. In 2001, he was promoted to the position of Dealer Development Coordinator and assigned at Tabaco

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[1] *Mendoza v. National Labor Relations Commission*, 369 Phil. 1113, 1123 (1999).

[2] *Rollo*, pp. 7-24.

[3] *Id.* at 25-unpaginated; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Enrico A. Lanzanas.

[4] *Id.* at 36-unpaginated.

City. During his stint therein, he was likewise designated as Acting District Sales Supervisor.

In 2003, due to changes in CCBPI's structure and operating systems, the position of Dealer Development Coordinator was abolished, and petitioner was designated as Account Specialist and assigned to the CCBPI Naga City Plant and at Iriga City. For his services, petitioner received a monthly salary of ₱29,350.00, exclusive of commissions and allowances. Prior to his dismissal from CCBPI, petitioner was an employee of good standing with an unblemished record.

As Account Specialist, petitioner was tasked mainly with booking customers' orders and collecting on their accounts;[5] petitioner merely books customers' orders, but does not deliver the product to them; the independent dealer makes the delivery.[6] In effect, petitioner performed the functions of a CCBPI salesman, except that he operates in concentrated or dense areas.[7]

As a matter of company policy, CCBPI Account Specialists/ Salesmen are obliged to remit all cash sales and credit cash collections to the company office on the same day that payments are received in cash or check from customers, dealers and outlets.[8] Thus, before allowing the Account Specialists/Salesmen to work the following day, the CCBPI Cashier shall first issue a clearance which is given to the company security guard stating whether they incurred shortages or have not remitted collections. If so, the Account Specialist/Salesman concerned is not allowed to leave the company premises unless his shortages are settled.[9]

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[5] *Id.* at 10, Petition for Review on *Certiorari*; *id.* at 144-145, petitioner's Reply to CCBPI's Rejoinder to Complainant's Position Paper.

[6] *Id.* at 144-145, petitioner's Reply to CCBPI's Rejoinder to Complainant's Position Paper.

[7] *Id.* at 41, petitioner's Position Paper; *id.* at 151, Decision of the Labor Arbiter; *id.* at 187, Decision of the National Labor Relations Commission (NLRC).

[8] *Id.* at 104-105, CCBPI Position Paper.

[9] *Id.* at 51, petitioner's Position Paper.

Moreover, shortages are recovered against the monthly salary of the concerned employee.[10]

Petitioner received an October 30, 2003 memorandum[11] from his immediate supervisor, George C. Macatangay (Macatangay), directing him to explain alleged past unliquidated collections and cash shortages, thus:

> You are directed to explain within twenty four (24) hours upon receiving this x x x for your shortages for past unliquidated reports and cash shortages.
>
> For your strict compliance.
> (signed)
> GEORGE C. MACATANGAY
> DSS-District 45[12]

On April 23, 2004, petitioner received another memorandum[13] of even date from Macatangay directing him –

> x x x to explain in writing within twenty four hours from receipt hereof why you should not be charged [with] violation of Rule 005-85 SEC. 10 of CCBPI EMPLOYEES' CODE OF DISCIPLINARY RULES AND REGULATIONS specifically… misappropriation or embezzlement of Company funds, withholding of Company fund[s], unauthorized retrieval of empties by converting the same to cash for personal use, unremitted or short remittance of collection, non-issuance or mis-issuance of invoices.[14]

Petitioner sought verbal clarification from Macatangay, claiming that the memorandum did not specify the acts and transactions covered by the charge, and said that he could not submit a written explanation unless the charges against him are specified.

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[10] *Id.*

[11] *Id.* at 72.

[12] *Id.*

[13] *Id.* at 73.

[14] *Id.*

Instead of furnishing details, Macatangay issued to petitioner another memorandum[15] dated April 26, 2004, which was for all intents and purposes identical to the April 23, 2004 memorandum. This time, petitioner confronted Macatangay and reiterated his request for a detailed account of his alleged violations, but the latter told him not to worry about the memorandum because it was just a scheme adopted by local CCBPI management to cover up problems in the Naga City Plant.[16]

On May 6, 2004, Macatangay issued another memorandum[17] to petitioner, informing him that he had been placed under preventive suspension for 30 days effective May 12, 2004, and directing him to attend a formal investigation to be conducted on May 11, 2004 at the Naga City Plant. Macatangay personally handed the said memorandum to petitioner at the Mother Seton Hospital where the latter's wife had just given birth. Petitioner sought a rescheduling of the investigation, as he had to attend to his wife and the hospital obligations, and to have time to prepare for the investigation.[18] Significantly, the memorandum included the following paragraph:

> Postponement will not be allowed unless prior notice thereof is made at least two (2) days before the scheduled investigation. Total postponement shall not exceed two (2) times [sic].[19]

Instead of rescheduling the investigation as requested, CCBPI through its Territory Sales Manager, Joselito Seradilla (Seradilla) sent a Notice of Termination[20] dated June 14, 2004, thus:

> Reference is [made to] the administrative investigation conducted on you by Management relative to your alleged violation of Section

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[15] *Id.* at 74.

[16] *Id.* at 188; Decision of the NLRC.

[17] *Id.* at 76.

[18] *Id.* at 188; Decision of the NLRC.

[19] *Id.* at 76.

[20] *Id.* at 71.

10, Rule 005-85 of our Company's Employee's Code of Disciplinary Rules and Regulation[s].

After carefully evaluating the records of the investigation and other pertinent documents, indeed you have misappropriated, embezzled or fail [sic] to remit company funds amounting to Php105,653.00.

In view of this, it is with much regret to [sic] inform you that your services are hereby terminated effective upon your receipt of this memo, in accordance with our Employee's Code of Disciplinary Rules and Regulations and pertinent provisions of Article 282 of the Labor Code.

At the same time, formal demand is being made to [pay]/restitute to the Company the amount of One Hundred Five Thousand Six Hundred and Fifty Three Pesos (Php105,653.00) within five (5) days from the receipt hereof. Failure to do so shall constrain us to file necessary charges against you to protect the interest of the Company.

(signed)
Joselito G. Seradilla
TSM T4 SLA[21]

After petitioner received the above termination notice on June 15, 2004, he sought permission from the CCBPI Finance Department to review CCBPI financial records in order to be apprised of the basis for the finding that he misappropriated company funds, but his request was denied.[22] He was also denied access to the plant.[23]

At around 6:30 in the morning of June 15,[24] 2004, Macatangay visited petitioner at his residence and told him that he was being summoned to the CCBPI office by Area Sales Manager Dodie Peniera (ASM Peniera). At the CCBPI Human Resource Department office, where Peniera, Seradilla, Macatangay, and

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[21] *Id.*

[22] *Id.* at 189; Decision of the NLRC.

[23] *Id.* at 46; petitioner's Position Paper.

[24] This could be June 16.

Human Resource Manager, Christine Banal (Banal), were present, Peniera ordered Macatangay to assist petitioner in reconciling the latter's accounts. At the same time, Banal directed petitioner to receive two Notices of Investigation apparently issued on different dates, and affix his signature on the "received" portion thereof, which he did.[25]

However, the agreed reconciliation of petitioner's accounts did not materialize, as Macatangay became uncooperative and CCBPI denied him access to its records.[26]

On August 19, 2004, petitioner filed a Complaint for illegal dismissal against respondents CCBPI, Banal and CCBPI Naga City Plant Logistics Head Calixto Manaig with the Naga City Sub-Regional Arbitration Branch No. V of the National Labor Relations Commission (NLRC), which was docketed as Case No. SUB-RAB V 05-08-0022-A-04. Petitioner prayed for reinstatement, backwages, ₱100,000.00 moral damages, ₱100,000.00 exemplary damages, and 10% attorney's fees.[27]

In their Position Paper[28] and Rejoinder to Complainant's Supplemental Position Paper,[29] respondents for the first time specified in detail the alleged violations of petitioner. They claimed that petitioner was guilty of misappropriation of cash/check collections, kiting of checks, and delayed remittances covering the following customer accounts:

1. Alice Asanza -	₱ 8,160.00
2. Kathryn Serrano/New Ongto Expressmart (Supermart) -	10,645.00
3. Ceguera Bakeshop -	2,558.00

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[25] *Rollo*, p. 47; petitioner's Position Paper.

[26] *Id.* at 47-48.

[27] *Id.* at 67-68.

[28] *Id.* at 102-110.

[29] *Id.* at 124-128.

4. Marlene Yu -		21,826.00
5. Ofelia Ong -		5,100.00
6. Beatriz Orolfo -		312.00
7. Henry Botor -		8,920.00
8. Noe Sabularse -		16,090.00
9. MCM Fastfood -		1,260.00
10. Leon Trinidad -		15,186.00
	TOTAL	₱ 90,057.00

Respondents alleged that misappropriation/embezzlement is a violation of CCBPI's November 18, 2002 Inter-Office Memorandum[30] which defined misappropriation, non-remittance or delayed remittance of cash/check collections and specified outright dismissal as punishment for the first offense. They claimed that petitioner's total unremitted collections amounted to ₱105,653.00 and for this reason, his dismissal was necessary and proper. They added that due to petitioner's failure to attend the scheduled May 11, 2004 investigation, CCBPI was compelled to terminate his services, after which the proper notice was given the Department of Labor and Employment (DOLE). Finally, they contended that since petitioner was dismissed for just cause, he was not entitled to reinstatement, backwages, damages, and attorney's fees.

CCBPI relied mainly on the strength of an audit conducted by its Territory Finance Head, Ronaldo D. Surara (Surara), which concluded that petitioner failed to remit cash and credit collections covering the above accounts.[31]

In his Position Paper,[32] Supplemental Position Paper,[33] and Reply to Respondents' Rejoinder to Complainant's Position

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

[31] *Id.* at 111; Respondents' Position Paper.

[32] *Id.* at 38-70.

[33] *Id.* at 82-90.

Paper,[34] petitioner claimed essentially that (1) his dismissal was without just cause, and (2) he was denied due process during the proceedings leading to his dismissal. Relative to his claim of dismissal without just cause, petitioner contended that:

1. The charges against him are false; he was not guilty of embezzlement. All his transactions as Account Specialist are duly accounted for, all cash sales were remitted to CCBPI and all check payments were remitted and credited to CCBPI's account. Nor did he delay the remittance of these cash and check payments, nor used them in kiting operations for his personal benefit;

2. With regard to cash collections covering the Henry Botor and Noe Sabularse accounts, CCBPI policies and procedures make it impossible for Salesmen/Account Specialists to commit embezzlement. Each working day, they are required to account for their sales/collections and obtain clearance from the company cashier before they are allowed to leave company premises at the end of their shift and report for work the next day; in case of a shortage, the concerned employee is not allowed to leave the company premises until he settles the shortage. In addition, shortages are deducted against the employee's salaries. The fact that he continued to report for work up to June 2004 without any adverse action from CCBPI proved that the irregularities attributed to him – which CCBPI claims were committed against his April and May 2003 accounts – were manufactured and untrue;

3. With respect to the Alice Asanza (Asanza) account, CCBPI's claim that he failed to remit the customer's payment is belied by the customer herself, who admitted in her sworn statement[35] that during a meeting with CCBPI auditors, she made a mistake in affirming that a delivery of CCBPI products worth ₱8,160.00 was made on January 30, 2004 and that the same was paid for in cash. She admitted that after consulting her records, delivery

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[34] *Id.* at 142-147.

[35] *Id.* at 148.

of said ₱8,160.00 worth of CCBPI products was in fact made on October 15, 2003, and that up to now the same remained unpaid. She admitted that she was confused by the CCBPI records which were shown to her, which indicated "Date of Invoice 01-30-04"; thus she mistakenly assumed that a delivery of ₱8,160.00 worth of CCBPI products was indeed made on such date, and that the same was paid for by her, when in fact no such transaction took place;

4. Contrary to CCBPI's claim, all the concerned CCBPI customers, through their submitted affidavits and certifications,[36] belied claims that petitioner embezzled their cash or check payments;

5. He could not have committed "kiting" of CCBPI's checks, as CCBPI claims, for the simple reason that these checks were made payable to CCBPI specifically, and were not issued in his name. Thus, even for CCBPI products paid for in advance through checks ("payment upon order" or "PUO" accounts), there is no opportunity for embezzlement because the checks are made out to CCBPI;[37]

6. On the claim of delayed remittances of check payments pertaining to the Leon Trinidad and MCM Fastfood accounts, petitioner claims that although it appears that the checks were issued or dated in the name of CCBPI days earlier, or upon the booking of orders by the petitioner, delivery of its products by the dealer was made days later. Naturally, the checks would only be released by the customers to the petitioner upon/after delivery of products by the dealer; which means that although it would appear that the checks were issued/dated by customers earlier – upon the booking of the customers' orders – they were delivered/handed over to petitioner only upon/after completion of delivery, which come days after the checks were issued/dated. CCBPI operates through private independent dealers over whom/which petitioner has no control, which means that after petitioner

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[36] *Id.* at 91-101, 148.

[37] *Id.* at 82-90; petitioner's Supplemental Position Paper.

books an order, prompt delivery by the dealer is not guaranteed, and actual delivery could be made days later;[38]

7. With regard to transactions with Kathryn Serrano (Serrano) of New Ongto Supermart, what CCBPI claims was a different transaction covering an alleged unremitted amount of ₱10,645.00 was already paid for by Serrano in check issued to CCBPI, and the amount has been debited from her account.[39] CCBPI made a mistake in its records, which showed that Serrano paid by check for her order of CCBPI products worth ₱10,645.00, but which account was recorded by it as a different sale transaction of ₱10,615.00. These two transactions are but one and the same; in fact, CCBPI itself claims in its Rejoinder to Complainant's Position Paper that Serrano's check for ₱10,645.00 was used to pay the ₱10,615.00 transaction, which only proves that the ₱10,615.00 transaction was an erroneous entry;

8. With respect to the Marlene Yu, Beatriz Orolfo, Ofelia Ong, and Ceguera Bakeshop accounts, their own sworn statements and certifications will show that all their check payments were issued in the name of CCBPI, not the petitioner. And all the amounts covered by these checks have been duly debited from their accounts.[40]

In conclusion, petitioner argued that the evidence showed that he did not commit the alleged embezzlement; that CCBPI failed to prove just cause for his dismissal; and that the charges against him were contrived and the evidence self-serving.

As for his contention that he was denied due process during the proceedings leading to his dismissal, petitioner claimed that he was not provided ample opportunity to be heard. The April 23, 2004 written charge against him did not specify the particular

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[38] *Id.* at 144-145; petitioner's Reply to Respondents' Rejoinder to Complainant's Position Paper.

[39] *Id.* at 96.

[40] *Id.* at 91-93, 101.

transactions and acts which formed the basis for the accusations against him, for which reason he was unable to prepare the required written explanation. He verbally informed Macatangay of this predicament, but instead of acceding to his lawful request, the latter issued the April 26, 2004 memorandum which was identical to that issued on April 23. Petitioner argued that he could not be considered to have ignored the written charge against him. Nor may it be said that he waived his right to an investigation, as the evidence showed that he sought a rescheduling of the May 11, 2004 hearing for valid reasons – his wife had just given birth; he had to attend to her and their newborn child, as well as take care of their financial obligations to the hospital. CCBPI's failure and refusal to grant a postponement of the investigation was thus unreasonable and violative of his rights.

Petitioner added that he waited in vain for CCBPI to furnish him the proper detailed charges and accusations against him; instead, CCBPI issued the June 14, 2004 Notice of Termination. And immediately after receiving the said notice, he was called by ASM Peniera to his office where he was ostensibly told that he could have access to company records in order to reconcile his accounts, but which never materialized as thereafter he was in fact prohibited from entering the company premises and denied access to the records.

Ruling of the Labor Arbiter

On March 28, 2005, the Labor Arbiter issued a Decision,[41] the decretal portion of which states:

> WHEREFORE, finding merit on [sic] the causes of action set forth by the complainant, judgment is hereby rendered declaring his termination or dismissal from employment by the respondents as ILLEGAL and thereby ORDERING x x x the following:
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> A. To reinstate the complainant within ten (10) days upon receipt of this Decision to his former position without loss of seniority rights and other privileges, and to submit compliance thereto within the same period.

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[41] *Id.* at 150-158; penned by Labor Arbiter Rolando L. Bobis.

B. To pay backwages, inclusive of allowances and other benefits or his [sic] monetary equivalent, computed from the date of his respective dismissal up to the time of his actual reinstatement, whether physically or on payroll, which as of the date of this decision amounted to ₱282,625.00 computed from June 14, 2004 to this date of decision, at the rate of ₱29,750.00 per month.

[C.] To pay Attorney's Fees corresponding to 10% of the total amount of ₱282,625.00 due to the complainant which is equivalent to the sum of ₱28,262.50.

Other than the above, all other claims are hereby ordered DISMISSED for lack of merit.

SO ORDERED.[42]

The Labor Arbiter held that CCBPI failed to adduce in evidence the particular provision in the CCBPI Employee's Code of Disciplinary Rules and Regulations which forms the basis of its accusations against petitioner. He added that the accusation that petitioner embezzled company funds totaling ₱105,653.00 was couched in general terms; the particulars thereof were not stated with sufficient clarity. Moreover, the alleged violations were not clearly made known to petitioner, such that he could not properly refute them. And instead of allowing a postponement of the investigation as requested by petitioner, he was summarily dismissed.

The Labor Arbiter further held that CCBPI violated the notice and hearing requirements, in serving upon petitioner a first notice which failed to correctly and fully inform him of the charges against him; for unreasonably denying him an opportunity to be heard during the investigation; and for issuing a second notice of termination that did not contain clear and sufficient reasons for his dismissal.

The Labor Arbiter however denied petitioner's prayer for moral and exemplary damages, stating that CCBPI and its co-respondents do not appear to be guilty of bad faith, malice or fraud, nor did they act in a manner contrary to morals, good

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

customs or public policy. However, petitioner was awarded attorney's fees, as he was compelled to litigate and thus secure the services of counsel to protect his interest.

Ruling of the National Labor Relations Commission

Respondents appealed to the NLRC.[43] Meanwhile, in May 2005, while the NLRC appeal was pending, petitioner was reinstated pursuant to Art. 223 of the Labor Code.[44] He was designated as Route Salesman, and was assigned tasks relative to booking and delivery of CCBPI products, and collection of accounts. In fact, he was awarded a Certificate of Achievement for exemplary sales performance.[45]

On July 31, 2006, the NLRC issued its Decision[46] which decreed as follows:

WHEREFORE, as modified, respondents-appellants are ordered to pay complainant-appellee Jonas Michael R. Garza his full backwages, inclusive of allowances and other benefits or their monetary equivalent, to be computed from the time of his illegal dismissal up to the promulgation of this [D]ecision in the amount

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[43] Docketed as NLRC CA No. 044656-05.

[44] ART. 223. Appeal. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

x x x x x x x x x

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation, or at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

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[45] CA *rollo* (CA-G.R. SP No. 97916), p. 198.

[46] *Rollo*, pp. 186-200; penned by Commissioner Victoriano R. Calaycay and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan.

of Php760,583.53, separation pay of one (1) month for his every year of service computed from the time of his employment up to the promulgation of this [D]ecision in the amount of Php267,750.00 and, ten percent (10%) attorney's fees of the total monetary award.

SO ORDERED.[47]

In affirming the Labor Arbiter's finding of illegal dismissal, the NLRC held that CCBPI failed to adduce sufficient evidence of petitioner's alleged embezzlement; quite the contrary, the latter's evidence showed that no embezzlement took place, as all check payments he received were credited to CCBPI's account. With regard to cash payments, the NLRC held that CCBPI's documentary evidence consisting of delivery and payment receipts, other than showing the fact of delivery of products to customers and payment made by them, do not prove embezzlement on the part of petitioner.

The NLRC likewise held that in dismissing petitioner, CCBPI failed to comply with the twin requirements of notice and hearing. The first two memorandum-notices of April 23 and April 26, 2004 requiring an explanation from petitioner did not indicate the particular transactions covered by the charges against him, despite clarification sought by him. The May 6, 2004 memorandum of suspension and investigation, on the other hand, merely reiterated the charges against petitioner, and did not state the basis for the investigation.

Finally, the NLRC reversed the Labor Arbiter's order of reinstatement, finding that relations between the petitioner and CCBPI have been strained.

Petitioner and respondents filed their respective motions for reconsideration,[48] which were denied in an October 27, 2006 Resolution.[49] Both thus went up to the CA on *certiorari*, with petitioner raising only the issue of reinstatement.

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[47] *Id.* at 199-200.

[48] *Id.* at 201-209; 222-231.

[49] *Id.* at 232.

In the meantime, petitioner received a January 16, 2007 Memorandum informing him that effective January 17, 2007, petitioner may no longer report for work on account of the NLRC's October 27, 2006 Resolution.

Ruling of the Court of Appeals

The CA consolidated the two petitions. On September 26, 2007, it issued the assailed Decision, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, the assailed Decision dated July 31, 2006 and the Resolution dated October 27, 2006 of the NLRC, Second Division in NLRC CA No. 044656-05 NLRC-SUB-RAB V Case No. 05-08-00122-04 are REVERSED AND SET ASIDE. Petitioner CCBPI is hereby ORDERED to pay Jonas Michael R. Garza the amount of ₱30,000.00 as nominal damages for non-compliance with statutory due process.
>
> SO ORDERED.[50]

The CA ruled that petitioner's dismissal was proper. It paid particular attention to the Asanza account, saying that CCBPI's evidence showed that petitioner was guilty of non-remittance of Asanza's ₱8,160.00 cash payment which appears to have been made on January 30, 2004 on an October 15, 2003 delivery. The payment is evidenced by Official Receipt No. 303203[51] issued by petitioner to Asanza on January 30, 2004, and a January 31, 2004 Route Header Form[52] where petitioner specifically indicated that Asanza no longer had payables to CCBPI. The CA held that from this, CCBPI was able to prove that petitioner was guilty of non-remittance of the ₱8,160.00 collected from Asanza.

With regard to the manner in which petitioner was dismissed, the CA conceded that the procedure observed by CCBPI was defective, but since the dismissal was for just cause, the lack

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[50] *Id.,* unpaginated.

[51] *Id.* at 113.

[52] CA *rollo* (CA-G.R. SP No. 97915), p. 231.

of due process did not nullify the dismissal, but merely entitled petitioner to an award of nominal damages.

Petitioner filed a Motion for Reconsideration, but in the second assailed November 16, 2007 Resolution, the CA denied the same.

Issues

In this Petition,[53] the following issues are raised:

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION DESPITE CLEAR AND CONVINCING EVIDENCE THAT PETITIONER WAS ILLEGALLY DISMISSED;

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN NOT MODIFYING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION WITH [REGARD] TO THE ORDER OF THE HONORABLE COMMISSION FOR PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT;

THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO AWARD DAMAGES AND ATTORNEY'S FEES TO THE PETITIONER.[54]

Petitioner's Arguments

Petitioner prays for the reinstatement of the Labor Arbiter's Decision, with an additional prayer for the award of moral and exemplary damages. He argues that he is innocent of the charges against him, pointing to the fact that all cash and check payments were remitted to CCBPI or credited to the latter's account. He insists that CCBPI's evidence consisting of the affidavit of its Territory Finance Head, Surara, is self-serving and without basis. Petitioner directs the Court's attention to the fact that company

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[53] In a January 28, 2009 Resolution, (*rollo*, unpaginated) the Court denied the Petition for Review on *Certiorari* for petitioner's failure to file a Reply. But on motion for reconsideration, the Court, in an August 23, 2010 Resolution, reconsidered, and the Petition was reinstated. (*Id*. at 333).

[54] *Id.* at 13.

policies make it impossible for him to embezzle cash and check payments made to him by CCBPI customers, and his evidence consisting of customers' affidavits and certifications prove that all payments are made in the name of and for the account of CCBPI.

With regard to the Asanza account, petitioner claims that the CA erred in finding him guilty of failure to remit the ₱8,160.00 cash payment made by Asanza, contending that Asanza herself admitted under oath that no payment has in fact been made; that his issuance of Official Receipt No. 303203 was conditioned on Asanza issuing a postdated check later on, which she failed to do; that Asanza's account, as indicated in the receipts and invoices, is precisely an RCS account, or "Regular Charge Sale," which means that deliveries to her are on a credit – not cash – basis; that the January 31, 2004 Route Header Form which indicated that Asanza no longer had payables to CCBPI refers to deliveries made specifically on January 30, 2004, and did not include or refer to the October 15, 2003 transaction, which to date remains unpaid.

Finally, petitioner contends that he should be reinstated to his former position, and awarded moral and exemplary damages, as well as attorney's fees.

Respondents' Arguments

Respondents, apart from echoing the pronouncements of the CA, flatly submit that the Petition involves purely questions of fact revolving around CCBPI customers, who confirmed in their affidavits[55] that their cash payments were not remitted by petitioner to CCBPI.

Our Ruling

The Court grants the Petition.

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[55] While their NLRC appeal was pending, respondents filed a "Motion for Leave to Admit Additional Offer of Newly Discovered Evidence," attaching thereto the affidavits of several of CCBPI's customers to the effect that petitioner embezzled their **cash** payments.

There is no issue on the manner by which petitioner was dismissed. Since respondents did not appeal the unanimous findings of the Labor Arbiter, NLRC and the CA in this regard, their pronouncements on the issue are deemed final and executory. The only issue that needs to be resolved, therefore, is whether there is just cause for petitioner's dismissal.

The sole basis for the CA's ruling that petitioner was validly dismissed is that he failed to remit a cash collection of ₱8,160.00 from one of its customers, Asanza. What seems to have escaped the appellate court's notice is that in order to be able to come to such a conclusion, an important issue concerning CCBPI policies and procedures must first be tackled.

One of CCBPI's policies requires that, on a daily basis, CCBPI Salesmen/ Account Specialists must account for their sales/ collections and obtain clearance from the company Cashier before they are allowed to leave company premises at the end of their shift and report for work the next day. If there is a shortage/ failure to account, the concerned Salesmen/Account Specialist is not allowed to leave the company premises until he settles the same. In addition, shortages are deducted from the employee's salaries. Petitioner made repeated reiterations of this company policy all throughout the proceedings, and not once did respondents deny or dispute its existence and implementation. In fact, respondents confirmed existence of this policy when they stated in their Position Paper,[56] that "[a]s a matter of policy, salesmen in respondent's company are obliged to remit all cash sales and credit cash collections to the company office on the same day that said payments are made by various customers, dealers and outlets."[57]

It is altogether reasonable to suppose that this policy actually exists, because undeniably, such policy insured a fool-proof system of accountability within CCBPI, where shortages are immediately detected, presumably through the reconciliation of

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[56] *Rollo*, pp. 102-110.

[57] *Id.* at 104-105.

daily orders and deliveries to customers with the daily collections of CCBPI's salesmen, and simultaneously accounted for. With such a policy, no transaction is left unnoticed, and erring salesmen are instantaneously made to account for their shortages before they can even leave the premises and come back to work the following day.

Within the context of said policy, it can be said that since petitioner continued to work for CCBPI until June 2004, this should necessarily mean that he was clear of daily cash and check accountabilities, including those transactions covered by the charges against him. If not, the company cashier would not have issued the required clearance and petitioner would have been required to settle these shortages as soon as they were incurred. Indeed, he would not have been allowed to leave company premises until they were settled in accordance with company policy. And he would not have been allowed to report for work the following day.

"Where facts are in evidence affording legitimate inferences going to establish the ultimate fact that the evidence is designed to prove, and the party to be affected by the proof, with an opportunity to do so, fails to deny or explain them, they may well be taken as admitted with all the effect of the inferences afforded."[58] If CCBPI expects to proceed with its case against petitioner, it should have negated this policy, for its existence and application are inextricably tied to CCBPI's accusations against petitioner. In the first place, as petitioner's employer, upon it lay the burden of proving by convincing evidence that he was dismissed for cause.[59] If petitioner continued to work until June 2004, this meant that he committed no infraction, going by this company policy; it could also mean that any infraction or shortage/non-remittance incurred by petitioner has been duly settled. Respondents' decision to ignore this issue

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[58] *Manila Bay Club Corporation v. Court of Appeals*, 369 Phil. 413, 418 (1995).

[59] *Galang v. Malasugui*, G.R. No. 174173, March 7, 2012, 667 SCRA 622, 635-636.

generates the belief that petitioner is telling the truth, and that the alleged infractions are fabricated, or have been forgiven. Coupled with Macatangay's statement – which remains equally unrefuted – that the charges against petitioner are a scheme by local CCBPI management to cover up problems in the Naga City Plant, the conclusion is indeed telling that petitioner is being wrongfully made to account.

The irregularity attributed to petitioner with regard to the Asanza account should fail as well. To be sure, Asanza herself confirmed that she did not make any payment in cash or check of ₱8,160.00 covering the October 15, 2003 delivery for which petitioner is being held to account. This being the case, petitioner could not be charged with embezzlement/failure to remit for the simple reason that as regards such October 15, 2003 delivery, **there was nothing to embezzle or remit because no payment thereon has as yet been made by the customer Asanza**. It may appear from Official Receipt No. 303203 issued to Asanza that the October 15 delivery of products to her has been paid; but as admitted by her, she has not paid for the said delivered products. The reason for petitioner's issuance of said official receipt to Asanza is the latter's concurrent promise that she would immediately issue the check covering the said amount, which she nevertheless failed to do.

Although petitioner may be faulted for this act – issuing an official receipt without receiving the corresponding payment – he could not be accused of embezzlement or failure to remit as defined and punished under CCBPI's November 18, 2002 Inter-Office Memorandum, because he received no cash or check from Asanza. Without receiving anything from her, there was nothing for petitioner to embezzle or remit, and thus CCBPI had no basis to charge him for violation of the November 18, 2002 Inter-Office Memorandum which punished embezzlement and failure/delay in remitting collections.

The Court likewise finds convincing petitioner's arguments that it was impossible for him to embezzle/not remit the other customers' cash and check payments, not only because of the existence of the abovementioned policy, but likewise due to the

sworn avowals of these customers that all their check payments have been issued in CCBPI's name and have been duly debited from their accounts. Certainly, petitioner could not have encashed check payments because they were issued in the name of CCBPI; for the same reason, he could not have engaged in kiting operations. Quite certainly, he would have easily been found out.

Regarding the claim that petitioner delayed the remittance of check payments covering PUO accounts, the Court finds petitioner's explanation to be satisfactory. Suffice it to state that in selling its products, CCBPI, like other manufacturers, operates through independent dealer-businessmen, whose delivery schedules are beyond CCBPI's control. Thus, if a CCBPI salesman places a customer's order with the independent dealer, this does not mean that the latter would immediately deliver the product; it could do so later. Meanwhile, the customer would write and date his/her check to coincide with the date of the order, expecting that delivery would be made the very same day. But actual delivery could be made days later; naturally, the customer would release the check – which is dated days earlier – to the CCBPI salesmen (including petitioner) only after the delivery is completed. As correctly argued by petitioner, this constitutes a cogent explanation for his apparent late remittance of PUO or "date of order-date of check" checks.

In a bid to further pin down petitioner, respondents rely heavily on CCBPI customers' affidavits[60] which state that their cash payments were not remitted by petitioner to CCBPI. How these customers came to the knowledge and conclusion that petitioner did not remit their cash payments to CCBPI is beyond the Court. If there should be actual knowledge of petitioner's embezzlement, it could only come from respondents; it is not for the CCBPI customers to prove, for the benefit of respondents, that petitioner embezzled their cash payments. They have gained no knowledge superior to that of respondents regarding this fact, and offhand are not adequately equipped with the means to come to such a

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[60] See note 55.

conclusion. Thus, for respondents to even present their sworn statements to such effect is truly beyond comprehension.

As earlier stated, the burden is on the employer to prove that the termination was for valid cause. Unsubstantiated accusations or baseless conclusions of the employer are insufficient legal justifications to dismiss an employee. "The unflinching rule in illegal dismissal cases is that the employer bears the burden of proof."[61]

It may also be said that CCBPI's subsequent award of a Certificate of Achievement to petitioner for his exemplary sales performance, while the NLRC appeal was pending, constitutes recognition of petitioner's abilities and accomplishments in CCBPI. It indicates that he is a responsible, trustworthy and hardworking employee of CCBPI. It constitutes adequate proof weighing in his favor.

Having thus seen that petitioner is innocent of the charges leveled against him, the Court must order his reinstatement. As a matter of course, the NLRC and CA pronouncements inconsistent with this declaration are necessarily rendered null and void. However, no moral and exemplary damages are forthcoming. Petitioner's failure to appeal the Labor Arbiter's ruling denying his claims for these damages rendered such pronouncement final and executory; he may no longer obtain a modification or reversal of the Decision on the issue. A party who did not appeal from the decision cannot seek any relief other than what is provided in the judgment appealed from.[62]

Finally, consistent with the Court's pronouncement in *Nacar v. Gallery Frames*,[63] the awards herein are subject to interest

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[61] *Mendoza v. National Labor Relations Commission*, *supra* note 1.

[62] *Chan, Jr. v. Iglesia ni Cristo, Inc.*, 509 Phil. 753, 764 (2005), citing *Spouses Buot v. Court of Appeals*, 410 Phil. 183, 199-200 (2001) and *The Consolidated Bank and Trust Corporation v. Court of Appeals*, 274 Phil. 947, 959-960 (1991).

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

at the rate of six *percent* (6%) *per annum*, to be computed from the finality of the Decision in this case until the total award is fully paid.

WHEREFORE, the Petition is **GRANTED**. The September 26, 2007 Decision and November 16, 2007 Resolution of the Court of Appeals in CA-G.R. SP Nos. 97915 and 97916 are **ANNULLED** and **SET ASIDE**. The July 31, 2006 Decision of the National Labor Relations Commission is **REINSTATED**, with the modification that petitioner Jonas Michael R. Garza is **ORDERED** reinstated to his former position as Account Specialist or its equivalent, without loss of seniority, rank, emolument and privileges, and with full backwages from the date of his illegal dismissal up to his actual reinstatement.

In addition, the awards in petitioner's favor shall earn interest at the rate of six *percent* (6%) *per annum* on outstanding balance from finality of this Decision until full payment thereof.

The computation division of the NLRC-SUB-RAB-Branch No. V is hereby **ORDERED** to immediately update and compute the awards as herein granted, excluding therefrom the period during which petitioner was actually reinstated and compensated, after which respondent Coca-Cola Bottlers Philippines, Inc. is **ORDERED** to immediately pay the petitioner Jonas Michael R. Garza these amounts.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 183880. January 20, 2014]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **TOLEDO POWER COMPANY,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); VALUE ADDED TAX (VAT); TAX REFUNDS/ CREDITS OF UNUTILIZED INPUT VAT; JUDICIAL CLAIMS; COMPLIANCE WITH THE 120+30 DAY RULE UNDER SECTION 112 OF THE TAX CODE IS MANDATORY.— It must be emphasized that to validly claim a refund or tax credit of input tax, compliance with the 120+30 day rule under Section 112 of the Tax Code is mandatory. x x x. Section 112 decrees that a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit or refund creditable input tax due or paid attributable to such sales within two years after the close of the taxable quarter when the sales were made. From the date of submission of complete documents in support of its application, the CIR has 120 days to decide whether or not to grant the claim for refund or issuance of tax credit certificate. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the CIR to act on the application within the given period, the taxpayer may, within 30 days from receipt of the decision denying the claim or after the expiration of the 120-day period, appeal with the CTA the decision or inaction of the CIR. Recently, in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation,* (*San Roque*), the Court confirmed the mandatory and jurisdictional nature of the 120+30 day rule.

2. ID.; ID.; ID.; ID.; ID.; RULES ON PRESCRIPTIVE PERIOD FOR FILING A TAX REFUND OR CREDIT OF UNUTILIZED INPUT VAT; APPLICATION TO CASE AT BAR.— The rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT, as provided in Section 112 of the Tax Code, are as follows: (1) An administrative claim must be filed with the CIR within

two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made. (2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction. (3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR. (4) All taxpayers, however, 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, as an exception to the mandatory and jurisdictional 120+30 day periods. Here, TPI filed its third and fourth quarterly VAT returns for 2001 on October 25, 2001 and January 25, 2002, respectively. It then filed an administrative claim for refund of its unutilized input VAT for the third and fourth quarters of 2001 on September 30, 2003. Thus, the CIR had 120 days or until January 28, 2004, after the submission of TPI's administrative claim and complete documents in support of its application, within which to decide on its claim. Then, it is only after the expiration of the 120-day period, if there is inaction on the part of the CIR, where TPI may elevate its claim with the CTA within 30 days.

3. ID.; ID.; ID.; ID.; ID.; STRICT COMPLIANCE WITH THE 120+30 DAY MANDATORY AND JURISDICTIONAL PERIODS IS NOT NECESSARY WHEN THE JUDICIAL CLAIMS ARE FILED BETWEEN THE ISSUANCE OF BIR RULING NO. DA-489-03 ON DECEMBER 10, 2003 TO THE PROMULGATION OF THE AICHI DOCTRINE ON OCTOBER 6, 2010; REFUND CLAIM OF UNUTILIZED INPUT VAT FOR THE THIRD QUARTER OF 2001 WAS PREMATURELY FILED WHILE THE REFUND CLAIM FOR THE FOURTH QUARTER OF 2001 MAY STILL BE ENTERTAINED IN CASE AT BAR.— In the present case, however, it appears that TPI's judicial claims for refund of its unutilized input VAT covering the third and fourth quarters of 2001 were prematurely filed on

October 24, 2003 and January 22, 2004, respectively. However, although TPI's judicial claim for the fourth quarter of 2001 has been filed prematurely, the most recent pronouncements of the Court provide for a window wherein the same may be entertained. As held in the *San Roque ponencia*, strict compliance with the 120+30 day mandatory and jurisdictional periods is not necessary when the judicial claims are filed between December 10, 2003 (*issuance of BIR Ruling No. DA-489-03 which states that the taxpayer need not wait for the 120-day period to expire before it could seek judicial relief*) to October 6, 2010 (*promulgation of the Aichi doctrine*). Clearly, therefore, TPI's refund claim of unutilized input VAT for the third quarter of 2001 was denied for being prematurely filed with the CTA, while its refund claim of unutilized input VAT for the fourth quarter of 2001 may be entertained since it falls within the exception provided in the Court's most recent rulings.

4. ID.; ID.; ID.; WORD "ZERO-RATED" APPEARING ON THE VAT INVOICES/OFFICIAL RECEIPTS, ALTHOUGH MERELY STAMPED AND NOT PRE-PRINTED, IS CONSIDERED SUFFICIENT COMPLIANCE WITH THE LAW.— Section 4.108-1 of Revenue Regulations No. 7-95 states: Section 4.108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show: x x x 5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and In the present case, we agree with the CTA's findings that the words "zero-rated" appeared on the VAT invoices/ official receipts presented by the TPI in support of its refund claim. Although the same was merely stamped and not pre-printed, the same is sufficient compliance with the law, since the imprinting of the word "zero-rated" was required merely to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other VAT provisions of the Tax Code.

5. REMEDIAL LAW; APPEALS; UNLESS THERE HAS BEEN AN ABUSE OR IMPROVIDENT EXERCISE OF AUTHORITY, THE COURT WILL NOT SET ASIDE THE CONCLUSIONS REACHED BY THE COURT OF TAX APPEALS WHICH, BY THE VERY NATURE OF ITS

FUNCTION OF BEING DEDICATED EXCLUSIVELY TO THE RESOLUTION OF TAX PROBLEMS, HAS ACCORDINGLY DEVELOPED AN EXPERTISE ON THE SUBJECT.— It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue,* the Court held that it accords the findings of fact by the CTA with the highest respect. It ruled that factual findings made by the CTA can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Salvador and Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Court of Tax Appeals (*CTA*) *En Banc* Decision[1] dated May 7, 2008, and Resolution[2] dated July 18, 2008.

The pertinent facts, as narrated by the CTA First Division, are as follows:

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring; *rollo*, pp. 28-41.

[2] *Id.* at 43-45.

Petitioner (*herein respondent Toledo Power, Inc.*) is a general partnership duly organized and existing under Philippine laws, with principal office at Sangi, Toledo City, Cebu. It is principally engaged in the business of power generation and subsequent sale thereof to the National Power Corporation (NPC), Cebu Electric Cooperative III (CEBECO), Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc., and is registered with the Bureau of Internal Revenue (BIR) as a Value Added Tax taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) with Tax Identification No. 003-883-626-VAT and BIR Certificate of Registration bearing RDO Control No. 94-083-000300.

On June 20, 2002, petitioner filed an application with the Energy Regulatory Commission (ERC) for the issuance of a Certificate of Compliance pursuant to the Implementing Rules and Regulations of R.A. 9136, otherwise known as the "Electric Power Industry Reform Act of 2007" (EPIRA).

On October 25, 2001, petitioner filed with the BIR Revenue District Office (RDO) No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the third quarter of 2001, declaring among others, the following:

Zero-rated Sales/Receipts	₱ 143,000,032.37
Taxable Sales-Sale of Scrap/Others	378,651.74
Output Tax	34,422.89
Less: Input Tax	
On Domestic Purchases	4,765,458.58
On Importation of Goods	1,242,792.00
Total Available Input Tax	6,008,250.58
Excess Input Tax & Overpayment	₱ 5,973,827.69

However, an amended Quarterly VAT Return for the same quarter of 2001 was filed on November 22, 2001. The amended return shows unutilized input VAT credits of ₱5,909,588.96 arising from petitioner's taxable purchases for the third quarter of 2001 and the following other information:

Zero-rated Sales/Receipts	₱ 143,000,032.37
Taxable Sales-Sale of Scrap/Others	378,651.74
Output Tax	34,422.89

Less: Input Tax	
On Domestic Purchases	4,718,099.85
On Importation of Goods	1,225,912.00
Total Available Input Tax	5,944,011.85
Excess Input Tax & Overpayment	**₱ 5,909,588.96**

Thus, for the third quarter of 2001, petitioner allegedly has unutilized input VAT in the total amount of ₱5,909,588.96 on its domestic purchase of taxable goods and services and importation of goods, which purchases and importations are all attributable to its zero-rated sale of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation and Cebu Industrial Park Development, Inc. Said input VAT of ₱5,909,588.96 paid by petitioner on its domestic purchase of goods and services for the third quarter of 2001 allegedly remained unutilized against output VAT liability in said period or even in subsequent matters.

On January 25, 2002, petitioner filed with the BIR RDO No. 83 at Toledo City, Province of Cebu, its Quarterly VAT Return for the fourth quarter of 2001 declaring, among others, the following:

Zero-Rated Sales/Receipts	₱ 127,259,720.44
Taxable Sales-Sale of Scrap/Others	309,697.50
Output Tax	28,154.33
Less: Input Tax	
On Domestic Purchases	1,374,608.64
On Importation of Goods	1,873,327.00
Total Available Input Tax	3,247,935.64
Excess Input Tax & Overpayment	**₱ 3,219,781.31**

Thus, petitioner allegedly had an excess input VAT credits of ₱3,219,781.31 for the fourth quarter of 2001 which remained unutilized against output VAT liability in said period or even in the subsequent quarters.

For the third and fourth quarters of 2001, petitioner incurred and accumulated input VAT from its domestic purchase of goods and services, which are all attributable to its zero-rated sales of power generation services to NPC, CEBECO, Atlas Consolidated Mining and Development Corporation, Atlas Fertilizer Corporation

and Cebu Industrial Park Development Inc., in the total amount of ₱9,129,370.27. Said excess and unutilized input VAT was allegedly not utilized against any output VAT liability in the subsequent quarters nor carried over to the succeeding taxable quarters.

On September 30, 2003, pursuant to the procedure prescribed in Revenue Regulations No. 7-95, as amended, petitioner filed with the BIR RDO No. 83, an administrative claim for refund or unutilized input VAT for the third and fourth quarter of 2001 in the amounts of ₱5,909,588.96 and ₱3,219,781.31, respectively, or the aggregate amount of ₱9,129,370.27.

Respondent (*herein petitioner Commissioner of Internal Revenue*) has not ruled upon petitioner's administrative claim and in order to preserve its right to file a judicial claim for the refund or issuance of a tax credit certificate of its unutilized input VAT, petitioner filed a Petition for Review to suspend the running of the two-year prescriptive period under Section 112(D) of the 1997 NIRC and Section 4.106-2(c) of Revenue Regulations No. 7-95, as amended. On October 24, 2003, petitioner filed a Petition for Review for the refund or issuance of a tax credit certificate in the amount of ₱5,909,588.96 for the third quarter of 2001, docketed as CTA Case No. 6805 and, on January 22, 2004, filed another Petition for Review for the refund or issuance of tax credit certificate in the amount of ₱3,219,781.31 for the fourth quarter of 2001, docketed as CTA Case No. 6851, both for its unutilized input VAT paid by petitioner on its domestic purchases of goods and services and importation of goods attributable to zero-rated sales.

On January 30, 2004, petitioner filed a Motion for Consolidation CTA Case Nos. 6805 and 6851, since these cases involve the same parties, same facts and issues. The said Motion was granted in open court on February 27, 2004 and confirmed in a Resolution dated March 8, 2004.

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After presenting its testimonial and documentary evidence, petitioner formally offered its evidence on February 16, 2006. On March 24, 2006, this Court promulgated a Resolution admitting all the exhibits offered by petitioner. Respondent, on the other hand, failed to adduce any evidence.

In a Resolution dated July 6, 2006, this consolidated case was ordered submitted for decision with only petitioner's Memorandum,

as respondent failed to file one within the period given by the Court.[3]

Acting on the petition, the CTA First Division issued a Decision dated May 17, 2007 partially granting Toledo Power, Inc.'s (*TPI*) refund claim or issuance of tax credit certificate. Pertinent portions of the Decision read:

In sum, petitioner was able to show its entitlement to the refund or issuance of tax credit certificate in the amount of ₱8,553,050.44 computed as follows:

Total Available Input VAT	₱ 9,191,947.49
Less: Disallowed Input VAT (₱20,696.34+₱52,363.64+₱277,207.50)	350,267.48
Substantiated available input VAT	₱ 8,841,680.01
Less: Output VAT	62,577.22
Substantiated Unutilized Input VAT	₱ 8,779,102.79
Multiply by the ratio of substantiated zero-rated sales to the total zero-rated sales	
Substantiated zero-rated sales	263,300,858.02
Total zero-rated sales	270,259,752.81
Refundable Input VAT	₱ 8,553,050.44

IN VIEW OF THE FOREGOING, the Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to refund or to issue a tax credit certificate in favor of petitioner in the reduced amount of ₱8,553,050.44 representing the substantiated unutilized input VAT for the third and fourth quarters of 2001.

SO ORDERED.[4]

The Commissioner of Internal Revenue (*CIR*), thereafter, filed a Motion for Reconsideration against said Decision. However, the same was denied in a Resolution dated October 15, 2007.

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[3] *Id.* at 47-53. (Citations omitted)

[4] *Id.* at 62. (Emphasis in the original)

On appeal to the CTA *En Banc*, the CIR argued that TPI failed to comply with the invoicing requirements to prove entitlement to the refund or issuance of tax credit certificate. In addition, he challenged the jurisdiction of the CTA First Division to entertain respondent's petition for review for failure on its part to comply with the provisions of Section 112 (C) of the Tax Code.

In a Decision dated May 7, 2008, the CTA *En Banc* affirmed with modification the First Division's assailed decision. It held –

x x x after re-examination of the records of this case, out of the alleged Zero-rated sales amounting to ₱270,259,752.81, only the amount of ₱248,989,191.87 is fully substantiated. Therefore, respondent is entitled to the refund or issuance of tax credit certificate in the amount of ₱8,088,151.07 computed as follows:

Total Available Input VAT	₱ 9,191,947.49
Less: Disallowed Input VAT (₱20,696.34+₱52,363.64+₱277,207.50)	350,267.48
Substantiated available input VAT	₱ 8,841,680.01
Less: Output VAT	62,577.22
Substantiated Unutilized Input VAT	₱ 8,779,102.79
Multiply by the ratio of substantiated zero-rated sales to the total zero-rated sales	
Substantiated zero-rated sales	248,989,191.87
Total zero-rated sales	270,259,752.81
Refundable Input VAT	₱ 8,088,151.07

WHEREFORE, premises considered, the Petition for Review *En Banc* is **DENIED** for lack of merit. Accordingly, the Decision dated May 17, 2007 and Resolution dated October 15, 2007 are **AFFIRMED with MODIFICATION**. Petitioner is hereby **ORDERED TO REFUND** to respondent the sum of **EIGHT MILLION EIGHTY-EIGHT THOUSAND ONE HUNDRED FIFTY-ONE PESOS AND SEVEN CENTAVOS (₱8,088,151.07)** only for the third and fourth quarters of taxable year 2001.

SO ORDERED.[5]

In a Resolution dated July 18, 2008, the CTA *En Banc* denied the CIR's motion for reconsideration.

Undaunted by the adverse ruling of the CTA, the CIR now seeks recourse to this Court on the following ground:

THE COURT OF TAX APPEALS *EN BANC* ERRED IN RULING THAT THE GOVERNMENT IS LIABLE TO REFUND PETITIONER FOR ALLEGED OVERPAYMENT OF VAT.[6]

In essence, two issues must be addressed to determine whether TPI is indeed entitled to its claim for refund or issuance of tax credit certificate: (1) whether TPI complied with the 120+30 day rule under Section 112 (C) of the Tax Code, and (2) whether TPI sufficiently complied with the invoicing requirements under the Tax Code.

Let us discuss the issues *in seriatim*.

First, it must be emphasized that to validly claim a refund or tax credit of input tax, compliance with the 120+30 day rule under Section 112 of the Tax Code is mandatory.

Pertinent portions of Section 112 of the Tax Code, as amended by Republic Act No. 9337,[7] state:

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

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[5] *Id.* at 39-40. (Emphasis in the original)

[6] *Id.* at 17.

[7] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 and 288 of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

input tax has not been applied against output tax: *Provided, however*, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (b) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): *Provided, further*, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods of properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales: *Provided, finally*, That for a person making sales that are zero-rated under Section 108(B)(6), the input taxes shall be allocated ratably between his zero-rated and non-zero-rated sales.

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within 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 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.

Section 112 decrees that a VAT-registered person, whose sales are zero-rated or effectively zero-rated, may apply for the issuance of a tax credit or refund creditable input tax due or paid attributable to such sales within two years after the close of the taxable quarter when the sales were made. From the date of submission of complete documents in support of its application, the CIR has 120 days to decide whether or not to grant the claim for refund or issuance of tax credit certificate. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the CIR to act on the application within the given period, the taxpayer may, within 30 days from receipt of the decision denying the claim or after

the expiration of the 120-day period, appeal with the CTA the decision or inaction of the CIR.

Recently, in the consolidated cases of *Commissioner of Internal Revenue v. San Roque Power Corporation*,[8] (*San Roque*), the Court confirmed the mandatory and jurisdictional nature of the 120+30 day rule. It ratiocinated as follows:

> At the time San Roque filed its petition for review with the CTA, the 120+30 day mandatory periods were already in the law. Section 112 (C) expressly grants the Commissioner 120 days within which to decide the taxpayer's claim. The law is clear, plain and unequivocal: "x x x the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes **within one hundred twenty (120) days** from the date of submission of complete documents." Following the *verba legis* doctrine, this law must be applied exactly as worded since it is clear, plain and unequivocal. The taxpayer cannot simply file a petition with the CTA without waiting for the Commissioner's decision within the 120-day mandatory and jurisdictional period. The CTA will have no jurisdiction because there will be no "decision" or "deemed a denial" decision of the Commissioner for the CTA to review. In San Roque's case, it filed its petition with the CTA a mere 13 days after it filed its administrative claim with the Commissioner. Indisputably, San Roque knowingly violated the mandatory 120-day period, and it cannot blame anyone but itself.
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> 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:
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> > 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.)
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> 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

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

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.

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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. Certainly by no stretch of the imagination can the word "may" be construed as making the 120+30 day periods optional, allowing the taxpayer to file a judicial claim one day after filing the administrative claim with the Commissioner.

The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period**. With the 30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during, or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was

adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.[9]

In a nutshell, the rules on the determination of the prescriptive period for filing a tax refund or credit of unutilized input VAT, as provided in Section 112 of the Tax Code, are as follows:

(1) An administrative claim must be filed with the CIR within two years after the close of the taxable quarter when the zero-rated or effectively zero-rated sales were made.

(2) The CIR has 120 days from the date of submission of complete documents in support of the administrative claim within which to decide whether to grant a refund or issue a tax credit certificate. The 120-day period may extend beyond the two-year period from the filing of the administrative claim if the claim is filed in the later part of the two-year period. If the 120-day period expires without any decision from the CIR, then the administrative claim may be considered to be denied by inaction.

(3) A judicial claim must be filed with the CTA within 30 days from the receipt of the CIR's decision denying the administrative claim or from the expiration of the 120-day period without any action from the CIR.

(4) All taxpayers, however, 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, as an exception to the mandatory and jurisdictional 120+30 day periods.[10]

Here, TPI filed its third and fourth quarterly VAT returns for 2001 on October 25, 2001 and January 25, 2002, respectively. It then filed an administrative claim for refund of its unutilized input VAT for the third and fourth quarters of 2001 on September

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[9] *CIR v. San Roque Power Corporation, supra*, at 387-399. (Citations omitted; emphasis in the original)

[10] *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, G.R. Nos. 193301 & 194637, March 11, 2013, 693 SCRA 49, 89.

30, 2003. Thus, the CIR had 120 days or until January 28, 2004, after the submission of TPI's administrative claim and complete documents in support of its application, within which to decide on its claim. Then, it is only after the expiration of the 120-day period, if there is inaction on the part of the CIR, where TPI may elevate its claim with the CTA within 30 days.

In the present case, however, it appears that TPI's judicial claims for refund of its unutilized input VAT covering the third and fourth quarters of 2001 were prematurely filed on October 24, 2003 and January 22, 2004, respectively.

However, although TPI's judicial claim for the fourth quarter of 2001 has been filed prematurely, the most recent pronouncements of the Court provide for a window wherein the same may be entertained.

As held in the *San Roque ponencia*, strict compliance with the 120+30 day mandatory and jurisdictional periods is not necessary when the judicial claims are filed between December 10, 2003 (*issuance of BIR Ruling No. DA-489-03 which states that the taxpayer need not wait for the 120-day period to expire before it could seek judicial relief*) to October 6, 2010 (*promulgation of the Aichi doctrine*).

Clearly, therefore, TPI's refund claim of unutilized input VAT for the third quarter of 2001 was denied for being prematurely filed with the CTA, while its refund claim of unutilized input VAT for the fourth quarter of 2001 may be entertained since it falls within the exception provided in the Court's most recent rulings.

With that settled, we now resolve the issue of whether TPI sufficiently complied with the invoicing requirements under the Tax Code with respect to the fourth quarter of 2001.

Section 113 (A), in relation to Section 237 of the Tax Code, provides:

SEC. 113. *Invoicing and Accounting Requirements for VAT-Registered Persons.* –

(A) Invoicing Requirements. – A VAT-registered person shall, for every sale, issue an invoice or receipt. In addition to the information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes value-added tax.

x x x x x x x x x

SEC. 237. – *Issuance of Receipts or Sales of Commercial Invoices*. – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: *Provided, however*, That in the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: *Provided, further*, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipts shall further show the Taxpayer Identification Number (TIN) of the purchaser.

Section 4.108-1 of Revenue Regulations No. 7-95 states:

Section 4.108-1. Invoicing Requirements – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. the name, TIN and address of seller;

2. date of transaction;

3. quantity, unit cost and description of merchandise or nature of service;

4. the name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;

5. the word "zero-rated" imprinted on the invoice covering zero-rated sales; and

6. the invoice value or consideration.[11]

In the present case, we agree with the CTA's findings that the words "zero-rated" appeared on the VAT invoices/official receipts presented by the TPI in support of its refund claim. Although the same was merely stamped and not pre-printed, the same is sufficient compliance with the law, since the imprinting of the word "zero-rated" was required merely to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other VAT provisions of the Tax Code.

Moreover, it is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[12]

In *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*,[13] the Court held that it accords the findings of fact by the CTA with the highest respect. It ruled that factual findings made by the CTA can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the Tax Court. In the absence of any clear and convincing proof to the contrary, this

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[11] Underscoring supplied.

[12] *Commissioner of Internal Revenue v. Asian Transmission Corporation*, G.R. No. 179617, January 19, 2011, 640 SCRA 189, 200.

[13] 529 Phil. 785 (2006).

Court must presume that the CTA rendered a decision which is valid in every respect.[14]

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. The Commissioner of Internal Revenue is hereby **ORDERED** to refund or issue tax credit certificate in favor of Toledo Power, Inc. only for the fourth quarter of 2001. This case is hereby **REMANDED** to the Court of Tax Appeals for the proper computation of the refundable amount representing unutilized input VAT for the fourth quarter of 2001.

SO ORDERED.

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

Leonen, J., dissents consistent with his opinion in the San Roque case.

FIRST DIVISION

[G.R. No. 187973. January 20, 2014]

LZK HOLDINGS and DEVELOPMENT CORPORATION, *petitioner, vs.* **PLANTERS DEVELOPMENT BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF *RES JUDICATA* BY CONCLUSIVENESS OF JUDGMENT; ELEMENTS; PRESENT.— Under the principle of conclusiveness of judgment, the right of Planters Bank to a writ of possession as adjudged in G.R. No. 167998 is binding

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[14] *Id.* at 794-795.

and conclusive on the parties. The doctrine of *res judicata* by conclusiveness of judgment postulates that "when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them." All the elements of the doctrine are present in this case. The final judgment in G.R. No. 167998 was rendered by the Court pursuant to its jurisdiction over the review of decisions and rulings of the CA. It was a judgment on the merits of Planters Banks's right to apply for and be issued a writ of possession. Lastly, the parties in G.R. No. 167998 are the same parties involved in the present case. Hence, LZK Holdings can no longer question Planter Bank's right to a writ of possession over the subject property because the doctrine of conclusiveness of judgment bars the relitigation of such particular issue.

2. ID.; ID.; EXECUTION OF JUDGMENT; WRIT OF POSSESSION; NO HEARING IS REQUIRED PRIOR TO THE ISSUANCE THEREOF.— We cannot also uphold the contentions of LZK Holdings that the RTC, in issuing the writ of possession, transgressed Act No. 3135. No hearing is required prior to the issuance of a writ of possession. This is clear from the following disquisitions in *Espinoza v. United Overseas Bank Phils*. which reiterates the settled rules on writs of possession, *to wit*: The proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard. By its very nature, an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong. Given the *ex-parte* nature of the proceedings for a writ of possession, the RTC did not err in cancelling the previously scheduled hearing and in granting Planters Bank's motion without affording notice to LZK Holdings or allowing it to participate.

3. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED, AS JURISDICTIONAL MATTER, TO REVIEWING ERRORS OF LAW THAT MIGHT HAVE BEEN COMMITTED BY THE COURT OF APPEALS; ALLEGATIONS OF INCORRECT COMPUTATION OF THE SURETY BOND INVOLVE FACTUAL MATTERS WITHIN THE COMPETENCE OF THE TRIAL COURT.— Anent the correct amount of surety bond, it is well to emphasize that our task in an appeal by petition for review on *certiorari* is limited, as a jurisdictional matter, to reviewing errors of law that might have been committed by the CA. The allegations of incorrect computation of the surety bond involve factual matters within the competence of the trial court to address as this Court is not a trier of facts. The RTC found the amount of ₱2,000,000.00 to be sufficiently equivalent to the use of the property for a period of twelve (12) months. We are bound by such factual finding especially considering the affirmation accorded it by the CA.

APPEARANCES OF COUNSEL

Pineda Pineda Mastura Valencia & Associates for petitioner.
Janda Asia & Associates for respondent.

R E S O L U T I O N

REYES, *J.*:

This resolves the appeal filed by petitioner LZK Holdings and Development Corporation (LZK Holdings) assailing the Decision[1] dated January 27, 2009 of the Court of Appeals (CA) in CA-G.R. S.P. No. 103267 affirming the Order[2] dated April 8, 2008 of the Regional Trial Court (RTC) of San Fernando City (San Fernando), La Union, Branch 66, which issued a writ

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[1] Penned by Associate Justice Teresita Dy-Liacco Flores with Associate Justices Rosmari D. Carandang and Sixto C. Marella, Jr., concurring; *rollo*, pp. 93-108.

[2] Issued by Judge Alpino P. Florendo; *id.* at 109-110.

of possession in favor of respondent Planters Development Bank (Planters Bank).

The facts are not disputed.

LZK Holdings obtained a ₱40,000,000.00 loan from Planters Bank on December 16, 1996 and secured the same with a Real Estate Mortgage over its lot located in La Union. The lot measures 589 square meters and is covered by Transfer Certificate of Title No. T-45337.

On September 21, 1998, the lot was sold at a public auction after Planters Bank extrajudicially foreclosed the real estate mortgage thereon due to LZK Holdings' failure to pay its loan. Planters Bank emerged as the highest bidder during the auction sale and its certificate of sale was registered on March 16, 1999.

On April 5, 1999, LZK Holdings filed before the RTC of Makati City, Branch 150, a complaint for annulment of extrajudicial foreclosure, mortgage contract, promissory note and damages. LZK Holdings also prayed for the issuance of a temporary restraining order (TRO) or writ of preliminary injunction to enjoin the consolidation of title over the lot by Planters Bank.

On December 27, 1999, Planters Bank filed an *ex-parte* motion for the issuance of a writ of possession with the RTC-San Fernando.

On March 13, 2000 or three (3) days before the expiration of LZK Holdings' redemption period, the RTC-Makati issued a TRO effective for 20 days enjoining Planters Bank from consolidating its title over the property. On April 3, 2000, the RTC-Makati ordered the issuance of a writ of preliminary injunction for the same purpose[3] but the writ was issued only on June 20, 2000 upon LZK Holdings' posting of a ₱40,000.00 bond.

In the meantime, Planters Bank succeeded in consolidating its ownership over the property on April 24, 2000. However,

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[3] *Id.* at 111-113.

the proceedings for its *ex-parte* motion for the issuance of a writ of possession was suspended by the RTC-San Fernando in an Order dated May 11, 2000 in view of the TRO and writ of preliminary injunction issued by the RTC- Makati. Planters Bank moved for reconsideration but its motion was denied by the RTC-San Fernando in an Order dated September 1, 2000.[4]

Meanwhile, upon motion of LZK Holdings, the RTC-Makati declared as null and void the consolidated title of Planters Bank in an Order[5] dated June 2, 2000. Such ruling was affirmed by the CA in a Decision[6] dated February 26, 2004 in CA-G.R. SP No. 59327. When the matter reached the Court *via* G.R. No. 164563, we sustained the CA's judgment in our Resolution[7] dated September 13, 2004.

Planters Bank also appealed the May 11, 2000 Order of the RTC-San Fernando which held in abeyance the resolution of its *ex parte* motion for the issuance of a writ of possession. This time, Planters Bank was victorious. The CA granted the appeal and annulled the assailed order of the RTC-San Fernando. Aggrieved, LZK Holdings sought recourse with the Court in a petition for review docketed as G.R. No. 167998.[8] In Our Decision dated April 27, 2007, we affirmed the CA's ruling and decreed that Planters Bank may apply for and is entitled to a writ of possession as the purchaser of the property in the foreclosure sale, *viz:*

"A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person

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[4] Culled from the Court's Decision in the related case of *LZK Holdings and Development Corp. v. Planters Development Bank*, 550 Phil. 825, 827-828 (2007).

[5] *Rollo,* pp. 114-122.

[6] *Id.* at 140-151.

[7] *Id.* at 152.

[8] Entitled *LZK Holdings and Development Corp. v. Planters Development Bank,* 550 Phil. 825 (2007).

entitled under the judgment. It may be issued in case of an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118.

Under said provision, the writ of possession may be issued to the purchaser in a foreclosure sale either within the one-year redemption period upon the filing of a bond, or after the lapse of the redemption period, without need of a bond.

We have consistently held that the duty of the trial court to grant a writ of possession is ministerial. Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*. The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court.

To emphasize the writ's ministerial character, we have in previous cases disallowed injunction to prohibit its issuance, just as we have held that issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.

x x x x x x x x x

x x x [Planters Bank], as the purchaser in the foreclosure sale, may apply for a writ of possession during the redemption period. In fact, it did apply for a writ on December 27, 1999, well within the redemption period. The San Fernando RTC, given its ministerial duty to issue the writ, therefore, should have acted on the ex parte petition. The injunction order is of no moment because it should be understood to have merely stayed the consolidation of title. As previously stated, an injunction is not allowed to prohibit the issuance of a writ of possession. Neither does the pending case for annulment of foreclosure sale, mortgage contract, promissory notes and damages stay the issuance of said writ.

Lastly, the trial on the merits has not even started. Until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, petitioner is bereft of valid title and of the right to prevent the issuance of a writ of possession to [Planters

Bank]. Until then, it is the trial court's ministerial function to grant the possessory writ to [Planters Bank]."[9] (Citations omitted)

Armed with the above ruling, Planters Bank filed before the RTC-San Fernando a motion to set *ex-parte* hearing for the issuance of a writ of possession. LZK Holdings opposed the motion. In an Order dated April 2, 2008, the RTC-San Fernando denied the opposition and set the hearing on April 14, 2008. On April 8, 2008, the RTC-San Fernando issued another Order[10] declaring the scheduled hearing moot and academic and granting Planters Bank's *ex-parte* motion for the issuance of a writ of possession which was filed as early as December 27, 1999. The decretal portion of the order reads:

> WHEREFORE, premises considered, the petition is hereby granted, hence the order setting the case for *ex-parte* hearing on April 14, 2008 is rendered moot and academic by this order. Let [a] Writ of Possession issue in favor of Planters Development Bank and the Deputy Sheriff of this Court is hereby directed to place Planters Development Bank or any of its authorized representatives in possession of the subject parcel of land, together with all the improvements existing thereon, covered by TCT- 45337 of the Register of Deeds for the province of La Union against LZK HOLDINGS AND DEVELOPMENT CORPORATION (referred to as LZK) including all other persons/occupants who are claiming rights under them and who are depriving [Planters Bank] of its right to possess the above-described property upon the filing of bond by [Planters Bank] in the amount of two million pesos (Php2,000,000.00).
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> SO ORDERED.[11]

In its herein assailed Decision[12] dated January 27, 2009, the CA affirmed the foregoing ruling and dismissed LZK Holdings' petition for *certiorari* docketed as CA-G.R. SP No.

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[9] *Id.* at 831-834.

[10] *Rollo*, pp. 109-110.

[11] *Id.* at 110.

[12] *Id.* at 93-108.

103267. The CA likewise denied LZK Holdings' motion for reconsideration in its Resolution[13] dated May 12, 2009.

LZK Holdings then filed a motion before the Court for a 30-day extension within which to file a petition for review reckoned from the date of its receipt of the resolution granting such extension. In our Resolution dated July 15, 2009 we granted the motion but we ordered that the 30-day extended period shall be counted from the expiration of the original reglementary period.[14] As such, LZK Holdings had until July 23, 2009 to file its petition and not August 24, 2009 or the date when the petition was actually filed.

In our Resolution dated August 26, 2009, we denied the petition for being filed beyond the extended period pursuant to Section 5(a), Rule 56 of the Rules of Court and for lack of reversible error in the assailed judgment of the CA.[15] LZK Holdings moved for reconsideration[16] explaining that it was able to obtain a copy of the Court's July 15, 2009 Resolution on July 29, 2009 when Lourdes Z. Korshak, LZK Holdings' Chief Executive Officer, went to the Office of the Clerk of Court of the Third Division and that she still had to confront and get the case records from the company's previous counsel and then look for a substitute lawyer. LZK Holdings also claimed that the writ of possession issued to Planters Bank should be annulled for the following reasons, to wit:

(a) with the cancellation of Planters Bank's consolidated title, LZK Holdings remain to be the registered owner of the property and as such, the former had no right to apply for a writ of possession pursuant to *PNB v. Sanao Marketing Corporation*,[17] which held that right of possession is based on the ownership of the subject property by the applicant;

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[13] *Id.* at 175-176.

[14] *Id.* at 12.

[15] *Id.* at 344-345.

[16] *Id.* at 350-372.

[17] 503 Phil. 260 (2005).

(b) LZK Holdings was deprived of due process because the RTC did not conduct a hearing on Planters Bank's motion for the issuance of a writ of possession;

(c) the ₱2,000,000.00 bond posted by LZK Holdings does not conform with Section 7 of Act No. 3135 which mandates that the bond amount shall be equivalent to "twelve (12) months use of the subject property" which in this case amounted to ₱7,801,472.28 at the time the writ was issued.

In a Resolution[18] dated October 13, 2010 the Court took a liberal stance on the late filing of LZK Holdings' petition for review. Accordingly, its motion for reconsideration was granted and the petition for review reinstated.

However, after a re-examination of the substantive merits of the petition, the Court finds and stands by its initial determination that the CA committed no reversible error in affirming the issuance of a writ of possession by the RTC in favor of Planters Bank.

Under the principle of conclusiveness of judgment, the right of Planters Bank to a writ of possession as adjudged in G.R. No. 167998 is binding and conclusive on the parties.

The doctrine of *res judicata* by conclusiveness of judgment postulates that "when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them."[19]

All the elements of the doctrine are present in this case. The final judgment in G.R. No. 167998 was rendered by the Court pursuant to its jurisdiction over the review of decisions and rulings of the CA. It was a judgment on the merits of Planters Bank's right to apply for and be issued a writ of possession.

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[18] *Rollo*, p. 401.

[19] *Spouses Noceda v. Arbizo-Directo*, G.R. No. 178495, July 26, 2010, 625 SCRA 472, 480.

Lastly, the parties in G.R. No. 167998 are the same parties involved in the present case.[20]

Hence, LZK Holdings can no longer question Planters Bank's right to a writ of possession over the subject property because the doctrine of conclusiveness of judgment bars the relitigation of such particular issue.

Moreover, the authority relied upon by LZK Holdings defeats rather than support its position. The ruling in *PNB*[21] echoes the very same rationale of the judgment in G.R. No. 167998 that is – the purchaser in foreclosure sale may take possession of the property even before the expiration of the redemption period by filing an *ex parte* motion for such purpose and upon posting of the necessary bond.[22]

The pronouncement in *PNB* that right of possession is based on the ownership of the subject property by the applicant pertains to applications for writ of possession after the expiration of the redemption period, a situation not contemplated within the facts of the present case.

We cannot also uphold the contentions of LZK Holdings that the RTC, in issuing the writ of possession, transgressed Act No. 3135.[23]

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[20] The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies. *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, G.R. No. 167050, June 1, 2011, 650 SCRA 50, 57-58.

[21] *Supra* note 17.

[22] *Id.* at 272.

[23] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

No hearing is required prior to the issuance of a writ of possession. This is clear from the following disquisitions in *Espinoza v. United Overseas Bank Phils*.[24] which reiterates the settled rules on writs of possession, *to wit*:

> The proceeding in a petition for a writ of possession is *ex parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.
>
> By its very nature, an *ex parte* petition for issuance of a writ of possession is a non-litigious proceeding. It is a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale. It is not an ordinary suit filed in court, by which one party sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.[25] (Citations omitted)

Given the *ex-parte* nature of the proceedings for a writ of possession, the RTC did not err in cancelling the previously scheduled hearing and in granting Planters Bank's motion without affording notice to LZK Holdings or allowing it to participate.

Anent the correct amount of surety bond, it is well to emphasize that our task in an appeal by petition for review on *certiorari* is limited, as a jurisdictional matter, to reviewing errors of law that might have been committed by the CA.[26] The allegations of incorrect computation of the surety bond involve factual matters within the competence of the trial court to address as this Court is not a trier of facts. The RTC found the amount of ₱2,000,000.00 to be sufficiently equivalent to the use of the property for a period of twelve (12) months. We are bound by such factual finding especially considering the affirmation accorded it by the CA.

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[24] G.R. No. 175380, March 22, 2010, 616 SCRA 353.

[25] *Id.* at 358.

[26] *Baldueza v. Hon. of Court of Appeals, et al.*, 590 Phil. 150, 154 (2008).

In fine, the decision of the CA is in accordance with the law and jurisprudence on the matter. It correctly sustained the Order of the RTC in issuing a writ of possession in favor of Planters Bank.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated January 27, 2009 of the Court of Appeals in CA-G.R. S.P. No. 103267 is **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191555. January 20, 2014]

UNION BANK OF THE PHILIPPINES, *petitioner, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; COMPENSATION; DEFINED; REQUISITES.— Compensation is defined as a mode of extinguishing obligations whereby two persons in their capacity as principals are mutual debtors and creditors of each other with respect to equally liquidated and demandable obligations to which no retention or controversy has been timely commenced and communicated by third parties. The requisites therefor are provided under Article 1279 of the Civil Code which reads as follows: Art. 1279. In order that compensation may be proper, it is necessary: (1) That each one of the obligors be bound principally, and that he be at the same time a principal

creditor of the other; (2) That both debts consist 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.

2. ID.; ID.; ID.; ID.; LEGAL COMPENSATION CANNOT TAKE PLACE WHERE BOTH DEBTS ARE NOT YET DUE, LIQUIDATED AND DEMANDABLE.— The rule on **legal** compensation is stated in Article 1290 of the Civil Code which provides that "**[w]hen all the requisites mentioned in Article 1279 are present**, **compensation takes effect by operation of law**, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation." In this case, Union Bank filed a motion to seek affirmation that legal compensation had taken place in order to effectively offset (***a***) its own obligation to return the funds it previously received from DBP as directed under the September 6, 2005 Writ of Execution **with** (***b***) DBP's assumed obligations under the Assumption Agreement. However, legal compensation could not have taken place between these debts for the apparent reason that **requisites 3 and 4 under Article 1279 of the Civil Code are not present**. Since DBP's assumed obligations to Union Bank for remittance of the lease payments are – in the Court's words in its Decision dated January 13, 2004 in G.R. No. 155838 – "**contingent on the prior payment thereof by [FW] to DBP**," it cannot be said that both debts are due (requisite 3 of Article 1279 of the Civil Code). Also, in the same ruling, the Court observed that any deficiency that DBP had to make up (by December 29, 1998 as per the Assumption Agreement) for the full satisfaction of the assumed obligations "**cannot be determined until after the satisfaction of Foodmasters' obligation to DBP**." In this regard, it cannot be concluded that the same debt had already been liquidated, and thereby became demandable (requisite 4 of Article 1279 of the Civil Code). The aforementioned Court decision had already attained finality on April 30, 2004 and, hence, pursuant to the **doctrine of conclusiveness of judgment**, the facts and issues actually and directly resolved therein may not be raised in any future case between the same parties, even if the latter suit may involve a different cause of action. x x x In fine,

since requisites 3 and 4 of Article 1279 of the Civil Code have not concurred in this case, no legal compensation could have taken place between the above-stated debts pursuant to Article 1290 of the Civil Code. Perforce, the petition must be denied, and the denial of Union Bank's motion to affirm legal compensation sustained.

APPEARANCES OF COUNSEL

Macalino and Associates for petitioner.
DBP Office of the Legal Counsel 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 November 3, 2009 and Resolution[3] dated February 26, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 93833 which affirmed the Orders[4] dated November 9, 2005 and January 30, 2006 of the Regional Trial Court of Makati, Branch 58[5] (RTC) in Civil Case No. 7648 denying the motion to affirm legal compensation[6] filed by petitioner Union Bank of the Philippines (Union Bank) against respondent Development Bank of the Philippines (DBP).

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[1] *Rollo*, pp. 32-50.

[2] *Id.* at 8-20. Penned by Associate Justice Romeo F. Barza, with Associate Justices Portia Aliño-Hormachuelos and Remedios A. Salazar-Fernando, concurring.

[3] *Id.* at 30.

[4] *Id.* at 278-279 and 323, respectively. Penned by Presiding Judge Eugene C. Paras.

[5] Erroneously stated as Branch 148 in the Complaint (see *id.* at 60) and Amended Third-Party Complaint (see *id.* at 71).

[6] *Id.* at 271-277.

The Facts

Foodmasters, Inc. (FI) had outstanding loan obligations to both Union Bank's predecessor-in-interest, Bancom Development Corporation (Bancom), and to DBP.

On May 21, 1979, FI and DBP, among others, entered into a Deed of Cession of Property In Payment of Debt[7] (*dacion en pago*) whereby the former ceded in favor of the latter certain properties (including a processing plant in Marilao, Bulacan [processing plant]) in consideration of the following: **(*a*)** the full and complete satisfaction of FI's loan obligations to DBP; and **(*b*) the direct assumption by DBP of FI's obligations to Bancom** in the amount of ₱17,000,000.00 (assumed obligations).[8]

On the same day, DBP, as the new owner of the processing plant, leased back[9] for 20 years the said property to FI (Lease Agreement) which was, in turn, obliged to pay **monthly rentals to be shared by DBP and Bancom**.

DBP also entered into a separate agreement[10] with Bancom (Assumption Agreement) whereby the former: **(*a*)** confirmed its assumption of FI's obligations to Bancom; and **(*b*) undertook to remit up to 30% of any and all rentals due from FI to Bancom (subject rentals) which would serve as payment of the assumed obligations, to be paid in monthly installments**. The pertinent portions of the Assumption Agreement reads as follows:

WHEREAS, DBP has agreed and firmly committed in favor of Bancom that **the above obligations to Bancom which DBP has assumed shall be settled, paid and/or liquidated by DBP out of a portion of the lease rentals or part of the proceeds of sale** of

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[7] *Id.* at 344-348.

[8] *Id.* at 87.

[9] *Id.* at 349-355.

[10] *Id.* at 356-359.

those properties of the Assignors conveyed to DBP pursuant to the [Deed of Cession of Property in Payment of Debt dated May 21, 1979] and which are the subject of [the Lease Agreement] made and executed by and between DBP and [FI], the last hereafter referred to as the "Lessee" to be effective as of July 31, 1978.

x x x x x x x x x

4. **DBP hereby covenants and undertakes that the amount up to 30% of any and all rentals due from the Lessee pursuant to the Lease Agreement shall be remitted by DBP to Bancom** at the latter's offices at Pasay Road, Makati, Metro Manila **within five (5) days from due dates thereof**, and **applied in payment of the Assumed Obligations**. Likewise, the amount up to 30% of the proceeds from any sale of the Leased Properties shall within the same period above, be remitted by DBP to Bancom and applied in payment or prepayment of the Assumed Obligations. x x x. **Any balance of the Assumed Obligations after application of the entire rentals and or the entire sales proceeds actually received by Bancom on the Leased Properties shall be paid by DBP to Bancom not later than December 29, 1998**. (Emphases supplied)

Meanwhile, on May 23, 1979, FI assigned its leasehold rights under the Lease Agreement to Foodmasters Worldwide, Inc. (FW);[11] while on May 9, 1984, Bancom conveyed all its receivables, including, among others, DBP's assumed obligations, to Union Bank.[12]

Claiming that the subject rentals have not been duly remitted despite its repeated demands, Union Bank filed, on June 20, 1984, a collection case against DBP before the RTC, docketed as Civil Case No. 7648.[13] In opposition, DBP countered, among others, that the obligations it assumed were payable only out of the rental payments made by FI. Thus, since FI had yet to pay the same, DBP's obligation to Union Bank had not arisen.[14]

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[11] *Id.* at 88.

[12] *Id.*

[13] *Id.* at 60-70.

[14] *Id.* at 72.

In addition, DBP sought to implead FW as third party-defendant in its capacity as FI's assignee and, thus, should be held liable to Union Bank.[15]

In the interim, or on May 6, 1988, DBP filed a motion to dismiss on the ground that it had ceased to be a real-party-in-interest due to the supervening transfer of its rights, title and interests over the subject matter to the Asset Privatization Trust (APT). Said motion was, however, denied by the RTC in an Order dated May 27, 1988.[16]

The RTC Ruling in Civil Case No. 7648

Finding the complaint to be meritorious, the RTC, in a Decision[17] dated May 8, 1990, ordered: (*a*) DBP to pay Union Bank the sum of ₱4,019,033.59, representing the amount of the subject rentals (which, again, constitutes 30% of FI's [now FW's] total rental debt), including interest until fully paid; and (*b*) FW, as third-party defendant, to indemnify DBP, as third-party plaintiff, for its payments of the subject rentals to Union Bank. It ruled that there lies no evidence which would show that DBP's receipt of the rental payments from FW is a condition precedent to the former's obligation to remit the subject rentals under the Lease Agreement. Thus, when DBP failed to remit the subject rentals to Union Bank, it defaulted on its assumed obligations.[18] DBP then elevated the case on appeal before the CA, docketed as CA-G.R. CV No. 35866.

The CA Ruling in CA-G.R. CV No. 35866

In a Decision[19] dated May 27, 1994 (May 27, 1994 Decision), the CA set aside the RTC's ruling, and consequently ordered: (*a*) FW to pay DBP the amount of ₱32,441,401.85 representing

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[15] *Id.* at 71-75.

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

[17] *Id.* at 80-85.

[18] *Id.* at 85.

[19] *Id.* at 86-104.

the total rental debt incurred under the Lease Agreement, including ₱10,000.00 as attorney's fees; and (*b*) DBP, **after having been paid by FW its unpaid rentals**, to remit 30% thereof (*i.e.*, the subject rentals) to Union Bank.[20]

It rejected Union Bank's claim that DBP has the direct obligation to remit the subject rentals not only from FW's rental payments but also out of its own resources since said claim contravened the "plain meaning" of the Assumption Agreement which specifies that **the payment of the assumed obligations shall be made "out of the portion of the lease rentals or part of the proceeds of the sale of those properties of [FI] conveyed to DBP**."[21] It also construed the phrase under the Assumption Agreement that DBP is obligated to "pay any balance of the Assumed Obligations after application of the entire rentals and/or the entire sales proceeds actually received by [Union Bank] on the Leased Properties . . . not later than December 29, 1998" to mean that the lease rentals must first be applied to the payment of the assumed obligations in the amount of ₱17,000,000.00, and **that DBP would have to pay out of its own money only in case the lease rentals were insufficient, having only until December 29, 1998 to do so**. Nevertheless, the monthly installments in satisfaction of the assumed obligations **would still have to be first sourced from said lease rentals as stipulated in the assumption agreement**.[22] In view of the foregoing, the CA ruled that DBP **did not default** in its obligations to remit the subject rentals to Union Bank **precisely because it had yet to receive the rental payments of FW**.[23]

Separately, the CA upheld the RTC's denial of DBP's motion to dismiss for the reason that the transfer of its rights, title and interests over the subject matter to the APT occurred *pendente*

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[20] *Id.* at 103-104.

[21] *Id.* at 100.

[22] *Id.* at 101.

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

lite, and, as such, the substitution of parties is largely discretionary on the part of the court.

At odds with the CA's ruling, Union Bank and DBP filed separate petitions for review on *certiorari* before the Court, respectively docketed as G.R. Nos. 115963 and 119112, which were thereafter consolidated.

The Court's Ruling in G.R. Nos. 115963 & 119112

The Court denied both petitions in a Resolution[24] dated December 13, 1995. First, it upheld the CA's finding that while DBP directly assumed FI's obligations to Union Bank, DBP was only obliged to remit to the latter 30% of the lease rentals collected from FW, from which any deficiency was to be settled by DBP not later than December 29, 1998.[25] Similarly, the Court agreed with the CA that the denial of DBP's motion to dismiss was proper since substitution of parties, in case of transfers *pendente lite*, is merely discretionary on the part of the court, adding further that the proposed substitution of APT will amount to a novation of debtor which cannot be done without the consent of the creditor.[26]

On August 2, 2000, the Court's resolution became final and executory.[27]

The RTC Execution Proceedings

On May 16, 2001, Union Bank filed a motion for execution[28] before the RTC, praying that DBP be directed to pay the amount of ₱9,732,420.555 which represents the amount of the subject rentals (*i.e.*, 30% of the FW's total rental debt in the amount of ₱32,441,401.85). DBP opposed[29] Union Bank's motion,

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[24] *Id.* at 105-109.

[25] *Id.* at 45.

[26] *Id.* at 108.

[27] *Id.* at 410.

[28] *Id.* at 110-113.

[29] *Id.* at 114-121.

contending that it sought to effectively vary the dispositive portion of the CA's May 27, 1994 Decision in CA-G.R. CV No. 35866. Also, on September 12, 2001, DBP filed its own motion for execution against FW, citing the same CA decision as its basis.

In a Consolidated Order[30] dated October 15, 2001 (Order of Execution), the RTC granted both motions for execution. Anent Union Bank's motion, the RTC opined that the CA's ruling that DBP's payment to Union Bank shall be demandable only upon payment of FW must be viewed in light of the date when the same was rendered. It noted that the CA decision was promulgated only on May 27, 1994, which was before the December 29, 1998 due date within which DBP had to fully pay its obligation to Union Bank under the Assumption Agreement. Since the latter period had already lapsed, "[i]t would, thus, be too strained to argue that payment by DBP of its assumed obligation[s] shall be dependent on [FW's] ability, if not availability, to pay."[31] In similar regard, the RTC granted DBP's motion for execution against FW since its liability to Union Bank and DBP remained undisputed.

As a result, a writ of execution[32] dated October 15, 2001 (October 15, 2001 Writ of Execution) and, thereafter, a notice of garnishment[33] against DBP were issued. Records, however, do not show that the same writ was implemented against FW.

DBP filed a motion for reconsideration[34] from the Execution Order, averring that the latter issuance varied the import of the CA's May 27, 1994 Decision in CA-G.R. CV No. 35866 in that it prematurely ordered DBP to pay the assumed obligations to Union Bank before FW's payment. The motion was, however, denied on December 5, 2001.[35] Thus, DBP's deposits were

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[30] *Id.* at 130-133. Penned by Judge Winlove M. Dumayas.

[31] *Id.* at 411.

[32] *Id.* at 134-136.

[33] *Id.* at 137.

[34] *Id.* at 138-151.

[35] *Id.* at 153-155.

eventually garnished.[36] Aggrieved, DBP filed a petition for *certiorari*[37] before the CA, docketed as CA-G.R. SP No. 68300.

The CA Ruling in CA-G.R. SP No. 68300

In a Decision[38] dated July 26, 2002, the CA dismissed DBP's petition, finding that the RTC did not abuse its discretion when it issued the October 15, 2001 Writ of Execution. It upheld the RTC's observation that there was "nothing wrong in the manner how [said writ] was implemented," as well as "in the zealousness and promptitude exhibited by Union Bank" in moving for the same. DBP appealed the CA's ruling before the Court, which was docketed as G.R. No. 155838.

The Court's Ruling in G.R. No. 155838

In a Decision[39] dated January 13, 2004 (January 13, 2004 Decision), the Court granted DBP's appeal, and thereby reversed and set aside the CA's ruling in CA-G.R. SP No. 68300. It found significant points of variance between the CA's May 27, 1994 Decision in CA-G.R. CV No. 35866, and the RTC's Order of Execution/October 15, 2001 Writ of Execution. It ruled that both the body and the dispositive portion of the same decision acknowledged that DBP's obligation to Union Bank for remittance of the lease payments is contingent on FW's prior payment to DBP, and that any deficiency DBP had to pay by December 29, 1998 as per the Assumption Agreement cannot be determined until after the satisfaction of FW's own rental obligations to DBP. Accordingly, the Court: (*a*) nullified the October 15, 2001 Writ of Execution and all related issuances thereto; and (*b*) ordered Union Bank to return to DBP the amounts it received pursuant to the said writ.[40]

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[36] *Id.* at 251.

[37] *Id.* at 174-204.

[38] *Id.* at 248-256.

[39] *Id.* at 257-268; *DBP v. Union Bank*, 464 Phil. 161 (2004).

[40] *Id.* at 266-267.

Dissatisfied, Union Bank moved for reconsideration which was, however, denied by the Court in a Resolution dated March 24, 2004 with finality. Thus, the January 13, 2004 Decision attained finality on April 30, 2004.[41] Thereafter, DBP moved for the execution of the said decision before the RTC. After numerous efforts on the part of Union Bank proved futile, the RTC issued a writ of execution (September 6, 2005 Writ of Execution), ordering Union Bank to return to DBP all funds it received pursuant to the October 15, 2001 Writ of Execution.[42]

Union Bank's Motion to Affirm Legal Compensation

On September 13, 2005, Union Bank filed a Manifestation and Motion to Affirm Legal Compensation,[43] praying that the RTC apply legal compensation between itself and DBP in order to offset the return of the funds it previously received from DBP. Union Bank anchored its motion on two grounds which were allegedly not in existence prior to or during trial, namely: (*a*) on December 29, 1998, DBP's assumed obligations became due and demandable;[44] and (*b*) considering that FWI became non-operational and non-existent, DBP became primarily liable to the balance of its assumed obligation, which as of Union Bank's computation **after its claimed set-off**, amounted to ₱1,849,391.87.[45]

On November 9, 2005, the RTC issued an Order[46] denying the above-mentioned motion for lack of merit, holding that Union Bank's stated grounds were already addressed by the Court in the January 13, 2004 Decision in G.R. No. 155838. With Union Bank's motion for reconsideration therefrom having been denied,

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[41] See Entry of Judgment in G.R. No. 155838; *Id.* at 452.

[42] *Id.* at 460-462.

[43] *Id.* at 271-277.

[44] See Agreement dated May 21, 1979; *id.* at 272 and 358.

[45] *Id.* at 273.

[46] *Id.* at 278-279.

it filed a petition for *certiorari*[47] with the CA, docketed as CA-G.R. SP No. 93833.

Pending resolution, Union Bank issued Manager's Check[48] No. 099-0003192363 dated April 21, 2006 amounting to ₱52,427,250.00 in favor of DBP, in satisfaction of the Writ of Execution dated September 6, 2005 Writ of Execution. DBP, however, averred that Union Bank still has a balance of ₱756,372.39 representing a portion of the garnished funds of DBP,[49] which means that said obligation had not been completely extinguished.

The CA Ruling in CA-G.R. SP No. 93833

In a Decision[50] dated November 3, 2009, the CA dismissed Union Bank's petition, finding no grave abuse of discretion on the RTC's part. It affirmed the denial of its motion to affirm legal compensation considering that: (*a*) the RTC only implemented the Court's January 13, 2004 Decision in G.R. No. 155838 which by then had already attained finality; (*b*) DBP is not a debtor of Union Bank; and (*c*) there is neither a demandable nor liquidated debt from DBP to Union Bank.[51]

Undaunted, Union Bank moved for reconsideration which was, however, denied in a Resolution[52] dated February 26, 2010; hence, the instant petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly upheld the denial of Union Bank's motion to affirm legal compensation.

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[47] *Id.* at 326-343.

[48] *Id.* at 463.

[49] See Comment of DBP; *id.* at 386. See also Reply of Union Bank which admitted to such fact; *id.* at 512.

[50] *Id.* at 8-20.

[51] *Id.* at 9.

[52] *Id.* at 30.

The Court's Ruling

The petition is bereft of merit.

Compensation is defined as a mode of extinguishing obligations whereby two persons in their capacity as principals are mutual debtors and creditors of each other with respect to equally liquidated and demandable obligations to which no retention or controversy has been timely commenced and communicated by third parties.[53] The requisites therefor are provided under Article 1279 of the Civil Code which reads as follows:

> Art. 1279. In order that compensation may be proper, it is necessary:
>
> (1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
>
> (2) That both debts consist 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. (Emphases and underscoring supplied)

The rule on **legal**[54] compensation is stated in Article 1290 of the Civil Code which provides that "**[w]hen all the requisites mentioned in Article 1279 are present**, **compensation takes effect by operation of law**, and extinguishes both debts to the

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[53] See *Mavest (U.S.A.), Inc. v. Sampaguita Garment Corporation*, G.R. No. 127454, September 21, 2005, 470 SCRA 440, 449.

[54] "Compensation may be legal or conventional. Legal compensation takes place *ipso jure* when all the requisites of law are present, as opposed to conventional or voluntary compensation which occurs when the parties agree to the mutual extinguishment of their credits or to compensate their mutual obligations even in the absence of some of the legal requisites." (*Id.* at 448-449; citations omitted)

concurrent amount, even though the creditors and debtors are not aware of the compensation."

In this case, Union Bank filed a motion to seek affirmation that legal compensation had taken place in order to effectively offset (***a***) its own obligation to return the funds it previously received from DBP as directed under the September 6, 2005 Writ of Execution **with** (***b***) DBP's assumed obligations under the Assumption Agreement. However, legal compensation could not have taken place between these debts for the apparent reason that **requisites 3 and 4 under Article 1279 of the Civil Code are not present**. Since DBP's assumed obligations to Union Bank for remittance of the lease payments are – in the Court's words in its Decision dated January 13, 2004 in G.R. No. 155838 – "**contingent on the prior payment thereof by [FW] to DBP**," it cannot be said that both debts are due (requisite 3 of Article 1279 of the Civil Code). Also, in the same ruling, the Court observed that any deficiency that DBP had to make up (by December 29, 1998 as per the Assumption Agreement) for the full satisfaction of the assumed obligations "**cannot be determined until after the satisfaction of Foodmasters' obligation to DBP**." In this regard, it cannot be concluded that the same debt had already been liquidated, and thereby became demandable (requisite 4 of Article 1279 of the Civil Code).

The aforementioned Court decision had already attained finality on April 30, 2004[55] and, hence, pursuant to the **doctrine of conclusiveness of judgment**, the facts and issues actually and directly resolved therein may not be raised in any future case between the same parties, even if the latter suit may involve a different cause of action.[56] Its pertinent portions are hereunder quoted for ready reference:[57]

Both the body and the dispositive portion of the [CA's May 27, 1994 Decision in CA-G.R. CV No. 35866] correctly **construed the**

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[55] See Entry of Judgment in G.R. No. 155838; *rollo*, p. 452.

[56] *Tan v. CA*, 415 Phil. 675, 676 (2001).

[57] *Rollo*, pp. 264-265; *DBP v. Union Bank*, *supra* note 49, at 170-172.

nature of DBP's liability for the lease payments under the various contracts, to wit:

> x x x Construing these three contracts, especially the "Agreement" x x x between DBP and Bancom as providing for the payment of DBP's assumed obligation out of the rentals to be paid to it does not mean negating DBP's assumption "for its own account" of the ₱17.0 million debt x x x. It only means that they provide a mechanism for discharging [DBP's] liability. This liability subsists, since under the "Agreement" x x x, DBP is obligated to pay "any balance of the Assumed Obligations after application of the entire rentals and or the entire sales proceeds actually received by [Union Bank] on the Leased Properties … not later than December 29, 1998." x x x It only means that the lease rentals must first be applied to the payment of the ₱17 million debt and that [DBP] would have to pay out of its money only in case of insufficiency of the lease rentals having until December 29, 1998 to do so. In this sense, it is correct to say that the means of repayment of the assumed obligation is not limited to the lease rentals. The monthly installments, however, would still have to come from the lease rentals since this was stipulated in the "Agreement."
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> x x x x x x x x x
>
> Since, as already stated, the monthly installments for the payment of the ₱17 million debt are to be funded from the lease rentals, **it follows that if the lease rentals are not paid, there is nothing for DBP to remit to [Union Bank], and thus [DBP] should not be considered in default**. It is noteworthy that, as stated in the appealed decision, "as regards plaintiff's claim for damages against defendant for its alleged negligence in failing and refusing to enforce a lessor's remedies against Foodmasters Worldwide, Inc., the Court finds no competent and reliable evidence of such claim."
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> x x x x x x x x x
>
> WHEREFORE, the decision appealed from is SET ASIDE and another one is RENDERED,
>
> (i) Ordering third-party defendant-appellee Foodmasters Worldwide, Inc. to pay defendant and third-party plaintiff-appellant Development Bank of the Philippines the sum of ₱32,441,401.85, representing the unpaid rentals from

August 1981 to June 30, 1987, as well as ₱10,000.00 for attorney's fees; and

(ii) Ordering defendant and third-party plaintiff-appellant Development Bank of the Philippines **after having been paid by third-party defendant-appellee** the sum of ₱32,441,401.85, to remit 30% thereof to plaintiff-appellee Union Bank of the Philippines.

SO ORDERED.

In other words, both the body and the dispositive portion of the aforequoted decision acknowledged that DBP's obligation to Union Bank for remittance of the lease payments is contingent on the prior payment thereof by Foodmasters to DBP.

A careful reading of the decision shows that the Court of Appeals, which was affirmed by the Supreme Court, found that only the balance or the deficiency of the ₱17 million principal obligation, if any, would be due and demandable as of December 29, 1998. **Naturally, this deficiency cannot be determined until after the satisfaction of Foodmasters' obligation to DBP, for remittance to Union Bank in the proportion set out in the 1994 Decision**. (Emphases and underscoring supplied; citations omitted)

x x x x x x x x x

In fine, since requisites 3 and 4 of Article 1279 of the Civil Code have not concurred in this case, no legal compensation could have taken place between the above-stated debts pursuant to Article 1290 of the Civil Code. Perforce, the petition must be denied, and the denial of Union Bank's motion to affirm legal compensation sustained.

WHEREFORE, the petition is **DENIED**. The Decision dated November 3, 2009 and Resolution dated February 26, 2010 of the Court of Appeals in CA-G.R. SP No. 93833 are hereby **AFFIRMED**.

SO ORDERED.

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

EN BANC

[A.M. No. P-05-2051. January 21, 2014]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. MONA LISA A. BUENCAMINO, Clerk of Court IV, DAVID E. MANIQUIS, Clerk of Court III, and CIELITO M. MAPUE, Sheriff III, all of the Office of the Clerk of Court, Metropolitan Trial Court, Caloocan City,** *respondents.*

[A.M. No. 05-4-118-MeTC. January 21, 2014]

RE: REPORT ON THE FINANCIAL AUDIT CONDUCTED IN THE METROPOLITAN TRIAL COURT, OFFICE OF THE CLERK OF COURT, CALOOCAN CITY

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; AS FRONT LINERS IN THE ADMINISTRATION OF JUSTICE, COURT PERSONNEL SHOULD LIVE UP TO THE STRICTEST STANDARDS OF HONESTY AND INTEGRITY IN THE PUBLIC SERVICE.— The Constitution mandates that a public office is a public trust and that all public officers must be accountable to the people, and serve them with responsibility, integrity, loyalty and efficiency. The demand for moral uprightness is more pronounced for members and personnel of the judiciary who are involved in the dispensation of justice. As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service.

2. ID.; ID.; ID.; MISAPPROPRIATION OF THE COURT FUNDS FOR PERSONAL USE CONSTITUTES GROSS DISHONESTY WHICH MERITS THE PENALTY OF DISMISSAL EVEN FOR THE FIRST OFFENSE.— In the present case, Mapue's admission, in her sworn statement, of misappropriating court funds shows her blatant disregard of the principles of public office she had sworn to uphold. As

found by the OCA, her restitution of the total amount did not exonerate or mitigate her liability, as this was done after the discovery of the misappropriation. Furthermore, Mapue already deprived the Court of the interest otherwise earned had the confiscated bonds been deposited in the GF or JDF. In *Office of the Court Administrator v. Besa*, the Court found respondent therein liable for dishonesty and dismissed her from the service due to her own admission that she misappropriated the fiduciary funds for her personal use. Gross dishonesty is a grave offense and merits the penalty of dismissal even for the first offense.

3. **ID.; ID.; ID.; CLERK OF COURT; FAILURE TO PROPERLY SUPERVISE AND MANAGE THE FINANCIAL TRANSACTIONS IN HER COURT CONSTITUTES SIMPLE NEGLECT OF DUTY PUNISHABLE BY SUSPENSION.—** Mapue's admission of liability, however, does not exculpate Atty. Buencamino from her own negligence. A clerk of court has general administrative supervision over all the personnel of the court. The administrative functions of a clerk of court are as vital to the prompt and proper administration of justice as his judicial duties. As custodian of court funds and revenues, the clerk of court is primarily accountable for all funds that are collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control. In the present case, we find Atty. Buencamino remiss in the performance of her duties as clerk of court. Atty. Buencamino failed to supervise Mapue and to properly manage the court funds entrusted to her, enabling Mapue to misappropriate part of the funds. Atty. Buencamino's attempt to pass on the responsibility to her subordinate, Sabater, is misplaced. As found by the OCA, Atty. Buencamino cannot wash her hands of Mapue's misappropriation as she even recommended Mapue for promotion to Sheriff III after Mapue's admission. Neither can she blame the Court for her lack of knowledge of the financial duties of a clerk of court. It is incumbent upon Atty. Buencamino, as clerk of court, to be diligent and competent in the performance of her duties, including the safekeeping of funds and collections because that is essential to an orderly administration of justice. Accordingly, Atty. Buencamino's failure to properly supervise and manage the financial transactions in her court constitutes simple neglect of duty. Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to

carelessness or indifference. It is a less grave offense punishable by suspension for one month and one day to six months for the first offense. In *Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., RTC, Catarman, Northern Samar*, a six-month suspension was imposed for neglect of duty leading to the defalcation of court funds and the consequent loss of income from the interest of such funds. Hence, we adopt the same penalty in this case.

4. ID.; ID.; ID.; AN OFFICER-IN-CHARGE (OIC) BEARS THE SAME RESPONSIBILITIES AND IS EXPECTED TO SERVE WITH THE SAME COMMITMENT AND EFFICIENCY AS A DULY-APPOINTED CLERK OF COURT; THE COURT WILL NOT COUNTENANCE ANY CONDUCT, ACT OR OMISSION ON THE PART OF THOSE INVOLVED IN THE ADMINISTRATION OF JUSTICE WHICH VIOLATES THE NORM OF PUBLIC ACCOUNTABILITY AND DIMINISHES THE FAITH OF THE PEOPLE IN THE JUDICIARY.— As to Maniquis, being the former Officer-in-Charge of the Office of the Clerk of Court, he bore the same responsibilities and was expected to serve with the same commitment and efficiency as a duly-appointed Clerk of Court. Thus, like Atty. Buencamino, he must be held liable for any loss or shortage of the funds entrusted to him by virtue of his office. Considering that this is Maniquis' first offense, we adopt the recommendation of the OCA as to the penalty. We reiterate that the conduct of all court personnel is circumscribed with the heavy burden of responsibility. The Court will not countenance any conduct, act or omission on the part of those involved in the administration of justice which violates the norm of public accountability and diminishes the faith of the people in the Judiciary.

D E C I S I O N

***PER CURIAM*:**

This administrative matter originated from the financial audit conducted by the Office of the Court Administrator (OCA) on the books of accounts of the Metropolitan Trial Court of Caloocan City (MeTC Caloocan City). The audit covered the financial

transactions of David E. Maniquis (Maniquis), former Officer-in-Charge, Clerk of Court III, from January 1993 to 4 June 1996, and that of his successor Atty. Mona Lisa A. Buencamino (Atty. Buencamino), Clerk of Court IV, from 5 June 1996 up to the audit dates.

The findings of the audit team are summarized as follows:

1) As of 31 December 2003 (cut-off date), the Judiciary Development Fund (JDF) had a cash shortage of ₱20,917.93, the Clerk of Court General Fund (GF) had a shortage of ₱1,574.30, and the Special Allowance for the Judiciary Fund (SAJ) had a shortage of ₱238.00. Of these cash shortages, Maniquis was accountable for ₱9,425.93 in the JDF and ₱352.50 in the GF, while Atty. Buencamino was accountable for ₱11,492.00 in the JDF, ₱1,221.80 in the GF and ₱238.00 in the SAJ. In January 2004, Atty. Buencamino settled her accountabilities in the JDF and SAJ, leaving a balance of ₱1,221.80 in the GF.

2) The MeTC Caloocan City had unwithdrawn fiduciary funds deposited with the Caloocan City Treasurer's Office (CCTO) amounting to ₱858,666.97 as of May 1992. Prior to May 1992, there was no fiduciary fund account with the Land Bank of the Philippines (LBP) and the depository agency was the CCTO.

3) There were undocumented fiduciary fund withdrawals in the amount of ₱492,220.00,[1] broken down as follows: a) ₱90,500.00 was due to lack of documents; b) ₱202,720.00 as Atty. Buencamino's undocumented withdrawals; and c) ₱289,500.00 as Maniquis' undocumented withdrawals.

4) Cielito M. Mapue (Mapue), then Clerk III, withdrew several confiscated bonds amounting to ₱10,100.00, which she converted to her personal use. Also, Mapue intentionally withdrew confiscated bonds twice. The first withdrawal, amounting to ₱48,000.00, was converted to her personal use, while the second withdrawal was deposited to the JDF account. Upon order by

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[1] *Rollo*, p. 45. However, if the amounts were added the total should be ₱582,720.00.

the audit team, Mapue restituted a total of ₱58,100.00 on 30 January 2004 and 11 February 2004.

In her letter dated 10 March 2004,[2] Mapue admitted that she misappropriated the amount of ₱58,100.00 to defray her personal expenses. She further admitted that she started to misuse judicial funds from November 1996 until 2000, during Atty. Buencamino's term.

5) There was neither a list or summary of confiscated bonds with deposit slips nor proof of remittance and official receipts presented for audit, as required under the check list of documents and reports for audit. Upon being directed by the audit team, Atty. Buencamino submitted a report, albeit incomplete.

6) Official receipts were not issued for the withdrawn interest amounting to ₱769,316.84 from October 1992 to December 2000, although this amount was remitted to the GF and JDF. Furthermore, the audit team also noted an unauthorized or overdrawn amount of interest collection amounting to ₱6,598.53.

In a Resolution dated 3 August 2005, the Court, upon recommendation of the audit team and the OCA, resolved to:

(a) ***DIRECT*** Atty. Mona Lisa A. Buencamino within ten (10) days from notice to: (1) ***RESTITUTE*** the shortages incurred in the Clerk of Court General Fund amounting to ₱1,221.80; (2) ***SUBMIT*** documents relative to undocumented fiduciary fund withdrawals in the amount of ₱202,720.00, and in case of her failure to do so, she should restitute the said amount; (3) ***EXPLAIN*** why no administrative sanction shall be imposed upon her for her failure to exercise close supervision over Ms. Cielito M. Mapue which resulted in the misappropriation of judiciary funds amounting to ₱58,100.00; and (4) ***WITHDRAW*** all fiduciary fund deposits with the City Treasurer's Office and ***DEPOSIT*** the same to the Court's fiduciary fund account with the Land Bank of the Philippines;

(b) ***DIRECT*** former Officer-in-Charge Mr. David E. Maniqui[s] within ten (10) days from notice to: (1) ***RESTITUTE*** the shortages incurred in the Judiciary Development Fund and the Clerk of Court

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[2] *Id.* at 115-119.

General Fund in the amounts of ₱9,425.93 and ₱352.50, respectively, or a total of ₱9,778.43; and (2) ***SUBMIT*** documents relative to undocumented fiduciary fund withdrawals in the amount of ₱289,500.00, and in case of his failure to do so, he should restitute the said amount;

(c) ***DOCKET*** the subject report of the Financial Audit conducted in the Metropolitan Trial Court-OCC, Caloocan City as a regular administrative matter against Clerk III Ms. Cielito M. Mapue and that appropriate administrative disciplinary proceedings be instituted against her immediately;

(d) ***DIRECT*** the Legal Office to file appropriate criminal charges against Cielito M. Mapue; and

(e) ***ISSUE*** a Hold Departure Order, effective immediately, against Clerk III Cielito M. Mapue to prevent her from leaving the country.[3] (Boldfacing and italicization in the original)

In her letter-compliance dated 8 August 2006,[4] Atty. Buencamino denied the shortage of ₱1,221.80 in the GF. Atty. Buencamino attached the letter of Cashier I Rowena Ruiz (Ruiz) explaining that the alleged shortage was due to the erroneous posting by Ruiz and the clerk in the OCA. Nevertheless, the amount of ₱1,221.80 was deposited in the LBP. Regarding the undocumented fiduciary fund withdrawals, Atty. Buencamino submitted the documents relating to them. On her failure to supervise Mapue, Atty. Buencamino explained that Administrative Officer II Aida Sabater (Sabater) was assigned to audit, monitor and supervise the Administrative Support Unit, which included Mapue. Mapue was assigned to prepare checks relative to the withdrawal of bonds and rental deposits, and to release the checks to the claimants. Atty. Buencamino alleged that she instructed Sabater to maintain a separate book on withdrawals of fiduciary fund to monitor withdrawals of bonds and to prevent double claims by claimants. Later on, she discovered that Sabater delegated the said task to Mapue. Atty. Buencamino claimed that as a newly appointed clerk of court, she had little knowledge

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

[4] *Id.* at 132-154.

of the Administrative or Collection Unit. She explained that the Manual for Clerks of Court is insufficient and she blamed the Court for the lack of an orientation seminar to newly appointed clerks of court. Finally, Atty. Buencamino insisted that she did not touch a single cent in the collections of fiduciary funds, and Mapue was able to encash the checks on her own.

As for the fiduciary fund deposits with the CCTO, Atty. Buencamino alleged that she demanded a refund of the amount, but City Accountant Edna Centeno required her to submit the official receipts indicated in the List of Unwithdrawn Fiduciary Fund for the period August 1988 to May 1992.

In his letter-compliance dated 8 August 2006,[5] Maniquis alleged that Ofelia Camara (Camara), the retired Officer-in-Charge in the Accounting Section, was responsible for the shortages in the JDF and the GF. Maniquis demanded restitution from Camara, but she did not reply. Maniquis also submitted the documents relative to the fiduciary fund withdrawals, but he stated that he could no longer find the documents for the amount of ₱3,000.00 despite due efforts. Thus, Maniquis requested the Court to deduct the shortages amounting to a total of ₱12,778.23[6] from his monthly salary. In his letter dated 18 January 2007,[7] Maniquis alleged that he already paid ₱12,862.43[8] for the shortages, despite the fact that the person primarily accountable was Camara.

In a Resolution dated 19 November 2007, the Court resolved to:

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[5] *Id.* at 96-97.

[6] Broken down as follows: a) ₱9,425.93 in the JDF; b) ₱352.30 in the GF; and c) ₱3,000.00 for the undocumented fiduciary fund withdrawals.

[7] *Rollo*, p. 120.

[8] Broken down as follows: a) ₱9,425.93 in the JDF; b) ₱352.30, which was increased to ₱436.50, in the GF; and c) ₱3,000.00 for the undocumented fiduciary fund withdrawals. The OCA found that the documents submitted by Atty. Buencamino negated her accountability in the GF, but Maniquis' accountability increased from ₱352.30 to ₱436.50.

1. **CONVERT** the report on the financial audit in OCC, MeTC, Caloocan City, into an administrative matter against Atty. Mona Lisa A. Buencamino, Clerk of Court IV, and Mr. David E. Maniquis, Clerk of Court III, and **INCLUDE** Atty. Buencamino and Mr. Maniquis as respondents in the docketed administrative matter against Cielito Mapue, **A. M. No. P-05-2051**;

2. **DIRECT** Atty. Buencamino to (a) **SUBMIT** to the City Treasurer's Office of Caloocan City, the official receipts indicated in the [L]ist of Unwithdrawn Fiduciary Funds for the period August 1988 to May 1992 in order that the fiduciary funds still deposited with the said office could be withdrawn and deposited to the Land Bank of the Philippines, and (b) properly **MONITOR** the collection, deposit and withdrawal of judiciary funds to prevent commission of similar irregularities in the future; and

3. **REQUIRE** respondents Cielito del Mundo Mapue, Atty. Mona Lisa A. Buencamino and David E. Maniquis to **MANIFEST** to this Court whether they are willing to submit this matter for resolution on the basis of the pleadings on record, within ten (10) days from notice.[9] (Boldfacing in the original)

On 9 January 2008, Mapue manifested her willingness to submit the administrative matter for resolution; emphasized that she already restituted the amount of ₱58,100.00; and asked for forgiveness for her wrongdoings. On 11 January 2008, Maniquis likewise manifested his willingness to submit the matter for resolution.

In an Addendum dated 14 January 2008,[10] Atty. Buencamino reiterated her explanation in her letter-compliance. Regarding the fiduciary fund deposits with the CCTO, she alleged that she partially submitted the official receipts enabling her to withdraw a total of ₱362,750.84 fiduciary funds from the CCTO. On 8 September 2009, Atty. Buencamino submitted the lists of official receipts and the Certification issued by the City Accountant that the amount of ₱369,702.84 was already

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[9] *Rollo,* pp. 314-315.

[10] *Id.* at 318-333.

withdrawn from the CCTO.[11] In a letter dated 8 March 2011,[12] Atty. Buencamino stated that a total of ₱448,785.79 was already deposited to the LBP fiduciary fund account. She further alleged that her office was still exerting efforts to locate other official receipts from the five branches of the MeTC Caloocan City. In another letter dated 16 May 2012,[13] Atty. Buencamino informed the Court that: (a) an amount of ₱323,489.60 was refunded by the CCTO; (b) another amount of ₱64,195.44 was withdrawn, but still waiting for CCTO Certification; and (c) out of the ₱858,666.97 initial fiduciary funds deposited with the CCTO, a total of ₱836,470.83 was already withdrawn from the CCTO and deposited with the LBP fiduciary fund account.

In its Memorandum dated 18 February 2013, the OCA recommended that:

a) **ATTY. MONA LISA A. BUENCAMINO**, Clerk of Court IV, Office of the Clerk of Court be found liable for **Simple Neglect of Duty** and be **SUSPENDED** from office for six (6) months effective immediately, with a **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severely; and she be **REQUIRED** to inform the Court whether she has fully complied with its directive to withdraw all fiduciary fund deposits with the City Treasurer's Office and deposit the same to the Court's fiduciary fund account with the Land Bank of the Philippines and to submit the necessary documents in relation thereto;

b) **DAVID E. MANIQUIS**, Clerk of Court III, Office of the Clerk of Court, be found liable for **Simple Neglect of Duty**; however, considering that this is his first offense, that he be **SUSPENDED** from office for one (1) month and 1 day effective immediately, with a **STERN WARNING** that a repetition of the same or similar offense shall be dealt with more severely;

c) **CIELITO DEL MUNDO MAPUE**, Sheriff III, Office of the Clerk of Court, be found **Guilty of Serious Dishonesty** and be meted the penalty of **DISMISSAL** from the service with forfeiture of all

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[11] *Id.* at 527.

[12] *Id.* at 514.

[13] *Id.* at 576.

retirement benefits except leave credits and disqualification for re-employment in any government office including government-owned or controlled corporations; and

d) The **Office of the Court Administrator** be **DIRECTED** to file the appropriate criminal action against respondent **CIELITO DEL MUNDO MAPUE**, Sheriff III, Office of the Clerk of Court.[14] (Boldfacing in the original)

The Court adopts the findings and recommendations of the OCA.

The Constitution mandates that a public office is a public trust and that all public officers must be accountable to the people, and serve them with responsibility, integrity, loyalty and efficiency.[15] The demand for moral uprightness is more pronounced for members and personnel of the judiciary who are involved in the dispensation of justice.[16] As front liners in the administration of justice, court personnel should live up to the strictest standards of honesty and integrity in the public service.[17]

In the present case, Mapue's admission, in her sworn statement, of misappropriating court funds shows her blatant disregard of the principles of public office she had sworn to uphold. As found by the OCA, her restitution of the total amount did not exonerate or mitigate her liability, as this was done after the discovery of the misappropriation. Furthermore, Mapue already deprived the Court of the interest otherwise earned had the confiscated bonds

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[14] *Id.* at 612.

[15] Section 1, Article XI of the 1987 Constitution provides: "Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives."

[16] *Office of the Court Administrator v. Peradilla,* A.M. No. P-09-2647, 17 July 2012, 676 SCRA 509.

[17] *Id.*; *Office of the Court Administrator v. Savadera,* A.M. No. P-04-1903, 10 September 2013.

been deposited in the GF or JDF. In *Office of the Court Administrator v. Besa*,[18] the Court found respondent therein liable for dishonesty and dismissed her from the service due to her own admission that she misappropriated the fiduciary funds for her personal use. Gross dishonesty is a grave offense and merits the penalty of dismissal even for the first offense.[19]

Mapue's admission of liability, however, does not exculpate Atty. Buencamino from her own negligence.

A clerk of court has general administrative supervision over all the personnel of the court.[20] The administrative functions of a clerk of court are as vital to the prompt and proper administration of justice as his judicial duties.[21] As custodian of court funds and revenues, the clerk of court is primarily accountable for all funds that are collected for the court, whether personally received by him or by a duly appointed cashier who is under his supervision and control.[22]

In the present case, we find Atty. Buencamino remiss in the performance of her duties as clerk of court. Atty. Buencamino failed to supervise Mapue and to properly manage the court funds entrusted to her, enabling Mapue to misappropriate part of the funds. Atty. Buencamino's attempt to pass on the responsibility to her subordinate, Sabater, is misplaced. As found by the OCA, Atty. Buencamino cannot wash her hands of Mapue's misappropriation as she even recommended Mapue for promotion

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[18] 437 Phil. 372 (2002).

[19] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52(A)(1).

[20] Revised Manual for Clerks of Court.

[21] *Office of the Court Administrator v. Banag,* A.M. No. P-09-2638, 7 December 2010, 637 SCRA 18, citing *Re: Report on the Financial Audit Conducted in the RTC, Br. 34, Balaoan, La Union,* 480 Phil. 484 (2004); *Office of the Court Administrator v. Ganzan,* A.M. No. P-05-2046, 17 September 2009, 600 SCRA 17.

[22] *Office of the Court Administrator v. Ofilas,* A.M. No. P-05-1935, 23 April 2010, 619 SCRA 13.

to Sheriff III after Mapue's admission.[23] Neither can she blame the Court for her lack of knowledge of the financial duties of a clerk of court. It is incumbent upon Atty. Buencamino, as clerk of court, to be diligent and competent in the performance of her duties, including the safekeeping of funds and collections because that is essential to an orderly administration of justice.

Accordingly, Atty. Buencamino's failure to properly supervise and manage the financial transactions in her court constitutes simple neglect of duty.[24] Simple neglect of duty is the failure to give attention to a task, or the disregard of a duty due to carelessness or indifference.[25] It is a less grave offense punishable by suspension for one month and one day to six months for the first offense.[26] *In Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., RTC, Catarman, Northern Samar*,[27] a six-month suspension was imposed for neglect of duty leading to the defalcation of court funds and the consequent loss of income from the interest of such funds. Hence, we adopt the same penalty in this case.

As to Maniquis, being the former Officer-in-Charge of the Office of the Clerk of Court, he bore the same responsibilities and was expected to serve with the same commitment and efficiency as a duly-appointed Clerk of Court. Thus, like Atty. Buencamino, he must be held liable for any loss or shortage of the funds entrusted to him by virtue of his office. Considering

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[23] *Rollo*, p. 113. 1st Indorsement dated 30 September 2004.

[24] *Report on the Financial Audit Conducted on the Books of Account of Sonia L. Dy and Atty. Graciano D. Cuanico, Jr., RTC, Catarman, Northern Samar*, A.M. No. P-07-2364, 25 January 2011, 640 SCRA 376, citing *Office of the Court Administrator v. Paredes*, 549 Phil. 879 (2007).

[25] *Id.* citing *Office of the Court Administrator v. Garcia-Rañoco*, 571 Phil. 386 (2008).

[26] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Section 52(B)(1).

[27] *Supra* note 24.

that this is Maniquis' first offense, we adopt the recommendation of the OCA as to the penalty.

We reiterate that the conduct of all court personnel is circumscribed with the heavy burden of responsibility.[28] The Court will not countenance any conduct, act or omission on the part of those involved in the administration of justice which violates the norm of public accountability and diminishes the faith of the people in the Judiciary.[29]

WHEREFORE, we find respondent Atty. Mona Lisa A. Buencamino, Clerk of Court IV, Metropolitan Trial Court of Caloocan City, **GUILTY** of simple neglect of duty, and **SUSPEND** her from office for six (6) months effective upon finality of this Decision. She is **STERNLY WARNED** that a repetition of the same or a similar offense shall be dealt with more severely. Atty. Buencamino is further required to inform the Court whether she has fully complied with its directive to withdraw all fiduciary fund deposits with the City Treasurer's Office and to deposit the same to the Court's fiduciary fund account with the Land Bank of the Philippines.

We also find respondent David E. Maniquis, Clerk of Court III, Metropolitan Trial Court of Caloocan City, **GUILTY** of simple neglect of duty, and **SUSPEND** him from office for one (1) month and one (1) day effective upon finality of this Decision. He is **STERNLY WARNED** that a repetition of the same or a similar offense shall be dealt with more severely.

We further find respondent Cielito M. Mapue, Sheriff III, Metropolitan Trial Court of Caloocan City, **GUILTY** of serious dishonesty, and **DISMISS** her from the service effective upon finality of this Decision, with forfeiture of all benefits due her, except accrued leave credits, and disqualification from appointment to any public office including government-owned or controlled corporations.

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[28] *Office of the Court Administrator v. Ganzan, supra* note 21.

[29] *Office of the Court Administrator v. Besa, supra* note 18.

The Office of the Court Administrator is further **DIRECTED** to file the appropriate criminal action against Cielito M. Mapue and to update its audit until the present.

SO ORDERED.

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

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

Abad, J., no part.

EN BANC

[A.M. No. P-13-3141. January 21, 2014]
(Formerly OCA I.P.I. No. 08-2875-P)

ATTY. RHEA R. ALCANTARA-AQUINO, *complainant, vs.* **MYLENE H. DELA CRUZ, Clerk III, Office of the Clerk of Court, Regional Trial Court, Santa Cruz, Laguna,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; THE CONDUCT OF COURT PERSONNEL, FROM THE PRESIDING JUDGE TO THE LOWLIEST CLERK, MUST ALWAYS BE BEYOND REPROACH AND MUST BE CIRCUMSCRIBED WITH THE HEAVY BURDEN OF RESPONSIBILITY AS TO LET THEM BE FREE FROM ANY SUSPICION THAT MAY TAINT THE JUDICIARY.— The Code of Conduct and Ethical Standards for Public Officials and Employees, Republic Act 6713, enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no

other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the judiciary. Every employee of the judiciary should be an example of integrity, uprightness and honesty. The Supreme Court has repeatedly emphasized that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary. In the instant case, there is no question that respondent Dela Cruz miserably failed to live up to these exacting standards.

2. ID.; ID.; ID.; THE EMPLOYEE'S ACT OF CERTIFYING A SPURIOUS AND NON-EXISTENT DECISION OF THE TRIAL COURT CONSTITUTES DISHONESTY AND GRAVE MISCONDUCT PUNISHABLE BY DISMISSAL FROM THE SERVICE.— A certificate is a written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with. To certify is to attest the truthfulness of the document. Without the records to verify the truthfulness and authenticity of a document, no certification should be issued. This is basic. Dela Cruz should know that when she certified the questioned order, she did so under the seal of the court. Thus, when the decision she certified turned out to be spurious and non-existent, she undoubtedly compromised the Judiciary and jeopardized the integrity of the court. Respondent's acts betray her complicity, if not participation, in acts that were irregular and violative of ethics and procedure, causing damage not only to the complainant but also to the public. The inculpatory acts committed by respondent are so grave as to call for the most severe administrative penalty. Dishonesty and grave misconduct, both being in the nature of a grave offense, carry the extreme penalty of dismissal from service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for re-employment in the government service. This penalty is in accordance with Sections 52 and 58 of the Revised Uniform Rules on

Administrative Cases in the Civil Service. In spite of her earlier resignation, the same accessory penalty shall be imposed upon her in addition to a fine of ₱40,000.00 which shall be deducted from her accrued leave credits.

D E C I S I O N

***PER CURIAM*:**

Before us is a Complaint[1] dated June 23, 2008 filed by Atty. Rhea R. Alcantara-Aquino, Assistant Clerk of Court, Office of the Clerk of Court (*OCC*), Regional Trial Court (*RTC*), Santa Cruz, Laguna, against Mylene H. Dela Cruz, Clerk III, of the same office, for Grave Misconduct.

The facts, as culled from the records, follow:

On May 29, 2008, complainant alleged that Mrs. Emerita B. Moises, Municipal Civil Registrar of Nagcarlan, Laguna, went to her office to verify the veracity of the documents in SP. Proc. Case No. SC-2268, entitled *Petition for Correction of Entry in the Marriage Contract* filed by Ms. Bella Coronado Igamen, who was then requesting a copy of her annotated marriage contract from the Municipal Civil Registrar's Office. The documents included the Order[2] dated May 4, 2007 issued by Judge Jaime C. Blancafor of Branch 26, RTC, Santa Cruz, Laguna, which was certified as a true copy by complainant Atty. Aquino and the Certificate of Finality[3] dated May 22, 2007 signed by complainant Atty. Aquino.

Upon verification from the records of the OCC, complainant Atty. Aquino discovered that said petition for correction of entry in the marriage contract with case number SP Proc. Case No. SC-2268, was inexistent and that the same case number pertained to another case. This fact was attested to by Atty. Arturo R.

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[1] *Rollo*, pp. 1-4.

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

[3] *Id.* at 8.

Trinidad, Clerk of Court VI, OCC, RTC, Santa Cruz, Laguna, in his Certification[4] dated May 26, 2008.

Upon further scrutiny, complainant Atty. Aquino alleged that the purported Order dated May 4, 2007 of Judge Blancaflor, the Certification dated May 25, 2007 that the said order was a true copy of the original, and the Certificate of Finality dated May 22, 2007 were all spurious and her signature and that of Judge Blancaflor appearing therein were forged. Complainant recalled that she never encountered any petition of that nature during her stint as Branch Clerk of Court of Branch 26, RTC, Santa Cruz, Laguna. Thus, it was impossible for her and Judge Blancaflor to have issued said documents. Aside from her allegation, complainant submitted the Affidavit dated June 23, 2008 of Mrs. Isabelita B. Cadelina, the then Civil Docket Clerk of Branch 26, RTC, Santa Cruz, Laguna, attesting that no such Petition for Correction of Entry in the Marriage Contract was received by their court.

Complainant further pointed out that the rubber stamp used by the forger to stamp the words "certified true copy" in the questioned order was different from the official rubber stamp for the certified true xerox copy being used by the court.

On June 4, 2008, a conference was held with Judge Blancaflor, Clerk of Court Atty. Trinidad, Jr., Municipal Civil Registrar Moises and Ms. Igamen, the alleged petitioner of SP Proc. Case No. SC-2268, in attendance. During the said conference, Ms. Igamen positively pointed to respondent Dela Cruz as the one who met her in court after being referred to her by Mr. Laudemer F. San Juan (*San Juan*), the Municipal Civil Registrar of Santa Cruz, Laguna, which led to the discovery of the fraudulent scheme perpetrated by respondent.

Complainant further claimed that there was another set of copies of the spurious order of Judge Blancaflor and certificate of finality of complainant, this time certified as true copies by respondent Dela Cruz herself. When confronted about this,

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[4] *Id.* at 9.

respondent admitted that she indeed certified the same upon the request of San Juan and she even issued a handwritten note dated May 29, 2008 which reads: "*Na wala akong kinalaman sa lahat nang naging conflict sa petition ni Bella Igamen dahil pinakiusapan lang ako ni Mr. Laudemer San Juan.*"[5]

Complainant was convinced that despite the knowledge that the documents were spurious and bore the forged signatures of complainant and Judge Blancaflor, respondent Dela Cruz authenticated the same, leading to the anomalous annotation of the spurious order in the certificate of marriage of Ms. Igamen.

Complainant added that in view of the above discovery, other documents purporting to be court-issued documents emerged indicating respondent Dela Cruz and her cohorts, namely, San Juan, then Municipal Civil Registrar of Santa Cruz, Laguna and a certain Ms. Apolonia B. Gamara, then Municipal Civil Registrar of Nagcarlan, Laguna, as the culprits. Complainant informed the Court that she had already filed a complaint before the National Bureau of Investigation (*NBI*) and had requested Judge Blancaflor to issue a Memorandum to the Local Civil Registries within his territorial jurisdiction regarding the matter in order to prevent similar occurrences in the future. She stated that she planned to eventually file a criminal case for falsification against respondent Dela Cruz and her cohorts.

On July 4, 2008, the OCA directed respondent Dela Cruz to submit her comment on the complaint against her.[6]

In a Resolution[7] dated August 3, 2009, the Court, upon the recommendation of the OCA, resolved to direct respondent Dela Cruz to show cause why she should not be administratively dealt with for failing to submit her comment despite the two (2) directives from the Court Administrator, and to submit the required comment within ten (10) days from notice, failing which,

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[5] *Id.* at 19.

[6] *Id.* at 24.

[7] *Id.* at 38.

necessary action shall be taken against her and a decision on the administrative complaint shall be rendered on the basis of the records on hand. The copy of the resolution sent to respondent Dela Cruz was returned unserved with the postal carrier's notation on the envelope "RTC-Unknown." Thus, the Court issued a Resolution[8] dated November 23, 2009 requiring complainant to inform the Court of the complete and present address of respondent.

In her Compliance and Manifestation[9] dated January 27, 2010, complainant Atty. Aquino provided the Court with the complete address of respondent. In the same compliance and manifestation, complainant informed the Court that the NBI had referred its findings of Estafa thru Falsification of Public Documents against herein respondent Dela Cruz, Municipal Civil Registrar San Juan and Ms. Gamara to the Provincial Prosecutor's Office (*PPO*) for preliminary investigation.[10]

On August 22, 2011, the Court dispensed with the submission of the comment of respondent Dela Cruz, considering that the copies of the Show Cause Resolution dated August 3, 2009, which required the latter to submit her comment on the complaint sent to her at her address on record and to the new address provided by the complainant, were returned unserved.[11]

Further, the Court required the parties to manifest their willingness to submit the case for decision on the basis of the pleadings/records already filed and submitted. On December 7, 2011, for failure of both parties to submit their respective manifestations, the Court deemed the case submitted for resolution based on the pleadings and records already filed.[12]

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[8] *Id.* at 36.

[9] *Id.* at 41.

[10] Letter dated October 21, 2008 of NBI Deputy Director for Regional Operation Services, Laguna, Atty. Reynaldo O. Esmeralda, *id.* at 43-51.

[11] *Rollo*, p. 66.

[12] *Id.* at 68.

Meanwhile, respondent Dela Cruz tendered her resignation effective June 2, 2008. On October 20, 2008, the Court accepted her resignation effective June 2, 2008, but without prejudice to the proceedings of the instant administrative case.

On August 22, 2012, the Court referred the instant complaint to the OCA for evaluation, report and recommendation.[13]

On July 1, 2013, in compliance with the Court's directive, the OCA, in a Memorandum,[14] recommended the following:

(1) the instant case against respondent **MYLENE H. DELA CRUZ**, former Clerk III. Office of the Clerk of Court, Regional Trial Court, Santa Cruz, Laguna, be **RE-DOCKETED** as regular administrative matter; and

(2) respondent **MYLENE H. DELA CRUZ** be found **guilty** of grave misconduct and, in lieu of **DISMISSAL FROM THE SERVICE** which can no longer be imposed upon her because of her resignation, be **ORDERED** to pay a **FINE** of Forty Thousand Pesos (₱40,000.00) with forfeiture of all her benefits, except accrued leave credits and disqualification from reemployment in any branch, agency or instrumentality of the government, including government-owned and controlled corporations. The fine of ₱40,000.00 shall be deducted from her accrued leave credits which, as computed by the Financial Management Office, is more than sufficient to cover said amount.[15]

RULING

The Code of Conduct and Ethical Standards for Public Officials and Employees, Republic Act 6713, enunciates the State's policy of promoting a high standard of ethics and utmost responsibility in the public service. And no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the judiciary.[16]

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[13] *Id.* at 76.

[14] *Id.* at 87-94.

[15] *Id.* at 93-94. (Emphasis in the original)

[16] *Civil Service Commission v. Sta. Ana*, 435 Phil. 1, 8-9 (2002).

Every employee of the judiciary should be an example of integrity, uprightness and honesty. The Supreme Court has repeatedly emphasized that the conduct of court personnel, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. The Court condemns and would never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary.

In the instant case, there is no question that respondent Dela Cruz miserably failed to live up to these exacting standards. The records speak for themselves: (1) Dela Cruz knew that there were no existing records that could have served as the basis for the issuance of the disputed certificate; (2) authenticating documents was neither part of Dela Cruz's duties nor was she authorized to authenticate documents; (3) Dela Cruz, despite knowledge that she was not authorized to authenticate, admitted having authenticated the questioned order and issued the certificate of finality in SP Proc. Case No. SC-2268 allegedly upon the request of Municipal Civil Registrar San Juan; and (4) Dela Cruz refused to face the charges against her, in disregard of the Court's directives. Clearly, these facts and evidence, coupled with respondent's admission, sufficiently establish her culpability.

A certificate is a written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality has been complied with. To certify is to attest the truthfulness of the document. Without the records to verify the truthfulness and authenticity of a document, no certification should be issued. This is basic.[17] Dela Cruz should know that when she certified the questioned order, she did so under the seal of the court. Thus, when the decision she certified turned out to be spurious and non-existent, she undoubtedly

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[17] *Atty. Francisco v. Galvez*, A.M. No. P-09-2636 (formerly OCA I.P.I. No. 07-2681-P), December 4, 2009, 607 SCRA 21, 28.

compromised the Judiciary and jeopardized the integrity of the court. Respondent's acts betray her complicity, if not participation, in acts that were irregular and violative of ethics and procedure, causing damage not only to the complainant but also to the public.[18]

The inculpatory acts committed by respondent are so grave as to call for the most severe administrative penalty. Dishonesty and grave misconduct, both being in the nature of a grave offense, carry the extreme penalty of dismissal from service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification for re-employment in the government service. This penalty is in accordance with Sections 52 and 58 of the Revised Uniform Rules on Administrative Cases in the Civil Service. In spite of her earlier resignation, the same accessory penalty shall be imposed upon her in addition to a fine of ₱40,000.00 which shall be deducted from her accrued leave credits.

WHEREFORE, the Court finds respondent **MYLENE H. DELA CRUZ**, then Clerk III, Office of the Clerk of Court, Regional Trial Court of Santa Cruz, Laguna, **GUILTY** of **GROSS MISCONDUCT and DISHONESTY**. Since she had resigned from the service, she is instead **FINED** in the amount of Forty Thousand (₱40,000.00) Pesos, with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The Provincial Prosecutor of the Province of Laguna is hereby **ORDERED** to inform the Court of the status of the criminal case of estafa thru falsification of public documents filed against Mylene H. Dela Cruz, Apolonia B. Gamara and Laudemer F. San Juan, within ten (10) days from receipt hereof.

Likewise, the incumbent Municipal Mayor of Santa Cruz, Laguna is hereby **REQUESTED** to determine if there is basis

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[18] *Id.* at 29.

for the filing of an administrative complaint, if none has yet been filed, against Laudemer F. San Juan and other employees who may have participated in this illegal scheme.

Let a copy of this decision be attached to respondent's personnel records in this Court.

SO ORDERED.

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

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

Mendoza, J., no part.

FIRST DIVISION

[A.C. No. 8644. January 22, 2014]
(Formerly CBD Case No. 11-2908)

AIDA R. CAMPOS, ALISTAIR R. CAMPOS, and CHARMAINE R. CAMPOS, *complainants, vs.* **ATTY. ELISEO M. CAMPOS,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; AM NO. 02-9-02-SC; AUTOMATIC CONVERSION OF ADMINISTRATIVE CASES AGAINST JUSTICES AND JUDGES TO DISCIPLINARY PROCEEDINGS AGAINST THEM AS LAWYERS, EXPLAINED; A DISCIPLINARY PROCEEDING AS A MEMBER OF THE BAR IS IMPLIEDLY INSTITUTED WITH THE FILING OF AN ADMINISTRATIVE CASE AGAINST A JUSTICE OF THE SANDIGANBAYAN, COURT OF APPEALS AND COURT

OF TAX APPEALS OR A JUDGE OF A FIRST-OR SECOND-LEVEL COURT.— It is worth emphasizing that the instant disbarment complaint and A.M. No. MTJ-10-1761 are anchored upon almost the same set of facts, except that in the former, the issue of occurence of the scuffle on September 14, 2009 is raised as well. This Court does not intend to punish Eliseo twice for the same acts especially since they pertain to his private life and were not actually committed in connection with the performance of his functions as a magistrate before. In *Samson v. Caballero*, the Court emphasized what "automatic conversion of administrative cases against justices and judges to disciplinary proceedings against them as lawyers" means, *viz*: This administrative case against respondent shall also be considered as a disciplinary proceeding against him as a member of the Bar, in accordance with AM. No. 02-9-02-SC. This resolution, entitled "Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar," provides: "Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and the court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers. In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent justice, judge or court official concerned as a member of the Bar. x x x. Judgment in both respects may be incorporated in one decision or resolution." x x x Under the same rule, a respondent "may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary sanctioned as member of the Bar." xxx In other words, an order to comment on the complaint is an order to give an explanation on why he should not be held administratively liable not only as a member of the bench but also as a member of the bar. This is the fair and reasonable meaning of "automatic conversion" of administrative

cases against justices and judges to disciplinary proceedings against them as lawyers. This will also serve the purpose of A.M. No. 02-9-02-SC to avoid the duplication or unnecessary replication of actions by treating an administrative complaint filed against a member of the bench also as a disciplinary proceeding against him as a lawyer by mere operation of the rule. Thus, a disciplinary proceeding as a member of the bar is impliedly instituted with the filing of an administrative case against a justice of the Sandiganbayan, Court of Appeals and Court of Tax Appeals or a judge of a first- or second-level court.

2. ID.; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 7.03 THEREOF; UNBECOMING CONDUCT, EXPLAINED; THE RESPONDENT-LAWYER'S ACT OF ENGAGING IN A BRAWL WITH HIS OWN CHILDREN INSIDE THE CHAMBER OF A JUDGE IS A CRUDE SOCIAL BEHAVIOR WHICH THE COURT CANNOT COUNTENANCE.— In the instant disbarment complaint, tirades and bare accusations were exchanged. It bears stressing that not one of the parties had presented even one independent witness to prove what transpired inside the chamber of Judge Casals on September 14, 2009. That a scuffle took place is a fact, but the question of who started what cannot be determined with much certainty. While admitting his engagement in the scuffle, Eliseo vigorously attempts to justify his conduct as self-defense on his part. While this Court finds credence and logic in Eliseo's narration of the incident, and understands that the successive acts of the parties during the tussle were committed at a time when passions ran high, he shall not be excused for comporting himself in such an undignified manner. Rule 7.03, Canon 7 of the Code of Professional Responsibility explicitly proscribes a lawyer from engaging in conduct that "adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession." The case of *Jamsani-Rodriguez v. Ong*, on the other hand, is instructive anent what constitutes unbecoming conduct, *viz*: Unbecoming conduct "applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method." *Sans* any descriptive sophistry, what Eliseo did was to engage in a brawl with no less than his own children inside the chamber

of a judge. This Court shall not countenance crude social behavior. Besides, the courtroom is looked upon by people with high respect and is regarded as a sacred place where litigants are heard, rights and conflicts settled, and justice solemnly dispensed. Misbehavior within or around the vicinity diminishes its sanctity and dignity. Although Alistair and Charmaine were not entirely faultless, a higher level of decorum and restraint was then expected from Eliseo, whose conduct failed to show due respect for the court and lend credit to the nobility of the practitioners of the legal profession.

3. ID.; ID.; ID.; ID.; CONDUCTING ONESELF IN A MANNER NOT BEFITTING A MEMBER OF THE BAR BY ENGAGING IN A SCUFFLE WITH HIS OWN CHILDREN IN THE CHAMBER OF A JUDGE AND RECKLESSLY EXPRESSING HIS DOUBT ANENT THE LEGITIMACY OF HIS SON DURING THE HEARING BEFORE THE COMMISSION ON BAR DISCIPLINE (CBD) CONSTITUTE A VIOLATION THEREOF.— This Court views with disfavor Eliseo's statement during the hearing conducted by the CBD on March 18, 2011 that he doubts Alistair to be his biologiocal son. As a lawyer, Eliseo is presumably aware that ascribing illegitimacy to Alistair in a proceeding not instituted for that specific purpose is nothing short of defamation. All told, Eliseo violated Rule 7.03, Canon 7 of the Code of Professional Responsibility when he conducted himself in a manner not befitting a member of the bar by engaging in the scuffle with his own children in the chamber of Judge Casals on September 14, 2009 and recklessly expressing his doubt anent the legitimacy of his son Alistair during the hearing before the CBD.

R E S O L U T I O N

REYES, *J.*:

Before this Court is a complaint for disbarment[1] on grounds of serious misconduct, immorality and dishonesty filed against Atty. Eliseo M. Campos (Eliseo), former presiding judge of

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

the Municipal Trial Court of Bayugan, Agusan del Sur. The complainants herein are his wife, Aida R. Campos (Aida), and their children, Alistair R. Campos (Alistair) and Charmaine R. Campos (Charmaine).

Antecedents

Eliseo and Aida were married in 1981. Alistair was born in 1982, and Charmaine, in 1986.

In 1999, Eliseo purchased by installment a 936-square meter lot (the property) in Bayugan, Agusan del Sur from a certain Renato Alimpoos. Eliseo thereafter applied for the issuance of a title in Alistair's name. Alistair was then a student without an income and a capacity to buy the property. In 2006, Original Certificate of Title (OCT) No. P-28258 covering the property was issued in Alistair's name. Meanwhile, Alistair got married and his wife and child likewise resided in Eliseo's house until 2008.[2]

On July 16, 2008, Eliseo filed with the Regional Trial Court (RTC) of Bayugan, Agusan del Sur, Branch 7, a Petition[3] for the Declaration of Nullity of Marriage. He alleged that both he and Aida are psychologically incapacitated to comply with essential marital obligations. He claimed that during the first few days of their marriage, he realized that he finds no gratification in engaging in sexual intercourse with his wife. He alleged that he is a homosexual. He also averred that Aida experienced severe pain when she delivered Alistair. Consequently, Aida no longer wanted to bear children. He likewise ascribed acts of infidelity to Aida.

On September 10, 2008, Eliseo executed an Affidavit of Loss[4] wherein he represented himself as the owner of the property

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[2] *See* Eliseo's Counter-Affidavit, dated December 23, 2008, which he executed relative to Alistair's complaint for perjury, *id.*, at 24-25; OCT No. P-28258, *id.* at 10-11.

[3] *Id.* at 6-8; The petition, docketed as Civil Case No. 1118, was subsequently raffled to Branch 7 of the RTC.

[4] *Id.* at 9.

covered by OCT No. P-28258. He declared that he unknowingly lost the owner's certificate of title which used to be in his files. On September 15, 2008, he caused the annotation[5] of the said affidavit in the the copy of OCT No. P-28258 kept in the Register of Deeds of Bayugan, Agusan del Sur. In the Affidavit of No Loss[6] executed on October 21, 2008 and likewise inscribed[7] in the certificate of title, Alistair refuted Eliseo's representations.

On November 26, 2008, Alistair filed before the Office of the Provincial Prosecutor of Bayugan, Agusan del Sur a complaint for perjury[8] against Eliseo. Alistair stated that the owner's copy of OCT No. P-28258 was in his possession. Eliseo was aware of such fact, but he still deliberately and maliciously asserted a falsehood.

In Eliseo's Counter-Affidavit,[9] he insisted that he is the sole owner of the property covered by OCT No. P-28258. Eliseo continued:

> That when I applied for titling of said lot[,] I caused it to be registered in the name of [Alistair], who was still single, as I have some other properties (land) under my name;
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> That I never intended to give it to [Alistair] as he [still has a] sister;
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> That when the title was released[,] it was kept in our files;
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> That when I filed an annulment case against my wife which is now pending before the [RTC] of Bayugan, I offered to my wife as a settlement to have our properties settled[.] [O]ne of [these properties] is this lot, which I asked to be sold and its proceeds be divided between us. I have learned that my wife refused to have that property sold claiming that I could not sell the house and lot as it is [in] the name of our son[,] herein complainant Alistair R. Campos;

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[5] *See* Entry No. 6963 inscribed in the certificate of title; *id.* at 11.

[6] *Id.* at 52.

[7] *See* Entry No. 7545 annotated in the certificate of title; *id.* at 11.

[8] *See* Affidavit-Complaint; *id.* at 22-23.

[9] *Id.* at 24-25.

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That my son's statement in his complaint affidavit that the Owner[']s Duplicate of the Title of the Lot has long been in his actual, physical and personal possession, is utterly false, as the title was previously in our possession in our files as the property is undersigned[']s own exclusive property. x x x

That when I learned that together with my wife[,] he is going to apply for a loan making the title of the lot as collateral, I decided to file a petition for cancellation of the title under my son's name Alistair R. Campos, and asked Mrs. Azucena A. Ortiz, to get a certified copy of the title from the Register of Deeds to be used in the filing of a petition for cancellation of the title in my son's name;

That I was told by Mrs. Ortiz, that she was told by the Register of Deeds, that I have to execute an affidavit of loss so that I can be given a certified copy. Since the title is not in my possession after I left my residence and I cannot find it from my files, I let Mrs. Ortiz prepare an affidavit of loss and I signed it. I have also instructed her to [cause the annotation of the affidavit on the certificate of title] to protect my interest as the real owner of the lot, to counter or stop my wife and son from using the titles as collateral of a loan;

x x x x x x x x x.[10]

Subsequently, the Office of the Provincial Prosecutor of Agusan del Sur dismissed for lack of probable cause Alistair's complaint for perjury against Eliseo.[11] The resolution, which dismissed the complaint, in part, reads:

"[W]hen [Eliseo] found [out] that the [t]itle of the lot he bought was missing and could not be found in his files, he did the proper actions to protect his rights thereto by executing an Affidavit of Loss.

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[10] *See* Eliseo's Counter-Affidavit; *id.*

[11] *See* Eliseo's letters (a) dated August 30, 2009, addressed to *J.* Jose P. Perez, then Court Administrator, *id.* at 75; and (b) dated September 22, 2010, addressed to Atty. Ma. Luisa Laurea, then Clerk of Court, *id.* at 66.

x x x [W]hen [Eliseo] sensed that his wife is about to obtain a loan using the [t]itle as collateral without his consent and to protect his right as owner of the property, he went to the Register of Deeds to cancel his son's ownership over the lot in question with the intent to revert back its ownership in his name. However, when asked to produce a copy of its duplicate original, [Eliseo] could not present the same as it was already lost and could not be retrieved from his files. To prove its loss, an Affidavit of Loss was executed by [Eliseo] attesting to the fact of its unavailability.

x x x [I]t can be deduced that the act of [Eliseo] was done in good faith. x x x [T]he intent of [Eliseo] in executing the Affidavit is not tainted with [a] corrupt assertion of falsehood since there was [a] firm belief that indeed[,] the [t]itle is not anymore found in his files. It could not be located and the [t]itle is kept by [Alistair] who took side[s] with [Aida] who has plans to enjoy [the] benefits from the [t]itle using it as [a] collateral in obtaining [a] loan from the lot covered by [the] said [t]itle. [Had Alistair been truthful to Eliseo, the former could have informed the latter of the] whereabouts of the [t]itle [and could] have sought permission from his father when he took [the] copy of the [t]itle from [Eliseo's] files. By not informing [Eliseo], [he] could not be faulted for executing such Affidavit and neither can he be found guilty of perjury as there was no malice on his part to do the same. x x x."[12] (Citation omitted)

On February 11, 2009, Aida filed a Complaint[13] for Legal Separation, Support and Separation of Conjugal Properties against Eliseo. Aida alleged that Eliseo confessed under oath that he is a homosexual. However, Eliseo, in effect, contradicted the said confession when he admitted to Alistair and Charmaine that he was then intimately involved with another woman. Aida likewise claimed that Eliseo is temperamental and had stopped giving support to their family.

On April 6, 2009, Aida, Alistair and Charmaine filed before the Office of the Court Administrator (OCA) an administrative

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[12] Please see Eliseo's Position Paper filed with the Integrated Bar of the Philippines' Commission on Bar Discipline; *id.* at 101-102.

[13] *Id.* at 12-15.

complaint[14] for serious misconduct, immorality and dishonesty against Eliseo. Formal investigation was thereafter conducted.

Pending the resolution of the above-mentioned administrative complaint against Eliseo, he resigned from his judicial post on July 1, 2009.[15]

On September 14, 2009, after the conclusion of a hearing on Eliseo's Petition for Declaration of Nullity of Marriage before the RTC of Bayugan, Agusan del Sur, Judge Eduardo Casals (Judge Casals) called the parties for a conference in his chamber. A scuffle ensued inside the chamber. The police blotter filed promptly after the incident indicated that Eliseo choked Charmaine and attempted to box but failed to hit Alistair.[16]

On June 4, 2010, Aida, Alistair and Charmaine filed the instant complaint for disbarment[17] against Eliseo. They alleged that Eliseo committed acts of dishonesty, immorality and serious misconduct in (a) causing the issuance of OCT No. P-28258 in Alistair's name; (b) subsequently misrepresenting himself as the real owner of the lot covered by OCT No. P-28258; (c) falsely declaring under oath in the Affidavit of Loss executed on September 10, 2008 that the owner's copy of OCT No. P-28258 is missing despite his knowledge that the said title is with Alistair; (d) stating in his Petition for Declaration of Nullity of Marriage that he is a homosexual albeit admitting to his children that he has an intimate relation with another woman; and (e) choking and boxing his children on September 14, 2009.

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[14] A.M. No. MTJ-10-1761, entitled "*Aida R. Campos, et al. v. Judge Eliseo M. Campos, Municipal Trial Court, Bayugan, Agusan del Sur.*"

[15] *See* Eliseo's letter addressed to J. Jose P. Perez, then Court Administrator; *rollo*, p. 73.

[16] *See* Certification dated September 14, 2009; *id.* at 27.

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

After Eliseo's submission of his comment,[18] the Court referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[19]

In Eliseo's Position Paper[20] filed with the IBP's Commission on Bar Discipline (CBD), he interposed the following defenses: (a) the complainants are engaged in forum shopping in view of pending administrative and civil cases in all of which the issues of immorality and homosexuality have already been raised;[21] (b) the complaint is instituted merely to harass him as a consequence of his refusal to provide a monthly support of Php60,000.00 to his wife and children;[22] (c) he has no extra-marital relation but he once told Alistair and Charmaine in jest that due to Aida's infidelity, he intends to live separately with another woman who may be more caring and loving than his wife;[23] and (d) to protect his rights and prevent the complainants from using as a collateral for a loan the house and lot covered by OCT No. P-28258, he executed the Affidavit of Loss on September 10, 2008 as a pre-requisite to his filing of an action in court for the registration of the property in his name.[24] Further, Eliseo refuted Alistair and Charmaine's claims relative to the scuffle which occurred on September 14, 2009 inside the chamber of the judge hearing the Petition for Declaration of Nullity of Marriage. Eliseo insists that if Alistair and Charmaine's claims were true, they could have presented independent witnesses to corroborate their version of the incident, and medical certificates to prove that they indeed sustained injuries. What follows is Eliseo's account of what had transpired:

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[18] *See* Eliseo's letter addressed to Atty. Ma. Luisa Laurea, then Clerk of Court; *id* at 64-67.

[19] Resolution dated November 17, 2010; *id.* at 77.

[20] *Id.* at 90-108.

[21] *Id.* at 93, 104-105.

[22] *Id.* at 97.

[23] *Id.* at 95-96.

[24] *Id.* at 96-97; Note that Eliseo now made reference to a house constructed on the lot covered by OCT No. P-28258.

[A]fter adjournment of the hearing of the annulment case, the judge called the parties to his chamber for a conference. [Aida] however was reluctant to go unless her children would join her. The judge then called all of them to the chamber. Once there, the Judge inquired about [Eliseo's] proposal for settlement. While [Eliseo] was explaining to the judge, [Charmaine] reacted by raising her voice uttering unprintable words to [Eliseo]. [Eliseo] requested her to calm down reminding her that they were still in court. But she continued her tirade at [Eliseo] with greater intensity even calling him a bad father, and that she despised him. x x x Charmaine had already been ejected by the judge out of the court for lack of decorum and respect. The order for her removal arose after she interrupted the court several times by shouting at [Eliseo]. When she was already outside the court premises, she was even heard by a certain Samuel Pasagdan saying that [Eliseo] should watch out after the hearing as she was going to attack him. The prior incident (where she was thrown out of court) made her angrier in the chamber. So when she continued with her unpleasant and scandalous utterances by again interrupting [Eliseo] who was asked by the judge to talk about his proposal for settlement, [Eliseo] walked to her and held her by her shoulder to put some sense to her that she really had to calm down out of respect [for] the judge. There was no choking of Charmaine. But, this sight of holding Charmaine by the shoulder was viewed differently by [Alistair] who flung with force and recklessness a bag containing an unknown hard object to [Eliseo]. [Eliseo] was hit and in pain. At this point, Charmaine suddenly held [Eliseo] from behind so he could not defend himself from the onslaught of Alistaire (sic) who was poised to attack him. [Eliseo] was forced to elbow Charmaine to break free from her hold. There was a brief exchange of punches between Alistair and [Eliseo] before the Presiding Judge broke the fray. This incident could not have happened if not for Charmaine's own misdemeanor and initial provocation.[25]

Aida, Alistair and Charmaine did not attend the hearing held on March 18, 2011, but Atty. Gener Sansaet came to represent them. Eliseo appeared on his own behalf, with Atty. Alex Bacarro as collaborating counsel.

During the hearing, Eliseo insisted that the allegations against him of (a) immorality and psychological incapacity in having

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[25] *Id.* at 98-99.

extra-marital affairs; and (b) serious misconduct in the execution of the Affidavit of Loss need not be resolved anymore in the instant disbarment complaint since they are already the subjects of other pending cases.[26] He also expressed his doubt that Alistair is his biological son.[27] He also alleged that Aida, who had served for three terms as a Provincial Board Member, had a lover, who was likewise a political figure.[28] Aida harbored the impression that Eliseo's filing of his Petition for the Declaration of Nullity of Marriage caused the downfall of the former's political career.[29]

The Report and Recommendation of the CBD

On June 11, 2012, CBD Commissioner Romualdo A. Din, Jr. (Commissioner Din, Jr.) submitted his Report and Recommendation[30] to the IBP Board of Governors. Commissioner Din, Jr. recommended the dismissal of the instant disbarment complaint against Eliseo for lack of evidence. Commissioner Din, Jr. ratiocinated that:

> The main issue in the case at bar is whether or not [Eliseo] committed serious misconduct sufficient to cause his disbarment. The determination of [Eliseo's] culpability is dependent on the following: 1. whether or not [Eliseo] was dishonest with regards to the statements he made in his Petition for Annulment. [Corollarily] whether or not [Eliseo] is guilty of immoral conduct; 2. Whether or not the statements raised in the Affidavit of Loss concerning the certificate of title of the Campos' property were untrue; and 3. Whether or not [Eliseo] choked his daughter, Charmaine, during the amicable settlement of the annulment case in the (sic) Judge Casal's (sic) chambers.
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> The Commission finds in the negative. Gross or serious misconduct has been defined as "any inexcusable, shameful and flagrant unlawful conduct on the part of the person concerned in the administration

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[26] TSN dated March 18, 2011, *id.* at 115-173, at 140-144.

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

[28] Please see Report and Recommendation, *id.* at 179-189, at 184.

[29] *Id.*

[30] *Id.* at 179-189.

of justice which is prejudicial to the rights of the parties or to the right determination of a cause, a conduct that is generally motivated by a predetermined, obstinate or intentional purpose (*Yumol*[,] *Jr. vs. Ferrer*[,] *Sr.*[,] *456 SCRA 457*).

As a consequence of finding of gross misconduct has been held to be "a ground for the imposition of the penalty of suspension or disbarment because good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege." (*Cham v. Atty. Paita-Moya*[,] *A.C. No. 7494, June 27, 2008*).

In the same vein, the Supreme Court has likewise held that: "A lawyer may be suspended or disbarred for any misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor. Possession of good moral character is not only a good condition precedent to the practice of law but also a good qualification for all members of the bar (*Manaois v. Deciembre[,] A.M. Case No. 5564, August 20, 2008*).

In the case at bar, the complainants' averments of [Eliseo's] alleged transgressions[,] *i.e.* the incongruence of his homosexuality and the extramarital relation of [Eliseo] as grounds for annulment compared with the complainants' allegation that [Eliseo] admitted that he has a mistress; the alleged choking of [Charmaine]; and the execution of the Affidavit of Loss despite knowledge of the fact that the certificate of title was with [Alistair] who is the registered owner of the subject property taken on their own is a valid ground to find [Eliseo] guilty of gross misconduct.

However, [Eliseo] has succinctly rebutted each and every single allegation of the complainants making the case at fore a battle of opposing narration of facts.

More importantly, the pieces of evidence presented by the complainants are insufficient to prove their claim beyond the degree of evidence required of them by law to satisfy and overcome.

Basic and fundamental is the rule that "the burden of proof is upon the complainant and the Court will exercise the disciplinary power only if the former establishes the case by clear, convincing and satisfactory evidence."

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In the case at bar, [apart] from the allegations in the complaint, no other evidence was presented by the complainants to bolster their claims. Aside from the statements made in the complaint, no other corroborative or collaborating evidence documentary or testimonial from independent, third person was presented to convince this Commission by clear, convincing and satisfactory proof that [Eliseo] is guilty of the allegations contained therein.[31] (Citation omitted)

The Resolution of the IBP Board of Governors

The IBP Board of Governors, however, reversed the findings of Commissioner Din, Jr. In the Extended Resolution issued on March 20, 2013, the Board suspended Eliseo from the practice of law for two years. Thus:

[T]he Board, upon a thorough perusal of the records, finds sufficient evidence to sustain misconduct on the part of [Eliseo] as a lawyer, specifically his filing an Affidavit of Loss of Title to Real Property which Title was in the name of Alistair[,] his son, and which was in the latter's possession, substantiated with annexes and affidavits. The same holds true for the alleged choking incident in the Judge's chamber which was caused to be blottered, Annex "G". [Eliseo] also admitted his infidelity albeit he postulated the defense of homosexuality. All these, taken together, fall short of the ethical standards set forth for lawyers in the Code of Professional Responsibility.[32]

Issues

Whether or not Eliseo committed acts of dishonesty, immorality and serious misconduct in:

I.

Causing the issuance of OCT No. P-28258 in Alistair's name;

II.

Subsequently misrepresenting himself as the real owner of the lot covered by OCT No. P-28258;

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[31] *Id.* at 187-189.

[32] *Id.* at 178.

III.

Falsely declaring under oath in the Affidavit of Loss executed on September 10, 2008 that the owner's copy of OCT No. P-28258 is missing despite his knowledge that the said title is with Alistair;

IV.

Stating in his Petition for Declaration of Nullity of Marriage that he is a homosexual albeit admitting to his children that he has an intimate relation with another woman; and

V.

Choking and boxing his children on September 14, 2009.

This Court's Ruling

Of the five issues raised herein, only the allegation of Eliseo's engagement in the scuffle inside the chamber of Judge Casals on September 14, 2009 shall be resolved. Anent the foregoing, this Court is compelled to once again impose a fine upon Eliseo for violating Rule 7.03, Canon 7 of the Code of Professional Responsibility when he conducted himself in a manner not befitting a member of the bar.

This Court *affirms* the findings of the IBP Board of Governors that Eliseo deserves to be sanctioned for his unbecoming behavior.

In recommending the imposition upon Eliseo of a penalty of two years of suspension from the practice of law, the IBP Board of Governors considered all the three charges of immorality, dishonesty and misconduct against the former.

However, this Court, on February 8, 2012, in A.M. No. MTJ-10-1761, had already imposed upon Eliseo a fine of Php20,000.00 for simple misconduct in causing the issuance of OCT No. P-

28258 in Alistair's name when the subject property actually belongs to the former. The charges of (a) immorality in engaging in extra-marital affairs; and (b) dishonesty in executing the Affidavit of Loss on September 10, 2008, were, on the other hand, dismissed by the Court after finding either the evidence of the complainants as insufficient or the issues raised being already the subjects of Eliseo's pending Petition for the Declaration of Nullity of Marriage.

It is worth emphasizing that the instant disbarment complaint and A.M. No. MTJ-10-1761 are anchored upon almost the same set of facts, except that in the former, the issue of occurence of the scuffle on September 14, 2009 is raised as well. This Court does not intend to punish Eliseo twice for the same acts especially since they pertain to his private life and were not actually committed in connection with the performance of his functions as a magistrate before.

In *Samson v. Caballero*,[33] the Court emphasized what "automatic conversion of administrative cases against justices and judges to disciplinary proceedings against them as lawyers" means, *viz*:

> This administrative case against respondent shall also be considered as a disciplinary proceeding against him as a member of the Bar, in accordance with AM. No. 02-9-02-SC. This resolution, entitled "Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar," provides:
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> > "Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and the court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of

[33] A.M. No. RTJ-08-2138, August 5, 2009, 595 SCRA 423.

> conduct that have been traditionally recognized as grounds for the discipline of lawyers.
>
> In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent justice, judge or court official concerned as a member of the Bar. x x x. Judgment in both respects may be incorporated in one decision or resolution."
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Under the same rule, a respondent "may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary sanctioned as member of the Bar." xxx In other words, an order to comment on the complaint is an order to give an explanation on why he should not be held administratively liable not only as a member of the bench but also as a member of the bar. This is the fair and reasonable meaning of "automatic conversion" of administrative cases against justices and judges to disciplinary proceedings against them as lawyers. This will also serve the purpose of A.M. No. 02-9-02-SC to avoid the duplication or unnecessary replication of actions by treating an administrative complaint filed against a member of the bench also as a disciplinary proceeding against him as a lawyer by mere operation of the rule. Thus, a disciplinary proceeding as a member of the bar is impliedly instituted with the filing of an administrative case against a justice of the Sandiganbayan, Court of Appeals and Court of Tax Appeals or a judge of a first- or second-level court.[34] (Citations and emphasis omitted)

The above-cited case suggests the superfluity of instituting a disbarment complaint against a lawyer when an administrative case had been previously filed against him or her as a magistrate. Ideally therefore, the instant disbarment complaint should have been consolidated with A.M. No. MTJ-10-1761. However, it is well to note that *Samson v. Caballero*[35] was promulgated by the Court on August 5, 2009 subsequent to the filing of the instant disbarment complaint on April 6, 2009. Further, while

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[34] *Id.* at 431, 435-436.

[35] *Supra* note 33.

all the allegations in A.M. No. MTJ-10-1761 are replicated in the instant disbarment complaint, the last issue of engagement in the scuffle is an addition to the latter. Hence, this Court shall now resolve the said issue to write *finis* to the parties' bickerings.

In the instant disbarment complaint, tirades and bare accusations were exchanged. It bears stressing that not one of the parties had presented even one independent witness to prove what transpired inside the chamber of Judge Casals on September 14, 2009. That a scuffle took place is a fact, but the question of who started what cannot be determined with much certainty. While admitting his engagement in the scuffle, Eliseo vigorously attempts to justify his conduct as self-defense on his part.[36]

While this Court finds credence and logic in Eliseo's narration of the incident, and understands that the successive acts of the parties during the tussle were committed at a time when passions ran high, he shall not be excused for comporting himself in such an undignified manner.

Rule 7.03, Canon 7[37] of the Code of Professional Responsibility explicitly proscribes a lawyer from engaging in conduct that "adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession."

The case of *Jamsani-Rodriguez v. Ong*,[38] on the other hand, is instructive anent what constitutes unbecoming conduct, *viz*:

> Unbecoming conduct "applies to a broader range of transgressions of rules not only of social behavior but of ethical practice or logical procedure or prescribed method."[39]

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[36] Please see note 25.

[37] 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.

[38] A.M. No. 08-19-SB-J, August 24, 2010, 628 SCRA 626.

[39] *Id.* at 653, citing *Zacarias v. National Police Commission,* G.R. No. 119847, October 24, 2003, 414 SCRA 387, 392.

Sans any descriptive sophistry, what Eliseo did was to engage in a brawl with no less than his own children inside the chamber of a judge. This Court shall not countenance crude social behavior. Besides, the courtroom is looked upon by people with high respect and is regarded as a sacred place where litigants are heard, rights and conflicts settled, and justice solemnly dispensed.[40] Misbehavior within or around the vicinity diminishes its sanctity and dignity.[41] Although Alistair and Charmaine were not entirely faultless, a higher level of decorum and restraint was then expected from Eliseo, whose conduct failed to show due respect for the court and lend credit to the nobility of the practitioners of the legal profession.

Further, albeit not raised as an issue, this Court views with disfavor Eliseo's statement during the hearing conducted by the CBD on March 18, 2011 that he doubts Alistair to be his biologiocal son.[42] As a lawyer, Eliseo is presumably aware that ascribing illegitimacy to Alistair in a proceeding not instituted for that specific purpose is nothing short of defamation.

All told, Eliseo violated Rule 7.03, Canon 7 of the Code of Professional Responsibility when he conducted himself in a manner not befitting a member of the bar by engaging in the scuffle with his own children in the chamber of Judge Casals on September 14, 2009 and recklessly expressing his doubt anent the legitimacy of his son Alistair during the hearing before the CBD.

WHEREFORE, this Court finds that respondent Eliseo M. Campos violated Rule 7.03, Canon 7 of the Code of Professional Responsibility. A **FINE** of Five Thousand Pesos (Php5,000.00) is hereby imposed upon him, with a **STERN WARNING** that a repetition of similar acts shall be dealt with more severely.

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[40] Please see *Atty. Roel O. Paras v. Myrna F. Lofranco*, 407 Phil. 329 (2001).

[41] *Id.*

[42] *Supra* note 27.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Leonen,*[*] *JJ.,* concur.

FIRST DIVISION

[A.M. No. P-08-2574. January 22, 2014]
(Formerly A.M. OCA IPI No. 08-2748-P)

RAUL K. SAN BUENAVENTURA, *complainant, vs.* **TIMOTEO A. MIGRIÑO, CLERK OF COURT III, METROPOLITAN TRIAL COURT, BRANCH 69, PASIG CITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CLERK OF COURT; SIMPLE NEGLECT OF DUTY, DEFINED; CARELESSNESS AND INDIFFERENCE IN THE PERFORMANCE OF DUTIES CONSTITUTES SIMPLE NEGLECT OF DUTY PUNISHABLE BY SUSPENSION FOR THE FIRST OFFENSE AND DISMISSAL FOR THE SECOND OFFENSE.— We adopt the findings of fact of the OCA and hold respondent Migriño liable for simple neglect of duty. Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to disregard a duty due to carelessness or indifference. It is classified as a less grave offense under the Uniform Rules on Administrative Cases in the Civil Service and is punishable with suspension for one (1) month and one (1) day to six (6) months for the

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[*] Additional member per Raffle dated January 22, 2014 *vice* Associate Justice Teresita J. Leonardo-De Castro.

first offense and dismissal for the second offense. In the instant case, it is incumbent upon respondent Migriño as the Clerk of Court and the administrative assistant of the judge, to assist in the management of the calendar of the court, particularly in the scheduling of cases and in all other matters not involving the exercise of discretion or judgment of the judge. Respondent Migriño is tasked to keep a calendar of cases for pre-trial, trial, and those with motions to set for hearing and to give preference to *habeas corpus* cases, election cases, special civil actions, and those required by law. Here, respondent Migriño showed carelessness and indifference in the performance of his duties. He cannot simply reason that "he had nothing to do with the resetting and the setting of the hearings." That is an unacceptable excuse, especially in light of Section 1, Canon IV of the Code of Conduct for Court Personnel which requires that "court personnel shall at all times perform official duties properly and diligently." Indeed, as found by the Investigating Judge and the OCA, respondent Migriño was guilty of delay in scheduling the Motion for Issuance of the Writ of Execution particularly when the subject decision in Civil Case No. 6798, an unlawful detainer case that is governed by the Rule on Summary Procedure, had already become final and executory. As such, respondent Migriño should have given preference to complainant San Buenaventura's motion which was filed on August 17, 2006. Granting that the requested date for hearing fell on a Tuesday, a non-hearing day for the Acting Presiding Judge, respondent Migriño should have set the date of the next hearing well within the 10-day period mandated under Section 5, Rule 15 of the Rules of Court.

2. ID.; ID.; ID.; ID.; SHOULD SUPERVISE HIS SUBORDINATES WELL AND EFFICIENTLY CONDUCT THE PROPER ADMINISTRATION OF JUSTICE.— [A]s the officer of the court next in line to the Presiding Judge, it is incumbent upon respondent Migriño to regularly check not only the status of the cases but also the functions of the other court personnel and employees under his supervision. It is important to stress that as clerk of court, respondent Migriño should take charge of the administrative aspects of the court's business and chronicle its will and directions, keep the records and seal, issue processes, enter judgments and orders, and give upon request, certified copies of the records of the court. Thus, it is clear that respondent Migriño was remiss of his duties

when he failed to supervise his subordinates well and to efficiently conduct the proper administration of justice.

3. ID.; ID.; ID.; ID.; PENALTY OF FINE IMPOSED UPON THE RESPONDENT FOR SIMPLE NEGLECT OF DUTY; THE DEATH OR RETIREMENT OF ANY JUDICIAL OFFICER FROM THE SERVICE DOES NOT PRECLUDE THE FINDING OF ANY ADMINISTRATIVE LIABILITY TO WHICH HE SHALL STILL BE ANSWERABLE; RATIONALE.— In a Memorandum dated May 31, 2012, the OCA adopted the Executive Judge's recommendation, *i.e.*, that respondent Migriño be found guilty of simple neglect of duty, for which he should be meted the penalty of fine corresponding to two months salary. The OCA, however, modified and reduced the said penalty, and recommended a fine equivalent to one month salary for humanitarian consideration by reason of his death. x x x. We agree with the recommendation of the OCA. The death or retirement of any judicial officer from the service does not preclude the finding of any administrative liability to which he shall still be answerable. In the instant case, an investigation was completed and two recommendations were already given by the OCA pointing to the misdemeanor of respondent Migriño. In *Gallo v. Cordero*, citing *Zarate v. Judge Romanillos*, the Court held: The jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implication ... If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

APPEARANCES OF COUNSEL

Pretty B. Celiz for complainant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This administrative case originates from a complaint for gross neglect of duty, undue interference on a case, and violation of the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) filed by complainant Raul K. San Buenaventura against respondent Timoteo A. Migriño, Clerk of Court III of the Metropolitan Trial Court (MeTC), Branch 69 of Pasig City, relative to Civil Case No. 6798 entitled, "*Lourdes K. San Buenaventura, represented by Teresita K. San Buenaventura and/or Raul K. San Buenaventura v. Johnny Josefa*," for unlawful detainer.

In a verified Complaint-Affidavit[1] dated February 22, 2008, complainant San Buenaventura narrated that after the decision of this Court in Civil Case No. 6798 became final and executory on April 3, 2006, he filed a Motion for Issuance of Writ of Execution on August 17, 2006, requesting that the said motion be heard on August 22, 2006. According to complainant San Buenaventura, respondent Migriño set the hearing on October 13, 2006 and refused to grant his request for an earlier setting. Complainant San Buenaventura further narrated that on October 30, 2006, the MeTC issued an order informing the parties that the said motion had already been submitted for resolution. However, on December 18, 2006, the MeTC issued another order deferring the resolution of the said motion since the records of the case had been elevated to the Regional Trial Court as defendant Josefa had filed an Annulment of the Judgment and Partition on the decision of the Supreme Court which was sought to be executed.

Complainant San Buenaventura added that he and his counsel asked respondent Migriño if the MeTC had already received a copy of the Supreme Court decision and entry of judgment, emphasizing upon respondent Migriño that there was no need

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[1] *Rollo*, pp. 1-7.

for the records of the case and that under prevailing jurisprudence, a certified true copy of the decision and its entry of judgment were sufficient for the issuance of a writ of execution. According to complainant San Buenaventura, respondent Migriño claimed that the MeTC was not yet served a copy of the Supreme Court decision and entry of judgment, yet when complainant San Buenaventura made further inquiries, he discovered that the MeTC had already received its copies as early as August 7, 2006.

Complainant San Buenaventura further alleged that he and his counsel requested respondent Migriño on several occasions to inform the MeTC Presiding Judge of the Supreme Court decision and the entry of judgment so that their pending motion could be resolved. These requests, however, were not acted upon by respondent Migriño, forcing complainant San Buenaventura to file a Motion with Leave of Court for the Immediate Resolution of Plaintiff's Motion for the Issuance of Writ of Execution on April 13, 2007. It was only on July 20, 2007 when the said motion for the issuance of a writ of execution was finally resolved, or after almost a year from the date of filing of said motion. With regard to the issuance of the writ of execution, complainant San Buenaventura also stated that despite repeated follow-ups and requests, respondent Migriño belatedly issued the said writ only on November 14, 2007, or after almost four months from the time the order of its issuance was given.

As reported in the Sheriff's Return dated December 4, 2007, defendant Josefa refused to leave the subject premises when he was served the Notice to Vacate dated November 19, 2007. On January 25, 2008, the Order dated January 8, 2008 directing the issuance of a writ of demolition was released. Complainant San Buenaventura further alleged that respondent Migriño informed him that the said writ could not yet be issued since an alleged third-party claimant filed a motion for reconsideration and a motion to suspend implementation of the demolition order, among others, was filed on January 28, 2008. Said motions were set to be heard on February 22, 2008 which complainant San Buenaventura asserted was violative of Section 5, Rule 15 of the Rules of Court as it has been mandated therein that the

time and date of the hearing of motions must not be later than 10 days after the filing of the motion. Complainant San Buenaventura also claimed that it was respondent Migriño who filled in, or at the least, facilitated the setting of the hearing of the motion at a very late date, on February 22, 2008.

Complainant San Buenaventura maintained that respondent Migriño should be administratively sanctioned for setting the hearings of various motions in their case over long periods of time and for unduly interfering in Civil Case No. 6798.

In a Comment[2] dated March 27, 2008, respondent Migriño denied the accusations hurled against him. Respondent Migriño clarified that the Acting Presiding Judge only conducted hearings every Monday, Wednesday and Friday, and that August 22, 2006 was a Tuesday, a non-hearing day, which was the reason why the setting of the hearing was rescheduled to October 13, 2006 without any objections from the counsels of both parties as evidenced by the minutes of the August 22, 2006 hearing. Respondent Migriño maintained that he had nothing to do with the resetting of the hearing schedules. According to him, the counsel for complainant San Buenaventura should have raised her objections on the resetting of the hearing in the minutes, or should have filed a motion for an earlier setting if they found the belated setting objectionable.

Anent the alleged inaction for the issuance of the writ of execution, respondent Migriño contended that it was the court sheriff who prepared the writ and that he merely checked or corrected the draft of the writ before it would be sent to the Presiding Judge for signature.

As to the receipt of the entry of judgment and the Supreme Court decision in Civil Case No. 6798, respondent Migriño admitted that a copy of the entry of judgment was personally received by the Presiding Judge on August 7, 2006, while the decision was received at a different date. He reasoned that he could not be blamed if complainant San Buenaventura's motion

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[2] *Id.* at 81-83.

for the issuance of a writ of execution remained unacted upon or if there was delay in the resolution thereof, since according to him, the issuance of judicial orders was not part of his duties and responsibilities as a Clerk of Court.

Respondent Migriño also dismissed as hearsay the accusation that he was responsible for the insertion of the date of hearing which was allegedly in violation of the Rules of Court. He submitted the affidavit of Ms. Zynex G. Estaras, civil cases in-charge, attesting to the fact that the date was already written on the motion when it was submitted to the court.

Alleging that the administrative charge against him was simply a harassment suit, respondent Migriño believed that he was not remiss of his duties and that he never interfered with the schedule of the hearings for the case.

In a Resolution[3] dated November 12, 2008, this Court re-docketed the instant complaint against respondent Migriño as a regular administrative matter and referred the same to the Executive Judge of the MeTC, Pasig City, for investigation, report and recommendation.

In a Report[4] dated March 26, 2009, Executive Judge Marina Gaerlan-Mejorada recommended that respondent Migriño be found guilty of simple neglect of duty, for which he should be fined an amount equivalent to his two months salary with a stern warning that a repetition of the same or similar offense in the future shall be dealt with more severely.

Executive Judge Gaerlan-Mejorada reasoned thus:

> Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case. Not only does it magnify the cost of seeking justice. It undermines the people's faith and confidence in the judiciary, lowers its standards and bring it to disrepute. It must be emphasized that the subject writ issued by the Pasig City-MeTC, Branch 69 is a mere

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[3] *Id.* at 93-94.

[4] *Id.* at 86-103.

administrative enforcement medium of the Order dated July 20, 2007, — the main order supporting the complainant's motion for the issuance of a writ of execution. The writ itself cannot and does not assume life of its own independent from the order on which it is based. Why it took the Court to issue the subject writ four (4) months after the issuance of the order dated July 20, 2007, truly boggles the mind. Respondent Migriño could not heap the blame on Branch Sheriff Ziganay and feel absolved of any liability for faulty court management. As Clerk of Court, respondent Migriño is the administrative office[r] of the court who must ensure that prompt action on the court's business must be done; failing which, he is deemed guilty of negligence.

The Honorable Supreme Court has stressed time and again that clerks of court are essential judicial officers who perform delicate administrative functions vital to the prompt and proper administration of justice. Their duty is, *inter alia*, to assist in the management of the calendar of the court and in all matters that do not involve the discretion or judgment properly belonging to the judge. They play a key role in the complement of the court, as their office is the hut of adjudicative and *administrative orders, processes* and concerns. As such, they are required to be persons of competence, honesty and probity; they cannot be permitted to slacken on their jobs. Respondent Migriño is guilty of simple neglect of duty.[5] (Citation omitted.)

In a Resolution[6] dated June 17, 2009, this Court noted the Report dated March 26, 2009 of Executive Judge Gaerlan-Mejorada and required the parties to manifest if they are willing to submit the case for resolution on the basis of the pleadings filed. Only respondent Migriño manifested[7] his willingness to submit the instant case for resolution based on the pleadings filed.

In a Resolution[8] dated November 16, 2009, this Court dispensed with complainant San Buenaventura's filing of his manifestation

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[5] *Id.* at 102.

[6] *Id.* at 406-407.

[7] *Id.* at 408.

[8] *Id.* at 410.

and considered the instant case submitted for resolution. Consequently, in a Resolution[9] dated July 21, 2010, this Court referred the instant administrative matter to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

On October 6, 2010, the OCA submitted a Report with the following recommendations:

> In view of the foregoing, we respectfully submit for the consideration of the Honorable Court the following recommendations:
>
> 1. Respondent Timoteo A. Migriño, Clerk of Court III, Metropolitan Trial Court (Branch 69), Pasig City be found **GUILTY** for simple neglect of duty and be **SUSPENDED** for two (2) months without salary and benefits, with a stern warning that the commission of the same or similar offense in the future shall be dealt with more severely;
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> 2. A separate administrative complaint be filed against Judge Jacqueline J. Ongpauco, Acting Presiding Judge, MeTC (Branch 69), Pasig City for undue delay in resolving the motion for the issuance of a writ of execution in Civil Case No. 6798, which complaint shall be re-docketed as a regular administrative matter; [and]
>
> 3. Judge Ongpauco be directed to submit her **COMMENT** on the charge against her within fifteen (15) days from receipt of notice.[10]

The OCA modified the penalty recommended by Executive Judge Gaerlan-Mejorada from a fine equivalent to two months salary to suspension of two months without salary and benefits after finding respondent Migriño guilty of simple neglect of duty, a less grave offense punishable by suspension of one (1) month and one (1) day to six (6) months, if committed for the first time, and by dismissal if committed for the second time.

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[9] *Id.* at 411.

[10] *Id.* at 417.

We adopt the findings of fact of the OCA and hold respondent Migriño liable for simple neglect of duty.

Simple neglect of duty is defined as the failure of an employee to give proper attention to a required task or to disregard a duty due to carelessness or indifference.[11] It is classified as a less grave offense under the Uniform Rules on Administrative Cases in the Civil Service and is punishable with suspension for one (1) month and one (1) day to six (6) months for the first offense and dismissal for the second offense.[12]

In the instant case, it is incumbent upon respondent Migriño as the Clerk of Court and the administrative assistant of the judge, to assist in the management of the calendar of the court, particularly in the scheduling of cases and in all other matters not involving the exercise of discretion or judgment of the judge.[13] Respondent Migriño is tasked to keep a calendar of cases for pre-trial, trial, and those with motions to set for hearing and to give preference to *habeas corpus* cases, election cases, special civil actions, and those required by law.[14] Here, respondent Migriño showed carelessness and indifference in the performance of his duties. He cannot simply reason that "he had nothing to do with the resetting and the setting of the hearings." That is an unacceptable excuse, especially in light of Section 1, Canon IV of the Code of Conduct for Court Personnel which requires that "court personnel shall at all times perform official duties properly and diligently."

Indeed, as found by the Investigating Judge and the OCA, respondent Migriño was guilty of delay in scheduling the Motion

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[11] *Reyes v. Pablico,* 538 Phil. 10, 20 (2006).

[12] Section 52(B)(1), Civil Service Commission Resolution No. 991936, August 31, 1999.

[13] *Re: Report on the Judicial Audit Conducted in the RTC, Branches 61, 134 and 137, Makati, Metro Manila,* A.M. No. 93-2-1001-RTC, September 5, 1995, 248 SCRA 5, 25.

[14] The 2002 Revised Manual for Clerks of Court, Volume 1, Chapter VI, E, 1.2.1.4, p. 238.

for Issuance of the Writ of Execution particularly when the subject decision in Civil Case No. 6798, an unlawful detainer case that is governed by the Rule on Summary Procedure, had already become final and executory. As such, respondent Migriño should have given preference to complainant San Buenaventura's motion which was filed on August 17, 2006. Granting that the requested date for hearing fell on a Tuesday, a non-hearing day for the Acting Presiding Judge, respondent Migriño should have set the date of the next hearing well within the 10-day period mandated under Section 5, Rule 15 of the Rules of Court.

Moreover, as the officer of the court next in line to the Presiding Judge, it is incumbent upon respondent Migriño to regularly check not only the status of the cases but also the functions of the other court personnel and employees under his supervision. It is important to stress that as clerk of court, respondent Migriño should take charge of the administrative aspects of the court's business and chronicle its will and directions, keep the records and seal, issue processes, enter judgments and orders, and give upon request, certified copies of the records of the court.[15] Thus, it is clear that respondent Migriño was remiss of his duties when he failed to supervise his subordinates well and to efficiently conduct the proper administration of justice.

Anent complainant San Buenaventura's allegation that respondent Migriño was the one who filled in the blank space for the date of the hearing of the motion of the alleged third-party claimant, or facilitated its setting at a very late date, this Court, however, finds no evidence to support such allegation.

In a Manifestation and Motion to Dismiss dated June 1, 2011, Emelinda P. Migriño, wife of respondent Migriño, wrote to the Court and prayed for the dismissal of the instant case due to respondent Migriño's death on December 11, 2010.

In a Memorandum dated May 31, 2012, the OCA adopted the Executive Judge's recommendation, *i.e.*, that respondent Migriño be found guilty of simple neglect of duty, for which he

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[15] *Id.,* Chapter I, B, p. 5.

should be meted the penalty of fine corresponding to two months salary. The OCA, however, modified and reduced the said penalty, and recommended a fine equivalent to one month salary for humanitarian consideration by reason of his death. The OCA recommended:

> In view of the foregoing, we respectfully recommend for the consideration of the Honorable Court that Mr. Timoteo A. Migriño, former Clerk of Court III, Metropolitan Trial Court, Branch 69, Pasig City, be found **GUILTY** of simple neglect of duty and a **FINE** equivalent to his one month salary be imposed upon him to be deducted from the retirement benefits due him. Thereafter, this matter be considered **CLOSED AND TERMINATED**.[16]

We agree with the recommendation of the OCA.

The death or retirement of any judicial officer from the service does not preclude the finding of any administrative liability to which he shall still be answerable. In the instant case, an investigation was completed and two recommendations were already given by the OCA pointing to the misdemeanor of respondent Migriño.

In *Gallo v. Cordero*,[17] citing *Zarate v. Judge Romanillos*,[18] the Court held:

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

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[16] *Rollo*, p. 432.

[17] 315 Phil. 210, 220 (1995).

[18] 312 Phil. 679, 693 (1995).

The recommendation of the OCA to file a separate administrative complaint against Judge Jacqueline J. Ongpauco for undue delay in resolving the motion for the issuance of a writ of execution in Civil Case No. 6798 is well-taken. We quote the findings of the OCA, thus:

> However, the delay in the execution of the judgment could not be wholly attributed to the respondent, but also to Acting Presiding Judge Ongpauco as it concerned judicial orders issued by her.
>
> It must be pointed out that the subject decision in Civil Case No. 6798 had already become final and executory. In fact, an entry of judgment was already issued by the Supreme Court where the case was elevated. Hence, as such, execution of the said decision should have been issued as a matter of right, in accordance with Section 1, Rule 39 of the Rules of Court, which reads:
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> > "Section 1. Execution upon judgment or final orders. – Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected."
>
> Instead of immediately ordering the execution of the final judgment, Judge Ongpauco allowed the case to drag on through several resettings of the hearings of the case on such grounds as (1) the defendant not being around; (2) the records of the case were not yet in the court's possession; (3) the granting of the defendant's motion and manifestation to submit his comment/opposition to plaintiff's motion for execution; (4) the records of the case had been elevated anew to the Regional Trial Court.
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> x x x x x x x x x
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> Judge Ongpauco, however, was not included as a respondent because she was not named in the complaint. But the fact is it was she who signed the orders, and both the Report dated September 29, 2008 of the Office of the Court Administrator and the Investigation Report dated March 26, 2009 of Judge Mejorada contained the same observation. It is imperative that she be formally charged and required to file her comment to answer the charge of undue delay in rendering an order in Civil Case No. 6798.[19] (Citation omitted.)

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[19] *Rollo,* pp. 416-417.

WHEREFORE, this Court finds Timoteo A. Migriño, former Clerk of Court III, Metropolitan Trial Court, Branch 69, Pasig City, **GUILTY** of simple neglect of duty and imposes upon him a **FINE** equivalent to his one (1) month salary to be deducted from the retirement benefits due him. Thereafter, let this matter be considered **CLOSED AND TERMINATED** with regard to respondent Migriño.

Furthermore, let a separate administrative complaint be filed against Judge Jacqueline J. Ongpauco, Acting Presiding Judge, MeTC (Branch 69), Pasig City for undue delay in resolving the motion for the issuance of a writ of execution in Civil Case No. 6798, to be re-docketed as a regular administrative matter.

SO ORDERED.

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

FIRST DIVISION

[A.M. No. RTJ-11-2287. January 22, 2014]
(Formerly OCA I.P.I. No. 11-3640-RTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. CADER P. INDAR, AL HAJ, PRESIDING JUDGE and ABDULRAHMAN D. PIANG, PROCESS SERVER, BRANCH 14, both of the REGIONAL TRIAL COURT, BRANCH 14, COTABATO CITY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CHARGE OF DISHONESTY; FALSIFICATION OR IRREGULARITIES IN THE

KEEPING OF TIME RECORDS WILL RENDER THE GUILTY OFFICER OR EMPLOYEE ADMINISTRATIVELY LIABLE, FOR TRUTHFULNESS AND ACCURACY IN THE DAILY TIME RECORDS SHOULD BE COMPLIED WITH IN ANY OFFICE, GOVERNMENT OFFICE MOST ESPECIALLY.— OCA Circular No. 7-2003 clearly states that court personnel should indicate in their bundy cards the "truthful and accurate times" of their arrival at, and departure from, the office. As we have ruled in *Garcia v. Bada* and *Servino v. Adolfo,* court employees must follow the clear mandate of OCA Circular No. 7-2003. Piang's entries in his February and March 2010 DTRs for dates that had not yet come to pass were a clear violation of OCA Circular No. 7-2003. Section 4, Rule XVII (on Government Office Hours) of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws also provides that falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable. There is no other way but for the Court to view Piang's falsification of his February and March 2010 DTRs as tantamount to dishonesty. He cannot claim honest mistake as he was fully aware when he accomplished his DTRs for February and March 2010 that there were dates that had not yet even come to pass and for which he could not have reported for work yet. He even meticulously and, thus, intentionally, entered varying time-in and time-out for each date in said DTRs. Piang need not be advised of the policies at RTC-Branch 14 of Cotabato City. Truthfulness and accuracy in the DTRs should be complied with in any office, government offices most especially.

2. **ID.; ID.; ID.; ID.; DISHONESTY, DEFINED; DISHONESTY CARRIES THE EXTREME PENALTY OF DISMISSAL FROM THE SERVICE; EXCEPTIONS.—** Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service. Indeed, dishonesty is a malevolent act that has no place in the judiciary. This Court has defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or

betray." Nonetheless, the Court has recognized exceptions to the rule, and imposed penalties less severe than dismissal from service upon a dishonest employee. In *Falsification of Daily Time Records of Ma. Emcisa A. Benedictos, Administrative Officer I, Regional Trial Court, Malolos City, Bulacan*, the Court ratiocinated: [I]n several administrative cases, the Court refrained from imposing the actual penalties in the presence of mitigating factors. There were several cases, particularly involving dishonesty, in which the Court meted a penalty lower than dismissal because of the existence of mitigating circumstances. In *In Re: Ting and Esmerio*, the Court did not impose the severe penalty of dismissal because the respondents acknowledged their infractions, demonstrated remorse, and had dedicated long years of service to the judiciary. Instead, the Court imposed the penalty of suspension for six months on Ting, and the forfeiture of Esmerio's salary equivalent to six months on account of the latter's retirement. x x x. The compassion extended by the Court in the aforementioned cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. In the case at bar, considering that Piang readily admitted his infraction and that this is Piang's first administrative case, a similar penalty of six (6) months suspension, instead of dismissal, is already sufficient.

3. JUDICIAL ETHICS; JUDGES; LONG DELAY IN COMPLYING, AS WELL AS TOTAL NON-COMPLIANCE WITH THE DIRECTIVES OF THE OFFICE OF THE COURT ADMINISTRATOR AND THE SUPREME COURT, CONSTITUTE GROSS MISCONDUCT AND INSUBORDINATION, FOR A RESOLUTION OF THE SUPREME COURT REQUIRING AN OFFICIAL/ EMPLOYEE OF THE JUDICIARY TO COMMENT ON AN ADMINISTRATIVE COMPLAINT AGAINST HIM SHOULD NOT BE CONSTRUED AS A MERE REQUEST NOR SHOULD IT BE COMPLIED WITH PARTIALLY, INADEQUATELY OR SELECTIVELY.— It took three directives and three years for Judge Indar to submit his Comment on the present administrative matter against him and Piang. x x x. The conduct exhibited by Judge Indar constitutes no less than a clear act of defiance, revealing his deliberate

disrespect and indifference to the authority of the Court. It is completely unacceptable especially for a judge. x x x. The Court x x x in *Soria v. Judge Villegas*, ruling as follows: Respondent should know that judges must respect the orders and decisions of higher tribunals, especially the Supreme Court from which all other courts take their bearings. A resolution of the Supreme Court is not to be construed as a mere request nor should it be complied with partially, inadequately or selectively. Respondent's failure to comply with the repeated directives of this Court constitutes gross disrespect to its lawful orders and directives, bordering on willful contumacy. In *Alonto-Frayna v. Astih*, it was held: A judge who deliberately and continuously fails and refuses to comply with the resolution of this Court is guilty of gross misconduct and insubordination. It is gross misconduct and even outright disrespect for this Court for respondent to exhibit indifference to the resolutions requiring him to comment on the accusations contained in the complaint against him. x x x. Judging by the foregoing standards, the Court can only conclude that Judge Indar is guilty of gross misconduct and insubordination for his long delay in complying, as well as for his total non-compliance, with the directives/ orders of the OCA and this Court.

4. ID.; ID.; FAILURE OF THE RESPONDENT JUDGE TO EXAMINE THE EMPLOYEE'S DAILY TIME RECORD BEFORE AFFIXING HIS SIGNATURE THEREIN CONSTITUTES NEGLIGENCE; A JUDGE IS ENJOINED, HIS HEAVY CASELOAD NOTWITHSTANDING, TO PORE OVER ALL DOCUMENTS WHEREON HE AFFIXES HIS SIGNATURE AND GIVES HIS OFFICIAL IMPRIMATUR.— [J]udge Indar's excuse – that he inadvertently signed Piang's DTRs for February and March 2010 as it was submitted for signature together with the DTRs of the other employees of RTC-Branch 14 of Cotobato City – is unacceptable. Judge Indar should be fully aware of the weight of his signature as a judge, and he should take care in affixing the same on the documents before him. In the discharge of the functions of his office, a judge must strive to act in a manner that puts him and his conduct above reproach and beyond suspicion. He must act with extreme care for his office indeed is laden with a heavy burden of responsibility. Certainly, a judge is enjoined, his heavy caseload notwithstanding, to pore over all documents whereon he affixes his signature and gives

his official imprimatur. The cavalier attitude displayed by Judge Indar in this case simply cannot be countenanced. Therefore, Judge Indar is guilty of negligence in his failure to examine Piang's DTRs for February and March 2010 before signing the same. Even a cursory reading of the said DTRs would readily reveal that they were not yet due, since they covered dates that had not yet transpired.

5. ID.; ID.; GROSS MISCONDUCT, INSUBORDINATION, AND NEGLIGENCE; PROPER PENALTY.— This is now Judge Indar's fifth offense. x x x. Since Judge Indar had already been dismissed from the service, a penalty of fine would suffice. Upon verification with the Leave Division, OAS, Judge Indar still has accumulated leave credits, the monetary value of which has not been claimed. For Judge Indar's gross misconduct, insubordination, and negligence, a fine of ₱40,000.00, as recommended by the OCA, is proper, such amount to be deducted from the monetary value of his accumulated leave credits.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This concerns the anomalous compliance by respondent Process Server Abdulrahman D. Piang (Piang) with the requirements for the facilitation of his initial salary, particularly his Daily Time Records (DTRs) for the months of February and March of 2010.

Piang was appointed Process Server of the Regional Trial Court (RTC), Branch 14 of Cotabato City on January 25, 2010. He assumed office on February 15, 2010.

On January 26, 2010, the Office of the Court Administrator, Office of Administrative Services (OCA-OAS), required Piang to submit several documents, which included a complete DTR or Bundy Card, verified as to the prescribed office hours by the Presiding Judge/Clerk of Court, one month from the date of his assumption.[1]

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[1] *Rollo,* pp. 6-7.

On February 22, 2010, Piang submitted the requirements to the OCA-OAS, including two DTRs with detailed time-in and time-out entries for the months of February and March 2010.[2] The DTR for the month of February 2010 reported Piang's time-in and time-out from February 15, 2010 to February 26, 2010, when it should only validly cover the period of February 15, 2010 up to February 21, 2010, the day prior to its submission to the OCA-OAS. In addition, the DTR for the month of March 2010 already contained complete time-in and time-out entries for the entire month even when the same had not yet transpired and become due.

Thus, Court Administrator Jose Midas P. Marquez (Marquez), in his *1st Indorsement*[3] dated April 5, 2010, required Piang to comment on his anomalous DTRs for February and March 2010.

In his explanation letter[4] dated February 22, 2010 addressed to the OCA-OAS, Piang said that it was an honest mistake caused by his lack of knowledge of the policies being implemented by the office. He claimed that he understood the OCA-OAS directive to submit "complete DTR or Bundy Card verified as to prescribed office hours by the Presiding Judge/Clerk of court, one month from the date of assumption" to mean that he should already submit DTRs for the remaining days of February and of the whole month of March 2010 even though he had not yet worked on those days. He further explained that he had no fraudulent intention and that the error was due to sheer inadvertence on his part alone, being too excited to perform his duties and to have the documents signed by former Judge Cader P. Indar (Indar). He simply forgot to seek advice from Judge Indar. Piang adopted the same explanation in his subsequent Comment[5] dated May 24, 2010.

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[2] *Id.* at 3.

[3] *Id.* at 11.

[4] *Id.* at 8.

[5] *Id.* at 52.

Based on Piang's explanation, Court Administrator Marquez wrote a letter[6] dated April 20, 2010 addressed to Judge Indar requiring the judge to comment on why he signed the questioned DTRs even if these were not yet due.

In the Agenda Report[7] dated May 9, 2011, the OCA found sufficient reason to hold Piang administratively liable. The OCA opined that the punching of the remaining working days for the month of February and for the entire month of March 2010, even for dates that were not yet due, is an outright violation of OCA Circular 7-2003. Failure to submit true and accurate DTRs/Bundy Cards amounts to falsification which is punishable by dismissal, and under Civil Service Rules and Regulations, it is dishonesty. The OCA, however, took into consideration the mitigating circumstance of Piang acknowledging his infractions, as well as the fact that this is his first offense. Thus, the OCA submitted the following recommendations:

1. That the instant administrative complaint be **RE-DOCKETTED** as a regular administrative matter;

2. That respondent Abdulrahman D. Piang, Process Server, Regional Trial Court, Branch 14, Cotobato (sic) City be found liable for Dishonesty; be immediately **SUSPENDED** for one (1) year without pay; and **WARNED** that a repetition of the same offense shall be dealt with more severely;

3. That the salary of respondent Abdulrahman D. Piang for the months of February and March 2010 be **FORFEITED** in view of the fact that he doctored and falsified Daily Time Records covering said months; and

4. That Judge Cader P. Indar be required to submit a **COMMENT** within ten (10) days from receipt hereof with notices sent to his last known residence and to the Regional Trial Court of Cotobato (sic) City, Branch 14, otherwise he will be deemed to have waived the right to file the same and the matter shall be decided based on the records at hand.[8]

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[6] *Id.* at 10.

[7] *Id.* at 29-32.

[8] *Id.* at 32.

In a Resolution[9] dated June 29, 2011, the Court required (1) Piang to manifest if he was willing to submit the case for decision/ resolution based on the pleadings filed, and (2) Judge Indar to submit his comment on the present matter, otherwise, it shall be deemed waived and the case against him will be decided based on the records at hand.

Piang filed his Manifestation[10] on September 15, 2011 expressing his willingness to submit the instant administrative case for resolution based on the submitted pleadings and requesting leniency of the Court in deciding his case.

In a Resolution[11] dated February 8, 2012, the Court required Judge Indar to show cause why he failed to comply with the earlier Resolution dated June 29, 2011 of the Court and directed him anew to submit the required comment.

Acting Presiding Judge Bansawan Z. Ibrahim (Ibrahim), Al Haj, RTC-Branch 14 of Cotabato City, informed the OCA, through a letter[12] dated April 23, 2012, that Judge Indar, who was by then already suspended because of another administrative case, had not been in touch with the court, thus, Judge Ibrahim believed that Judge Indar would no longer submit his comment on the present case. Judge Ibrahim also vouched for the absence of malice on the part of Piang when he prepared the subject DTRs; Piang was merely not advised properly.

Court Administrator Marquez submitted a report[13] dated April 3, 2013, in which he recommended that:

1. The OCA's findings and recommendation of a penalty of suspension for one (1) year without pay against Abdulrahman D. Piang, Process Server, Branch 14, Regional Trial Court, Cotabato City, be **APPROVED** and **ADOPTED**.

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

[10] *Id.* at 35.

[11] *Id.* at 41.

[12] *Id.* at 42.

[13] *Id.* at 62-66.

2. Respondent Judge Cader P. Indar, former Presiding Judge of Branch 14, Regional Trial Court, Cotabato City, be found **GUILTY** of **GROSS MISCONDUCT** and **INSUBORDINATION**; and

3. A penalty of **FINE** in the amount of **FORTY THOUSAND PESOS (₱40,000.00)** be imposed against respondent Judge Indar, to be deducted from the monetary value of his unclaimed leave credits.[14]

Six months thereafter, Judge Indar finally submitted his Comment on October 7, 2013. In his Comment, Judge Indar was completely silent on the reason/s for his delay in filing the same and went straight ahead to explaining the circumstances surrounding Piang's February and March 2010 DTRs, thus:

4. That the undersigned had inadvertently signed the Daily Time Records (DTRs) for February 15, 2010 and March 2010 of Mr. Abdulrahman D. Piang, as it was submitted for signatures together with the other DTRs of the old employees of RTC, Branch 14, Cotabato City;

5. That during a talk with Mr. Piang, He explained to the undersigned that he was advised to prepare the subjects DTRs for the processing of his initial salary and that he complied right away by submitting the same for signatures;

6. That he confided to the undersigned that his act was an honest mistake as he failed to inquire about the rules on preparing DTRs, all that he was thinking at that time was to comply immediately with the directive of Administrative Services of the Office of the Court Administrator for the submission of the subject DTRs;

7. That the undersigned is convinced that Mr. Piang committed an honest mistake and that his act was never intended to violate or disregard the rules and law he being a first time appointee to the government service at that time, he cannot as yet be expected to know the rules and regulations pertaining to DTRs;

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[14] *Id.* at 66.

8. That Mr. Piang deserves a second chance, as he has already suffered enough from such honest mistake as he has been performing his duties as Process Server of RTC, Branch 14, Cotabato City without salaries and benefits since his appointment to office.[15]

The charge of dishonesty against Piang

OCA Circular No. 7-2003 clearly states that court personnel should indicate in their bundy cards the "truthful and accurate times" of their arrival at, and departure from, the office. As we have ruled in *Garcia v. Bada*[16] and *Servino v. Adolfo*,[17] court employees must follow the clear mandate of OCA Circular No. 7-2003. Piang's entries in his February and March 2010 DTRs for dates that had not yet come to pass were a clear violation of OCA Circular No. 7-2003.

Section 4, Rule XVII (on Government Office Hours) of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws also provides that falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable.[18]

There is no other way but for the Court to view Piang's falsification of his February and March 2010 DTRs as tantamount to dishonesty. He cannot claim honest mistake as he was fully aware when he accomplished his DTRs for February and March 2010 that there were dates that had not yet even come to pass and for which he could not have reported for work yet. He even meticulously and, thus, intentionally, entered varying time-in and time-out for each date in said DTRs. Piang need not be advised of the policies at RTC-Branch 14 of Cotabato City. Truthfulness and accuracy in the DTRs should be complied with in any office, government offices most especially.

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[15] *Id.* at 69-70.

[16] 557 Phil. 526, 530 (2007).

[17] 538 Phil. 540, 550-551 (2006).

[18] *See* also *Duque v. Aspiras*, 502 Phil. 15, 23 (2005).

Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification for reemployment in government service. Indeed, dishonesty is a malevolent act that has no place in the judiciary. This Court has defined dishonesty as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[19]

Nonetheless, the Court has recognized exceptions to the rule, and imposed penalties less severe than dismissal from service upon a dishonest employee. In *Falsification of Daily Time Records of Ma. Emcisa A. Benedictos, Administrative Officer I, Regional Trial Court, Malolos City, Bulacan,*[20] the Court ratiocinated:

> [I]n several administrative cases, the Court refrained from imposing the actual penalties in the presence of mitigating factors. There were several cases, particularly involving dishonesty, in which the Court meted a penalty lower than dismissal because of the existence of mitigating circumstances.
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> In *In Re: Ting and Esmerio*, the Court did not impose the severe penalty of dismissal because the respondents acknowledged their infractions, demonstrated remorse, and had dedicated long years of service to the judiciary. Instead, the Court imposed the penalty of suspension for six months on Ting, and the forfeiture of Esmerio's salary equivalent to six months on account of the latter's retirement.
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> The Court similarly imposed in *Re: Failure of Jose Dante E. Guerrero to Register his Time In and Out in the Chronolog Time Recorder Machine on Several Dates* the penalty of six months suspension on an employee found guilty of dishonesty for falsifying his time record. The Court took into account as mitigating circumstances Guererro's good performance rating, 13 years of satisfactory service in the judiciary, and his acknowledgment of and remorse for his infractions.

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[19] *Servino v. Adolfo*, *supra* note 17 at 552.

[20] A.M. No. P-10-2784, October 19, 2011, 659 SCRA 403, 408.

The compassion extended by the Court in the aforementioned cases was not without legal basis. Section 53, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. (Citations omitted.)

In the case at bar, considering that Piang readily admitted his infraction and that this is Piang's first administrative case, a similar penalty of six (6) months suspension, instead of dismissal, is already sufficient.

The charges of gross misconduct and insubordination against Judge Indar

It took three directives and three years for Judge Indar to submit his Comment on the present administrative matter against him and Piang. In a letter dated April 20, 2010, Court Administrator Marquez required Judge Indar to comment on why he signed Piang's DTRs for February and March 2010 even if these were not yet due. In a Resolution issued more than a year later, on June 29, 2011, the Court likewise ordered Judge Indar to submit his comment on the matter of Piang's anomalous DTRs. Then, in another Resolution dated February 8, 2012, the Court already required Judge Indar to show cause why he failed to comply with the Resolution dated June 29, 2011 and directed him once more to file his comment. Despite being given notices of the aforementioned letter and Resolutions, Judge Indar filed his Comment only on October 7, 2013, and even then, he did not offer any apology and/or explanation for his long delay in complying with the directives/orders of the OCA and this Court. In fact, Judge Indar has still not complied with the show-cause order of the Court contained in its Resolution dated February 8, 2012. It is worthy to note further that Judge Indar, at that time, was already suspended pending investigation of another administrative case against him,[21] and Judge Indar

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[21] *Office of the Court Administrator v. Indar*, A.M. No. RTJ-10-2232, April 10, 2012, 669 SCRA 24.

failed to file his comment and compliance with the directives/ orders of the Court in said other case.

The conduct exhibited by Judge Indar constitutes no less than a clear act of defiance, revealing his deliberate disrespect and indifference to the authority of the Court. It is completely unacceptable especially for a judge.

In *Martinez v. Zoleta*[22] the Court declared:

> Certainly, this Court can never turn a blind eye, much less tolerate respondent's impiety and its odious effects on the administration of justice in this part of the judicial hemisphere. Again, we find the need and occasion to rule that a resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially, inadequately or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. Moreover, the Court should not and will not tolerate future indifference of respondents to administrative complaints and to resolutions requiring comment on such administrative complaints. (Citation omitted.)

In the *Benedictos* case, previously cited herein, the Court also made the following significant pronouncements:

> Additionally, the Court bears in mind Benedictos's failure to submit her comment, which constitutes clear and willful disrespect, not just for the OCA, but also for the Court, which exercises direct administrative supervision over trial court officers and employees through the former. In fact, it can be said that Benedictos's non-compliance with the OCA directives is tantamount to insubordination to the Court itself. Benedictos also directly demonstrated her disrespect to the Court by ignoring its Resolutions dated June 25, 2007 (ordering her to show cause for her failure to comply with the OCA directives and to file her comment) and March 26, 2008 (ordering her to pay a fine of ₱1,000.00 for her continuous failure to file a comment).

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[22] 374 Phil. 35, 47 (1999), citing *Josep v. Abarquez*, 330 Phil. 352, 359 (1996).

A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but also disrespect for the Court's lawful order and directive. This contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system. Benedictos's insolence is further aggravated by the fact that she is an employee of the Judiciary, who, more than an ordinary citizen, should be aware of her duty to obey the orders and processes of the Supreme Court without delay.[23] (Citations omitted.)

The Court was even more severe in *Soria v. Judge Villegas*,[24] ruling as follows:

Respondent should know that judges must respect the orders and decisions of higher tribunals, especially the Supreme Court from which all other courts take their bearings. A resolution of the Supreme Court is not to be construed as a mere request nor should it be complied with partially, inadequately or selectively.

Respondent's failure to comply with the repeated directives of this Court constitutes gross disrespect to its lawful orders and directives, bordering on willful contumacy. In *Alonto-Frayna v. Astih*, it was held:

> A judge who deliberately and continuously fails and refuses to comply with the resolution of this Court is guilty of gross misconduct and insubordination. It is gross misconduct and even outright disrespect for this Court for respondent to exhibit indifference to the resolutions requiring him to comment on the accusations contained in the complaint against him.

Respondent's continued refusal to comply with the lawful orders underscores his lack of respect for authority and a defiance for law and order which is at the very core of his position. This is anathema to those who seek a career in the judiciary because obedience to the

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[23] *Falsification of Daily Time Records of Ma. Emcisa A. Benedictos, Administrative Officer I, Regional Trial Court, Malolos City, Bulacan, supra* note 20 at 409.

[24] 461 Phil. 665, 669-670 (2003).

dictates of the law and justice is demanded of every judge. How else would respondent judge endeavor to serve justice and uphold the law, let alone lead his peers, when he disdains to follow even simple directives?

In the Judiciary, moral integrity is more than a cardinal virtue, it is a necessity. The exacting standards of conduct demanded from judges are designed to promote public confidence in the integrity and impartiality of the judiciary. When the judge himself becomes the transgressor of the law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity of the judiciary itself. (Citations omitted.)

Judging by the foregoing standards, the Court can only conclude that Judge Indar is guilty of gross misconduct and insubordination for his long delay in complying, as well as for his total non-compliance, with the directives/orders of the OCA and this Court.

Lastly, Judge Indar's excuse – that he inadvertently signed Piang's DTRs for February and March 2010 as it was submitted for signature together with the DTRs of the other employees of RTC-Branch 14 of Cotabato City – is unacceptable. Judge Indar should be fully aware of the weight of his signature as a judge, and he should take care in affixing the same on the documents before him.

In the discharge of the functions of his office, a judge must strive to act in a manner that puts him and his conduct above reproach and beyond suspicion. He must act with extreme care for his office indeed is laden with a heavy burden of responsibility. Certainly, a judge is enjoined, his heavy caseload notwithstanding, to pore over all documents whereon he affixes his signature and gives his official imprimatur.[25] The cavalier attitude displayed by Judge Indar in this case simply cannot be countenanced.

Therefore, Judge Indar is guilty of negligence in his failure to examine Piang's DTRs for February and March 2010 before signing the same. Even a cursory reading of the said DTRs

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[25] *Padilla v. Silerio,* 387 Phil. 538, 543 (2000).

would readily reveal that they were not yet due, since they covered dates that had not yet transpired.

This is now Judge Indar's fifth offense. In A.M. No. RTJ-05-1953,[26] the Court imposed upon him a fine of ₱10,000.00 for violating Rule 58, Section 5 of the Rules of Court, when he issued a preliminary injunction without any hearing and prior notice to the parties. In another case, A.M. No. RTJ-07-2069,[27] the Court found him guilty of gross misconduct for committing violations of the Code of Judicial Conduct, for which he was fined ₱25,000.00. For his third offense, in A.M. No. RTJ-10-2332,[28] he was already dismissed from the service for gross misconduct and dishonesty. In A.M. No. RTJ-11-2271,[29] he was fined once more for ₱20,000.00 for gross ignorance of the law and conduct unbecoming a judge. As per records, Judge Indar still has several more cases pending before the Court. All of these cases aggravate the imposable penalty against Judge Indar.

Since Judge Indar had already been dismissed from the service, a penalty of fine would suffice. Upon verification with the Leave Division, OAS, Judge Indar still has accumulated leave credits, the monetary value of which has not been claimed. For Judge Indar's gross misconduct, insubordination, and negligence, a fine of ₱40,000.00, as recommended by the OCA, is proper, such amount to be deducted from the monetary value of his accumulated leave credits.

WHEREFORE, in view of the foregoing, the Court hereby renders judgment:

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[26] *Sampiano v. Indar*, A.M. No. RTJ-05-1953, December 21, 2009, 608 SCRA 597.

[27] *Espina & Madarang, Co. v. Indar Al Haj*, A.M. No. RTJ-07-2069, December 14, 2011, 662 SCRA 380.

[28] *Office of the Court Administrator v. Indar*, *supra* note 21.

[29] *Magtibay v. Indar*, A.M. No. RTJ-11-2271, September 24, 2012, 681 SCRA 510.

(1) Finding Abdulrahman D. Piang **GUILTY** of dishonesty and imposing upon him the penalty of **SUSPENSION** for six (6) months to take effect immediately upon receipt of a copy of this judgment;

(2) Giving a **STERN WARNING** to Abdulrahman D. Piang that a repetition of the same or similar acts shall be dealt with more severely; and

(3) Finding former Judge Cader P. Indar **GUILTY** of gross misconduct, insubordination, and negligence, and imposing upon him a **FINE** in the amount of ₱40,000.00, to be deducted from the monetary value of his accumulated leave credits.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 163109. January 22, 2014]

MARICHU G. EJERA, *petitioner, vs.* **BEAU HENRY L. MERTO and ERWIN VERGARA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; PERSONNEL ACTIONS THAT MAY BE TAKEN IN THE GOVERNMENT SERVICE.— Section 26, Chapter 5, Title I-A of the *Administrative Code of 1987* lists the personnel actions that may be taken in the government service, namely: (1) appointment through certification; (2) promotion; (3) transfer; (4) reinstatement; (5) reemployment; (6) detail; and (7) reassignment.

2. ID.; ID.; THE SUBJECT OF THE ASSAILED OFFICE ORDERS WAS A REASSIGNMENT, WHICH IS NOT TO BE CONFUSED WITH A TRANSFER; TRANSFER AND REASSIGNMENT, DISTINGUISHED.— The subject of the assailed office orders was a reassignment, which is not to be confused with a transfer. The office orders themselves indicated that the personnel action involved was a reassignment, not a transfer, for, indeed, the petitioner was being moved from the organizational unit of the Office of the Provincial Agriculturist in Dumaguete City to that in the *barangays* of the Municipality of Siaton. Section 26, Chapter 5, Title I-A, Book V of the *Administrative Code of 1987* defines *transfer* and *reassignment* thusly: x x x "(3) *Transfer.* A transfer is a **movement from one position to another which is of equivalent rank, level, or salary without break in service involving the issuance of an appointment.** x x x (7) *Reassignment.* An employee may be reassigned **from one organizational unit to another in the same agency:** *Provided*, That such reassignment shall not involve a reduction in rank, status or salary."

3. ID.; ID.; REASSIGNMENT IS A "PERSONNEL" AND "CIVIL SERVICE" MATTER TO BE PROPERLY ADDRESSED IN ACCORDANCE WITH THE RULES AND GUIDELINES PRESCRIBED BY THE CSC.— The reassignment of the petitioner was a "personnel" and "Civil Service" matter to be properly addressed in accordance with the rules and guidelines prescribed by the CSC. Her resort to judicial intervention could not take the place of the grievance procedure then available to her. Her having shrouded her complaint in the RTC with language that presented a legal issue against the assailed office order of Merto did not excuse her premature resort to judicial action.

4. ID.; ID.; LOCAL GOVERNMENT CODE; POWERS OF LOCAL CHIEF EXECUTIVE; POWER TO SUPERVISE AND CONTROL; ONLY THE PROVINCIAL GOVERNOR COULD COMPETENTLY DETERMINE THE SOUNDNESS OF OFFICE ORDER NO. 008 OR THE PROPRIETY OF ITS IMPLEMENTATION.— The petitioner should also not ignore that Merto had issued Office Order No. 008 in his capacity as Provincial Agriculturist in order to implement the policy of the Provincial Government of Negros Oriental to provide regular and adequate agricultural

extension services to residents of remote interior *barangays* that were economically depressed but with potentials for agricultural development. In that context, only the Provincial Governor could competently determine the soundness of Office Order No. 008 or the propriety of its implementation, for the Provincial Governor had the power to supervise and control "programs, projects, services, and activities" of the province pursuant to Section 465 of Republic Act No. 7160 (*Local Government Code*) x x x.

5. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTION, NOT PRESENT IN THE CASE AT BAR.— It is true that the doctrine of exhaustion of administrative remedies is not an ironclad rule, but recognizes exceptions, specifically: (*a*) where there is estoppel on the part of the party invoking the doctrine; (*b*) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (*c*) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (*d*) where the amount involved is relatively so small as to make the rule impractical and oppressive; (*e*) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (*f*) where judicial intervention is urgent; (*g*) where the application of the doctrines may cause great and irreparable damage; (*h*) where the controversial acts violate due process; (*i*) where the issue of non-exhaustion of administrative remedies has been rendered moot; (*j*) where strong public interest is involved; and (*k*) in *quo warranto* proceedings. The exceptions did not cover the petitioner's case. x x x It ought to be beyond question that the factual issues could only be settled by a higher policy-determining provincial official like the Provincial Governor by virtue of his authority, experience and expertise to deal with the issues.

6. ID.; ID.; ID.; ID.; THE NON-OBSERVANCE OF THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES RESULTED IN THE COMPLAINT HAVING NO CAUSE OF ACTION.— The rule is that judicial intervention should only be availed of after all administrative remedies had been exhausted. The Judiciary must not intervene because Office Order No. 008 and Office Order No. 005 both concerned the implementation of a provincial executive policy.

x x x the non-observance of the doctrine of exhaustion of administrative remedies resulted in the complaint having no cause of action.

7. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; COULD BE RESOLVED BEFORE THE ADMISSION OF THE SUPPLEMENTAL COMPLAINT.— The petitioner filed her supplemental complaint to assail Office Order No. 005, and thereby raised issues identical to those raised in her original complaint involving Office Order No. 008. Hence, the RTC could already resolve Paltinca's motion to dismiss even without first admitting the supplemental complaint. Unlike an amended complaint, her supplemental complaint could "exist side-by-side" with the original complaint, because the supplemental complaint averred facts supervening from the filing of the complaint.

8. ID.; ID.; EFFECT OF FAILURE TO PLEAD; DEFAULT, DECLARATION OF; DEFENSE OF NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES RAISED BY A NON-DEFAULTING DEFENDANT INURED TO THE BENEFIT OF RESPONDENTS WHO HAD BEEN DECLARED IN DEFAULT.— The defense of non-exhaustion of her administrative remedies raised by Paltinca as the non-defaulting defendant inured to the benefit of the respondents who had been declared in default. For one, there was a common cause of action against the respondents and Paltinca. The non-exhaustion was fatal to such common cause of action. Moreover, such benefit inuring to the respondents despite default was predicated on Section 3, Rule 9 of the *1997 Rules of Civil Procedure* x x x.

APPEARANCES OF COUNSEL

Jocelyn T. Dabon for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

A public servant who has an issue against a directive for her re-assignment must exhaust her available administrative remedies

before resorting to judicial action. The non-exhaustion of available administrative remedies is fatal to the resort to judicial action.

This appeal by petition for review on *certiorari* assails the decision promulgated on July 23, 2003,[1] whereby the Court of Appeals (CA) affirmed the order issued on October 22, 2001 by the Regional Trial Court, Branch 33, in Dumaguete City (RTC) dismissing the petitioner's suit for injunction and damages on the ground of non-exhaustion of administrative remedies.[2] She had commenced the suit to restrain the respondents from investigating her refusal to comply with the office orders re-assigning her to a station other than her current place of work.

Antecedents

The petitioner held the position of Agricultural Center Chief I in the Office of the Provincial Agriculturist in Negros Oriental.[3] Her position was equivalent to the position of Senior Agriculturist, the next-in-rank to the position of Supervising Agriculturist. Upon the retirement of the Supervising Agriculturist, she applied for that position, but one Daisy Kirit was eventually appointed. She filed a protest against the appointment of Kirit before the Civil Service Commission (CSC) Regional Office in Cebu City,[4] but that said office dismissed her protest on May 24, 2000.[5] The Central CSC Office affirmed the dismissal on July 25, 2001 under its Resolution No. 011253.[6]

Meanwhile, on September 11, 2000, respondent Provincial Agriculturist Beau Henry L. Merto issued Office Order No.

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[1] *Rollo*, pp. 25-34; penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justice Marina L. Buzon (retired) and Associate Justice Jose C. Mendoza (now a Member of the Court) concurring.

[2] CA *rollo*, pp. 24-28.

[3] Records, p. 43.

[4] *Id.* at 26-32.

[5] *Id.* at 18.

[6] *Id.* at 93-96; penned by Commissioner J. Waldemar V. Valmores and concurred in by Chairperson Karina Constantino-David and Commissioner Jose F. Erestain, Jr.

008 (*Amending Office Order No. 008, Series of 2000, Re: Assignment/Re-assignment of BADC Area Coordinators and Development Team Members*)[7] "[i]n the interest of the service and to provide intensive agricultural extension services to residents of interior *barangays* under the Barangay Agricultural Development Center (BADC) Program in the province, which is aimed at achieving Food Security and Poverty Alleviation." Provincial Governor George P. Arnaiz of Negros Oriental was furnished a copy of Office Order No. 008.

To take effect on October 2, 2000, Office Order No. 008 stated:

> All Fishery Technologists presently assigned in the coastal areas, and in further pursuant to Special Order No. 001, Series of 2000 approved by the Provincial Governor, shall now radiate and devote 60% of their official time to their respective assigned BADC sites to provide technical assistance to participants in freshwater fish production. However, they shall maintain their present station as their official duty station.
>
> It has been an established policy of the present provincial administration to provide regular and adequate agricultural extension services to residents of remote interior *barangays* which are economically depressed but with potentials for agricultural development. The deployment of Agricultural and Fishery Technologists in the above mentioned *barangays*/*sitios* will improve farming activities of the residents in the long term and eventually trigger other developments that will improve their quality of life.[8]

The petitioner was one of the personnel re-assigned under Office Order No. 008. She was designated therein as the team leader in Lake Balanan and Sandulot in the Municipality of Siaton. When she refused to obey the office order, Merto ordered her on March 12, 2001 to explain in writing within 72 hours why no administrative disciplinary action should be taken against her.[9]

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

[8] *Id.* at 39.

[9] *Id.* at 40.

After she did not submit her explanation, Merto and respondent Atty. Erwin B. Vergara, the Provincial Legal Officer, summoned her to a conference. She and her counsel, Atty. Lenin R. Victoriano, attended the conference, but later on walked out allegedly because Vergara refused to record her objections to the questions she was being asked to answer.

On April 16, 2001,[10] the petitioner filed in the RTC her complaint for "final injunction with temporary restraining order and/or preliminary injunction, and damages," averring that Merto had issued Office Order No. 008 because he had so bitterly resented her attacks against him before the CSC Regional Office; that her reassignment was a virtual "banishment" because her position required her to stay in Dumaguete City; that the re-assignment was a "gross and blatant violation of the '*Omnibus Rules on Appointments and Other Personnel Actions*'" prohibiting whimsical and indiscriminate reassignments; that on account of her refusal to obey Office Order No. 008, Merto had charged her administratively; that Merto had no power to investigate, because the Provincial Governor was the proper disciplining authority; that the letter of Merto requiring her to explain violated Rule II, Section B of CSC Memorandum Circular No. 19, Series of 1999 requiring complaints to be under oath; that Merto connived with Vergara, who had issued a "Notice of Conference" on March 30, 2001 setting the preliminary conference on April 5, 2001; and that the conference could not be terminated when she and her counsel walked out due to the refusal of Vergara to allow the recording of the objections of her counsel.

The petitioner further averred that the RTC could rule on the basic ground that the respondents had no power to banish her to the far-flung areas of Municipality of Siaton through the "illegal, whimsical and malicious" Office Order No. 008; and that they acted in bad faith and with malice in violation of Article 19 and Article 20 of the *Civil Code*, thereby entitling her to damages. For reliefs, she prayed:

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[10] *Id.* at 2-10.

WHEREFORE, it is respectfully prayed:

(1) That, pending trial, a temporary restraining order and/or preliminary injunction be immediately issued, ordering the defendants to cease and desist from investigating plaintiff for refusal to obey Office Order No. 008, Series of 2000, issued by defendant Beau Henry L. Merto, and to refrain from committing any and all acts which might impair the efficacy of said temporary restraining order and/or preliminary injunction;

(2) That, after trial, judgment issue, declaring said Office Order No. 008, Series of 2000, as a violation of the Administrative Code of 1987, as implemented by the "Omnibus Rules on Appointments and Other Personnel Actions" issued by the Civil Service Commission, therefore, null and void;

(3) That, after trial, the preliminary injunction be made permanent;

(4) That, likewise after trial, defendants be ordered jointly and severally to pay plaintiff ₱500,000.00 moral damages, ₱200,000.00 exemplary damages, and ₱50,000.00 attorney's fees and litigation expenses, plus the costs.

Plaintiff respectfully prays for such other relief just and equitable.[11]

At the hearing on the issuance of the temporary restraining order, the RTC proposed the possible reconsideration of Office Order No. 008 especially because the petitioner complained of ill-health. The respondents expressed willingness to consider the proposal of the RTC, and promised to confer with the Provincial Governor. Later on, however, they manifested that they had apprised the Provincial Governor about the proposal but, with the Provincial Governor running for re-election, they could submit an approved written proposal only after the elections.[12] The RTC granted their prayer for an extension of time to submit their written proposal for an amicable settlement.[13]

Shortly after the elections, the petitioner filed a motion to declare the respondents in default for failing to answer the

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[11] *Id.* at 8-9.

[12] *Id.* at 62.

[13] *Id.* at 63.

complaint.[14] The RTC held in abeyance the resolution of the motion in view of the proposals and counterproposals regarding a compromise.[15] Later on, however, the respondents manifested that because the possible compromise would involve an order for a transfer or detail of the petitioner to another place, they and the Provincial Governor could not act because the *Omnibus Election Code* prohibited the appointment, promotion, and transfer of civil servants during the campaign period from January 2, 2001 to June 13, 2001 pursuant to COMELEC Resolution No. 3401.[16] Accordingly, the RTC declared the respondents in default.[17]

Prior to the *ex parte* hearing of the case on the merits, the petitioner moved for the admission of a supplemental complaint in order to implead Gregorio P. Paltinca, the Officer-in-Charge of the Office of the Provincial Agriculturist, for issuing on June 29, 2001 Office Order No. 005, Series of 2001, to amend Office Order No. 008.[18] Office Order No. 005 was re-assigning her to Barangays Balanan, Sandulot, and Jumalon in the Municipality of Siaton as her official duty stations.[19]

The supplemental complaint stated that Office Order No. 005, to take effect on July 2, 2001, had not been posted in the bulletin board of the Office of the Provincial Agriculturist; that she had not been furnished a copy of the order; that OIC Paltinca had acted with malice and evident bad faith by his failure to notify her of the re-assignment, which was "worse than the original re-assignment" by Merto, as it constituted her "banishment" from her office in Dumaguete City; that the re-assignment had violated Book V, Section 12 (2) and (3) of the *Administrative Code of 1987* prohibiting re-assignments that were

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[14] *Id.* at 64.

[15] *Id.* at 67.

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

[17] *Id.* at 70.

[18] *Id.* at 76.

[19] *Id.* at 82-85.

indiscriminately and whimsically done; that although the appointing and disciplining authority was the Provincial Governor, who had approved Office Order No. 005, Paltinca should be impleaded because it was he who had thereby violated the *Administrative Code of 1987*; and that she had refused to obey the two office orders for justifiable reasons because both were null and void *ab initio* as far as she was concerned.[20]

Paltinca moved to dismiss the supplemental complaint on the ground that the admission of the petitioner that the Provincial Governor, not he, was her appointing and disciplining authority exposed her lack of cause of action; that the non-inclusion of the Provincial Governor as the real party in interest was a fatal error; and that the failure of the petitioner to exhaust administrative remedies before going to court was also a ground for the dismissal of the case.[21]

The petitioner opposed Paltinca's motion to dismiss, contending that the Provincial Governor was neither an indispensable nor a necessary party inasmuch as Office Order No. 005 could be declared null and void without impleading the Provincial Governor, who could always intervene if he so desired; that there was no need for the exhaustion of administrative remedies because the issue was a purely legal one, *i.e.*, the nullity of the office orders in question; and that the motion to dismiss was premature because the trial court had not yet admitted the supplemental complaint.[22]

After the RTC deemed the motion to dismiss submitted for resolution,[23] Vergara filed a manifestation informing the RTC of the dismissal by the CSC Central Office of the petitioner's appeal (CSC Resolution No. 011253). Vergara argued that she had utilized the pendency of the appeal as her legal excuse in disobeying Office Order No. 008, which her affected co-employees

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[20] *Id.* at 78-81.

[21] *Id.* at 86-87.

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

[23] *Id.* at 90.

had dutifully obeyed; and that the dismissal of her appeal removed any valid reason or legal ground for her to disobey the office orders that the Provincial Governor had issued "for the good of the service and to promote our food security."[24]

The petitioner responded to the manifestation of Vergara, stating that she had moved for the reconsideration of CSC Resolution No. 011253, and that the outcome of her appeal in the CSC did not affect the case because the issue involved was the legality of her re-assignment.[25]

Ruling of the RTC

On October 22, 2001, the RTC dismissed the case, holding on the legality of Office Order No. 008 and Office Order No. 005 as follows:

> Section 7, Rule 1 of the Memorandum Circular No. 19, series of 1999 provides: Heads of departments, agencies, provinces, cities, municipalities and other instrumentalities shall have concurrent jurisdiction with the Commission, over their respective officers and employees. In the case at bar, it is the Chief Executive who has the power of disciplining over his subordinates. But issuance of Office Order No. 008 is not a penalty. Section 5, paragraph 3, Rule VII of the Omnibus Rules Implementing Book V of Executive Order No. 292, provides: Transfer shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefor. If the imployee (sic) believes that there is no justification for the transfer, he may appeal his case to the Commission.[26]

On the allegation of the petitioner that the "complaint" of Merto asking her to explain why she should not be disciplined for her refusal to obey Office Order No. 008, the RTC declared:

> This Court agrees with the plaintiff that a complaint against a civil servant shall not be given due course unless it is in writing

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[24] *Id.* at 91.

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

[26] CA *rollo*, pp. 26-29.

and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath (Section 8, Rule 11, Memorandum Circular No. 19, series of 1999). This is explained in Maloga v. Gella, 15 SCRA 370, which held that head or chief of office of the bureau or office is deemed to be acting in his official capacity and under his oath of office.

Lastly, the RTC opined that the petitioner should have first gone to the CSC to challenge the legality of Office Order No. 008 and Office Order No. 005 prior to her resort to the courts; and that, therefore, she had not exhausted all her administrative remedies considering that her case did not fall under any of the exceptions to the application of the doctrine on the exhaustion of administrative remedies.

Decision of the CA

Not satisfied, the petitioner appealed to the CA, contending that:

I.

THE LOWER COURT ERRED IN DISMISSING THE CASE AGAINST DEFENDANTS-APPELLEES BEAU HENRY L. MERTO AND ERWIN VERGARA FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES WHEN SAID DEFENDANTS-APPELLEES HAVE BEEN DECLARED IN DEFAULT. THUS, THEY NEVER RAISED THE ISSUE OF NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ARE, THEREFORE, DEEMED TO HAVE WAIVED SUCH DEFENSE;

II.

THE LOWER COURT ERRED IN DISMISSING THE CASE AS AGAINST DEFENDANT-APPELLEE GREGORIO P. PALTINCA FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES WHEN THE SAID COURT HAS NOT EVEN ACTED YET ON THE MOTION OF THE PLAINTIFF-APPELLANT TO ADMIT THE SUPPLEMENTAL COMPLAINT AGAINST HIM. THEREFORE, THE MOTION OF DEFENDANT-APPELLEEE GREGORIO P. PALTINCA TO DISMISS THE CASE ON THE GROUND OF FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES IS

PREMATURE. THE TRIAL COURT, FOR REASONS UNKNOWN, WAS TOO PRECIPITATE IN DISMISSING THE CASE; AND

III.

IN ANY EVENT, THE LOWER COURT ERRED IN DISMISSING THE CASE FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES BECAUSE THE ISSUE IS PURELY A LEGAL ONE AND NOTHING OF AN ADMINISTRATIVE NATURE IS TO BE AND CAN BE DONE. MOREOVER, THE CONTROVERTED ACT IS PATENTLY ILLEGAL.[27]

On July 23, 2003, the CA affirmed the RTC,[28] ruling that the legality of Office Order No. 008 and Office Order No. 005 could not be denied because they were "intended for public service." It observed that:

x x x. The impugned Office Orders were issued by defendants-appellees Merto and Paltinca in their capacity as heads of the Office of the Provincial Agriculturist and were duly approved by the Provincial Governor. More importantly, these Office Orders do not single out plaintiff-appellee for transfer to the interior localities of the province. They cannot therefore be considered as her personal banishment as a consequence of the protest she initiated for the appointment of Kirit.[29]

It pointed out that the petitioner should have appealed her transfer to the CSC conformably with the *Omnibus Rules Implementing Book V of the Administrative Code of 1987* that mandated an administrative appeal or remedy before a resort to judicial action instead of directly resorting to the court action.

On the petitioner's contention that the RTC precipitately acted on Paltinca's motion to dismiss because it had yet to admit her supplemental complaint, the CA observed:

Indeed, the trial court did not explicitly resolve to admit, in a separate order, plaintiff-appellant's Supplemental Complaint against

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[27] *Rollo*, pp. 30-31.

[28] *Supra* note 1.

[29] *Rollo*, p. 32.

defendant-appellee Paltinca prior to the latter's filing of a Motion to Dismiss the said supplemental complaint against him. To Our mind, however, the procedural lapse did not prejudice plaintiff-appellant's substantive rights. ***First,*** it must be noted that by filing the Supplemental Complaint against defendant-appellee Paltinca, plaintiff-appellant had intended it all along to be admitted by the trial court. ***Second,*** when plaintiff-appellant moved for the resolution of the Motion to Dismiss and her Opposition thereto, she, in effect, impliedly conceded the admission of the Supplemental Complaint subject of the pending incidents for, otherwise, what was there to dismiss and to oppose the dismissal of. ***Third,*** the trial court in fact indirectly admitted the Supplemental Complaint when it dismissed the case against all the defendants. ***Fourth*** and more importantly, even had the trial court decided to deny the Motion to Dismiss on the ground of prematurity, there was nothing to prevent the newly impleaded defendant from raising anew the defense of non-exhaustion of administrative remedies in his answer and the same would have been upheld and ultimately resulted in the dismissal of the case not only as against him but even as against the original defendants. ***Finally,*** jurisprudence dictates that departures from procedure may be forgiven where they do not appear to have impaired the substantive rights of the parties. As We have earlier noted, We perceive no impairment of plaintiff-appellant's substantive rights with the non-issuance by the trial court of a separate order admitting the supplemental complaint.[30]

As regards the petitioner's position that the respondents waived the defense of her non-exhaustion of administrative remedies by not filing their answer, the CA pronounced:

Under paragraph c, Section 3, Rule 9 of the 1997 Revised Rules on Civil Procedure, when a common cause of action is alleged against several defendants, some of whom filed an answer and the others failed to do so, thus, were declared in default, the court shall try the case against all defendants, defaulted and not defaulted, upon the answer thus filed and render judgment upon the evidence presented. Clearly, the answer of a non-defaulting defendant, such as that of the additional defendant Paltinca, inures to the benefit of those defaulted, like the original defendants Merto and Vergara, since

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[30] *Id.* at 32-33.

they all share a common fate in the action commenced by plaintiff-appellee. The trial court, therefore, did not err in appreciating the defense of non-exhaustion of administrative remedies raised by defendant-appellee Paltinca in favor of his co-defendants-appellees Merto and Vergara who had been declared in default by the trial court.

The petitioner moved for reconsideration, but the CA denied her motion.[31]

Hence, this appeal.

Issues

The petitioner submits that the CA erred in holding that: (*a*) her case did not constitute an exception to the rule on the exhaustion of administrative remedies; (*b*) a motion to dismiss could be acted upon even without an order admitting the supplemental complaint; and (*c*) the respondents as defaulted defendants could not benefit from the special defense of her non-exhaustion of administrative remedies raised by Paltinca, the non-defaulting defendant.[32]

Ruling of the Court

The appeal lacks merit.

I

Petitioner's non-exhaustion of her available administrative remedies was fatal to her cause

The petitioner alleges that Office Order No. 008 and Office Order No. 005 were illegal for violating the rule against indiscriminate and whimsical reassignment enunciated in the *Administrative Code of 1987*; that the issuances were really intended for her, who was based in Dumaguete City, "manifestly in the guise of assigning/reassigning her to the Barangay Agricultural Development Project to the far flung isolated

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[31] *Id.* at 35.

[32] *Id.* at 14.

mountainous areas in Sandulot and Jumalon, Siaton, Negros Oriental"; that the respondents could not issue the office orders because "the *transfer* of an employee without her consent is arbitrary for it is tantamount to removal without cause and therefore invalid as it is violative of her security of tenure"; that the *transfer* done without her consent amounted to her removal from office; that the legal issue she raised could be threshed out only by a court of justice, not by an administrative body; that her allegation that the office orders were "contrary to law and jurisprudence on the matter" only meant that she was raising a question of law, which ruled out administrative intervention; that in keeping with the broad discretion of courts in urgent matters, she would suffer an irreparable damage or injury unless there was judicial intervention; and that the fact that the office orders were intended for public service did not shield them from judicial scrutiny.

The petitioner argues that the declaration of the respondents in default resulted in the waiver of their defense of non-exhaustion of administrative remedies; and that the court had then no legal justification to dismiss the case on that ground inasmuch as the respondents did not file a motion to set aside the order of default.

In their comment, the respondents counter that the arguments of the petitioner had been thoroughly discussed and passed upon by the CA; and that she did not show that her appeal was one that the Court could take cognizance of.

In her reply, the petitioner insisted that the decision of the CA was rendered with grave abuse of discretion because the rule on exhaustion of administrative remedies was not absolute; that there were exceptions to the rule, such as when the question litigated was a purely legal one, or when applying the rule would not provide plain, speedy and adequate remedy, or when its application would cause great and irreparable damage; that a ground for judicial review would exist when an administrative determination was made without or in excess of authority; that Office Order No. 008 and Office Order No. 005 were issued without or in excess of authority; and that the CA overlooked

that her right to security of tenure and right to due process of law would be violated unless she went to court.

We cannot uphold the position of the petitioner.

Firstly, Section 26, Chapter 5, Title I-A, Book V of the *Administrative Code of 1987* lists the personnel actions that may be taken in the government service, namely: (1) appointment through certification; (2) promotion; (3) transfer; (4) reinstatement; (5) reemployment; (6) detail; and (7) reassignment.

The subject of the assailed office orders was a reassignment, which is not to be confused with a transfer. The office orders themselves indicated that the personnel action involved was a reassignment, not a transfer, for, indeed, the petitioner was being moved from the organizational unit of the Office of the Provincial Agriculturist in Dumaguete City to that in the *barangays* of the Municipality of Siaton.

Section 26, Chapter 5, Title I-A, Book V of the *Administrative Code of 1987* defines *transfer* and *reassignment* thusly:

x x x x x x x x x

(3) *Transfer*. A transfer is a **movement from one position to another which is of equivalent rank, level, or salary without break in service involving the issuance of an appointment.**

It shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefor. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission.

The transfer may be from one department or agency to another or from one organizational unit to another in the same department or agency: *Provided, however,* That any movement from the non-career service to the career service shall not be considered a transfer. (Emphasis supplied.)

x x x x x x x x x

(7) *Reassignment.* An employee may be reassigned **from one organizational unit to another in the same agency:** *Provided,* That

such reassignment shall not involve a reduction in rank, status or salary. (Emphasis supplied.)

x x x x x x x x x

The foregoing definition of *reassignment* has been adopted by the CSC in Section 10 of Rule VII (*Other Personnel Action*)[33] of the *Omnibus Rules Implementing Book V of the Administrative Code of 1987* (*Omnibus Rules*), declaring that a *reassignment* "is the movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary and does not require the issuance of an appointment."[34]

Rule III of CSC Memorandum Circular No. 40, Series of 1998 (*Revised Omnibus Rules on Appointments and Other*

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[33] The CSC enumerates in Section 1, Rule VII of the *Omnibus Rules* the personnel actions of (1) original appointment; (2) appointment through certification; (3) promotion; (4) transfer; (5) reinstatement; (6) reemployment; (7) detail; (8) secondment; (9) demotion; and (10) separation. It may be noted that items (1), (8), and (9) are not included in the enumeration of personnel actions in Book V, Title I A, Chapter 5, Sec. 26 of the *Administrative Code of 1987*.

[34] CSC Memorandum Circular No. 02-05, issued pursuant to CSC Resolution No. 041458 dated December 23, 2004, defines *reassignment* as the "movement of an employee across the organizational structure within the same department or agency, which does not involve a reduction in rank, status or salary." It also provides that "personnel movements involving *transfer* or *detail* should not be confused with reassignment since they are governed by separate rules." The reassignment of employees "with *station-specific* place of work indicated in their respective appointments shall be allowed only for a maximum period of one (1) year. An appointment is considered *station-specific* when the particular office or station where the position is located is specifically indicated on the face of the appointment paper. Station-specific appointment does not refer to a specified plantilla item number since it is used for purposes of identifying the particular position to be filled or occupied by the employee." However, if the appointment is *not station-specific,* the one-year maximum period shall not apply. Thus, reassignment of employees whose appointments do not specifically indicate the particular office or place of work has no definite period unless otherwise revoked or recalled by the Head of Agency, the CSC, or a competent court.

Personnel Actions) includes *reassignment* in the enumeration of personnel movements that do not require the issuance of a new appointment, to wit:

SEC. 6. **Other Personnel Movements.** The following personnel movements which will not require issuance of an appointment shall nevertheless ***require an office order by duly authorized official***.

a. **Reassignment** – movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary. ***If reassignment is without the consent of the employee being reassigned, it shall be allowed only for a maximum period of one year. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or if it constitutes constructive dismissal.***

Constructive dismissal exists when an employee quits his work because of the agency head's unreasonable, humiliating, or demeaning actuations which render continued work impossible. Hence, the employee is deemed to have been illegally dismissed. This may occur although there is no diminution or reduction of salary of the employee. ***It may be a transfer from a position of dignity to a more servile or menial job***.

No reassignment shall be undertaken if done indiscriminately or whimsically because the law is not intended as a convenient shield for the appointing/disciplining authority to harass or oppress a subordinate on the pretext of advancing and promoting public interest.

Reassignment of small salaried employees is not permissible if it causes significant financial dislocation.

Sufficient reasons to warrant the continued reassignment of the employee and performance of functions other than those attached to the position must be established. (Emphasis in the original; bold italics supplied.)

That the reassignment was made without the petitioner's consent can be deduced from her refusal to report to the station of her new assignment. Nonetheless, there is no record showing that she ever claimed that the reassignment involved a reduction in rank, status or salary. In addition, she was but one of several employees re-assigned pursuant to the questioned office orders.

In view of these circumstances, she could not decline the reassignment unless she would have a valid personal reason to refuse to abide by the office orders. Yet, it was only during the trial that she revealed that her refusal to accept the re-assignment had been because of her poor health condition, *i.e.*, due to her having had three caesarean sections and a myoma extraction, her obstetrician had advised her to refrain from extraneous activities including riding in the *habal-habal* (hired motorcycle) which was the only means of transportation to the *barangays* of the Municipality of Siaton.[35] But she lost the opportunity to ventilate her reason for refusing the reassignment by walking out of the conference instead of explaining her refusal to follow Office Order No. 008.

Secondly, under the *Administrative Code of 1987*, the CSC has the power and function to "[p]rescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws."[36] It also has the complementing power to render opinions and rulings "on all personnel and other Civil Service matters which shall be binding on all heads of departments, offices and agencies and which may be brought to the Supreme Court (now Court of Appeals) on *certiorari*."[37]

Pursuant to its rule-making authority, the CSC promulgated the *Omnibus Rules*, whose Rule XII, governing complaints and grievances, defines a *complaint* as "an employee's expressed (written or spoken) feelings of dissatisfaction with some aspects of his working conditions, relationships or status which are outside his control. This does not include those involving disciplinary actions which are governed by separate rules."[38] The same rule characterizes *grievance* as "a complaint in writing which has,

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[35] TSN, April 25, 2001, 34-35.

[36] Book V, Title I A, Chapter 3, Section 12 (2).

[37] *Id.* Section 12 (5).

[38] Section 1 (a).

in the first instance and in the employee's opinion, been ignored, overridden or dropped without due consideration."

The reassignment of the petitioner was a "personnel" and "Civil Service" matter to be properly addressed in accordance with the rules and guidelines prescribed by the CSC. Her resort to judicial intervention could not take the place of the grievance procedure then available to her. Her having shrouded her complaint in the RTC with language that presented a legal issue against the assailed office order of Merto did not excuse her premature resort to judicial action.

For one, the petitioner was aware that Merto's superior was the Provincial Governor, an official who could competently redress her grievance. She could have then challenged both the wisdom and the legality of Office Order No. 008, as well as the propriety of her reassignment to a station outside of Dumaguete City, before the Provincial Governor himself.[39] For her to do so was appropriate because of the need to resolve a local problem like her reassignment "within the local government."[40]

The petitioner should also not ignore that Merto had issued Office Order No. 008 in his capacity as Provincial Agriculturist

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[39] The *Local Government Code* provides:

Section 463. *Officials of the Provincial Government.* (a) There shall be in each province a governor, a vice governor, members of the Sangguniang Panlalawigan, a secretary to the Sangguniang Panlalawigan, a provincial treasurer, a provincial assessor, a provincial accountant, a provincial engineer, a provincial budget officer, a provincial planning and development coordinator, a provincial legal officer, a provincial social welfare and development officer, a provincial general services officer, a **provincial agriculturist** and a provincial veterinarian. (Bold emphasis supplied)

(b) In addition, the governor may appoint a provincial population officer, a provincial natural resources and environment officer, a provincial cooperative officer, a provincial architect and a provincial information officer.

x x x x x x x x x.

[40] *New Sun Valley Homeowners' Association, Inc. v. Sangguniang Barangay, Barangay Sun Valley, Parañaque City*, G.R. No. 156686, July 27, 2011, 654 SCRA 438, 463.

in order to implement the policy of the Provincial Government of Negros Oriental to provide regular and adequate agricultural extension services to residents of remote interior barangays that were economically depressed but with potentials for agricultural development. In that context, only the Provincial Governor could competently determine the soundness of Office Order No. 008 or the propriety of its implementation, for the Provincial Governor had the power to supervise and control "programs, projects, services, and activities" of the province pursuant to Section 465 of Republic Act No. 7160 (*Local Government Code*), which pertinently states:

Section 465. *The Chief Executive: Powers, Duties, Functions, and Compensation.*

(a) x x x.

(b) For efficient, effective and economical governance the purpose of which is the **general welfare of the province and its inhabitants** pursuant to Section 16 of this Code,[41] the provincial governor shall:

(1) Exercise **general supervision and control over all programs, projects, services, and activities of the provincial government,** and in this connection, shall:

(i) Determine the guidelines of provincial policies and be responsible to the Sangguniang Panlalawigan for the program of government;

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[41] This provision of the *Local Government Code* states:

Section 16. *General Welfare.* Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

(ii) Direct the formulation of the provincial development plan, with the assistance of the provincial development council, and upon approval thereof by the Sangguniang Panlalawigan, implement the same;

(iii) Present the program and propose policies and projects for the consideration of the Sangguniang Panlalawigan at the opening of the regular session of the Sangguniang Panlalawigan every calendar year and as often as may be deemed necessary as the general welfare of the inhabitants and the needs of the provincial government may require;

x x x. (Bold emphasis supplied)

Thirdly, the rule requiring the exhaustion of administrative remedies rests on the principle that the administrative agency, if afforded a complete chance to pass upon the matter again, will decide the same correctly. There are both legal and practical reasons for the rule. The administrative process is intended to provide less expensive and speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, therefore, the courts – for reasons of law, comity and convenience – will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum. [42]

The importance and value of the exhaustion of administrative remedies as a condition before resorting to judicial action cannot be brushed aside. As the Court points out in *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*:[43]

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions

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[42] *Union Bank of the Philippines v. Court of Appeals*, G.R. No. 131729, May 19, 1998, 290 SCRA 198, 219-220.

[43] G.R. No. 191427, May 30 , 2011, 649 SCRA 506, 511.

and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

The petitioner contends, however, that her case came under the exceptions to the application of the rule for the exhaustion of administrative remedies considering that her judicial challenge in the RTC related to the legality of Office Order No. 008 and Office Order No. 005.

The contention is untenable.

It is true that the doctrine of exhaustion of administrative remedies is not an ironclad rule, but recognizes exceptions, specifically: (*a*) where there is estoppel on the part of the party invoking the doctrine; (*b*) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (*c*) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (*d*) where the amount involved is relatively so small as to make the rule impractical and oppressive; (*e*) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (*f*) where judicial intervention is urgent; (*g*) where the application of the doctrines may cause great and irreparable damage; (*h*) where the controversial acts violate due process; (*i*) where the issue of non-exhaustion of administrative remedies has been rendered moot; (*j*) where strong public interest is involved; and (*k*) in *quo warranto* proceedings.[44]

The exceptions did not cover the petitioner's case. In her complaint, she assailed Office Order No. 008 on three basic legal grounds, namely: (*a*) the re-assignment, being "whimsical and indiscriminate," violated the *Omnibus Rules on Appointments and Other Personnel Actions*; (*b*) Merto had no power to

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[44] *Vigilar v. Aquino*, G.R. No. 180388, January 18, 2011, 639 SCRA 772, 777; *Republic v. Lacap*, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 265-266.

investigate her, considering that the Provincial Governor was the "proper disciplining authority"; and (*c*) whether the letter of Merto requiring her to explain her refusal to follow Office Order No. 008 should be under oath. Still, her immediate resort to the RTC remained premature, because the legal issues she seemingly raised were admittedly interlaced with factual issues, like whether or not Merto had issued Office Order No. 008 because of her having attacked him in her protest against Kirit as the appointee to the position of Supervising Agriculturist, and whether or not her reassignment constituted banishment from her office in Dumaguete City. She further averred that the reassignment had been whimsical and indiscriminate, an averment that surely called for factual basis. It ought to be beyond question that the factual issues could only be settled by a higher policy-determining provincial official like the Provincial Governor by virtue of his authority, experience and expertise to deal with the issues. The Provincial Governor should have been given a very meaningful opportunity to resolve the matter and to exhaust all opportunities for its resolution before bringing the action in court.[45]

The rule is that judicial intervention should only be availed of after all administrative remedies had been exhausted. The Judiciary must not intervene because Office Order No. 008 and Office Order No. 005 both concerned the implementation of a provincial executive policy. According to *Dimson (Manila), Inc. v. Local Water Utilities Administration*:[46]

> x x x. The doctrine of exhaustion of administrative remedies is a judicial recognition of certain matters that are peculiarly within the competence of the administrative agency to address. It operates as a shield that prevents the overarching use of judicial power and thus **hinders courts from intervening in matters of policy infused with administrative character**. The Court has always adhered to this precept, and it has no reason to depart from it now. (Bold emphasis supplied.)

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[45] *Teng v. Pahagac*, G.R. No. 169704, November 17, 2010, 635 SCRA 173, 185.

[46] G.R. No. 168656, September 22, 2010, 631 SCRA 59, 72.

Moreover, the non-observance of the doctrine of exhaustion of administrative remedies resulted in the complaint having no cause of action.[47] Hence, the RTC and the CA correctly dismissed the case.

Fourthly, the non-exhaustion by the petitioner had jurisdictional implications.

Verily, had the petitioner followed the grievance procedure under the CSC's *Omnibus Rules*, her next step would have been to elevate her case to the CSC itself,[48] the constitutional body charged with the *exclusive jurisdiction* not only over disciplinary actions against government officials and employees but also over cases involving personnel actions.

In *Corsiga v. Judge Defensor*,[49] which concerned the reassignment of an engineer in the National Irrigation Authority, the Court ruled:

> Section 13 Rule VII of the Rules Implementing Book V of Executive Order No. 292 (the Adm. Code of 1987) provides how appeal can be taken from a decision of a department or agency head. It states that such decision shall be brought to the Merit System Protection Board (now the CSC *En Banc* per CSC Resolution No. 93-2387 dated June 29, 1993). It is the intent of the Civil Service Law, in requiring the establishment of a grievance procedure in Rule XII, Section 6 of the same rules, that decisions of lower level officials be appealed to the agency head, then to the Civil Service Commission. Decisions of the Civil Service Commission, in turn, may be elevated to the Court of Appeals. **Under this set up, the trial court does**

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[47] *Sison v. Tablang,* G.R. No. 177011, June 5, 2009, 588 SCRA 727, 733.

[48] Section 8 (B) (2) of Rule 2 of the *Revised Rules on Administrative Cases in the Civil Service*, which the CSC issued on November 8, 2011 under CSC Resolution No. 1101502, provides that the CSC Regional Office shall "take cognizance" of "[d]ecisions of heads of agencies, except those of department secretaries and bureau heads within their geographical boundaries relative to protests and other personnel actions and other non-disciplinary actions brought before it on appeal."

[49] G.R. No. 139302, October 28, 2002, 391 SCRA 267, 272-273.

not have jurisdiction over personnel actions and, thus, committed an error in taking jurisdiction over Civil Case No. 22462. The trial court should have dismissed the case on motion of petitioner and let private respondent question RMO No. 52 before the NIA Administrator, and then the Civil Service Commission. As held in *Mantala v. Salvador*,[50] **cases involving personnel actions, reassignment included, affecting civil service employees, are within the exclusive jurisdiction of the Civil Service Commission**. (Emphasis supplied.)

II.

Paltinca's motion to dismiss could be resolved before the admission of the supplemental complaint

The petitioner insists that the RTC erroneously resolved Paltinca's motion to dismiss without first admitting her supplemental pleading.

The insistence is not correct. The petitioner filed her supplemental complaint to assail Office Order No. 005, and thereby raised issues identical to those raised in her original complaint involving Office Order No. 008. Hence, the RTC could already resolve Paltinca's motion to dismiss even without first admitting the supplemental complaint. Unlike an amended complaint, her supplemental complaint could "exist side-by-side" with the original complaint, because the supplemental complaint averred facts supervening from the filing of the complaint.[51] Rule 10 of the *1997 Rules of Civil Procedure* expressly provides:

> Section 6. *Supplemental pleadings.* – Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead

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[50] G.R. No. 101646, February 13, 1992, 206 SCRA 264.

[51] *Shoemart, Inc. v. Court of Appeals*, G.R. No. 86956, October 1, 1990, 190 SCRA 189, 196.

thereto within ten (10) days from notice of the order admitting the supplemental pleading.

The defense of non-exhaustion of her administrative remedies raised by Paltinca as the non-defaulting defendant inured to the benefit of the respondents who had been declared in default. For one, there was a common cause of action against the respondents and Paltinca.[52] The non-exhaustion was fatal to such common cause of action.[53] Moreover, such benefit inuring to the respondents despite default was predicated on Section 3, Rule 9 of the *1997 Rules of Civil Procedure*, to wit:

> Section 3. *Default; declaration of.* – If the defending party fails to answer within the time allowed therefore, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.
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> x x x x x x x x x.
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> (c) *Effect of partial default.* – When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.
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> x x x x x x x x x.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for its lack of merit; **AFFIRMS** the decision of the Court of Appeals promulgated on July 23, 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.

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[52] I Regalado, *Remedial Law Compendium*, 194.

[53] *Sison v. Tablang*, *supra* note 47; *Paat v. Court of Appeals*, G.R. No. 111107, January 10, 1997, 266 SCRA 167.

THIRD DIVISION

[G.R. No. 170701. January 22, 2014]

RALPH P. TUA, *petitioner, vs.* **HON. CESAR A. MANGROBANG, Presiding Judge, Branch 22, Regional Trial Court, Imus, Cavite; and ROSSANA HONRADO-TUA,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (RA 9262); SECTION 15 THEREOF; TEMPORARY PROTECTION ORDER (TPO); ***EX-PARTE*** **ISSUANCE OF TEMPORARY PROTECTION ORDER IS NOT VIOLATIVE OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION; EXPOUNDED.—** Petitioner particularly directs his constitutional attack on Section 15 of RA 9262 contending that had there been no *ex parte* issuance of the TPO, he would have been afforded due process of law and had properly presented his side on the matter; that the questioned provision simply encourages arbitrary enforcement repulsive to basic constitutional rights which affects his life, liberty and property. We are not impressed. In *Garcia v. Drilon*, wherein petitioner therein argued that Section 15 of RA 9262 is a violation of the due process clause of the Constitution, we struck down the challenge and held: x x x. There need not be any fear that the judge may have no rational basis to issue an *ex parte* order. The victim is required not only to verify the allegations in the petition, but also to attach her witnesses' affidavits to the petition. The grant of a TPO *ex parte* cannot, therefore, be challenged as violative of the right to due process. x x x. It should be pointed out that when the TPO is issued *ex parte*, the court shall likewise order that notice be immediately given to the respondent directing him to file an opposition within five (5) days from service. Moreover, the court shall order that notice, copies of the petition and TPO be served immediately on the respondent by the court sheriffs. The TPOs are initially effective for thirty (30) days from service on the respondent. Where no TPO is issued *ex parte*, the court will nonetheless

order the immediate issuance and service of the notice upon the respondent requiring him to file an opposition to the petition within five (5) days from service. The date of the preliminary conference and hearing on the merits shall likewise be indicated on the notice. The opposition to the petition which the respondent himself shall verify, must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued. It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side.

2. **ID.; ID.; ID.; ID.; THE ACT OF CONGRESS ENTRUSTING THE COURT WITH THE ISSUANCE OF PROTECTION ORDERS IS IN PURSUANCE OF ITS AUTHORITY TO SETTLE JUSTICIABLE CONTROVERSIES OR DISPUTES INVOLVING RIGHTS THAT ARE ENFORCEABLE AND DEMANDABLE BEFORE THE COURTS OF JUSTICE OR THE REDRESS OF WRONGS FOR VIOLATIONS OF SUCH RIGHTS.—** Section 2 of Article VIII of the 1987 Constitution provides that "the Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof." Hence, the primary judge of the necessity, adequacy, wisdom, reasonableness and expediency of any law is primarily the function of the legislature. The act of Congress entrusting us with the issuance of protection orders is in pursuance of our authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights.

3. **ID.; ID.; ID.; BARANGAY PROTECTION ORDER (BPO); THE AUTHORITY OF THE *PUNONG BARANGAY* TO ISSUE PROTECTION ORDERS IS PURELY EXECUTIVE IN NATURE, IN PURSUANCE OF HIS DUTY UNDER THE LOCAL GOVERNMENT CODE TO ENFORCE ALL LAWS AND ORDINANCES, AND TO MAINTAIN PUBLIC ORDER IN THE *BARANGAY*.—** [T]he issuance of a BPO by the *Punong Barangay* or, in his unavailability, by any available *Barangay Kagawad*, merely orders the perpetrator to desist from (a) causing physical harm to the woman or her

child; and (2) threatening to cause the woman or her child physical harm. Such function of the *Punong Barangay* is, thus, purely executive in nature, in pursuance of his duty under the Local Government Code to "enforce all laws and ordinances," and to "maintain public order in the *barangay*."

4. ID.; ID.; ID.; TEMPORARY PROTECTION ORDER (TPO); IT IS WITHIN THE COURT'S DISCRETION, BASED ON THE PETITION AND THE AFFIDAVIT ATTACHED THERETO, TO DETERMINE THAT THE VIOLENT ACTS AGAINST WOMEN AND THEIR CHILDREN FOR THE ISSUANCE OF A TEMPORARY PROTECTION ORDER HAVE BEEN COMMITTED.— [T]he court is authorized to issue a TPO on the date of the filing of the application after *ex parte* determination that there is basis for the issuance thereof. *Ex parte* means that the respondent need not be notified or be present in the hearing for the issuance of the TPO. Thus, it is within the court's discretion, based on the petition and the affidavit attached thereto, to determine that the violent acts against women and their children for the issuance of a TPO have been committed. In this case, the alleged acts of petitioner among others, *i.e.*, he cocked the gun and pointed the same to his head in order to convince respondent not to proceed with the legal separation case; feeding his other children with the food which another child spat out; and threatening the crying child with a belt to stop him from crying which was repeatedly done; and holding respondent by her nape when he got furious that she was asking him not to come often to their conjugal home and hold office thereat after their agreed separation and threatening her of withholding half of the financial support for the kids, while not conclusive, are enough bases for the issuance of a TPO. Petitioner's actions would fall under the enumeration of Section 5, more particularly, paragraphs a, d, e (2), f, h, and i.

5. ID.; ID.; ID.; ID.; ISSUANCE OF TEMPORARY PROTECTION ORDER AFFIRMED IN CASE AT BAR.— It is settled doctrine that there is grave abuse of discretion when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a

virtual refusal to perform the duty enjoined or to act at all in contemplation of law. We find that the CA did not err when it found no grave abuse of discretion committed by the RTC in the issuance of the TPO.

APPEARANCES OF COUNSEL

Tugonon & Associates Law Office for petitioner.
Rommel N. Cariño for private respondent.

D E C I S I O N

PERALTA, ***J.*:**

Before us is a petition for review on *certiorari* which seeks to annul the Decision[1] dated October 28, 2005 of the Court of Appeals (*CA*) issued in CA-G.R. SP No. 89939.

On May 20, 2005, respondent Rossana Honrado-Tua (*respondent*) filed with the Regional Trial Court (*RTC*) of Imus, Cavite a Verified Petition[2] for herself and in behalf of her minor children, Joshua Raphael, Jesse Ruth Lois, and Jezreel Abigail, for the issuance of a protection order, pursuant to Republic Act (RA) 9262 or the Anti-Violence Against Women and their Children Act of 2004, against her husband, petitioner Ralph Tua. The case was docketed as Civil Case No. 0464-05 and raffled-off to Branch 22. Respondent claimed that she and her children had suffered from petitioner's abusive conduct; that petitioner had threatened to cause her and the children physical harm for the purpose of controlling her actions or decisions; that she was actually deprived of custody and access to her minor children; and, that she was threatened to be deprived of her and her children's financial support.

Respondent and petitioner were married on January 10, 1998 in Makati City. They have three children, namely, Joshua Raphael

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[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Noel G. Tijam and Arturo G. Tayag, concurring; *rollo*, pp. 54-58.

[2] *Rollo*, pp. 129-132.

born on February 9, 1999, Jesse Ruth Lois, born on June 27, 2000, and Jezreel Abigail, born on December 25, 2001. In her Affidavit[3] attached to the petition, respondent claimed, among others, that: there was a time when petitioner went to her room and cocked his gun and pointed the barrel of his gun to his head as he wanted to convince her not to proceed with the legal separation case she filed; she hid her fears although she was scared; there was also an instance when petitioner fed her children with the fried chicken that her youngest daughter had chewed and spat out; in order to stop his child from crying, petitioner would threaten him with a belt; when she told petitioner that she felt unsafe and insecure with the latter's presence and asked him to stop coming to the house as often as he wanted or she would apply for a protection order, petitioner got furious and threatened her of withholding his financial support and even held her by the nape and pushed her to lie flat on the bed; and, on May 4, 2005, while she was at work, petitioner with companions went to her new home and forcibly took the children and refused to give them back to her.

On May 23, 2005, the RTC issued a Temporary Protection Order (TPO),[4] which we quote in full:

> Pursuant to the provisions of R.A. 9262, otherwise known as the "Anti-Violence Against Women and their Children Act of 2004, a Temporary Protection Order (TPO) effective for thirty (30) days from date of receipt is hereby issued against respondent Ralph P. Tua.
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> For the purpose of the implementation of the Temporary Protection Order, the respondent (herein petitioner Ralph) is hereby ordered to:
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> 1. Enjoin from committing and threatening to commit personally or through another, physical, verbal and emotional harm or abuse against the herein petitioner (respondent) and other family and household members;

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[3] *Id.* at 133-136.

[4] *Id.* at 60-61; per Judge Cesar A. Mangrobang.

2. Restrain from harassing, annoying, texting, telephoning, contacting or otherwise communicating with the petitioner (respondent) whether directly or indirectly or engaged in any psychological form of harassment;

3. Stay away from the petitioner (respondent) and other family and household members at a distance of 100 meters radius from the place of residence of the plaintiff and likewise to stay away from the residence, school, place of employment and other places frequented by the herein petitioner (respondent), and other family and household members.

4. Give and deliver the three (3) minor children of the petitioner (respondent) to the [latter] who shall have their temporary custody pending the determination of whether or not a permanent protection order shall issue.

VIOLATION OF THIS ORDER IS PUNISHABLE BY LAW.

The Sheriff of this Court, the PNP Imus, Cavite, or any Officers of the Law are hereby commanded to effect this Order immediately and to use necessary force and measures under the law to implement this Order.

Let the hearing for Permanent Protection Order be set on June 9, 2005 at 2:00 o'clock in the afternoon.

SO ORDERED.[5]

In his Comment[6] to respondent's Petition with Urgent Motion to Lift TPO, petitioner denied respondent's allegations and alleged, among others, that he had been maintaining a separate abode from petitioner since November 2004; that it was respondent who verbally abused and threatened him whenever their children's stay with him was extended; that respondent had been staying with a certain Rebendor Zuñiga despite the impropriety and moral implications of such set-up; that despite their written agreement that their minor children should stay in their conjugal home, the latter violated the same when she surreptitiously moved

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[5] *Id.* (Emphasis in the original)

[6] *Id.* at 62-66.

out of their conjugal dwelling with their minor children and stayed with said Zuñiga; and, that respondent is mentally, psychologically, spiritually and morally unfit to keep the children in her custody. Petitioner contended that the issuance of the TPO on May 23, 2005 is unconstitutional for being violative of the due process clause of the Constitution.

Without awaiting for the resolution of his Comment on the petition and motion to lift TPO, petitioner filed with the CA a petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order and preliminary injunction and hold departure order assailing the May 23, 2005 TPO issued by the RTC.

On June 9, 2005, the CA, in order not to render the petition moot and to avoid grave and irreparable injury, issued a temporary restraining order to temporarily enjoin the parties and their agents from enforcing the assailed May 23, 2005 TPO issued in Civil Case No. 0464-05.[7]

Petitioner later filed an Urgent Motion for Issuance of a Writ of Preliminary Injunction with Manifestation,[8] praying that the enforcement of all orders, decision to be issued by the RTC and all the proceedings therein be restrained. A hearing[9] was, subsequently, conducted on the motion.

On October 28, 2005, the CA issued its assailed decision, the decretal portion of which reads:

WHEREFORE, based on the foregoing premises, the instant petition is hereby **DENIED** for lack of merit. Accordingly, the assailed Temporary Protection Order dated May 23, 2002 (sic) issued

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[7] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Hakim S. Abdulhawid and Lucenito N. Tagle, concurring; CA *rollo*, pp. 86-87.

[8] *Id.* at 93-94.

[9] *Id.* at 144-177; In attendance were Associate Justices Elvi John S. Asuncion, Hakim S. Abdulhawid and Estela M. Perlas–Bernabe (now a member of the Supreme Court).

by the Regional Trial Court of Imus, Cavite, Branch 22 in Civil Case No. 0464-05 is **UPHELD**.[10]

In so ruling, the CA found that the petition filed by respondent under RA 9262 is still pending before the RTC; thus, the factual matters raised therein could not be passed upon in the petition for *certiorari* filed with it. The CA noted that during the pendency of the herein proceedings, petitioner filed an urgent motion to quash warrant issued by the RTC and which matter could not also be a subject of this petition which assails the TPO dated May 23, 2005 and that the motion to quash should have been filed with the RTC.

The CA found that the TPO dated May 23, 2005 was validly issued by the RTC and found no grave abuse of discretion in the issuance thereof as the same were in complete accord with the provision of RA 9262.

As to petitioner's argument that there was no basis for the issuance of the TPO, considering that the provision authorizing such issuance is unconstitutional, the CA ruled that since the matter raised herein was the RTC's alleged grave abuse of discretion in issuing the TPO, such matter could be resolved without having to rule on the constitutionality of RA 9262 and its provisions. And that the requisites that the constitutionality of the law in question be the very *lis mota* of the case was absent.

Dissatisfied, petitioner files the instant petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS WITH DUE RESPECT SERIOUSLY ERRED IN HOLDING AND FINDING IN A MANNER CONTRARY TO ESTABLISHED RULES AND JURISPRUDENCE THAT PUBLIC RESPONDENT COMMITTED NO GRAVE ABUSE OF DISCRETION WHEN THE LATTER ISSUED THE TEMPORARY PROTECTIVE ORDER (TPO) DATED 23 MAY 2005

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[10] *Rollo*, p. 58. (Emphasis in the original)

WITHOUT OBSERVING DUE PROCESS OF LAW AND CONSIDERATIONS OF JUSTICE AND BASIC HUMAN RIGHTS.

II

THE HONORABLE COURT OF APPEALS IN REFUSING TO RULE ON THE CONSTITUTIONALITY OF THE PROVISIONS OF RA 9262 HAS DECIDED THE CASE IN A MANNER NOT IN ACCORD WITH ESTABLISHED LAWS AND JURISPRUDENCE CONSIDERING THAT CONTRARY TO ITS FINDINGS THE CONSTITUTIONALITY OF THE SAID LAW IS THE *LIS MOTA* OF THE CASE.[11]

Petitioner claims that contrary to the stance of the CA in not deciding the issue of the constitutionality of RA 9262, the issue presented is the very *lis mota* in the instant case.

The issue of constitutionality of RA 9262 was raised by petitioner in his Comment to respondent's Petition with Urgent Motion to Lift TPO dated May 23, 2005 filed with the RTC. However, without awaiting for the resolution of the same, petitioner filed a petition for *certiorari* with the CA assailing the TPO issued for violating the due process clause of the Constitution. Contrary to the CA's finding that the matter raised in the petition filed with it was the RTC's alleged grave abuse of discretion in issuing the TPO which could be resolved without having to rule on the constitutionality of RA 9262 and its provisions, we find that since petitioner is assailing the validity of RA 9262 wherein respondent's right to a protection order is based upon, the constitutionality of the said law must first be decided upon. After all, the alleged unconstitutionality of RA 9262 is, for all intents and purposes, a valid cause for the non-issuance of a protection order.[12] Notwithstanding, however, we still find no merit to declare RA 9262 unconstitutional.

Petitioner particularly directs his constitutional attack on Section 15 of RA 9262 contending that had there been no *ex*

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[11] *Id.* at 25.

[12] *Garcia v. Drilon*, G. R. No. 179267, June 25, 2013, 699 SCRA 352, 401.

parte issuance of the TPO, he would have been afforded due process of law and had properly presented his side on the matter; that the questioned provision simply encourages arbitrary enforcement repulsive to basic constitutional rights which affects his life, liberty and property.

We are not impressed.

Section 15 of RA 9262 provides:

SECTION 15. *Temporary Protection Orders*. – Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after *ex parte* determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a [Permanent Protection Order] PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

In *Garcia v. Drilon*,[13] wherein petitioner therein argued that Section 15 of RA 9262 is a violation of the due process clause of the Constitution, we struck down the challenge and held:

A **protection order** is an order issued to prevent further acts of violence against women and their children, their family or household members, and to grant other necessary reliefs. Its purpose is to safeguard the offended parties from further harm, minimize any disruption in their daily life and facilitate the opportunity and ability to regain control of their life.

The scope of reliefs in protection orders is broadened to ensure that the victim or offended party is afforded all the remedies necessary to curtail access by a perpetrator to the victim. This serves to safeguard the victim from greater risk of violence; to accord the victim and any designated family or household member safety in the family residence, and to prevent the perpetrator from committing acts that jeopardize the employment and support of the victim. It also enables

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[13] *Supra*.

the court to award temporary custody of minor children to protect the children from violence, to prevent their abduction by the perpetrator and to ensure their financial support.

The rules require that petitions for protection order be in writing, signed and verified by the petitioner thereby undertaking full responsibility, criminal or civil, for every allegation therein. Since "time is of the essence in cases of VAWC if further violence is to be prevented," the court is authorized to issue *ex parte* a TPO after raffle but before notice and hearing when the life, limb or property of the victim is in jeopardy and there is reasonable ground to believe that the order is necessary to protect the victim from the immediate and imminent danger of VAWC or to prevent such violence, which is about to recur.

There need not be any fear that the judge may have no rational basis to issue an *ex parte* order. The victim is required not only to verify the allegations in the petition, but also to attach her witnesses' affidavits to the petition.

The grant of a TPO *ex parte* cannot, therefore, be challenged as violative of the right to due process. Just like a writ of preliminary attachment which is issued without notice and hearing because the time in which the hearing will take could be enough to enable the defendant to abscond or dispose of his property, in the same way, the victim of VAWC may already have suffered harrowing experiences in the hands of her tormentor, and possibly even death, if notice and hearing were required before such acts could be prevented. It is a constitutional commonplace that the ordinary requirements of procedural due process must yield to the necessities of protecting vital public interests, among which is protection of women and children from violence and threats to their personal safety and security.

It should be pointed out that when the TPO is issued *ex parte*, the court shall likewise order that notice be immediately given to the respondent directing him to file an opposition within five (5) days from service. Moreover, the court shall order that notice, copies of the petition and TPO be served immediately on the respondent by the court sheriffs. The TPOs are initially effective for thirty (30) days from service on the respondent.

Where no TPO is issued *ex parte*, the court will nonetheless order the immediate issuance and service of the notice upon the respondent requiring him to file an opposition to the petition within five (5)

days from service. The date of the preliminary conference and hearing on the merits shall likewise be indicated on the notice.

The opposition to the petition which the respondent himself shall verify, must be accompanied by the affidavits of witnesses and shall show cause why a temporary or permanent protection order should not be issued.

It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side. x x x. The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[14]

Petitioner also assails that there is an invalid delegation of legislative power to the court and to *barangay* officials to issue protection orders.

Section 2 of Article VIII of the 1987 Constitution provides that "the Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof." Hence, the primary judge of the necessity, adequacy, wisdom, reasonableness and expediency of any law is primarily the function of the legislature.[15] The act of Congress entrusting us with the issuance of protection orders is in pursuance of our authority to settle justiciable controversies or disputes involving rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such rights.[16]

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[14] *Id.* at 426-429. (Emphasis in the original; citations omitted)

[15] *NPC Employees Consolidated Union v. National Power Corporation*, 550 Phil. 199, 208-209 (2007).

[16] Philippine Constitution, Art. VIII, Sec. 1.

As to the issuance of protection order by the *Punong Barangay*, Section 14 pertinently provides:

> SEC. 14. *Barangay Protection Orders (BPOs); Who May Issue and How*. – Barangay Protection Orders (BPOs) refer to the protection order issued by the *Punong Barangay* ordering the perpetrator to desist from committing acts under Section 5 (a) and (b) of this Act. A *Punong Barangay* who receives applications for a BPO shall issue the protection order to the applicant on the date of filing after *ex parte* determination of the basis of the application. If the *Punong Barangay* is unavailable to act on the application for a BPO, the application shall be acted upon by any available *Barangay Kagawad*. If the BPO is issued by a *Barangay Kagawad*, the order must be accompanied by an attestation by the *Barangay Kagawad* that the *Punong Barangay* was unavailable at the time of the issuance of the BPO. BPOs shall be effective for fifteen (15) days. Immediately after the issuance of an *ex parte* BPO, the *Punong Barangay* or *Barangay Kagawad* shall personally serve a copy of the same on the respondent, or direct any *barangay* official to effect its personal service.
>
> The parties may be accompanied by a non-lawyer advocate in any proceeding before the *Punong Barangay*.

Hence, the issuance of a BPO by the *Punong Barangay* or, in his unavailability, by any available *Barangay Kagawad*, merely orders the perpetrator to desist from (1) causing physical harm to the woman or her child; and (2) threatening to cause the woman or her child physical harm. Such function of the *Punong Barangay* is, thus, purely executive in nature, in pursuance of his duty under the Local Government Code to "enforce all laws and ordinances," and to "maintain public order in the *barangay*."[17]

Petitioner assails that the CA erred in finding that the RTC did not commit grave abuse of discretion in issuing the TPO dated May 23, 2005 as the petition was bereft of any indication of grounds for the issuance of the same. Petitioner claims that while the issuance of the TPO is *ex parte*, there must be a judicial determination of the basis thereof. He contends that the allegations

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[17] *Garcia v. Drilon, supra* note 12, at 432.

in respondent's affidavit attached to the petition, and without admitting the same to be true, are nothing more than normal or usual quarrels between a husband and wife which are not grave or imminent enough to merit the issuance of a TPO.

We are not persuaded.

We quote again Section 15 of RA 9262 for ready reference, thus:

SECTION 15. *Temporary Protection Orders*. – Temporary Protection Orders (TPOs) refers to the protection order issued by the court on the date of filing of the application after *ex parte* determination that such order should be issued. A court may grant in a TPO any, some or all of the reliefs mentioned in this Act and shall be effective for thirty (30) days. The court shall schedule a hearing on the issuance of a PPO prior to or on the date of the expiration of the TPO. The court shall order the immediate personal service of the TPO on the respondent by the court sheriff who may obtain the assistance of law enforcement agents for the service. The TPO shall include notice of the date of the hearing on the merits of the issuance of a PPO.

Clearly, the court is authorized to issue a TPO on the date of the filing of the application after *ex parte* determination that there is basis for the issuance thereof. *Ex parte* means that the respondent need not be notified or be present in the hearing for the issuance of the TPO. Thus, it is within the court's discretion, based on the petition and the affidavit attached thereto, to determine that the violent acts against women and their children for the issuance of a TPO have been committed.

And Section 5 of the same law provides:

SECTION 5. *Acts of Violence Against Women and Their Children*.— The crime of violence against women and their children is committed through any of the following acts:

(a) Causing physical harm to the woman or her child;

(b) Threatening to cause the woman or her child physical harm;

(c) Attempting to cause the woman or her child physical harm;

(d) Placing the woman or her child in fear of imminent physical harm;

(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

(1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;

(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3) Depriving or threatening to deprive the woman or her child of a legal right;

(4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties;

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(1) Stalking or following the woman or her child in public or private places;

(2) Peering in the window or lingering outside the residence of the woman or her child;

(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5) Engaging in any form of harassment or violence;

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.

In this case, the alleged acts of petitioner among others, *i.e.*, he cocked the gun and pointed the same to his head in order to convince respondent not to proceed with the legal separation case; feeding his other children with the food which another child spat out; and threatening the crying child with a belt to stop him from crying which was repeatedly done; and holding respondent by her nape when he got furious that she was asking him not to come often to their conjugal home and hold office thereat after their agreed separation and threatening her of withholding half of the financial support for the kids, while not conclusive, are enough bases for the issuance of a TPO. Petitioner's actions would fall under the enumeration of Section 5, more particularly, paragraphs a, d, e (2), f, h, and i.

It is settled doctrine that there is grave abuse of discretion when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[18] We find that the CA did not err when

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[18] *Chua Huat v. Court of Appeals*, 276 Phil. 1, 18 (1991).

it found no grave abuse of discretion committed by the RTC in the issuance of the TPO.

The factual matters herein raised by petitioner should be presented during the hearing on the merits on the issuance of the Permanent Protection Order.

WHEREFORE, the petition is **DENIED.** The Decision dated October 28, 2005 of the Court of Appeals issued in CA-G.R. SP No. 89939, upholding the Regional Trial Court's issuance of the Temporary Protection Order dated May 23, 2005, is **AFFIRMED.** The Regional Trial Court of Imus, Cavite is hereby **ORDERED** to resolve with dispatch respondent's Petition for a Permanent Protection Order.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173540. January 22, 2014]

PEREGRINA MACUA *VDA. DE* AVENIDO, *petitioner, vs.* **TECLA HOYBIA AVENIDO,** *respondent.*

SYLLABUS

1. CIVIL LAW; MARRIAGE; THE FACT OF MARRIAGE MAY BE PROVEN BY RELEVANT EVIDENCE OTHER THAN THE MARRIAGE CERTIFICATE.— [I]n *Añonuevo v. Intestate Estate of Rodolfo G. Jalandoni,* we said, citing precedents, that: While a marriage certificate is considered the primary evidence of a marital union, it is not regarded as the sole and exclusive evidence of marriage. Jurisprudence teaches that the fact of marriage may be proven by relevant

evidence other than the marriage certificate. Hence, even a person's birth certificate may be recognized as competent evidence of the marriage between his parents. The error of the trial court in ruling that without the marriage certificate, no other proof of the fact can be accepted, has been aptly delineated in *Vda de Jacob v. Court of Appeals*. Thus: It should be stressed that the due execution and the loss of the marriage contract, both constituting the *conditio sine qua non* for the introduction of secondary evidence of its contents, were shown by the very evidence they have disregarded. They have thus confused the evidence to show due execution and loss as "secondary" evidence of the marriage. In *Hernaez v. Mcgrath*, the Court clarified this misconception thus: x x x [T]he court below was entirely mistaken in holding that parol evidence of the execution of the instrument was barred. *The court confounded the execution and the contents of the document.* It is the contents, x x x which may not be prove[n] by secondary evidence when the instrument itself is accessible. Proofs of the execution are not dependent on the existence or non-existence of the document, and, as a matter of fact, such proofs of the contents: due execution, besides the loss, has to be shown as foundation for the inroduction of secondary evidence of the contents. x x x Evidence of the execution of a document is, in the last analysis, necessarily collateral or primary. *It generally consists of parol testimony or extrinsic papers. Even when the document is actually produced, its authencity is not necessarily, if at all, determined from its face or recital of its contents but by parol evidence.* At the most, failure to produce the document, when available, to establish its execution may effect the weight of the evidence presented but not the admissibility of such evidence.

2. ID.; ID.; PRESUMPTION OF MARRIAGE; PERSONS DWELLING TOGETHER IN APPARENT MATRIMONY ARE PRESUMED, IN THE ABSENCE OF COUNTER-PRESUMPTION OR EVIDENCE SPECIAL TO THE CASE, TO BE IN FACT MARRIED; RATIONALE BEHIND THE PRESUMPTION.— The starting point then, is the presumption of marriage. As early as the case of *Adong v. Cheong Seng Gee*, this Court has elucidated on the rationale behind the presumption: The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation,

an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. A presumption established by our Code of Civil Procedure is that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage. (Sec. 334, No. 28*) Semper – praesumitur pro matrimonio* – Always presume marriage. In the case at bar, the establishment of the fact of marriage was completed by the testimonies of Adelina, Climaco and Tecla; the unrebutted fact of the birth within the cohabitation of Tecla, and Eustaquio of four (4) children coupled with the certificates of the children's birth and baptism; and the certifications of marriage issued by the parish priest of the Most Holy Trinity Cathedral of Talibon, Bohol.

APPEARANCES OF COUNSEL

Edgardo T. Mata and Romero A. Boniel for petitioner.
Apolinario Veruasa for respondent.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the 31 August 2005 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 79444, which reversed the 25 March 2003 Decision[2] of the Regional Trial Court (RTC), Branch 8 of Davao City, in a complaint for

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[1] *Rollo*, pp. 10-24; Penned by Associate Justice Myrna Dimaranan-Vidal with Associate Justices Teresita Dy-Liacco Flores and Edgardo A. Camello concurring.

[2] *Id.* at 225-232; Penned by Judge Salvador M. Ibarreta, Jr.

Declaration of Absolute Nullity of Marriage docketed as Civil Case No. 26, 908-98.

The Facts

This case involves a contest between two women both claiming to have been validly married to the same man, now deceased.

Respondent Tecla Hoybia Avenido (Tecla) instituted on 11 November 1998, a Complaint for Declaration of Nullity of Marriage against Peregrina Macua *Vda. de* Avenido (Peregrina) on the ground that she (Tecla), is the lawful wife of the deceased Eustaquio Avenido (Eustaquio). In her complaint, Tecla alleged that her marriage to Eustaquio was solemnized on 30 September 1942 in Talibon, Bohol in rites officiated by the Parish Priest of the said town. According to her, the fact of their marriage is evidenced by a Marriage Certificate recorded with the Office of the Local Civil Registrar (LCR) of Talibon, Bohol. However, due to World War II, records were destroyed. Thus, only a Certification[3] was issued by the LCR.

During the existence of Tecla and Eustaquio's union, they begot four (4) children, namely: Climaco H. Avenido, born on 30 March 1943; Apolinario H. Avenido, born on 23 August 1948; Editha A. Ausa, born on 26 July 1950, and Eustaquio H. Avenido, Jr., born on 15 December 1952. Sometime in 1954, Eustaquio left his family and his whereabouts was not known. In 1958, Tecla and her children were informed that Eustaquio was in Davao City living with another woman by the name of Buenaventura Sayson who later died in 1977 without any issue.

In 1979, Tecla learned that her husband Eustaquio got married to another woman by the name of Peregrina, which marriage she claims must be declared null and void for being bigamous

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[3] Records, p. 116; Exhibit "A", the certification states:

x x x [T]he records of marriages during the period 1900 to 1944 were totally destroyed by Second World War. Hence, we cannot issue as requested a true transcription from the Register of Marriages or true copy of the Certificate of Marriage between [EUSTAQUIO] and [TECLA], who are alleged to have been married on September 30, 1942 in this city/municipality.

– an action she sought to protect the rights of her children over the properties acquired by Eustaquio.

On 12 April 1999, Peregrina filed her answer to the complaint with counterclaim,[4] essentially averring that she is the legal surviving spouse of Eustaquio who died on 22 September 1989 in Davao City, their marriage having been celebrated on 30 March 1979 at St. Jude Parish in Davao City. She also contended that the case was instituted to deprive her of the properties she owns in her own right and as an heir of Eustaquio.

Trial ensued.

Tecla presented testimonial and documentary evidence consisting of:

1) Testimonies of Adelina Avenido-Ceno (Adelina), Climaco Avenido (Climaco) and Tecla herself to substantiate her alleged prior existing and valid marriage with (sic) Eustaquio;

2) Documentary evidence such as the following:

    a. Certification of Loss/Destruction of Record of Marriage from 1900 to 1944 issued by the Office of the Civil Registrar, Municipality of Talibon, Bohol;[5]

    b. Certification of Submission of a copy of Certificate of Marriage to the Office of the Civil Registrar General, National Statistics Office (NSO), R. Magsaysay Blvd., Sta Mesa, Manila;[6]

    c. Certification that Civil Registry records of births, deaths and marriages that were actually filed in the Office of the Civil Registrar General, NSO Manila, started only in 1932;[7]

    d. Certification that Civil Registry records submitted to the Office of the Civil Registrar General, NSO,

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[4] *Id.* at 22-28.

[5] *Id.* at 116; Exhibit "A".

[6] *Id.*; Exhibit "A-1".

[7] *Id.* at 117; Exhibit "B".

from 1932 to the early part of 1945, were totally destroyed during the liberation of Manila;[8]

e. Certification of Birth of Apolinario Avenido;[9]

f. Certification of Birth of Eustaquio Avenido, Jr.;[10]

g. Certification of Birth of Editha Avenido;[11]

h. Certification of Marriage between Eustaquio Sr., and Tecla issued by the Parish Priest of Talibon, Bohol on 30 September 1942;[12]

i. Certification that record of birth from 1900 to 1944 were destroyed by Second World War issued by the Office of the Municipal Registrar of Talibon, Bohol, that they cannot furnish as requested a true transcription from the Register of Birth of Climaco Avenido;[13]

j. Certificate of Baptism of Climaco indicating that he was born on 30 March 1943 to spouses Eustaquio and Tecla;[14]

k. Electronic copy of the Marriage Contract between Eustaquio and Peregrina.[15]

On the other hand, Peregrina testified on, among others, her marriage to Eustaquio that took place in Davao City on 3 March 1979; her life as a wife and how she took care of Eustaquio when he already had poor health, as well as her knowledge that Tecla is not the legal wife, but was once a common law wife of Eustaquio.[16] Peregrina likewise set forth documentary evidence

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[8] *Id.*; Exhibit "B-1".

[9] *Id.* at 118; Exhibit "C".

[10] *Id.* at 119; Exhibit "D".

[11] *Id.* at 120; Exhibit "E".

[12] *Id.* at 121; Exhibit "F".

[13] *Id.* at 122; Exhibit "G".

[14] *Id.* at 123; Exhibit "G-1".

[15] *Id.* at 124; Exhibit "H".

[16] TSN, 25 July 2001, pp. 11-12.

to substantiate her allegations and to prove her claim for damages, to wit:

1) Marriage Contract[17] between Peregrina and the late Eustaquio showing the date of marriage on 3 March 1979;

2) Affidavit of Eustaquio executed on 22 March 1985 declaring himself as single when he contracted marriage with the petitioner although he had a common law relation with one Tecla Hoybia with whom he had four (4) children namely: Climaco, Tiburcio, Editha and Eustaquio, Jr., all surnamed Avenido;[18]

3) Letter of Atty. Edgardo T. Mata dated 15 April 2002, addressed to the Civil Registrar of the Municipality of Alegria, Surigao del Norte;[19] and

4) Certification dated 25 April 2002 issued by Colita P. Umipig, in her capacity as the Civil Registrar of Alegria, Surigao del Norte.[20]

In addition, as basis for the counterclaim, Peregrina averred that the case was initiated in bad faith so as to deprive her of the properties she owns in her own right and as an heir of Eustaquio; hence, her entitlement to damages and attorney's fees.

On 25 March 2003, the RTC rendered a Decision[21] denying Tecla's petition, as well as Peregrina's counter-claim. The dispositive portion thereof reads:

For The Foregoing, the petition for the "**DECLARATION OF NULLITY OF MARRIAGE**" filed by petitioner **TECLA HOYBIA AVENIDO** against respondent **PEREGRINA MACUA** is hereby **DENIED**.

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[17] Records, p. 12; Exhibit "1".

[18] *Id.* at 143; Exhibit "2".

[19] *Id.* at 144; Exhibit "3".

[20] *Id.* at 145; Exhibit "4".

[21] *Id.* at 150-156.

The "**COUNTERCLAIM**" filed by respondent **PEREGRINA MACUA** against petitioner **TECLA HOYBIA AVENIDO** is hereby **DISMISSED.**[22]

Not convinced, Tecla appealed to the CA raising as error the trial court's alleged disregard of the evidence on the existence of her marriage to Eustaquio.

In its 31 August 2005 Decision,[23] the CA ruled in favor of Tecla by declaring the validity of her marriage to Eustaquio, while pronouncing on the other hand, the marriage between Peregrina and Eustaquio to be bigamous, and thus, null and void. The CA ruled:

> The court *a quo* committed a reversible error when it disregarded (1) the testimonies of [Adelina], the sister of EUSTAQUIO who testified that she personally witnessed the wedding celebration of her older brother EUSTAQUIO and [Tecla] on 30 September 1942 at Talibon, Bohol; [Climaco], the eldest son of EUSTAQUIO and [Tecla], who testified that his mother [Tecla] was married to his father, EUSTAQUIO, and [Tecla] herself; and (2) the documentary evidence mentioned at the outset. It should be stressed that the due execution and the loss of the marriage contract, both constituting the *condition sine qua non*, for the introduction of secondary evidence of its contents, were shown by the very evidence the trial court has disregarded.[24]

Peregrina now questions the said ruling assigning as error, among others, the failure of the CA to appreciate the validity of her marriage to Eustaquio. For its part, the Office of the Solicitor General (OSG), in its Memorandum[25] dated 5 June 2008, raises the following legal issues:

1. Whether or not the court can validly rely on the "presumption of marriage" to overturn the validity of a subsequent marriage;

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[22] *Id.* at 156.

[23] *Rollo*, pp. 10-24.

[24] *Id.* at 22.

[25] *Id.* at 361-385.

2. Whether or not secondary evidence may be considered and/or taken cognizance of, without proof of the execution or existence and the cause of the unavailability of the best evidence, the original document; and

3. Whether or not a Certificate of Marriage issued by the church has a probative value to prove the existence of a valid marriage without the priest who issued the same being presented to the witness stand.[26]

Our Ruling

Essentially, the question before us is whether or not the evidence presented during the trial proves the existence of the marriage of Tecla to Eustaquio.

The trial court, in ruling against Tecla's claim of her prior valid marriage to Eustaquio relied on Tecla's failure to present her certificate of marriage to Eustaquio. Without such certificate, the trial court considered as useless the certification of the Office of the Civil Registrar of Talibon, Bohol, that it has no more records of marriages during the period 1900 to 1944. The same thing was said as regards the Certification issued by the National Statistics Office of Manila. The trial court observed:

Upon verification from the NSO, Office of the Civil Registrar General, Manila, it, likewise, issued a Certification (Exhibit "B") stating that:

> records from 1932 up to early part of 1945 were totally destroyed during the liberation of Manila on February 4, 1945. What are presently filed in this office are records from the latter part of 1945 to date, except for the city of Manila which starts from 1952. Hence, this office has no way of verifying and could not issue as requested, certified true copy of the records of marriage between [Eustaquio] and [Tecla], alleged to have been married on 30th September 1942, in Talibon, Bohol.[27]

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[26] *Id.* at 373.

[27] *Id.* at 229-230.

In the absence of the marriage contract, the trial court did not give credence to the testimony of Tecla and her witnesses as it considered the same as mere self-serving assertions. Superior significance was given to the fact that Tecla could not even produce her own copy of the said proof of marriage. Relying on Section 3 (a) and Section 5, Rule 130 of the Rules of Court, the trial court declared that Tecla failed to prove the existence of the first marriage.

The CA, on the other hand, concluded that there was a presumption of lawful marriage between Tecla and Eustaquio as they deported themselves as husband and wife and begot four (4) children. Such presumption, supported by documentary evidence consisting of the same Certifications disregarded by the trial court, as well as the testimonial evidence especially that of Adelina Avenido-Ceno, created, according to the CA, sufficient proof of the fact of marriage. Contrary to the trial court's ruling, the CA found that its appreciation of the evidence presented by Tecla is well in accord with Section 5, Rule 130 of the Rules of Court.

We uphold the reversal by the CA of the decision of the trial court. Quite recently, in *Añonuevo v. Intestate Estate of Rodolfo G. Jalandoni*,[28] we said, citing precedents, that:

> While a marriage certificate is considered the primary evidence of a marital union, it is not regarded as the sole and exclusive evidence of marriage. Jurisprudence teaches that the fact of marriage may be proven by relevant evidence other than the marriage certificate. Hence, even a person's birth certificate may be recognized as competent evidence of the marriage between his parents.

The error of the trial court in ruling that without the marriage certificate, no other proof of the fact can be accepted, has been aptly delineated in *Vda. de Jacob v. Court of Appeals*.[29] Thus:

> It should be stressed that the due execution and the loss of the marriage contract, both constituting the *conditio sine qua non* for

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[28] G.R. No. 178221, 1 December 2010, 636 SCRA 420, 429-430.

[29] 371 Phil. 693 (1999).

the introduction of secondary evidence of its contents, were shown by the very evidence they have disregarded. They have thus confused the evidence to show due execution and loss as "secondary" evidence of the marriage. In *Hernaez v. Mcgrath*, the Court clarified this misconception thus:

> x x x [T]he court below was entirely mistaken in holding that parol evidence of the execution of the instrument was barred. *The court confounded the execution and the contents of the document*. It is the contents, x x x which may not be prove[n] by secondary evidence when the instrument itself is accessible. Proofs of the execution are not dependent on the existence or non-existence of the document, and, as a matter of fact, such proofs of the contents: due execution, besides the loss, has to be shown as foundation for the inroduction of secondary evidence of the contents.
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> x x x x x x x x x
>
> Evidence of the execution of a document is, in the last analysis, necessarily collateral or primary. *It generally consists of parol testimony or extrinsic papers. Even when the document is actually produced, its authencity is not necessarily, if at all, determined from its face or recital of its contents but by parol evidence.* At the most, failure to produce the document, when available, to establish its execution may effect the weight of the evidence presented but not the admissibility of such evidence.

The Court of Appeals, as well as the trial court, tried to justify its stand on this issue by relying on *Lim Tanhu v. Ramolete*. But even there, we said that "marriage may be prove[n] by other competent evidence.

Truly, the execution of a document may be proven by the parties themselves, by the swearing officer, by witnesses who saw and recognized the signatures of the parties; or even by those to whom the parties have previously narrated the execution thereof. The Court has also held that "[t]he loss may be shown by any person who [knows] the fact of its loss, or by any one who ha[s] made, in the judgment of the court, a sufficient examination in the place or places where the document or papers of similar character are usually kept by the person in whose custody the document lost was, and has been unable to find it; or who has made any other investigation

which is sufficient to satisfy the court that the instrument [has] indeed [been] lost."

In the present case, due execution was established by the testimonies of Adela Pilapil, who was present during the marriage ceremony, and of petitioner herself as a party to the event. The subsequent loss was shown by the testimony and the affidavit of the officiating priest, Monsignor Yllana, as relevant, competent and admissible evidence. Since the due execution and the loss of the marriage contract were clearly shown by the evidence presented, secondary evidence–testimonial and documentary–may be admitted to prove the fact of marriage.[30]

As correctly stated by the appellate court:

In the case at bench, the celebration of marriage between [Tecla] and EUSTAQUIO was established by the testimonial evidence furnished by [Adelina] who appears to be present during the marriage ceremony, and by [Tecla] herself as a living witness to the event. The loss was shown by the certifications issued by the NSO and LCR of Talibon, Bohol. These are relevant, competent and admissible evidence. Since the due execution and the loss of the marriage contract were clearly shown by the evidence presented, secondary evidence – testimonial and documentary – may be admitted to prove the fact of marriage. In PUGEDA *v.* TRIAS, the Supreme Court held that "*marriage may be proven by any competent and relevant evidence. The testimony by one of the parties to the marriage or by one of the witnesses to the marriage has been held to be admissible to prove the fact of marriage. The person who officiated at the solemnization is also competent to testify as an eyewitness to the fact of marriage*."

x x x x x x x x x

The court *a quo* committed a reversible error when it disregarded (1) the testimonies of [Adelina], the sister of EUSTAQUIO who testified that she personally witnessed the wedding celebration of her older brother EUSTAQUIO and [Tecla] on 30 September 1942 at Talibon, Bohol; [Climaco], the eldest son of EUSTAQUIO and [Tecla], who testified that his mother [Tecla] was married to his father, EUSTAQUIO, and [Tecla] herself; and (2) the documentary evidence mentioned at the outset. It should be stressed that the due

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[30] *Id.* at 705-707.

execution and the loss of the marriage contract, both constituting the *condition sine qua non* for the introduction of secondary evidence of its contents, were shown by the very evidence the trial court has disregarded.[31]

The starting point then, is the presumption of marriage.

As early as the case of *Adong v. Cheong Seng Gee*,[32] this Court has elucidated on the rationale behind the presumption:

> The basis of human society throughout the civilized world is that of marriage. Marriage in this jurisdiction is not only a civil contract, but it is a new relation, an institution in the maintenance of which the public is deeply interested. Consequently, every intendment of the law leans toward legalizing matrimony. Persons dwelling together in apparent matrimony are presumed, in the absence of any counter-presumption or evidence special to the case, to be in fact married. The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. A presumption established by our Code of Civil Procedure is that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage. (Sec. 334, No. 28) *Semper – praesumitur pro matrimonio* – Always presume marriage.

In the case at bar, the establishment of the fact of marriage was completed by the testimonies of Adelina, Climaco and Tecla; the unrebutted fact of the birth within the cohabitation of Tecla and Eustaquio of four (4) children coupled with the certificates of the children's birth and baptism; and the certifications of marriage issued by the parish priest of the Most Holy Trinity Cathedral of Talibon, Bohol.

WHEREFORE, the Petition is **DENIED** and the assailed Decision of the Court of Appeals in CA-G.R. CV No. 79444 is **AFFIRMED**. The marriage between petitioner Peregrina Macua Avenido and the deceased Eustaquio Avenido is hereby declared **NULL** and **VOID**. No pronouncement as to costs.

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[31] *Rollo*, pp. 20-22.

[32] 43 Phil. 43, 56 (1922).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184045. January 22, 2014]

SPOUSES NICASIO C. MARQUEZ and ANITA J. MARQUEZ, *petitioners, vs.* **SPOUSES CARLITO ALINDOG and CARMEN ALINDOG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; THE ISSUANCE OF A WRIT OF POSSESSION IN FAVOR OF THE PURCHASER IN AN EXTRA-JUDICIAL FORECLOSURE SALE SHOULD COME AS A MATTER OF COURSE AND CONSTITUTES A MINISTERIAL DUTY ON THE PART OF THE COURT UNLESS A THIRD PARTY IS ACTUALLY HOLDING THE PROPERTY BY ADVERSE TITLE OR RIGHT, SUCH AS THAT OF A CO-OWNER, TENANT OR USUFRUCTUARY, OR CLAIMS A RIGHT SUPERIOR TO THAT OF THE ORIGINAL MORTGAGOR.— It is an established rule that the purchaser in an extra-judicial foreclosure sale is entitled to the possession of the property and can demand that he be placed in possession of the same either during (with bond) or after the expiration (without bond) of the redemption period therefor. To this end, the Court, in *China Banking Corp. v. Sps. Lozada* (*China Banking Corp.*), citing several cases on the matter, explained that a writ of possession duly applied for by said purchaser **should issue as a matter of course**, and thus, merely **constitutes a ministerial duty on the part of the court** x x x. The ministerial

issuance of a writ of possession in favor of the purchaser in an extra-judicial foreclosure sale, however, admits of an exception. Section 33, Rule 39 of the Rules of Court (Rules) pertinently provides that the possession of the mortgaged property may be awarded to a purchaser in an extra-judicial foreclosure **unless a third party is actually holding the property by adverse title or right**. In the recent case of *Rural Bank of Sta. Barbara (Iloilo), Inc. v. Centeno*, citing the case of *China Banking Corp.*, the Court illumined that "the phrase 'a third party who is actually holding the property adversely to the judgment obligor' **contemplates a situation in which a third party holds the property by adverse title or right**, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are **not merely the successor or transferee of the right of possession of another co-owner or the owner of the property**. Notably, **the property should not only be possessed by a third party, but also held by the third party adversely to the judgment obligor**." In other words, as mentioned in *Villanueva v. Cherdan Lending Investors Corporation*, the third person must therefore claim **a right superior to that of the original mortgagor**. In this case, it is clear that the issuance of a writ of possession in favor of Sps. Marquez, who had already consolidated their title over the extra-judicially foreclosed property, is merely ministerial in nature. The general rule as herein stated – and not the exception found under Section 33, Rule 39 of the Rules – should apply since Sps. Alindog hinged their claim over the subject property on their purported purchase of the same from its previous owner, *i.e.*, Sps. Gutierrez (with Gutierrez being the original mortgagor). Accordingly, it cannot be seriously doubted that Sps. Alindog are only the latter's (Sps. Gutierrez) successors-in-interest who do not have a right superior to them.

2. ID.; PROVISIONAL REMEDIES; INJUNCTION; THE CONSUMMATION OF THE ACT SOUGHT TO BE RESTRAINED RENDERED THE PETITION FOR INJUNCTION MOOT; ISSUANCE OF THE INJUNCTIVE WRIT IS IMPROPER WHERE THE IMPLEMENTATION OF THE WRIT OF POSSESSION WHICH IS SOUGHT TO BE ENJOINED, HAD ALREADY BEEN ACCOMPLISHED.— The RTC x x x gravely abused its discretion when it issued the injunctive writ which enjoined

Sps. Marquez from taking possession of the subject property. To be sure, grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence. Here, while the RTC had initially issued a writ of possession in favor of Sps. Marquez, it defied existing jurisprudence when it effectively rescinded the said writ by subsequently granting Sps. Alindog's prayer for injunctive relief. The RTC's finding anent the initial evidence adduced by Sps. Alindog constitutes improper basis to justify the issuance of the writ of preliminary injunction in their favor since, in the first place, it had no authority to exercise any discretion in this respect. Jurisprudence is clear on the matter: without the exception under Section 33, Rule 39 of the Rules availing, the issuance of a writ of possession in favor of the purchaser of an extra-judicially foreclosed property – such as Sps. Marquez in this case – should come as a matter of course, and, in such regard, constitutes only a ministerial duty on the part of the court. Besides, it was improper for the RTC to have issued a writ of preliminary injunction since the act sought to be enjoined, *i.e.*, the implementation of the writ of possession, had already been accomplished in the *interim* and thus, rendered the matter moot. Case law instructs that injunction would not lie where the acts sought to be enjoined had already become *fait accompli* (meaning, an accomplished or consummated act). Hence, since the consummation of the act sought to be restrained had rendered Sps. Alindog's injunction petition moot, the issuance of the said injunctive writ was altogether improper. All told, by acting averse to well-settled jurisprudential rules and resultantly depriving Sps. Marquez of their right of possession over the subject property, the Court therefore concludes that the RTC gravely abused its discretion in this case. In effect, the CA's contrary ruling thereto is hereby reversed and set aside, which consequentially leads to the nullification of the writ of preliminary injunction issued by the RTC in favor of Sps. Alindog, and the reinstatement of the writ of possession issued by the same court in favor of Sps. Marquez. It must, however, be noted that these pronouncements are without prejudice to any separate action which Sps. Alindog may file in order to recover ownership of the subject property.

APPEARANCES OF COUNSEL

Puracan Law Office & Associates for petitioners.
Hazel A. Ballesteros for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 29, 2008 and Resolution[3] dated August 6, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 97744 finding no grave abuse of discretion on the part of the Regional Trial Court of Tagaytay City, Branch 18 (RTC) in issuing the Orders dated November 14, 2005[4] and January 17, 2007[5] in SCA No. TG-05-2521. Based on these orders, a writ of preliminary injunction was issued against petitioners-spouses Nicasio C. Marquez and Anita J. Marquez (Sps. Marquez), enjoining them from taking possession of the property subject of this case despite the consolidation of their title over the same.

The Facts

Records show that sometime in June 1998, petitioner Anita J. Marquez (Anita) extended a loan in the amount of ₱500,000.00 to a certain Benjamin Gutierrez (Gutierrez). As security therefor, Gutierrez executed a Deed of Real Estate Mortgage[6] dated June 16, 1998 over a parcel of land located in Tagaytay City with an area of 660 square meters, more or less, covered by Transfer Certificate of Title (TCT) No. T-13443[7] (subject property),

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[1] *Rollo*, pp. 10-32.

[2] *Id.* at 35-41. Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Mario L. Guariña III and Sixto C. Marella, Jr., concurring.

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

[4] *Id.* at 69-70. Penned by Presiding Judge Edwin G. Larida, Jr.

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

[6] *Id.* at 76-77.

[7] *Id.* at 73-75.

registered under the name of Benjamin A. Gutierrez, married to Liwanag Camerin (Sps. Gutiererez). The mortgage was duly annotated on the dorsal portion of TCT No. T-13443, which Sps. Marquez had verified as clean prior to the mortgage.[8]

Since Gutierrez defaulted in the payment of his loan obligation, Anita sought the extra-judicial foreclosure of the subject property. At the public auction sale held on January 19, 2000, Anita emerged as the highest bidder for the amount of ₱1,171,000.00.[9] Upon Gutierrez's failure to redeem the same property within the prescribed period therefor, title was consolidated under TCT No. T-41939[10] on November 5, 2001 (in the name of Anita J. Marquez, married to Nicasio C. Marquez) which, however, bore an annotation of adverse claim[11] dated March 2, 2000 in the names of respondents-spouses Carlito and Carmen Alindog (Sps. Alindog). Said annotation was copied from an earlier annotation on TCT No. T-13443 made only after the subject property's mortgage to Sps. Marquez.

Subsequently, or on March 21, 2000, Sps. Alindog filed a civil case for annulment of real estate mortgage and certificate of sale with prayer for damages against Sps. Marquez and a certain Agripina Gonzales (Gonzales) before the RTC, docketed as Civil Case No. TG-1966 (annulment case). In their complaint,[12] Sps. Alindog alleged that they purchased[13] the subject property from Gutierrez way back in September 1989, but were unable to secure a certificate of title in their names because Gonzales – to whom they have entrusted said task – had deceived them in that they were assured that the said certificate was already being processed when such was not the case.[14] Eventually, they

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[8] *Id.* at 36.

[9] *Id.* at 80-81.

[10] *Id.* at 82-83.

[11] *Id.* at 83.

[12] *Id.* at 84-87.

[13] See Deed of Absolute Sale dated September 1989; *id.* at 90-91.

[14] *Id.* at 36-37.

found out that the property had already been mortgaged to Sps. Marquez, and that when they tried to contact Gonzales for an explanation, she could no longer be found. Separately, Sps. Alindog averred that when the mortgage was executed in favor of Sps. Marquez, Gutierrez was already dead.[15]

In their defense,[16] Sps. Marquez disputed Sps. Alindog's ownership over the subject property, arguing that the purported sale in the latter's favor was never registered and therefore, not binding upon them. Further, they insisted that their certificate of title, TCT No. T-41939, was already indefeasible, and cannot be attacked collaterally.

Meanwhile, on March 16, 2005, Anita filed an *ex-parte* petition for the issuance of a writ of possession[17] (*ex-parte* petition) before the RTC, docketed as LRC Case No. TG-05-1068, claiming that the same is ministerial on the court's part following the consolidation of her and her husband's title over the subject property. Impleaded in said petition are Sps. Gutierrez, including all persons claiming rights under them.

The RTC Rulings and Subsequent Proceedings

In an **Order**[18] **dated August 1, 2005**, the RTC granted Anita's *ex-parte* petition and thereby directed the issuance of a writ of possession in her favor. Consequently, a notice to vacate[19] dated September 23, 2005 was issued by Acting Sheriff Teodorico V. Cosare (Sheriff Cosare) against Sps. Gutierrez and all persons claiming rights under them. Sps. Alindog were served with a copy of the said notice to vacate on September 27, 2005.[20]

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[15] *Id.* at 37.

[16] See Verified Consolidated Answer (With Special/Affirmative Defenses and Counterclaims); *id.* at 92-103.

[17] *Id.* at 105-108.

[18] *Id.* at 113.

[19] *Id.* at 115.

[20] *Id.* at 118.

Claiming that they would suffer irreparable injury if the implementation of the writ of possession in favor of Sps. Marquez would be left unrestrained, Sps. Alindog sought the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction with prayer for damages,[21] in a separate case docketed as SCA No. TG-05-2521[22] (injunction case) which was raffled to the same court.

While it appears that the RTC issued a 72-hour TRO on September 29, 2005 in Sps. Alindog's favor, records nonetheless show that said order was not extended to a full 20-day TRO.[23] To this end, the Sheriff's Return[24] dated November 14, 2005 shows that Sheriff Cosare was able to implement the writ of possession on November 11, 2005, turning over the possession of the subject property to Sps. Marquez.

After further proceedings on the injunction case, the RTC, through an **Order**[25] **dated November 14, 2005**, issued a writ of preliminary injunction enjoining Sps. Marquez from taking possession of the subject property until after the controversy has been fully resolved on the merits. The said issuance was based on the RTC's appreciation of the initial evidence adduced by Sps. Alindog, concluding that they appear to have a right to be protected. Thus, notwithstanding the consolidation of Sps. Marquez's title over the subject property, the RTC granted Sps. Alindog's prayer for injunctive relief, holding that any further dispossession on their part would cause them irreparable injury.[26]

Aggrieved, Sps. Marquez moved for reconsideration,[27] essentially pointing out that, as the confirmed and registered

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[21] *Id.* at 116-120.

[22] Initially docketed as Civil Case No. TG-05-2521.

[23] *Rollo*, p. 69.

[24] *Id.* at 114.

[25] *Id.* at 69-70.

[26] *Id.* at 70.

[27] See Motion for Reconsideration with Urgent Prayer to Recall/Defer Issuance of the Writ of Preliminary Injunction; *id.* at 132-139.

owners of the subject property, they are entitled to its possession as a matter of right. They argued that pursuant to Sections 7[28] and 8[29] of Act No. 3135,[30] as amended by Act No. 4118,[31] the RTC was legally bound to place them in possession of the subject

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[28] Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[29] Sec. 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.

[30] Entitled "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES."

[31] Entitled "AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED 'AN ACT TO REGULATE THE SALE OF PROPERTY

property pending resolution of the annulment case. Further, it is their position that the purpose for the issuance of the injunctive writ – *i.e.*, to restrain the implementation of the writ of possession – had already been rendered moot and academic by its actual enforcement in the *interim*.

For their part, Sps. Alindog filed a Motion for Approval of Cash Bond and to Regain Possession[32] of the subject property.

In an Order[33] dated January 17, 2007, the RTC denied the motion of Sps. Marquez, while granted that of Sps. Alindog. Unperturbed, Sps. Marquez elevated the case to the CA on *certiorari*.[34]

The CA Ruling

In a Decision[35] dated February 29, 2008, the CA denied Sps. Marquez's petition as it found no grave abuse of discretion on the RTC's part when it issued the injunctive writ that enjoined Sps. Marquez from taking possession of the subject property. It observed that Sps. Alindog had indeed "adduced *prima facie* proof of their right to possess the subject property"[36] while the annulment case was pending, adding that the latter's "right to remain in possession"[37] proceeds from the fact of the subject property's earlier sale to them. Thus, while Sps. Marquez concededly had a right to possess the subject property on account of the consolidation of the title in their names, the CA nonetheless found no fault on the part of the RTC for "proceeding with

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UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.'"

[32] Posting a cash bond in the amount of ₱500,000.00 by way of a manager's check; CA *rollo*, pp. 181-182.

[33] *Rollo*, pp. 71-72.

[34] *Id.* at 44-67.

[35] *Id.* at 35-41.

[36] *Id.* at 39.

[37] *Id.*

caution"[38] in weighing the conflicting claims of the parties and subsequently issuing the writ of preliminary injunction in Sps. Alindog's favor.

Dissatisfied, Sps. Marquez moved for reconsideration[39] which was, however, denied in a Resolution[40] dated August 6, 2008, hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in finding no grave abuse of discretion on the part of the RTC when it issued the injunctive writ which enjoined Sps. Marquez from taking possession of the subject property.

The Court's Ruling

The petition is meritorious.

It is an established rule that the purchaser in an extra-judicial foreclosure sale is entitled to the possession of the property and can demand that he be placed in possession of the same either during (with bond) or after the expiration (without bond) of the redemption period therefor. To this end, the Court, in *China Banking Corp. v. Sps. Lozada*[41] (*China Banking Corp.*), citing several cases on the matter, explained that a writ of possession duly applied for by said purchaser **should issue as a matter of course**, and thus, merely **constitutes a ministerial duty on the part of the court**, *viz.*:[42]

The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135, as amended. **The purchaser at the public auction sale of an extrajudicially foreclosed real property**

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[38] *Id.* at 40.

[39] *Id.* at 207-220.

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

[41] 579 Phil. 454 (2008).

[42] *Id.* at 470-473, citing *De Gracia v. San Jose*, 94 Phil. 623, 625-626 (1954), and *IFC Service Leasing and Acceptance Corporation v. Nera*, 125 Phil. 595 (1967).

may seek possession thereof in accordance with Section 7 of Act No. 3135, as amended, which provides:

> SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, **to give him possession thereof during the redemption period**, **furnishing bond** in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form or an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety six as amended by Act Numbered Twenty-eight hundred and sixty-six, and **the court shall, upon approval of the bond, order that a writ of possession issue addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately**.

The Court expounded on the application of the foregoing provision in *De Gracia v. San Jose*, thus:

> As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession **during the redemption period** by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title; and upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, **the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond**. **No discretion is left to the court**. And any question regarding the regularity and validity of the

> sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*.

Strictly, Section 7 of Act No. 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the 12-month period for redemption. Upon the purchaser's filing of the *ex parte* petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor.

In *IFC Service Leasing and Acceptance Corporation v. Nera*, the Court reasoned that if under Section 7 of Act No. 3135, as amended, the RTC has the power during the period of redemption to issue a writ of possession on the *ex parte* application of the purchaser, **there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title has already been issued in the name of the purchaser**. Hence, the procedure under Section 7 of Act No. 3135, as amended, may be availed of by a purchaser seeking possession of the foreclosed property he bought at the public auction sale **after the redemption period has expired** without redemption having been made.

x x x x x x x x x

It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, **he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title**. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. **Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court**. (Emphases and underscoring supplied; citations and emphases in the original omitted)

In the case of *Spouses Espiridion v. CA*,[43] the Court expounded on the ministerial nature of the foregoing issuance as follows:[44]

> The issuance of a writ of possession to a purchaser in a public auction is a ministerial act. **After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function**. The trial court has no discretion on this matter. Hence, **any talk of discretion in connection with such issuance is misplaced.**
>
> A clear line demarcates a discretionary act from a ministerial one. Thus:
>
> > The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, **without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done**. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.
>
> Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive. (Emphases and underscoring supplied; citations omitted)

The ministerial issuance of a writ of possession in favor of the purchaser in an extra-judicial foreclosure sale, however, admits of an exception. Section 33,[45] Rule 39 of the Rules of

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[43] 523 Phil. 664 (2006).

[44] *Id.* at 667-668.

[45] Section 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – x x x.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the

Court (Rules) pertinently provides that the possession of the mortgaged property may be awarded to a purchaser in an extra-judicial foreclosure **unless a third party is actually holding the property by adverse title or right**. In the recent case of *Rural Bank of Sta. Barbara (Iloilo), Inc. v. Centeno*,[46] citing the case of *China Banking Corp.*, the Court illumined that "the phrase 'a third party who is actually holding the property adversely to the judgment obligor' **contemplates a situation in which a third party holds the property by adverse title or right**, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are **not merely the successor or transferee of the right of possession of another co-owner or the owner of the property**. Notably, **the property should not only be possessed by a third party, but also held by the third party adversely to the judgment obligor**."[47] In other words, as mentioned in *Villanueva v. Cherdan Lending Investors Corporation*,[48] the third person must therefore claim **a right superior to that of the original mortgagor**.

In this case, it is clear that the issuance of a writ of possession in favor of Sps. Marquez, who had already consolidated their title over the extra-judicially foreclosed property, is merely ministerial in nature. The general rule as herein stated – and not the exception found under Section 33, Rule 39 of the Rules – should apply since Sps. Alindog hinged their claim over the subject property on their purported purchase of the same from its previous owner, *i.e.*, Sps. Gutierrez (with Gutierrez being the original mortgagor). Accordingly, it cannot be seriously doubted that Sps. Alindog are only the latter's (Sps. Gutierrez) successors-in-interest who do not have a right superior to them.

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levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer **unless a third party is actually holding the property adversely to the judgment obligor**. (Emphasis supplied)

[46] G.R. No. 200667, March 11, 2013, 693 SCRA 110.

[47] *Id.* at 115, citing *supra* note 41, at 473-474; emphases supplied.

[48] G.R. No. 177881, October 13, 2010, 633 SCRA 173.

That said, the RTC therefore gravely abused its discretion when it issued the injunctive writ which enjoined Sps. Marquez from taking possession of the subject property. To be sure, grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence.[49] Here, while the RTC had initially issued a writ of possession in favor of Sps. Marquez, it defied existing jurisprudence when it effectively rescinded the said writ by subsequently granting Sps. Alindog's prayer for injunctive relief. The RTC's finding anent the initial evidence adduced by Sps. Alindog constitutes improper basis to justify the issuance of the writ of preliminary injunction in their favor since, in the first place, it had no authority to exercise any discretion in this respect. Jurisprudence is clear on the matter: without the exception under Section 33, Rule 39 of the Rules availing, the issuance of a writ of possession in favor of the purchaser of an extra-judicially foreclosed property – such as Sps. Marquez in this case – should come as a matter of course, and, in such regard, constitutes only a ministerial duty on the part of the court. Besides, it was improper for the RTC to have issued a writ of preliminary injunction since the act sought to be enjoined, *i.e.*, the implementation of the writ of possession, had already been accomplished in the *interim* and thus, rendered the matter moot. Case law instructs that injunction would not lie where the acts sought to be enjoined had already become *fait accompli* (meaning, an accomplished or consummated act).[50] Hence, since the consummation of the act sought to be restrained had rendered Sps. Alindog's injunction petition moot, the issuance of the said injunctive writ was altogether improper.

All told, by acting averse to well-settled jurisprudential rules and resultantly depriving Sps. Marquez of their right of possession over the subject property, the Court therefore concludes that

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[49] *Tagolino v. House of Representatives Electoral Tribunal*, G.R. No. 202202, March 19, 2013, 693 SCRA 574, 599-600, citing *Fernandez v. Commission on Elections*, 535 Phil. 122 (2006).

[50] *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, G.R. No. 146717, November 22, 2004, 443 SCRA 307, 339.

the RTC gravely abused its discretion in this case. In effect, the CA's contrary ruling thereto is hereby reversed and set aside, which consequentially leads to the nullification of the writ of preliminary injunction issued by the RTC in favor of Sps. Alindog, and the reinstatement of the writ of possession issued by the same court in favor of Sps. Marquez. It must, however, be noted that these pronouncements are without prejudice to any separate action which Sps. Alindog may file in order to recover ownership of the subject property.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 29, 2008 and Resolution dated August 6, 2008 of the Court of Appeals in CA-G.R. SP No. 97744, as well as the Orders dated November 14, 2005 and January 17, 2007 of the Regional Trial Court of Tagaytay City, Branch 18 in SCA No. TG-05-2521 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the writ of preliminary injunction in SCA No. TG-05-2521 is **NULLIFIED**, while the Writ of Possession in LRC Case No. TG-05-1068 is **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 186622. January 22, 2014]

PEBLIA ALFARO and THE HEIRS OF PROSPEROUS ALFARO, NAMELY: MARY ANN PEARL ALFARO & ROUSLIA ALFARO, *petitioners, vs.* **SPOUSES EDITHO and HERA DUMALAGAN, SPOUSES CRISPIN and EDITHA DALOGDOG, *ET AL.*,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; ELEMENTS; DOCTRINE OF *RES JUDICATA* IS INAPPLICABLE ABSENT IDENTITY OF PARTIES AND CAUSE OF ACTION.— *Res judicata* refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit. The elements of *res judicata* are as follows: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action. x x x Our decision in the Bagano case on the merits has long been final. Also, the court *a quo* has jurisdiction over the subject matter and the parties. However, on the issue on identity of parties and cause of action, We rule in the negative. In the Bagano case, the parties are herein petitioner Spouses Alfaro and theSpouses Bagano, as privies to the Deed of Absolute Sale dated 14 June 1995. In the case at bar, the parties are petitioner Spouse Alfaro and respondent Spouses Dumalagan basing their rights on the Deed of Absolute Sale dated 3 December 1993. There is, thus, no identity of parties. In the Bagano case, the cause of action is the alleged forgery of the Deed of Absolute Sale by petitioners; the crux of the case being the validity of the sale between Bagano and petitioners. In the case at bar, the cause of action is the violation of right of ownership of respondent Spouses Dumalagan. Clearly, there is no identity of cause of action. Therefore, the doctrine of *res judicata* is inapplicable in the case at bar. The appellate court did not reverse a Supreme Court decision.

2. ID.; INTERVENTION; NOT PROPER WHERE THERE ARE CERTAIN FACTS GIVING THE INTERVENOR'S CASE AN ASPECT PECULIAR TO HIMSELF AND DIFFERENTIATING IT CLEARLY FROM THAT OF THE ORIGINAL PARTIES; THE PROPER RECOURSE IS FOR THE WOULD-BE-INTERVENOR TO LITIGATE HIS CLAIM IN A SEPARATE SUIT.— Petitioners also contend that respondents should have intervened in the Bagano case;

for failure to intervene, the latter are bound by the judgment for bad faith and/or laches. Petitioners' claim must fail. In *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza, et al.*, this Court clarified that: x x x **an independent controversy cannot be injected into a suit by intervention, hence, such intervention will not be allowed where it would enlarge the issues in the action and expand the scope of the remedies. It is not proper where there are certain facts giving the intervenor's case an aspect peculiar to himself and differentiating it clearly from that of the original parties; the proper course is for the would-be intervenor to litigate his claim in a separate suit**. Intervention is not intended to change the nature and character of the action itself, or to stop or delay the placid operation of the machinery of the trial. The remedy of intervention is not proper where it will have the effect of retarding the principal suit or delaying the trial of the action. In line with this ruling, the issue on double sale, which concerns the present case cannot be injected into the Bagano case, which is based on facts peculiar to the transaction between Bagano and petitioners. For one, herein respondents claim ownership of only a portion of the property litigated in the Bagano case, and the basis of respondents' claim is a prior sale to them by Bagano, whose authority as a seller was an unquestioned fact. Neither of the parties in the second Bagano sale made any mention of the first sale of a part of the property to respondents.

3. CIVIL LAW; PROPERTY REGISTRATION DECREE (PD 1529), SECTION 70 THEREOF; THE CANCELLATION OF THE ADVERSE CLAIM IS STILL NECESSARY TO RENDER IT INEFFECTIVE, OTHERWISE, THE INSCRIPTION WILL REMAIN ANNOTATED AND SHALL CONTINUE AS A LIEN UPON THE PROPERTY; FOR IF THE ADVERSE CLAIM ALREADY CEASED TO BE EFFECTIVE UPON THE LAPSE OF THIRTY (30) DAYS, ITS CANCELLATION IS NO LONGER NECESSARY AND THE PROCESS OF CANCELLATION WOULD BE A USELESS CEREMONY.— Section 70 of P.D. 1529 provides: x x x. **The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of the said period, the annotation of adverse claim may be cancelled upon filing of a verified petition**

therefore by the party in interest: x x x The above provision would seem to strict the effectivity of adverse claims to 30 days. However, the same should not be read separately, but should be read in relation to the subsequent sentence, which reads: After the lapse of said period, the annotation of adverse claim **may be cancelled** upon filing of a verified petition therefore by the party in interest. The law, taken together, simply means that the cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property; for if the adverse claim already ceased to be effective upon the lapse of the said period, its cancellation is no longer necessary and the process of cancellation would be a useless ceremony. Therefore, petitioners cannot claim good faith on the basis of the supposed ineffectivity of the annotated adverse claims as the same have not been cancelled at the time of purchase. Assuming *arguendo* that the annotated adverse claims expired on 23 March 1995, petitioners still cannot claim good faith as they were fully aware that there were occupants in the subject property other than the seller. Worse, they were also fully aware that an occupant in the subject property bought the same; that aside from the nipa hut, there were also other structures in the subject property, one of which was built by Epifanio Pesarillo.

4. ID.; SPECIAL CONTRACTS; SALES; RULE ON DOUBLE SALE APPLIES ONLY WHEN ALL THE PURCHASERS ARE IN GOOD FAITH; PURCHASER IN GOOD FAITH, DISCUSSED.— [Article 1544 of the Civil Code] clearly states that the rule on double or multiple sales applies only when all the purchasers are in good faith. In detail, Art. 1544 requires that before the second buyer can obtain priority over the first, he must show that he acted in good faith throughout, *i.e.*, in ignorance of the first sale and of the first buyer's rights, from the time of acquisition until the title is transferred to him by registration or failing registration, by delivery of possession. A purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or an interest in such property, and pays a full and fair price for the same at the time of such purchase, or before he has notice of some other person's claim or interest in the property. The petitioners are not such purchaser. Petitioners had prior knowledge of the previous sales by installment of portions of

the property to several purchasers. Moreover, petitioners had prior knowledge of respondents' possession over the subject property. Hence, the rule on double sale is inapplicable in the case at bar. As correctly held by the appellate court, petitioners' prior registration of the subject property, with prior knowledge of respondents' claim of ownership and possession, cannot confer ownership or better right over the subject property. The ruling in *Crisostomo v. Court of Appeals*, citing repeated pronouncements, is apropos. **It is a well-settled rule that a purchaser or mortgagee cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor**. His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in the vendor's or mortgagor's title, will not make him an innocent purchaser or mortgagee for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defects as would have led to its discovery had he acted with the measure of precaution which may be required of a prudent man in a like situation.

APPEARANCES OF COUNSEL

Caesar A.M. Tabotabo and Franklin Manching for petitioners.
Antonio R. Bacalso II for respondents.

D E C I S I O N

PEREZ, *J.*:

For review on *certiorari* is the Decision[1] of the Court of Appeals dated 20 May 2008, which reversed and set aside the Regional Trial Court Decision[2] dated 7 August 2006 in Civil

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[1] Penned by Associate Justice Priscilla Baltazar-Padilla, with Associate Justices Franchito N. Diamante and Florito S. Macalino concurring, docketed as CA-G.R. CEB CV. No. 01702. *Rollo*, pp. 32-43.

[2] Penned by Presiding Judge Gabriel T. Ingles. Records, pp. 342-369.

Case No. CEB-27400 for Annulment of Title, Preliminary Injunction with Temporary Restraining Order and Damages.

The facts as culled from the records are as follows:

The lot in controversy is Lot No. 1710, covered by TCT No. T-78445, consisting of an estimated area of 2,287 sq m, more or less, located in Talisay-Minglanilla Estate, Brgy. San Roque, Talisay City, registered in the name of Olegario Bagano. On 14 June 1995, Bagano sold the subject property to petitioner Spouses Prosperous and Peblia Alfaro (Spouses Alfaro) through a Deed of Absolute Sale.

Petitioners caused the immediate transfer of the title in their names on 20 June 1995, now TCT No. T-92783, and at the same time, paid the real property tax, and constructed a perimeter fence around the subject property.

In preservation of their right as occupants of the subject property, respondents filed the instant case.[3]

According to respondent Spouses Editho and Hera Dumalagan (Spouses Dumalagan), they are the real owners of Lot No. 1710-H, a portion of the subject property, based on a notarized Deed of Absolute Sale dated 6 December 1993.[4] To prove ownership and possession, respondents offered in evidence a Certificate of Completion (Exhibit "**C**") and a Certificate of Occupancy (Exhibit "**C-3**"), both dated 10 August 1993[5] and Visayan Electric Company Inc. electric bills.[6] Right after their purchase from Bagano, respondent Spouses Dumalagan immediately took possession of the subject property and

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[3] *Sps. Editho and Hera Dumalagan, Sps. Crispin and Editha Dalogdog, Sps. Mariano and Constancia Castanares and Sps. Alberto and Lucy Boncales v. Sps. Prosperous and Peblia Alfaro*, Civil Case No. CEB-27400, RTC, Branch 58, Cebu City. *Id.* at 1-4.

[4] *Rollo,* p. 51.

[5] Records, p. 116.

[6] *Id.* at 117-120.

constructed a nipa hut therein, which they later on leased to Ramil Quiñineza, who then occupied the subject property until the end of 1997. Since then, several tenants have occupied the subject property, paying monthly rentals to respondent Spouses Dumalagan: Spouses Crispin and Editha Dalogdog, Spouses Alberto and Lucy Boncales, and Spouses Mariano and Constancia Castañares.

Meanwhile, Spouses Bagano filed a complaint for Declaration of Nullity of Sale with Damages and Preliminary Injunction against petitioners on 15 April 1996 entitled, "*Spouses Olegario P. Bagano and Cecilia C. Bagano v. Spouses Peblia and Prosperous Alfaro*" ("Bagano case" for brevity), docketed as Civil Case No. CEB-18835, in the Cebu City RTC, Branch 12.[7] In the Bagano case, this Court sustained the validity of the Deed of Absolute Sale executed on 14 June 1995 between petitioners and Spouses Bagano.[8]

In the case at bar, the trial court dismissed the complaint for lack of cause of action on 7 August 2006. The dispositive portion of the dismissal reads:[9]

> Accordingly, for lack of cause of action, the complaint is hereby DISMISSED. Plaintiff-spouses Editho and Hera Dumalagan jointly and solidarily are directed to pay defendants the following sums:
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> 1. ₱50,000.00 as moral damages;
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> 2. ₱30,000.00 as attorney's fees;
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> 3. ₱15,000.00 as litigation expenses.
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> SO ORDERED.

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[7] *Spouses Olegario P. Bagano and Cecilia C. Bagano v. Spouses Peblia and Prosperous Alfaro*, Civil Case No. CEB-18835, RTC, Branch 12, Cebu City.

[8] Penned by Associate Justice Dante O. Tinga, with Associate Justices Leonardo A. Quisumbing, Antonio T. Carpio, Conchita Carpio Morales, Presbitero J. Velasco, Jr., concurring. *Rollo*, pp. 316-335.

[9] *Id.* at 214.

According to the trial court:

> In sum, because of the unreliability of the testimonial evidence presented by the plaintiffs, this court finds no basis to conclude that the defendants were indeed informed prior to June 20, 1995, that portions of Lot No. 1710, including Lot No. 1710-H were already owned by the plaintiffs and other parties.
>
> In other words, the plaintiffs failed to establish that defendants were in bad faith when they bought Lot No. 1710 in 1995.[10]

Aggrieved, respondents elevated the case to the Court of Appeals. On 20 May 2008, the appellate court reversed and set aside the trial court decision. The dispositive portion of the Decision reads as:[11]

> 1. Declaring TCT No. T-92783 of the defendants-appellees as Null and Void insofar as it included Lot No. 1710-H consisting of Two Hundred Twelve (212) square meters of plaintiffs-appellants Sps. Editho and Hera Dumalagan;
>
> 2. Declaring plaintiffs-appellants Sps. Editho and Hera Dumalagan as lawful owners of Lot No. 1710-H, including the improvements thereon.
>
> 3. Ordering the defendants-appellees liable to pay to plaintiffs-appellants Sps. Editho and Hera Dumalagan the amount ₱20,000 as moral damages; and
>
> 4. Ordering the defendants-appellees liable to pay to plaintiffs-appellants Sps. Editho and Hera Dumalagan the amount ₱30,000 as attorney's fees and litigation expenses.

According to the appellate court, petitioners cannot claim good faith. It referred to annotations written at the back of Bagano's title. It noted that the annotated adverse claims, even if not in the names of respondents, have the effect of charging petitioners as subsequent buyers with constructive notice of the defect of the seller's title. Moreover, as shown by the records,

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[10] *Id.* at 37.

[11] CA *rollo*, pp. 184-185.

petitioners had prior knowledge that portions of the subject property have been sold to third persons.[12]

On 9 February 2009, the Court of Appeals denied the motion for reconsideration affirming its decision.[13]

Hence this Petition with the following assignment of errors:

1. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN PARTIALLY REVERSING A DECISION OF THE SUPREME COURT INVOLVING THE ISSUES OF OWNERSHIP OVER THE SAME LOT;
2. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN DECLARING PETITIONERS AS BUYERS IN BAD FAITH MERELY ON THE BASIS OF AN EXPIRED ADVERSE CLAIM OF ALLEGED PRIOR PURCHASERS-WHO ARE NOT EVEN PARTIES HEREIN; and
3. THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR AS WELL AS JUDICIAL LEGISLATION IN DECLARING THAT AN ADVERSE CLAIM, EVEN IF ALREADY EXPIRED, IS STILL CONSIDERED CONSTRUCTIVE NOTICE.

As just noted, this Court sustained the validity of the Deed of Absolute Sale between Spouses Bagano and petitioners in the Bagano case. On this basis, petitioners contend that the Supreme Court's decision in the Bagano case constitutes *res judicata* apropos the case at bar. According to petitioners, respondents, even if they were not made parties, are bound by the Court's ruling on the ownership in favor of petitioner.[14] Petitioners contend that the appellate court violated the doctrine of *res judicata* when it sustained the validity of the Deed of Absolute Sale as it unduly awarded ownership of the subject property to respondents, obliquely reversing the Supreme Court's decision in the Bagano case.

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[12] *Rollo*, pp. 38-39.

[13] Resolution dated 9 February 2009; *id.* at 29.

[14] *Id.* at 412.

Res judicata refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.[15] The elements of *res judicata* are as follows: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and the second action, identity of parties, of subject matter and cause of action.[16]

We shall discuss each element in *seriatim*.

Our decision in the Bagano case on the merits has long been final. Also, the court *a quo* has jurisdiction over the subject matter and the parties. However, on the issue on identity of parties and cause of action, We rule in the negative.

In the Bagano case, the parties are herein petitioner Spouses Alfaro and the Spouses Bagano, as privies to the Deed of Absolute Sale dated 14 June 1995. In the case at bar, the parties are petitioner Spouses Alfaro and respondent Spouses Dumalagan basing their rights on the Deed of Absolute Sale dated 3 December 1993. There is, thus, no identity of parties.

In the Bagano case, the cause of action is the alleged forgery of the Deed of Absolute Sale by petitioners; the crux of the case being the validity of the sale between Bagano and petitioners. In the case at bar, the cause of action is the violation of right of ownership of respondent Spouses Dumalagan. Clearly, there is no identity of cause of action. Therefore, the doctrine of *res judicata* is inapplicable in the case at bar. The appellate court did not reverse a Supreme Court decision.

Petitioners also contend that respondents should have intervened in the Bagano case; for failure to intervene, the latter are bound

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[15] *Allied Banking Corporation v. Court of Appeals*, G.R. No. 108089, 10 January 1994, 229 SCRA 252, 257.

[16] *Mirpuri v. Court of Appeals*, 376 Phil. 628, 650 (1999).

by the judgment for bad faith and/or laches.[17] Petitioners' claim must fail. In *Mactan-Cebu International Airport Authority v. Heirs of Estanislao Miñoza, et al.*, this Court clarified that:

> xxx **an independent controversy cannot be injected into a suit by intervention, hence, such intervention will not be allowed where it would enlarge the issues in the action and expand the scope of the remedies. It is not proper where there are certain facts giving the intervenor's case an aspect peculiar to himself and differentiating it clearly from that of the original parties; the proper course is for the would-be intervenor to litigate his claim in a separate suit**. Intervention is not intended to change the nature and character of the action itself, or to stop or delay the placid operation of the machinery of the trial. The remedy of intervention is not proper where it will have the effect of retarding the principal suit or delaying the trial of the action.[18] [Emphasis supplied]

In line with this ruling, the issue on double sale, which concerns the present case cannot be injected into the Bagano case, which is based on facts peculiar to the transaction between Bagano and petitioners. For one, herein respondents claim ownership of only a portion of the property litigated in the Bagano case, and the basis of respondents' claim is a prior sale to them by Bagano, whose authority as a seller was an unquestioned fact. Neither of the parties in the second Bagano sale made any mention of the first sale of a part of the property to respondents.

We shall discuss the second and third issues together as they are closely related.

A simple perusal of the records will reveal that there were two adverse claims annotated in the title: (1) 22 February 1995, executed by Maria Theresa Dimaguila and Andrew D. Sepe,[19] and (2) 6 April 1995, executed by Spouses Lorenzo and Milagros Belandres.[20] However, petitioners contend that the annotated

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[17] *Rollo*, pp. 20-21.

[18] G.R. No. 186045, 2 February 2011, 641 SCRA 520, 531-532.

[19] Exhibit "**T-2**", records, p. 129.

[20] Exhibit "**W-3**", *id.* at 207.

adverse claims have already expired pursuant to Section 70 of Presidential Decree No. 1529, which provides that an adverse claim shall be effective only for a period of 30 days from the date of its registration. Petitioners claim that the "constructive notice" ended 30 days from 22 February 1995 or on 23 March 1995. Consequently, petitioners claim that because they purchased the subject property after 23 March 1995, they were, therefore, buyers in good faith.[21]

Section 70 of P.D. 1529[22] provides:

> Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of certificates of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.
>
> The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. **The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of the said period, the annotation of adverse claim may be cancelled upon filing of a verified petition therefore by the party in interest:** Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant. x x x [Emphasis supplied]

The above provision would seem to restrict the effectivity of adverse claims to 30 days. However, the same should not be read separately, but should be read in relation to the subsequent sentence, which reads:[23]

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[21] *Rollo,* p. 413.

[22] Presidential Decree No. 1529, Section 70.

[23] *Equatorial Realty Development, Inc. v. Sps. Desiderio, et al.*, G.R. No. 128563, 25 March 2004, 426 SCRA 271, 278.

After the lapse of said period, the annotation of adverse claim **may be cancelled** upon filing of a verified petition therefore by the party in interest. [Emphasis supplied]

The law, taken together, simply means that the cancellation of the adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property; for if the adverse claim already ceased to be effective upon the lapse of the said period, its cancellation is no longer necessary and the process of cancellation would be a useless ceremony.[24]

Therefore, petitioners cannot claim good faith on the basis of the supposed ineffectivity of the annotated adverse claims as the same have not been cancelled at the time of purchase. Assuming *arguendo* that the annotated adverse claims expired on 23 March 1995, petitioners still cannot claim good faith as they were fully aware that there were occupants in the subject property other than the seller. Worse, they were also fully aware that an occupant in the subject property bought the same; that aside from the nipa hut, there were also other structures in the subject property, one of which was built by Epifanio Pesarillo.[25]

As culled from the records, Mr. Pesarillo constructed a building in the subject property and occupied the same as evidenced by official receipts for construction materials[26] and various electrical bills and receipts.[27] In fact, it was no less than petitioner Peblia Alfaro, who admitted that there were other occupants in the subject property:[28]

Q: Before you bought this property from Mr. Bagano, did you try to inspect the property in order to find out if there are occupants on the subject property?

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[24] *Id.*

[25] *Rollo*, pp. 80-87.

[26] Exhibits "**I**"- "**M-1**", records, pp. 122-126.

[27] Exhibits "**N**"- "**S-2**", *id.* at 127-128.

[28] TSN, 22 February 2002, p. 6.

A: Yes. I conducted an inspection of the site.

Q: What did you find out?

A: **There was a person occupying there by the name of Pesarillo.**

x x x x x x x x x

Q: **Aside from Mr. Pesarillo, were there other occupants in the said lot?**

A: **Yes. John Danao.**

Q: Are you trying to tell the court that Mr. John Danao was constructing a house on the said property?

A: Yes, ma'am.

Q: Were you able to talk to Mr. John Danao during the inspection that you have conducted?

A: Yes, I have a talk with him once.

Q: Will you please tell the court what did you talk about with Mr. John Danao?

A: **He told me that he purchased the lot by installment.** But upon learning that we bought the lot he did not pursue talking to me. He went to Mr. Bagano to have a talk about the matter. xxx [Emphasis supplied]

As correctly held by the appellate court:

xxx by the very fact that the title of Bagano was not clean on its face, the defendants-appellees [petitioners] were more than obliged to look beyond the former's title and make further inquiries about the extent of the latter's right and authority over the subject lot. In other words, defendants-appellees [petitioners] should have inquired deeper into the title and right of Bagano over Lot No. 1710. Obviously, the defendants-appellees failed to take this precaution and instead proceeded with the purchase in haste. Had they done so as a reasonably prudent man buying real property should, they would have discovered that some portions of Lot 1710 had already been sold by Bagano to third persons who are already in possession of the same xxx[29]

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[29] *Rollo*, pp. 41-42.

Article 1544 of the Civil Code provides:[30]

If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. [Emphasis supplied]

The aforesaid provision clearly states that the rule on double or multiple sales applies only when all the purchasers are in good faith. In detail, Art. 1544 requires that before the second buyer can obtain priority over the first, he must show that he acted in good faith throughout, *i.e.*, in ignorance of the first sale and of the first buyer's rights, from the time of acquisition until the title is transferred to him by registration or failing registration, by delivery of possession.[31]

A purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or an interest in such property, and pays a full and fair price for the same at the time of such purchase, or before he has notice of some other person's claim or interest in the property.[32] The petitioners are not such purchaser.

Petitioners had prior knowledge of the previous sales by installment of portions of the property to several purchasers. Moreover, petitioners had prior knowledge of respondents' possession over the subject property. Hence, the rule on double sale is inapplicable in the case at bar. As correctly held by the appellate court, petitioners' prior registration of the subject

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[30] CIVIL CODE, Art. 1544.

[31] *Consolidated Rural Bank, Inc. v. CA*, 489 Phil. 320, 334 (2005).

[32] *Centeno v. Spouses Viray*, 440 Phil. 881, 885 (2002).

property, with prior knowledge of respondents' claim of ownership and possession, cannot confer ownership or better right over the subject property.[33]

The ruling in *Crisostomo v. Court of Appeals,* citing repeated pronouncements, is apropos:[34]

> **It is a well-settled rule that a purchaser or mortgagee cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor or mortgagor.** His mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in the vendor's or mortgagor's title, will not make him an innocent purchaser or mortgagee for value, if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defects as would have led to its discovery had he acted with the measure of precaution which may be required of a prudent man in a like situation. [Emphasis supplied]

WHEREFORE, the petition is **DENIED**. The Decision dated 20 May 2008 and Resolution dated 9 February 2009 of the Court of Appeals in CA-G.R. CEB CV. No. 01702 are **AFFIRMED**.

SO ORDERED.

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

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[33] *Consolidated Rural Bank, Inc. v. CA, supra*.

[34] 274 Phil. 1134, 1142-1143 citing *Leung Yee v. Strong Machinery Co.*, 37 Phil. 644, 651 (1918); *RFC v. Javillonar*, 57 O.G. 39 (1961); *C.N. Hodges v. Dy Buncio and Co., Inc. and Court of Appeals*, 116 Phil. 595, (1962); *Manacop v. Cansino*, 61 O.G. 21; and *Gatioan v. Gaffud*, 137 Phil. 125, 133 (1969).

FIRST DIVISION

[G.R. No. 198804. January 22, 2014]

CARLITO VALENCIA *Y* CANDELARIA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; 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 ILLEGAL POSSESSION OF DANGEROUS DRUGS FAILS.— The elements of the offense of illegal possession of dangerous drugs, are the following: *first*, the accused was in possession of an item or object, which is identified to be a prohibited or dangerous drug; *second*, such possession was not authorized by law; and *third*, the accused freely and consciously possessed the drug. In the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense and, in sustaining a conviction therefor, 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 illegal possession of dangerous drugs under R.A. No. 9165 fails.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE, EXPOUNDED; THE PRESCRIBED MEASURES TO BE OBSERVED DURING AND AFTER THE SEIZURE OF DANGEROUS

DRUGS AND RELATED PARAPHERNALIA, DURING THE CUSTODY AND TRANSFER THEREOF FOR EXAMINATION, AND AT ALL TIMES UP TO THEIR PRESENTATION IN COURT, MUST BE STRICTLY COMPLIED WITH.— There must be strict compliance with the prescribed measures to be observed during and after the seizure of dangerous drugs and related paraphernalia, during the custody and transfer thereof for examination, and at all times up to their presentation in court. In this regard, Section 21, Article II of R.A. No. 9165 outlines the procedure to be observed by the apprehending officers in the seizure and custody of dangerous drugs x x x. The rule on chain of custody under the foregoing enactments expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused.

3. **ID.; ID.; ID.; ID.; ALTHOUGH NON-COMPLIANCE WITH THE DIRECTIVE OF SECTION 21, ARTICLE II OF R.A. NO. 9165 IS NOT NECESSARILY FATAL TO THE PROSECUTION'S CASE, THE PROSECUTION MUST STILL PROVE THAT THERE IS A JUSTIFIABLE GROUND FOR THE NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE PROPERLY PRESERVED.—** To

prove the chain of custody of the seized plastic sachets, which were confiscated from Valencia, the prosecution presented PO3 Modina [and PO2 Rosales] x x x. A perusal of the x x x testimonies of PO3 Modina and PO2 Rosales shows that there are significant lapses in the chain of custody of the plastic sachets that were confiscated from Valencia. x x x. Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.

4. ID.; ID.; ID.; ID.; ID.; FAILURE TO JUSTIFY NON-COMPLIANCE WITH THE PROCEDURES LAID DOWN UNDER SECTION 21 OF ARTICLE II OF R.A. No. 9165 IS FATAL TO THE PROSECUTION'S CASE.— [I]n *People v. Almorfe*, the Court stressed that: Respecting the team's non-compliance with the inventory, not to mention the photograph, requirement of R.A. No. 9165, the same does not necessarily render void and invalid the seizure of the dangerous drugs. There must, however, be **justifiable grounds to warrant exception therefrom, and provided that the integrity and evidentiary value of the seized items are properly preserved** by the apprehending officer/s. For the saving clause to apply, it is important that **the prosecution should explain the reasons behind the procedural lapses and that the integrity and value of the seized evidence had been preserved**: x x x *[N]on-compliance* with the strict directive of Section 21 of R.A. No. 9165 is *not necessarily fatal* to the prosecution's case; police procedures in the handling of confiscated evidence may still have lapses, as in the present case. **These lapses, however, must be recognized and explained in terms of their *justifiable grounds* and the *integrity and evidentiary value of the evidence seized must be shown to have been preserved.*** The arresting

officers in this case tendered no justification in court for their non-compliance with the procedures. Indeed, a thorough perusal of the records of this case yielded no result as to any explanation or justification tendered by the apprehending officers as regards their non-compliance with the procedures laid down under Section 21, Article II of R.A. No. 9165. It was thus a grave error for the RTC and the CA to rule that there was an unbroken chain of custody despite the failure of the arresting officers to mark the confiscated plastic sachets in the presence of Valencia and to identify all the individuals who took custody of the same from the time the said plastic sachets were confiscated until the time they were presented in the RTC.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated May 25, 2011 and the Resolution[3] dated September 26, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 33194. The CA affirmed with modification the Decision[4] dated February 18, 2010 of the Regional Trial Court (RTC) of Caloocan City, Branch 127 in Criminal Case No. C-75090 finding Carlito Valencia *y* Candelaria (Valencia) guilty beyond reasonable doubt of the offense of possession of dangerous drugs, punished under Section 11, Article II of Republic Act (R.A.) No. 9165,

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[1] *Rollo*, pp. 10-24.

[2] Penned by Associate Justice Japar B. Dimaampao, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Jane Aurora C. Lantion, concurring; *id.* at 30-41.

[3] *Id.* at 43-44.

[4] Issued by Judge Victoriano B. Cabanos; records, pp. 149-156.

otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

Valencia was charged in an Information with illegal possession of dangerous drugs under Section 11, Article II of R.A. No. 9165, docketed as Criminal Case No. C-75090 before the RTC, *viz*:

> That on or about the 8th day of April 2006, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without having authorized by law, did then and there wilfully, unlawfully and feloniously, have in his possession, custody and control two (2) small heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.02 gram, 0.02 gram of METHYLAMPHETAMINE HYDROCHLORIDE (*Shabu*), a dangerous drug, when subjected for chemistry examination gave positive result of METHYLAMPHETAMINE HYDROCHLORIDE, knowing the same to be such.
>
> CONTRARY TO LAW.[5] (Citation omitted)

Upon arraignment on March 10, 2006, Valencia pleaded "not guilty" to the offense charged.[6]

Version of the Prosecution

On April 7, 2006, Police Superintendent (P/Supt.) Napoleon L. Cuaton (Cuaton), the Officer-in-Charge of the Station Anti-Illegal Drugs–Special Operation Unit, Caloocan City Police Station, received a call from a concerned citizen regarding the rampant sale of illegal drugs in *Barangay* 18, Caloocan City. Thus, P/Supt. Cuaton organized a team, composed of several police officers headed by Police Officer 3 (PO3) Ferdinand Modina (Modina), to conduct surveillance and a possible buy-bust operation in the said area. The team immediately proceeded to the target area.[7]

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[5] *Rollo*, pp. 30-31.

[6] Records, p. 149.

[7] *Rollo*, p. 82.

On April 8, 2006, at around one o'clock in the morning, the team arrived at *Barangay* 18, Caloocan City. PO3 Modina and PO2 Joel Rosales (Rosales) alighted from their vehicle and approached a group of six persons playing *cara y cruz*; PO3 Modina posed as a bettor. While watching the game, PO3 Modina saw a man, later identified to be Valencia, place a plastic sachet containing a white crystalline substance as a bet. Thereupon, PO3 Modina introduced himself as a police officer, confiscated the plastic sachet, and arrested Valencia. The other persons who were playing *cara y cruz* scampered away.[8]

When asked to empty his pockets, Valencia brought out another transparent plastic sachet containing white crystalline substance from his right pocket. PO3 Modina then apprised Valencia of his constitutional rights. Valencia was then brought to the police station, together with the confiscated transparent plastic sachets containing white crystalline substance.[9]

At the police station, the two plastic sachets that were confiscated from Valencia were turned over to PO2 Randulfo Hipolito (Hipolito) for investigation. The plastic sachets were then marked by PO2 Hipolito as "CVC-1" and "CVC-2" and were placed in a sachet marked "SAID SOU EVIDENCE dtd 04-08-06." PO2 Hipolito then prepared the request to the Philippine National Police (PNP) Crime Laboratory for the examination of the contents of the plastic sachets that were confiscated from Valencia.[10]

Upon examination, the white crystalline substance contained in the plastic sachets confiscated from Valencia yielded a positive result for Methylamphetamine Hydrochloride or *shabu*.[11]

Version of the Defense

Valencia denied the allegations against him. He claimed that, at the time of the incident, he was standing in front of his house

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[8] *Id.* at 68.

[9] *Id.* at 83.

[10] *Id.*

[11] *Id.* at 68.

when several men came running from an alley. Thereupon, he saw that two of his neighbors were already handcuffed and are already being escorted by three (3) armed men clad in civilian clothes. One of the armed men then asked him if he knew where a certain "Fe" resides. When Valencia told them that he did not know where "Fe" resides, the armed men brought him to the police station together with his two neighbors.[12]

At the police station, Valencia was immediately placed in a cell. When he asked the reason for his detention, the police officers told him "*samahan mo na lang ang dalawa*."[13] Thereafter, the police officers demanded from Valencia and his two neighbors, who were also detained, the amount of ₱5,000.00 each. When Valencia failed to pay the said amount, he was charged with possession of dangerous drugs under Section 11, Article II of R.A. No. 9165; his two neighbors were however released from detention upon payment of the said amount.[14]

Ruling of the RTC

On February 18, 2010, the RTC rendered a Decision[15] finding Valencia guilty beyond reasonable doubt of the offense of possession of dangerous drugs under Section 11, Article II of R.A. No. 9165, *viz*:

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring Accused **CARLITO VALENCIA *y* CANDELARIA *GUILTY BEYOND REASONABLE DOUBT*** of the offense of Violation of Section 11, Art. II. R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. Accordingly, this Court hereby sentences him to suffer an imprisonment of **Twelve (12) years** and **one (1) day as the minimum** to **Seventeen (17) years and Eight (8) months as the maximum** and to pay the fine of Three hundred thousand pesos ([₱]300,000.00).

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[12] *Id.* at 13.

[13] *Id.*

[14] *Id.* at 32.

[15] Records, pp. 149-156.

The subject drug subject matter of this case is hereby ordered confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.[16]

Ruling of the CA

Valencia appealed, claiming that the RTC erred in finding him guilty as charged. He insists that the prosecution failed to show an unbroken chain of custody of the seized dangerous drug in violation of Section 21 of R.A. No. 9165.[17]

On May 25, 2011, the CA rendered the herein assailed Decision[18] which affirmed the RTC's Decision dated February 18, 2010. The CA ruled that, contrary to Valencia's claim, the prosecution was able to show an unbroken chain of custody of the seized dangerous drug. Thus:

> The prosecution's evidence convincingly demonstrated the unbroken chain of custody of the seized drugs beginning from the arresting officers, to the investigating officer, then to the forensic chemist, until such time that they were offered in evidence before the court *a quo*. The plastic sachets seized were not tampered with or switched before the same were delivered to and chemically examined by the forensic chemist. Perforce, all persons who obtained and received the plastic sachets did so in the performance of their official duties. Appellants adduced not a speck of proof to overthrow the presumption that official duty was regularly performed.
>
> x x x x x x x x x
>
> **WHEREFORE**, the *Appeal* is hereby **DENIED**. The *Decision* of conviction dated 18 February 2010 of the Regional Trial Court of Caloocan City, Branch 127, in Criminal Case No. C-75090, is **AFFIRMED.**
>
> **SO ORDERED**.[19]

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[16] *Id.* at 156.

[17] *Rollo*, pp. 59-65.

[18] *Id.* 30-41.

[19] *Id.* at 38-40.

Valencia sought a reconsideration[20] of the Decision dated May 25, 2011, but it was denied by the CA in its Resolution[21] dated September 26, 2011.

Issue

Essentially, the issue presented for the Court's resolution is whether the CA erred in affirming Valencia's conviction for the offense of possession of dangerous drugs under Section 11, Article II of R.A. No. 9165.

The Court's Ruling

The petition is meritorious.

Section 11, Article II of R.A. No. 9165 pertinently provides that:

> Sec. 11. *Possession of Dangerous Drugs*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos ([₱]500,000.00) to Ten million pesos ([₱]10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:
>
> x x x x x x x x x
>
> Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:
>
> x x x x x x x x x
>
> (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine, or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstacy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their

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[20] *Id.* at 101-107.

[21] *Id.* at 43-44.

derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana.

The elements of the offense of illegal possession of dangerous drugs, are the following: *first*, the accused was in possession of an item or object, which is identified to be a prohibited or dangerous drug; *second*, such possession was not authorized by law; and *third*, the accused freely and consciously possessed the drug.[22]

In the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense and, in sustaining a conviction therefor, 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 illegal possession of dangerous drugs under R.A. No. 9165 fails.[23]

There must be strict compliance with the prescribed measures to be observed during and after the seizure of dangerous drugs and related paraphernalia, during the custody and transfer thereof for examination, and at all times up to their presentation in court.[24] In this regard, Section 21, Article II of R.A. No. 9165

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[22] See *People v. Secreto*, G.R. No. 198115, February 27, 2013, 692 SCRA 298, 307; *People v. Climaco*, G.R. No. 199403, June 13, 2012, 672 SCRA 631, 641.

[23] See *Fajardo v. People*, G.R. No. 185460, July 25, 2012, 677 SCRA 541, 548; *People v. Alcuizar*, G.R. No. 189980, April 6, 2011, 647 SCRA 431, 437.

[24] See *People v. Nacua*, G.R. No. 200165, January 30, 2013, 689 SCRA 819, 832.

outlines the procedure to be observed by the apprehending officers in the seizure and custody of dangerous drugs, *viz*:

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 precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) **The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

x x x x x x x x x(Emphasis ours)

Further, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 similarly provides that:

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 precursor 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 officer/team having initial custody and control of the drugs **shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated** and/or seized, or his/ her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public

> official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;
>
> x x x x x x x x x(Emphasis ours)

The rule on chain of custody under the foregoing enactments expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court.[25] Moreover, as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[26]

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[25] *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 533.

[26] See *Mallillin v. People*, 576 Phil. 576, 587 (2008).

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused.[27] In *People v. Gonzales*,[28] the Court explained that:

> The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**[29] (Emphasis ours)

To prove the chain of custody of the seized plastic sachets, which were confiscated from Valencia, the prosecution presented PO3 Modina, who testified that:

> PROS. GALLO:
>
> Q. And what happened to the *shabu* which the accused placed as his bet?
>
> WITNESS:
>
> A. When I introduced myself as a policeman I took the *shabu*, ma'am.

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

[28] G.R. No. 182417, April 3, 2013, 695 SCRA 123.

[29] *Id.* at 134.

Q. If that *shabu* which you confiscated will be seen by you again, will you be able to identify the same?
A. Yes, ma'am.

Q. How will you be able to identify?
A. Because of the markings, ma'am.

Q. What marking are you referring to?
A. CV[C]-1 and CV[C]-2, ma'am.

x x x x x x x x x

PROS. GALLO:

Q. Now, Mr. Witness, what did you do after you asked the accused to bring out the contents of his pocket which yielded another plastic sachet?

WITNESS:

A. I apprised him of his constitutional rights and boarded him to our vehicle and brought him to our office, ma'am.

Q. What happened now to the plastic sachet marked CVC-2?
A. I was in possession of the plastic sachets including the plastic sachet which he placed as a bet, ma'am.

x x x x x x x x x

Q. And what did you do next?
A. We proceeded to our office, ma'am.

Q. What did you do upon arrival at your office?
A. We turned over the accused to the investigator including the *shabu* I recovered, ma'am.

Q. Was there any document evidencing the turn over of the person of the accused and the two plastic sachets you recovered from the possession of the accused?
A. Yes, ma'am, the evidence acknowledge (*sic*) receipt.

x x x x x x x x x

Q. Did you come to know what happened to the plastic sachets you turned over to PO2 Hipolito?
A. PO2 Hipolito made a request addressed to crime laboratory, ma'am.

Q. Did you see that document?

A. Yes, ma'am.

Q. How about the result, have you seen the result?
A. Yes, ma'am.

Q. What was the result?
A. Positive for Methylamphetamine Hydrochloride, ma'am.[30]

On the other hand, PO2 Rosales testified that

Q. Who marked these two plastic sachets CVC-1 and CVC-2?
A. The investigator, ma'am.

Q. Who turned over to the investigator CVC-1?
A. PO3 Modina, ma'am.

Q. How about CVC-2?
A. I was the one, ma'am.

Q. Who was in possession of CVC-1 from the time it was recovered from accused by PO3 Modina up to the time it was turned over to the investigator?
A. PO3 Modina, ma'am.

Q. How about the item CVC-2 when you said it was handed to you by the accused at the place of the incident until it was turned over to the investigator and marked by him, who was in possession thereof?
A. Me, ma'am.

Q. At that time, was there any other apprehension that you conducted?
A. None, ma'am.

THE COURT: x x x

Q. Were you present when the investigator put the marking on the specimen?

THE WITNESS:

A. Yes, your Honor. When it was handed by PO3 Modina it was marked by the investigator.[31]

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[30] Testimony of PO3 Ferdinand Modina, TSN, November 8, 2007, pp. 10-15.

[31] Testimony of PO2 Joel Rosales, TSN, August 22, 2008, pp. 16-17.

A perusal of the foregoing testimonies of PO3 Modina and PO2 Rosales shows that there are significant lapses in the chain of custody of the plastic sachets that were confiscated from Valencia. Indeed, while the prosecution was able to prove that the two plastic sachets containing white crystalline substance that were confiscated from Valencia were marked as "CVC-1" and "CVC-2" by PO2 Hipolito, after the same were turned over to him at the police station for investigation, there was no showing that the marking had been done in the presence of Valencia or his representatives.

Further, although PO3 Modina testified that he turned over the said plastic sachets to PO2 Hipolito, who subsequently made the request for examination of the contents of the plastic sachet, it was not clear who actually brought the plastic sachets to the PNP Crime Laboratory for examination. It is likewise unclear who actually received the confiscated plastic sachets in the PNP Crime Laboratory and who exercised custody and possession of the same after it was examined and before it was presented before the RTC.

Verily, the records are bereft of any evidence, which would clearly show that the said plastic sachets were indeed marked in the presence of Valencia. Nor was there any evidence as to the identity of the individual who brought the seized plastic sachets from the police station to the PNP Crime Laboratory for examination. That the plastic sachets that were confiscated from Valencia were not marked in his presence or that of his representative and the indeterminateness of the identities of the individuals who had actually taken custody of the plastic sachets effectively broke the chain of custody, which thus taints the integrity of the sachets of *shabu* that were presented before the RTC. The foregoing lapses create reasonable doubt as to whether the plastic sachets containing white crystalline substance that were presented before the RTC are the same ones that were confiscated from Valencia.

In *Gonzales*,[32] the Court acquitted the accused for the failure of the prosecution to prove that the arresting officers therein

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[32] *Supra* Note 28.

had marked the confiscated sachet of *shabu* in the presence of the accused and its failure to identify the individual who brought the sachet of *shabu* to the PNP Crime Laboratory. The foregoing circumstances, the Court ruled, are fatal to the prosecution's case, *viz*:

> Although PO1 Dimla, the State's lone witness, testified that he had marked the sachet of *shabu* with his own initials of "ED" following Gonzales' arrest, **he did not explain, either in his court testimony or in the joint affidavit of arrest, whether his marking had been done in the presence of Gonzales, or done immediately upon the arrest of Gonzales**. Nor did he show by testimony or otherwise who had taken custody of the sachet of *shabu* after he had done his marking, **and who had subsequently brought the sachet of *shabu* to the police station, and, still later on, to the laboratory. Given the possibility of just anyone bringing any quantity of *shabu* to the laboratory for examination, there is now no assurance that the quantity presented here as evidence was the same article that had been the subject of the sale by Gonzales.** The indeterminateness of the identities of the individuals who could have handled the sachet of *shabu* after PO1 Dimla's marking broke the chain of custody, and tainted the integrity of the *shabu* ultimately presented as evidence to the trial court. We hardly need to reiterate that the chain of custody, which Section 1(b) of DDB Regulation No. 1, Series of 2002, *supra*, explicitly describes as "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," demands such record of movements and custody of seized items to include the identities and signatures of the persons who held temporary custody of the seized item, the dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[33] (Citations omitted and emphasis ours)

Similarly, in *Fajardo v. People*,[34] the prosecution failed to establish that the plastic sachets containing *shabu* were marked

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[33] *Id.* at 134-135.

[34] G.R. No. 185460, July 25, 2012, 677 SCRA 541.

in the presence of the accused therein; the individual who actually brought the confiscated plastic sachets to the PNP Crime Laboratory for examination was also not identified by the prosecution. The Court likewise acquitted the accused therein, ruling that:

> Another phase of the first link to the chain of custody is the marking of seized items. **The rule requires that it should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence. Evidently, the marking was not done at the scene of the crime.** In fact, PO1 Bernardo testified that it was an investigator of the crime laboratory, whose name he cannot recall, who made the markings. Indeed, PO1 Bernardo could not explain the actual markings.
>
> The prosecution miserably failed to establish the crucial first link in the chain of custody. The plastic sachets, while tested positive for *shabu*, could not be considered as the primary proof of the *corpus delicti* because the persons from whom they were seized were not positively and categorically identified by prosecution witnesses. **The prosecution likewise failed to show how the integrity and evidentiary value of the item seized had been preserved when it was not explained who made the markings, how and where they were made.**
>
> x x x x x x x x x
>
> **The third link in the chain should detail who brought the seized *shabu* to the crime laboratory, who received the *shabu* at the crime laboratory and, who exercised custody and possession of the *shabu* after it was examined and before it was presented in court. Once again, these crucial details were nowhere to be found in the records.** PO2 Tugo allegedly brought them to the crime laboratory but he was not presented to affirm and corroborate PO1 Tuscano's statement, nor was any document shown to evidence the turnover of the seized items. The Request for Laboratory Examination was signed by a certain Police Senior Inspector Rodolfo Tababan. But his participation in the custody and handling of the seized items were never mentioned by the prosecution witnesses.
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> **Considering these huge discrepancies in the chain of custody, the claim of regularity in the conduct of police operation will**

certainly not hold water. It bears stressing that the presumption of regularity only arises in the absence of contradicting details that would raise doubts on the regularity in the performance of official duties. Where the police officers failed to comply with the standard procedure prescribed by law, there is no occasion to apply the presumption.[35] (Citations omitted and emphases supplied)

Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case,[36] the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved.[37] Further, the non-compliance with the procedures must be justified by the State's agents themselves.[38] The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.[39]

Thus, in *People v. Almorfe*,[40] the Court stressed that:

Respecting the team's non-compliance with the inventory, not to mention the photograph, requirement of R.A. No. 9165, the same does not necessarily render void and invalid the seizure of the dangerous drugs. There must, however, be **justifiable grounds to warrant exception therefrom, and provided that the integrity**

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[35] *Id.* at 557-559.

[36] *People v. Bara*, G.R. No. 184808, November 14, 2011, 660 SCRA 38, 45.

[37] *Zafra v. People*, G.R. No. 190749, April 25, 2012, 671 SCRA 396, 408.

[38] *Supra* note 28, at 136.

[39] See *People v. Ancheta*, G.R. No. 197371, June 13, 2012, 672 SCRA 604, 618.

[40] G.R. No. 181831, March 29, 2010, 617 SCRA 52.

and evidentiary value of the seized items are properly preserved by the apprehending officer/s.

For the saving clause to apply, it is important that **the prosecution should explain the reasons behind the procedural lapses and that the integrity and value of the seized evidence had been preserved**:

> x x x *[N]on-compliance* with the strict directive of Section 21 of R.A. No. 9165 is *not necessarily fatal* to the prosecution's case; police procedures in the handling of confiscated evidence may still have lapses, as in the present case. **These lapses, however, must be recognized and explained in terms of their *justifiable grounds* and the *integrity and evidentiary value of the evidence seized must be shown to have been preserved.***[41]
> (Citations omitted and emphasis ours)

The arresting officers in this case tendered no justification in court for their non-compliance with the procedures. Indeed, a thorough perusal of the records of this case yielded no result as to any explanation or justification tendered by the apprehending officers as regards their non-compliance with the procedures laid down under Section 21, Article II of R.A. No. 9165. It was thus a grave error for the RTC and the CA to rule that there was an unbroken chain of custody despite the failure of the arresting officers to mark the confiscated plastic sachets in the presence of Valencia and to identify all the individuals who took custody of the same from the time the said plastic sachets were confiscated until the time they were presented in the RTC.

WHEREFORE, in consideration of the foregoing disquisitions, the Decision dated May 25, 2011 and the Resolution dated September 26, 2011 of the Court of Appeals in CA-G.R. CR No. 33194, which affirmed the Decision dated February 18, 2010 of the Regional Trial Court of Caloocan City, Branch 127, is hereby **REVERSED** and **SET ASIDE**. The petitioner Carlito Valencia *y* Candelaria is hereby **ACQUITTED** for the failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately **RELEASED** from

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[41] *Id.* at 59-60.

detention, unless he is being detained for some other lawful cause.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 200804. January 22, 2014]

A.L. ANG NETWORK, INC., *petitioner, vs.* **EMMA MONDEJAR, accompanied by her husband, EFREN MONDEJAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE FOR SMALL CLAIMS CASES; THE REMEDY OF APPEAL IS NOT ALLOWED, AND THE PREVAILING PARTY MAY IMMEDIATELY MOVE FOR ITS EXECUTION; NEVERTHELESS, THE AGGRIEVED PARTY IS NOT PRECLUDED FROM FILING A PETITION FOR *CERTIORARI* WHERE THERE IS NO APPEAL OR ANY OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.— Considering the final nature of a small claims case decision under [Section 23 of the Rule of Procedure for small claims cases], the remedy of appeal is not allowed, and the prevailing party may, thus, immediately move for its execution. Nevertheless, the proscription on appeals in small claims cases, similar to other proceedings where appeal is not an available remedy, does

not preclude the aggrieved party from filing a petition for *certiorari* under Rule 65 of the Rules of Court. This general rule has been enunciated in the case of *Okada v. Security Pacific Assurance Corporation,* wherein it was held that: In a long line of cases, the Court has consistently ruled that **"the extraordinary writ of *certiorari* is always available where there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law."** In *Jaca v. Davao Lumber Co.*, the Court ruled: x x x Although Section 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when "there is no appeal, nor any plain, speedy and adequate remedy in the course of law," this rule is not without exception. The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of *certiorari* where appeal is not an adequate remedy or equally beneficial, speedy and sufficient. It is the inadequacy – not the mere absence – of all other legal remedies and the danger of failure of justice without the writ that usually determines the propriety of *certiorari*.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN ORIGINAL ACTION DESIGNED TO CORRECT ONLY ERRORS OF JURISDICTION AND NOT OF JUDGMENT; REMEDY OF *CERTIORARI* PROPER TO ASSAIL THE PROPRIETY OF THE DECISION OF THE MTCC IN A SMALL CLAIMS CASE.— It may not be amiss to placate the RTC's apprehension that respondent's recourse before it (was only filed to circumvent the non-appealable nature of [small claims cases], because it asks [the court] to supplant the decision of the lower [c]ourt with another decision directing the private respondent to pay the petitioner a bigger sum than what has been awarded. Verily, a petition for *certiorari*, unlike an appeal, is an original action designed to correct only errors of jurisdiction and not of judgment. Owing to its nature, it is therefore incumbent upon petitioner to establish that jurisdictional errors tainted the MTCC Decision. The RTC, in turn, could either grant or dismiss the petition based on an evaluation of whether or not the MTCC gravely abused its discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to the controversy. In view of the foregoing, the Court thus finds that petitioner correctly availed of the remedy of *certiorari* to assail the

propriety of the MTCC Decision in the subject small claims case,contrary to the RTC's ruling.

3. ID.; ID.; ID.; IN CONSONANCE WITH THE DOCTRINE OF HIERARCHY OF COURTS, *CERTIORARI* PETITIONS ASSAILING THE DISPOSITIONS OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, IN SMALL CLAIMS CASES SHOULD BE FILED BEFORE THEIR CORRESPONDING REGIONAL TRIAL COURTS.— [T]he Court finds that petitioner filed the said petition before the proper forum (*i.e.*, the RTC). To be sure, the Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue a writ of *certiorari*. Such concurrence of jurisdiction, however, does not give a party unbridled freedom to choose the venue of his action lest he ran afoul of the doctrine of hierarchy of courts. Instead, a becoming regard for judicial hierarchy dictates that petitions for the issuance of writs of *certiorari* against first level courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals, before resort may be had before the Court. This procedure is also in consonance with Section 4, Rule 65 of the Rules of Court. Hence, considering that small claims cases are exclusively within the jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts, *certiorari* petitions assailing its dispositions should be filed before their corresponding Regional Trial Courts. This petitioner complied with when it instituted its petition for *certiorari* before the RTC which, as previously mentioned, has jurisdiction over the same. In fine, the RTC erred in dismissing the said petition on the ground that it was an improper remedy, and, as such, RTC Case No. 11-13833 must be reinstated and remanded thereto for its proper disposition.

APPEARANCES OF COUNSEL

Cana Law Office for petitioner.
Alex A. Abastillas for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This is a direct recourse[1] to the Court from the Decision[2] dated November 23, 2011 and Order[3] dated February 16, 2012 of the Regional Trial Court of Bacolod City, Branch 45 (RTC) in RTC Case No. 11-13833 which dismissed, on the ground of improper remedy, petitioner A.L. Ang Network, Inc.'s (petitioner) petition for *certiorari* from the Decision[4] dated June 10, 2011 of the Municipal Trial Court in Cities of Bacolod City, Branch 4 (MTCC) in Civil Case No. SCC-1436, a small claims case for sum of money against respondent Emma Mondejar (respondent).

The Facts

On March 23, 2011, petitioner filed a complaint[5] for sum of money under the Rule of Procedure for Small Claims Cases[6] before the MTCC, seeking to collect from respondent the amount of ₱23,111.71 which represented her unpaid water bills for the period June 1, 2002 to September 30, 2005.[7]

Petitioner claimed that it was duly authorized to supply water to and collect payment therefor from the homeowners of Regent Pearl Subdivision, one of whom is respondent who owns and occupies Lot 8, Block 3 of said subdivision. From June 1, 2002 until September 30, 2005, respondent and her family consumed a total of 1,150 cubic meters (cu. m.) of water, which upon

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[1] See Petition for Review on *Certiorari* dated March 12, 2012; *rollo*, pp. 3-35.

[2] *Id.* at 290-292. Penned by Presiding Judge Eliseo C. Geolingo.

[3] *Id.* at 306-307.

[4] *Id.* at 145-152. Penned by Judge Francisco S. Pando.

[5] *Id.* at 40-45.

[6] A.M. No. 08-8-7-SC, effective October 1, 2008.

[7] *Rollo*, p. 149.

application of the agreed rate of ₱113.00 for every 10 cu. m. of water, plus an additional charge of ₱11.60 for every additional cu. m. of water, amounted to ₱28,580.09.[8] However, respondent only paid the amount of ₱5,468.38, thus, leaving a balance of ₱23,111.71 which was left unpaid despite petitioner's repeated demands.[9]

In defense, respondent contended that since April 1998 up to February 2003, she religiously paid petitioner the agreed monthly flat rate of ₱75.00 for her water consumption. Notwithstanding their agreement that the same would be adjusted only upon prior notice to the homeowners, petitioner unilaterally charged her unreasonable and excessive adjustments (at the average of 40 cu. m. of water per month or 1.3 cu. m. of water a day) far above the average daily water consumption for a household of only 3 persons. She also questioned the propriety and/or basis of the aforesaid ₱23,111.71 claim.[10]

In the interim, petitioner disconnected respondent's water line for not paying the adjusted water charges since March 2003 up to August 2005.[11]

The MTCC Ruling

On June 10, 2011, the MTCC rendered a Decision[12] holding that since petitioner was issued a Certificate of Public Convenience (CPC)[13] by the National Water Resources Board (NWRB) only on August 7, 2003, then, it can only charge respondent the agreed flat rate of ₱75.00 per month prior thereto or the sum of ₱1,050.00 for the **period June 1, 2002 to August 7, 2003**. Thus, given that respondent had made total payments equivalent to ₱1,685.99

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[8] *Id.* at 147.

[9] *Id.*

[10] *Id.* at 146-147.

[11] *Id.* at 146.

[12] *Id.* at 145-152.

[13] *Id.* at 191-192.

for the same period, she should be considered to have fully paid petitioner.[14]

The MTCC disregarded petitioner's reliance on the Housing and Land Use Regulatory Board's (HLURB) Decision[15] dated August 17, 2000 in HLURB Case No. REM C6-00-001 entitled *Nollie B. Apura, et al. v. Dona Carmen I Subdivision, et al.*, as source of its authority to impose new water consumption rates for water consumed from June 1, 2002 to August 7, 2003 in the absence of proof (*a*) that petitioner complied with the directive to inform the HLURB of the result of its consultation with the concerned homeowners as regards the rates to be charged, and (*b*) that the HLURB approved of the same.[16]

Moreover, the MTCC noted that petitioner failed to submit evidence showing (*a*) the exact date when it actually began imposing the NWRB approved rates; and (*b*) that the parties had a formal agreement containing the terms and conditions thereof, without which it cannot establish with certainty respondent's obligation.[17] Accordingly, it ruled that the earlier agreed rate of ₱75.00 per month should still be the basis for respondent's water consumption charges for the **period August 8, 2003 to September 30, 2005**.[18] Based on petitioner's computation, respondent had only paid ₱300.00 of her ₱1,500.00 obligation for said period. Thus, it ordered respondent to pay petitioner the balance thereof, equivalent to ₱1,200.00 with legal interest at the rate of 6% per annum from date of receipt of the extrajudicial demand on October 14, 2010 until fully paid.[19]

Aggrieved, petitioner filed a petition for *certiorari*[20] under Rule 65 of the Rules of Court before the RTC, ascribing grave

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[14] *Id.* at 149.

[15] *Id.*

[16] *Id.* at 149-151.

[17] *Id.* at 151.

[18] *Id.* at 152.

[19] *Id.*

[20] *Id.* at 153-176.

abuse of discretion on the part of the MTCC in finding that it (petitioner) failed to establish with certainty respondent's obligation, and in not ordering the latter to pay the full amount sought to be collected.

The RTC Ruling

On November 23, 2011, the RTC issued a Decision[21] dismissing the petition for *certiorari,* finding that the said petition was only filed to circumvent the non-appealable nature of small claims cases as provided under Section 23[22] of the Rule of Procedure on Small Claims Cases. To this end, the RTC ruled that it cannot supplant the decision of the MTCC with another decision directing respondent to pay petitioner a bigger sum than that which has been awarded.

Petitioner moved for reconsideration[23] but was denied in an Order[24] dated February 16, 2012, hence, the instant petition.

The Issue Before the Court

The sole issue in this case is whether or not the RTC erred in dismissing petitioner's recourse under Rule 65 of the Rules of Court assailing the propriety of the MTCC Decision in the subject small claims case.

The Court's Ruling

The petition is meritorious.

Section 23 of the Rule of Procedure for Small Claims Cases states that:

SEC. 23. *Decision*. — After the hearing, the court shall render its decision on the same day, based on the facts established by the evidence (Form 13-SCC). The decision shall immediately be entered

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[21] *Id.* at 290-292.

[22] Infra.

[23] *Id.* at 293-305.

[24] *Id.* at 306-307.

by the Clerk of Court in the court docket for civil cases and a copy thereof forthwith served on the parties.

The decision shall be final and unappealable.

Considering the final nature of a small claims case decision under the above-stated rule, the remedy of appeal is not allowed, and the prevailing party may, thus, immediately move for its execution.[25] Nevertheless, the proscription on appeals in small claims cases, similar to other proceedings where appeal is not an available remedy,[26] does not preclude the aggrieved party from filing a petition for *certiorari* under Rule 65 of the Rules of Court. This general rule has been enunciated in the case of *Okada v. Security Pacific Assurance Corporation*,[27] wherein it was held that:

In a long line of cases, the Court has consistently ruled that **"the extraordinary writ of *certiorari* is always available where there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law."** In *Jaca v. Davao Lumber Co.*, the Court ruled:

> x x x Although Section 1, Rule 65 of the Rules of Court provides that the special civil action of *certiorari* may only be invoked when "there is no appeal, nor any plain, speedy and adequate remedy in the course of law," this rule is not without exception. The availability of the ordinary course of appeal does not constitute sufficient ground to prevent a party from making use of the extraordinary remedy of *certiorari* where

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[25] Section 24, Rule of Procedure for Small Claims Cases.

[26] See *Republic v. Narceda*, G.R. No. 182760, April 10, 2013, 695 SCRA 483, 489-490, citing *Republic v. Tango*, G.R. No. 161062, July 31, 2009, 594 SCRA 560, 566-567 involving summary proceedings for petitions for the declaration of presumptive death; see also *Sarona v. National Labor Relations Commission*, G.R. No. 185280, January 18, 2012, 663 SCRA 394, 411-425, involving illegal dismissal cases decided by the NLRC; Section 1, Rule 65 of the Rules of Court.

[27] G.R. No. 164344, December 23, 2008, 575 SCRA 124, 141-142, citing *Jaca v. Davao Lumber Co.*, 198 Phil. 493, 517 (1982) and *Conti v. CA*, 336 Phil. 956, 965 (1999).

> appeal is not an adequate remedy or equally beneficial, speedy and sufficient. It is the inadequacy – not the mere absence – of all other legal remedies and the danger of failure of justice without the writ that usually determines the propriety of *certiorari*.

This ruling was reiterated in *Conti v. Court of Appeals*:

> Truly, an essential requisite for the availability of the extraordinary remedies under the Rules is an absence of an appeal nor any "plain, speedy and adequate remedy" in the ordinary course of law, one which has been so defined as a "remedy which (would) equally (be) beneficial, speedy and sufficient not merely a remedy which at some time in the future will bring about a revival of the judgment x x x complained of in the *certiorari* proceeding, but a remedy which will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal" concerned. x x x (Emphasis supplied)

In this relation, it may not be amiss to placate the RTC's apprehension that respondent's recourse before it (was only filed to circumvent the non-appealable nature of [small claims cases], because it asks [the court] to supplant the decision of the lower [c]ourt with another decision directing the private respondent to pay the petitioner a bigger sum than what has been awarded.[28] Verily, a petition for *certiorari*, unlike an appeal, is an original action[29] designed to correct only errors of jurisdiction and not of judgment. Owing to its nature, it is therefore incumbent upon petitioner to establish that jurisdictional errors tainted the MTCC Decision. The RTC, in turn, could either grant or dismiss the petition based on an evaluation of whether or not the MTCC gravely abused its discretion by capriciously, whimsically, or arbitrarily disregarding evidence that is material to the controversy.[30]

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[28] *Rollo*, p. 291.

[29] *Dy v. Hon. Bibat-Palamos*, G.R. No. 196200, September 11, 2013.

[30] *Leonis Navigation Co., Inc. v. Villamater*, G.R. No. 179169, March 3, 2010, 614 SCRA 182, 192.

In view of the foregoing, the Court thus finds that petitioner correctly availed of the remedy of *certiorari* to assail the propriety of the MTCC Decision in the subject small claims case, contrary to the RTC's ruling.

Likewise, the Court finds that petitioner filed the said petition before the proper forum (*i.e.*, the RTC). To be sure, the Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue a writ of *certiorari*.[31] Such concurrence of jurisdiction, however, does not give a party unbridled freedom to choose the venue of his action lest he ran afoul of the doctrine of hierarchy of courts. Instead, a becoming regard for judicial hierarchy dictates that petitions for the issuance of writs of *certiorari* against first level courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals, before resort may be had before the Court.[32] This procedure is also in consonance with Section 4, Rule 65 of the Rules of Court.[33]

Hence, considering that small claims cases are exclusively within the jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and Municipal Circuit Trial Courts,[34] *certiorari* petitions assailing its dispositions should be filed before their corresponding Regional Trial Courts. This petitioner complied with when it instituted its petition for *certiorari* before the RTC which, as previously mentioned, has jurisdiction over the same. In fine, the RTC

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[31] *Rayos v. The City of Manila*, G.R. No. 196063, December 14, 2011, 662 SCRA 684, 689.

[32] *Id.*

[33] SEC. 4. *When and where to file the petition.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. x x x

If the petition relates to an act or omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. x x x.

[34] Sections 2 and 4 of the Rule of Procedure for Small Claims Cases.

erred in dismissing the said petition on the ground that it was an improper remedy, and, as such, RTC Case No. 11-13833 must be reinstated and remanded thereto for its proper disposition.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 23, 2011 and Resolution dated February 16, 2012 of the Regional Trial Court of Bacolod City, Branch 45 are **REVERSED** and **SET ASIDE**. RTC Case No. 11-13833 is hereby **REINSTATED** and the court a *quo* is ordered to resolve the same with dispatch.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 201860. January 22, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCELINO DADAO, ANTONIO SULINDAO, EDDIE MALOGSI (deceased) and ALFEMIO MALOGSI,**[*] *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY MISAPPREHENSION OF FACTS OR GRAVE ABUSE OF DISCRETION, THE TRIAL COURT'S FINDINGS OF FACT WITH RESPECT TO THE CREDIBILITY OF THE WITNESSES SHALL NOT BE DISTURBED; EXPOUNDED.— [T]he pivotal issue

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[*] Sometimes referred to as Elfemio Malogsi in the records of this case.

raised by appellants in questioning the validity of their conviction for the crime of murder is whether or not the eyewitness testimonies presented by the prosecution, specifically that of the two stepsons (Ronie and Edgar Dacion) and the widow (Nenita Yacapin) of the deceased victim, Pionio Yacapin, are credible enough to be worthy of belief. We have consistently held in jurisprudence that the resolution of such a factual question is best left to the sound judgment of the trial court and that, absent any misapprehension of facts or grave abuse of discretion, the findings of the trial court shall not be disturbed. In *People v. De la Rosa*, we yet again expounded on this principle in this wise: [T]he issue raised by accused-appellant involves the credibility of [the] witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.

2. ID.; ID.; ID.; ABSENT EVIDENCE THAT THE WITNESSES OF THE PROSECUTION WERE ACTUATED BY ILL MOTIVE, IT IS PRESUMED THAT THEY WERE NOT SO ACTUATED AND THEIR TESTIMONY IS ENTITLED TO FULL FAITH AND CREDIT.— Jurisprudence also tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. In the case at bar, no imputation of improper motive on the part of the prosecution witnesses was ever made by appellants.

3. ID.; ID.; ID.; MATTERS INVOLVING MINOR INCONSISTENCIES PERTAINING TO DETAILS OF IMMATERIAL NATURE DO NOT DIMINISH THE

PROBATIVE VALUE OF THE TESTIMONIES OF THE PROSECUTION WITNESSES.— [A]ppellants contend that the prosecution witnesses made inconsistent and improbable statements in court which supposedly impair their credibility, such as whether or not the stepsons of the victim left for Ticalaan together to report the incident, whether the accused were still firing at the victim when they left or not, and whether or not the accused went after the stepsons after shooting the victim. We have reviewed the relevant portions of the transcripts pointed out by the appellants and have confidently arrived at the conclusion that these are matters involving minor inconsistencies pertaining to details of immaterial nature that do not tend to diminish the probative value of the testimonies at issue. We elucidated on this subject in *Avelino v. People*, to wit: Given the natural frailties of the human mind and its capacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well-settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. Notwithstanding their conflicting statements on minor details, Ronie, Edgar and Nenita positively identified appellants as the perpetrators of the dastardly crime of murder committed on the victim which they categorically and consistently claimed to have personally witnessed.

4. ID.; ID.; DEFENSE OF ALIBI; MUST BE SUPPORTED BY CREDIBLE CORROBORATION FROM DISINTERESTED WITNESSES, AND IF NOT, IS FATAL TO THE ACCUSED.— In order to counter the serious accusation made against them, appellants put forward the defense of alibi which necessarily fails in the face of positive identification. It is a time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable. Hence, it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused. An examination of the record would indicate that Eddie and Alfemio Malogsi were unable to present a corroborating witness to support their

alibi that they were working at a farm owned by a certain Boyle on the date and time of Pionio Yacapin's murder. While the witnesses presented by the defense to corroborate the respective alibis of Marcelino Dadao and Antonio Sulindao consisted of friends and relatives who are hardly the disinterested witnesses that is required by jurisprudence.

5. ID.; ID.; PARAFFIN TEST; NOT CONCLUSIVE PROOF THAT A PERSON HAS NOT FIRED A GUN.— With regard to appellants' assertion that the negative result of the paraffin tests that were conducted on their persons should be considered as sufficient ground for acquittal, we can only declare that such a statement is misguided considering that it has been established in jurisprudence that a paraffin test is not conclusive proof that a person has not fired a gun. It should also be noted that, according to the prosecution, only Eddie and Alfemio Malogsi held firearms which were used in the fatal shooting of Pionio Yacapin while Marcelino Dadao and Antonio Sulindao purportedly held bolos. Thus, it does not come as a surprise that the latter two tested negative for powder burns because they were never accused of having fired any gun.

6. ID.; ID.; CONSPIRACY; PRINCIPLE OF CRIMINAL CONSPIRACY AND ITS RAMIFICATIONS, ELABORATED.— [T]he evidence on record has established that all four accused shared a community of criminal design. By their concerted action, it is evident that they conspired with one another to murder Pionio Yacapin and should each suffer the same criminal liability attached to the aforementioned criminal act regardless of who fired the weapon which delivered the fatal wounds that ended the life of the victim. In *People v. Nelmida*, we elaborated on the principle of criminal conspiracy and its ramifications in this manner: There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and then decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them. In the absence of any direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and

community of interest. As such, it does not matter who inflicted the mortal wound, as each of the actors incurs the same criminal liability, because the act of one is the act of all.

7. ID.; ID.; NON-FLIGHT DOES NOT NECESSARILY CONNOTE INNOCENCE.— As to appellants' argument that their act of bravely reporting to the police station to answer the serious charge of murder against them instead of fleeing militates against a finding of any criminal liability on their part especially in light of the dubious evidence presented by the prosecution, we can only dismiss this as a hollow line of reasoning considering that human experience as observed in jurisprudence instructs us that non-flight does not necessarily connote innocence. Consequently, we have held: Flight is indicative of guilt, but its converse is not necessarily true. Culprits behave differently and even erratically in externalizing and manifesting their guilt. Some may escape or flee – a circumstance strongly illustrative of guilt – while others may remain in the same vicinity so as to create a semblance of regularity, thereby avoiding suspicion from other members of the community.

8. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE THEREOF; WHEN THE CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH CONCURS WITH TREACHERY, THE FORMER IS ABSORBED IN THE LATTER.— As correctly observed by the Court of Appeals, the lower court appreciated treachery, which was alleged in the information, as an aggravating circumstance which qualified the offense to murder. This is proper considering that, even if abuse of superior strength was properly alleged and proven in court, it cannot serve to qualify or aggravate the felony at issue since it is jurisprudentially settled that when the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter. Time and again, we have declared 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. Furthermore, we have also held that the essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording

the hapless, unarmed and unsuspecting victim no chance to resist or escape. In the case at bar, the manner by which Pionio Yacapin was killed carried all the indubitable hallmarks of treachery.

9. ID.; MURDER; PROPER PENALTY.— After reviewing the penalty of imprisonment imposed by the trial court and affirmed by the Court of Appeals, we declare that the imposition of the penalty of *reclusion perpetua* on the appellants is correct and should be upheld. Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the felony of murder. There being no aggravating or mitigating circumstance, the proper penalty is *reclusion perpetua* pursuant to Article 63, paragraph 2 of the Revised Penal Code.

10. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANTS.— Anent the award of damages, it is jurisprudentially settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. Thus, the award of civil indemnity in the amount of ₱75,000.00 is proper. Likewise, the award of temperate damages, in lieu of actual damages, in the amount of ₱25,000.00 is warranted considering that the death of the victim definitely caused his heirs some expenses for his wake and burial though they were not able to present proof. However, we must modify the amounts of moral and exemplary damages already awarded in order to conform to existing jurisprudence. Therefore, the exemplary damages awarded should be increased from ₱20,000.00 to ₱30,000.00. Moreover, there being no aggravating circumstance present in this case, the award of moral damages in the amount of ₱75,000.00 should be decreased to ₱50,000.00. Lastly, the interest rate of 6% per annum is imposed on all damages awarded from the date of finality of this ruling until fully paid.

11. ID.; ID.; DEATH OF THE ACCUSED DURING THE PENDENCY OF HIS CASE EXTINGUISHES BOTH HIS CRIMINAL AND CIVIL LIABILITY.— [W]e observe that the Court of Appeals did not rule on the effect of the death of Eddie Malogsi during the pendency of this case. Considering that no final judgment had been rendered against him at the

time of his death, whether or not he was guilty of the crime charged had become irrelevant because even assuming that he did incur criminal liability and civil liability *ex delicto*, these were totally extinguished by his death, following Article 89(1) of the Revised Penal Code and, by analogy, our ruling in *People v. Bayotas*. Therefore, the present criminal case should be dismissed with respect only to the deceased Eddie Malogsi.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is an appeal from a Decision[1] dated May 16, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00364, entitled *People of the Philippines v. Marcelino Dadao, Antonio Sulindao, Eddie Malogsi and Alfemio Malogsi*, which affirmed with modifications the Decision[2] dated January 31, 2005 of the Regional Trial Court of Manolo Fortich, Bukidnon, Branch 11 that convicted appellants Marcelino Dadao, Antonio Sulindao, Eddie Malogsi (deceased) and Alfemio Malogsi for the felony of murder under Article 248 of the Revised Penal Code, as amended, in Criminal Case No. 93-1272.

The genesis of this court case can be traced to the charge of murder against the appellants in the trial court via an Information[3] dated July 16, 1993. The accusatory portion of said indictment reads:

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[1] *Rollo*, pp. 3-21; penned by Associate Justice Romulo V. Borja with Associate Justices Melchor Quirino C. Sadang and Zenaida Galapate Laguilles, concurring.

[2] CA *rollo*, pp. 40-51.

[3] Records, pp. 7-8.

That on or about the 11th day of July 1993, at 7:30 in the evening more or less at barangay Salucot, municipality of Talakag, province of Bukidnon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with (sic) one another, with intent to kill, by means of treachery, armed with guns and bolos, did then and there wilfully, unlawfully and criminally attack, assault and sho[o]t PIONIO YACAPIN, hitting his back and left leg, inflicting wounds that cause[d] his death thereafter.

To the damage and prejudice [of] the heirs of the deceased PIONIO YACAPIN in such sum they are entitled under the law.

Contrary to and in violation of Article 248 of the Revised Penal Code.

On September 27, 1993, the appellants were arraigned. All four (4) accused pleaded "NOT GUILTY" to the charge leveled against them.[4]

The factual backdrop of this case as condensed in the trial court's assailed January 31, 2005 judgment and adopted by the Court of Appeals in its similarly assailed May 16, 2011 Decision is reproduced hereunder:

Evidence for the Prosecution

Prosecution's first witness, Ronie Dacion, a 14[-]year old stepson of the victim, Pionio Yacapin, testified that on July 11, 1993 at about 7:30 in the evening he saw accused Marcelino Dadao, Antonio Sulindao, Eddie Malogsi and [A]lfemio Malogsi helping each other and with the use of firearms and bolos, shot to death the victim, Pionio Yacapin in their house at Barangay Salucot, Talakag, Bukidnon.

The testimony of the second witness for the prosecution, Edgar Dacion, a 12[-]year old stepson of the victim, corroborates the testimony of his older brother Ronie Dacion.

Prosecution's third witness, Nenita Yacapin, the widow of the victim, also corroborates the testimony of the prosecution's first

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[4] *Id.* at 18.

and second witness. The said witness further testified that she suffered civil and moral damages [due to] the death of her husband.

Prosecution's fourth witness, Bernandino Signawan, testified that at about 10:00 o'clock in the evening of July 11, 1993, Ronie and Edgar Dacion reached to [sic] his house and related to him that their stepfather was killed by accused Eddie Malogsi, [A]lfemio Malogsi, Marcelino Dadao and Antonio Sulindao. Witness Signawan further testified that on the following morning, he and the other people in Ticalaan including the *barangay* captain, Ronie and Edgar Dacion returned to the house of the victim and found the latter already dead and in the surrounding [area] of the house were recovered empty shells of firearms.

Prosecution's fifth witness, SPO2 Nestor Aznar, testified that he was the one who prepared the sketch of the hut where the incident happened and further testified that the four accused were in the custody of the government and in the following morning of the incident, he was at the scene of the crime and found in the yard of the hut eight (8) garand empty shells caliber 30m[m].

The prosecution presented its sixth and last witness, Modesto Libyocan, who testified that on the evening of July 11, 1993, at Barangay Salucot, he saw in the house of the victim, Pionio Yacapin, lights caused by flashlights and heard several gunshots from the house of the victim, and that the family left their house on that evening and went to Ticalaan where they learned that Pionio Yacapin was killed in his house and that early the following morning, July 12, 1993, he was with some companions, *barangay* officials of Ticalaan in the house of the victim where they found him dead and sustaining gunshot wounds.

Evidence for the Defense

Defense's first witness, Police Inspector Vicente Armada, testified that on July 30, 1993, at 11:00 in the morning, he conducted an examination for paraffin test on all four accused with the findings that they yielded negative result x x x.

The defense presented Eddie Malogsi, one of the accused, as its second witness, who testified that on July 11, 1993 at 7:30 in the evening, he was at the farm of a certain Boyle together with his brother, [A]lfemio Malogsi, one of the accused herein, being a worker of that farm. He further testified that on the said date and time, he never fired a gun.

Defense's third witness, [A]lfemio Malogsi, another accused in this case, corroborates the testimony of his brother and co-accused, Eddie Malogsi, that on the said date and time above-mentioned, he was at the farm of a certain Boyle with his brother and that they heard several gunshots. He further testified that he never owned a garand rifle.

Another accused, Antonio Sulindao, defense's fourth witness, testified that on the date and time above-mentioned, he was at Salucot together with his family and at 7:30 x x x in the evening, he heard some gun shots. He further testified among others, that he has no grudge x x x with the victim prior to the incident.

The testimony of defense's fifth witness, Fernandez Saplina, [was to] establish the defense of denial and alibi in so far as accused Marcelino Dadao, that on the whole evening of July 11, 1993, accused Marcelino Dadao was all the time at his house in San Fernandez, Salucot, Talacag, Bukidnon, and there was no occasion that said accused went outside or left his house on the said date and time. The said witness further testified that he visited the accused at the municipal jail of Talakag, Bukidnon, where he was detained for having been the suspect in the killing of Pionio Yacapin.

The defense presented its sixth witness, Camilo Dumalig, who corroborates the testimony of Fernandez Saplina to the effect that accused Marcelino Dadao has been residing at San Fernandez, Salucot, Talakag, Bukidnon at the time of the incident on July 11, 1993 which place is about 7 kilometers from the place of the incident.

Defense's seventh witness, Venancio Payonda, father-in-law of accused Antonio Sulindao, testified that the latter was in his house the whole day of July 11, 1993.

The defense presented as its last witness, accused Marcelino Dadao, who testified that three (3) months prior to July 11, 1993, he had been staying at the house of one Fernandez Saplina at Sitio San Fernandez, Salucot, Talakag, Bukidnon, which is about 7 kilometers away from the house of the victim. He further testified that on July 11, 1993, he did not leave the house of Fernandez Saplina until the following morning.[5]

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[5] CA *rollo,* pp. 41-43.

After trial was concluded, a guilty verdict was handed down by the trial court finding appellants guilty beyond reasonable doubt of murdering Pionio Yacapin. The assailed January 31, 2005 Decision disposed of the case in this manner:

> **WHEREFORE**, premises considered, the Court finds accused, EDDIE MALOGSI, [A]LFEMIO MALOGSI, ANTONIO SULINDAO and MARCELINO DADAO, guilty beyond reasonable doubt of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended, the said four accused are hereby sentenced to suffer the penalty of *reclusion perpetua* and are ordered to pay the heirs of the victim, the amount of SEVENTY[-]FIVE THOUSAND PESOS (₱75,000.00) as moral damages and TWENTY THOUSAND PESOS (₱20,000.00) as exemplary damages and to pay the cost of the suit. Pursuant to Supreme Court Administrative Circular No. 2-92, dated January 20, 1992, the bailbonds of all four accused are hereby ordered cancelled and the latter are ordered detained, pending resolution of any Appeal that may be pursued in this case.[6]

Appellants elevated their case to the Court of Appeals. During the pendency of the appeal, the appellate court acted on a Manifestation filed by Rogelio Tampil, bondsman for Eddie Malogsi, who sought the cancellation of the memorandum of encumbrance that was reflected in his land title (Original Certificate of Title No. P-13825, Entry No. 165683) for the reason that Eddie Malogsi had already died on August 25, 2003. Thus, on February 11, 2008, the Court of Appeals issued a resolution granting Tampil's request.[7] Subsequently, after considering the pleadings and memoranda of the parties, the Court of Appeals issued its May 16, 2011 Decision, the dispositive portion of which states:

> ACCORDINGLY, this appeal is DISMISSED and the Decision appealed from is AFFIRMED with the modification the ₱75,000.00 as civil indemnity and ₱25,000.00 as temperate damages shall be

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[6] *Id.* at 51.

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

awarded in addition to the moral and exemplary damages already awarded by the lower court.[8]

Hence, appellants, through counsel, seek final recourse with the Court and reiterate the following assignment of errors from their Appellants' Brief filed with the Court of Appeals:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING APPELLANTS OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN NOT CONSIDERING THE EVIDENCE OF THE DEFENSE.

III

THE COURT *A QUO* GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF ABUSE OF SUPERIOR STRENGTH WHEN THE SAME WAS NOT ALLEGED IN THE INFORMATION.[9]

The foregoing arguments were later on amplified by appellants' Supplemental Brief.[10]

Appellants reiterate that their guilt was not proven beyond reasonable doubt because the testimonies of the witnesses for the prosecution were afflicted with inconsistencies and improbabilities, thus, making them of doubtful veracity. Furthermore, appellants faulted the trial court for disbelieving their alibis and for disregarding the fact that the paraffin test which all of them were subjected to produced a negative result. Appellants also underscored the fact that they did not take flight despite the knowledge that they were made suspects in the murder of Pionio Yacapin. Lastly, appellants maintain that the qualifying

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[8] *Rollo*, p. 20.

[9] CA *rollo*, pp. 24-25.

[10] *Rollo*, pp. 39-44.

circumstance of abuse of superior strength should not have been appreciated as it was not alleged in the criminal information filed against them.

The petition is without merit.

In fine, the pivotal issue raised by appellants in questioning the validity of their conviction for the crime of murder is whether or not the eyewitness testimonies presented by the prosecution, specifically that of the two stepsons (Ronie and Edgar Dacion) and the widow (Nenita Yacapin) of the deceased victim, Pionio Yacapin, are credible enough to be worthy of belief.

We have consistently held in jurisprudence that the resolution of such a factual question is best left to the sound judgment of the trial court and that, absent any misapprehension of facts or grave abuse of discretion, the findings of the trial court shall not be disturbed. In *People v. De la Rosa*,[11] we yet again expounded on this principle in this wise:

> [T]he issue raised by accused-appellant involves the credibility of [the] witness, which is best addressed by the trial court, it being in a better position to decide such question, having heard the witness and observed his demeanor, conduct, and attitude under grueling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. x x x.

Jurisprudence also tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony

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[11] G.R. No. 201723, June 13, 2013, 698 SCRA 548, 555, citing *People v. Diu*, G.R. No. 201449, April 3, 2013, 695 SCRA 229, 242.

is entitled to full faith and credit.[12] In the case at bar, no imputation of improper motive on the part of the prosecution witnesses was ever made by appellants.

Furthermore, appellants contend that the prosecution witnesses made inconsistent and improbable statements in court which supposedly impair their credibility, such as whether or not the stepsons of the victim left for Ticalaan together to report the incident, whether the accused were still firing at the victim when they left or not, and whether or not the accused went after the stepsons after shooting the victim. We have reviewed the relevant portions of the transcripts pointed out by the appellants and have confidently arrived at the conclusion that these are matters involving minor inconsistencies pertaining to details of immaterial nature that do not tend to diminish the probative value of the testimonies at issue. We elucidated on this subject in *Avelino v. People*,[13] to wit:

> Given the natural frailties of the human mind and its capacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well-settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. (Emphasis omitted.)

Notwithstanding their conflicting statements on minor details, Ronie, Edgar and Nenita positively identified appellants as the perpetrators of the dastardly crime of murder committed on the victim which they categorically and consistently claimed to have personally witnessed.

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[12] *People v. Roman*, G.R. No. 198110, July 31, 2013.

[13] G.R. No. 181444, July 17, 2013, citing *Madali v. People*, G.R. No. 180380, August 4, 2009, 595 SCRA 274, 294.

In order to counter the serious accusation made against them, appellants put forward the defense of alibi which necessarily fails in the face of positive identification. It is a time-honored principle in jurisprudence that positive identification prevails over alibi since the latter can easily be fabricated and is inherently unreliable.[14] Hence, it must be supported by credible corroboration from disinterested witnesses, and if not, is fatal to the accused.[15] An examination of the record would indicate that Eddie and Alfemio Malogsi were unable to present a corroborating witness to support their alibi that they were working at a farm owned by a certain Boyle on the date and time of Pionio Yacapin's murder. While the witnesses presented by the defense to corroborate the respective alibis of Marcelino Dadao and Antonio Sulindao consisted of friends and relatives who are hardly the disinterested witnesses that is required by jurisprudence.

With regard to appellants' assertion that the negative result of the paraffin tests that were conducted on their persons should be considered as sufficient ground for acquittal, we can only declare that such a statement is misguided considering that it has been established in jurisprudence that a paraffin test is not conclusive proof that a person has not fired a gun.[16] It should also be noted that, according to the prosecution, only Eddie and Alfemio Malogsi held firearms which were used in the fatal shooting of Pionio Yacapin while Marcelino Dadao and Antonio Sulindao purportedly held bolos. Thus, it does not come as a surprise that the latter two tested negative for powder burns because they were never accused of having fired any gun. Nevertheless, the evidence on record has established that all four accused shared a community of criminal design. By their

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[14] *People v. Ramos*, G.R. No. 190340, July 24, 2013.

[15] *People v. Mallari*, G.R. No. 179041, April 1, 2013, 694 SCRA 284, 298.

[16] *People v. Tomas, Sr.*, G.R. No. 192251, February 16, 2011, 643 SCRA 530, 547; *Ilisan v. People*, G.R. No. 179487, November 15, 2010, 634 SCRA 658, 668; *People v. Villasan*, G.R. No. 176527, October 9, 2009, 603 SCRA 241, 257.

concerted action, it is evident that they conspired with one another to murder Pionio Yacapin and should each suffer the same criminal liability attached to the aforementioned criminal act regardless of who fired the weapon which delivered the fatal wounds that ended the life of the victim.

In *People v. Nelmida*,[17] we elaborated on the principle of criminal conspiracy and its ramifications in this manner:

> There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and then decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them. In the absence of any direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of interest. As such, it does not matter who inflicted the mortal wound, as each of the actors incurs the same criminal liability, because the act of one is the act of all. (Citation and emphasis omitted.)

As to appellants' argument that their act of bravely reporting to the police station to answer the serious charge of murder against them instead of fleeing militates against a finding of any criminal liability on their part especially in light of the dubious evidence presented by the prosecution, we can only dismiss this as a hollow line of reasoning considering that human experience as observed in jurisprudence instructs us that non-flight does not necessarily connote innocence. Consequently, we have held:

> Flight is indicative of guilt, but its converse is not necessarily true. Culprits behave differently and even erratically in externalizing and manifesting their guilt. Some may escape or flee – a circumstance strongly illustrative of guilt – while others may remain in the same

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[17] *People v. Nelmida*, G.R. No. 184500, September 11, 2012, 680 SCRA 386, 429.

vicinity so as to create a semblance of regularity, thereby avoiding suspicion from other members of the community.[18]

Contrary to appellants' claim that the aggravating circumstance of abuse of superior strength was used by the trial court to qualify the act of killing committed by appellants to murder despite it not having been alleged in the criminal information filed against them, the text of the assailed January 31, 2005 Decision of the trial court clearly shows that, even though abuse of superior strength was discussed as present in the commission of the crime, it was not appreciated as either a qualifying or generic aggravating circumstance.

As correctly observed by the Court of Appeals, the lower court appreciated treachery, which was alleged in the information, as an aggravating circumstance which qualified the offense to murder. This is proper considering that, even if abuse of superior strength was properly alleged and proven in court, it cannot serve to qualify or aggravate the felony at issue since it is jurisprudentially settled that when the circumstance of abuse of superior strength concurs with treachery, the former is absorbed in the latter.[19]

Time and again, we have declared 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.[20] Furthermore, we have also held that the essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.[21]

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[18] *People v. Mores*, G.R. No. 189846, June 26, 2013, citing *People v. Asilan*, G.R. No. 188322, April 11, 2012, 669 SCRA 405, 419.

[19] *People v. Cabtalan*, G.R. No. 175980, February 15, 2012, 666 SCRA 174, 195.

[20] *People v. De la Rosa*, *supra* note 11.

[21] *People v. Hatsero*, G.R. No. 192179, July 3, 2013.

In the case at bar, the manner by which Pionio Yacapin was killed carried all the indubitable hallmarks of treachery. We quote with approval the following discussion of the Court of Appeals on this matter, to wit:

> Treachery, which was alleged in the information, was duly proven by the prosecution. The Court notes, in particular, the testimony of Nenita Yacapin who declared that when the victim was making a fire in the kitchen, she heard shots and she saw the barrel of the gun inserted on the bamboo split walling of their house. Exhibit "B", the anatomical chart certified by the Philippine National Police (PNP) personnel, shows the relative location of the gunshot wounds sustained by the victim. The chart indicates that the victim was shot from behind. Clearly, the execution of the attack made it impossible for the victim to defend himself or to retaliate.[22] (Citations omitted.)

After reviewing the penalty of imprisonment imposed by the trial court and affirmed by the Court of Appeals, we declare that the imposition of the penalty of *reclusion perpetua* on the appellants is correct and should be upheld. Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, provides for the penalty of *reclusion perpetua* to death for the felony of murder. There being no aggravating or mitigating circumstance, the proper penalty is *reclusion perpetua* pursuant to Article 63, paragraph 2 of the Revised Penal Code.[23]

Anent the award of damages, it is jurisprudentially settled that when death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages;

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[22] *Rollo*, pp. 18-19.

[23] 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.

(4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[24]

Thus, the award of civil indemnity in the amount of ₱75,000.00[25] is proper. Likewise, the award of temperate damages, in lieu of actual damages, in the amount of ₱25,000.00[26] is warranted considering that the death of the victim definitely caused his heirs some expenses for his wake and burial though they were not able to present proof.

However, we must modify the amounts of moral and exemplary damages already awarded in order to conform to existing jurisprudence. Therefore, the exemplary damages awarded should be increased from ₱20,000.00 to ₱30,000.00.[27] Moreover, there being no aggravating circumstance present in this case, the award of moral damages in the amount of ₱75,000.00 should be decreased to ₱50,000.00.[28] Lastly, the interest rate of 6% per annum is imposed on all damages awarded from the date of finality of this ruling until fully paid.[29]

Finally, we observe that the Court of Appeals did not rule on the effect of the death of Eddie Malogsi during the pendency of this case. Considering that no final judgment had been rendered against him at the time of his death, whether or not he was guilty of the crime charged had become irrelevant because even assuming that he did incur criminal liability and civil liability *ex delicto*, these were totally extinguished by his death, following Article 89(1) of the Revised Penal Code and, by analogy, our ruling in *People v. Bayotas*.[30] Therefore, the present criminal

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[24] *People v. Rarugal*, G.R. No. 188603, January 16, 2013, 688 SCRA 646, 657.

[25] *People v. Corpuz*, G.R. No. 191068, July 17, 2013.

[26] *People v. Roman*, *supra* note 12.

[27] *People v. Alawig*, G.R. No. 187731, September 18, 2013.

[28] *People v. Vergara*, G.R. No. 177763, July 3, 2013.

[29] *Avelino v. People*, *supra* note 13.

[30] G.R. No. 102007, September 2, 1994, 236 SCRA 239.

case should be dismissed with respect only to the deceased Eddie Malogsi.

WHEREFORE, premises considered, the Decision dated May 16, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00364 is hereby **AFFIRMED** with the **MODIFICATIONS** that:

(1) The amount of exemplary damages to be paid by appellants Marcelino Dadao, Antonio Sulindao and Alfemio Malogsi is increased from Twenty Thousand Pesos (₱20,000.00) to Thirty Thousand Pesos (₱30,000.00);

(2) The amount of moral damages to be paid by appellants Marcelino Dadao, Antonio Sulindao and Alfemio Malogsi is decreased from Seventy-Five Thousand Pesos (₱75,000.00) to Fifty Thousand Pesos (₱50,000.00);

(3) Appellants Marcelino Dadao, Antonio Sulindao and Alfemio Malogsi are ordered to pay the private offended party interest on all damages at the legal rate of six percent (6%) per annum from the date of finality of this judgment; and

(4) Criminal Case No. 93-1272 is **DISMISSED** with respect to Eddie Malogsi in view of his death during the pendency of this case.

No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 192479. January 27, 2014]

DIONES BELZA, *petitioner, vs.* **DANILO T. CANONERO, ANTONIO N. ESQUIVEL, and CEZAR I. BELZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ATTORNEYS; SUBSTITUTION OF ATTORNEYS; CLIENT SHOULD GIVE HIS ORIGINAL COUNSEL A NOTICE OF DISMISSAL SO THE LATTER COULD IMMEDIATELY CEASE TO REPRESENT HIM; EFFECT OF NO PROPER SUBSTITUTION OF COUNSEL; CASE AT BAR.— A client has of course the right to dismiss and replace his counsel of record as provided in the second paragraph of Section 26, [Rule 138 of the Rules of Court]. But this assumes that such client has given counsel a notice of dismissal so the latter could immediately cease to represent him. Indeed, it would have been more prudent for newly hired counsel to refrain from entering his appearance in the case until he has ascertained that the previous counsel has been dismissed from it. As it happened, apparently unaware that Atty. Carpio had already filed a motion for reconsideration of the NLRC Order dismissing DNB's appeal, Atty. Claveria filed still another motion for reconsideration on its behalf. He had no inkling that his client had decided to replace him. Clearly, the fault in this case did not lie with the NLRC but with DNB which failed in its duty to inform Atty. Claveria of his dismissal. And, since DNB had no right to file two motions for reconsideration, the NLRC would have been well within its right to altogether disregard both motions. Instead, however, it chose the more lenient option of acting on the one filed by the original counsel of record who had not withdrawn from the case or been properly substituted. This action cannot be regarded as constituting grave abuse of discretion.

2. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC); THE REVISED RULES OF PROCEDURE OF THE NLRC SPECIFICALLY REQUIRES THE SUBMISSION OF CERTIFICATION OF

NON-FORUM SHOPPING IN APPEALS TO THE NLRC; DISMISSAL OF APPEAL FOR NONCOMPLIANCE THEREWITH, JUSTIFIED.— Section 4, Rule VI of the 2005 Revised Rules of Procedure of the NLRC specifically requires the submission of such certification of non-forum shopping in appeals to the NLRC. x x x The fact that DNB had not actually engaged in forum shopping is not an excuse for its failure to comply with the requirement, an omission that allowed the period for perfecting the appeal to run inexorably. The NLRC was, therefore, justified in dismissing DNB's appeal. DNB points out that the requirement of certification of non-forum shopping has no meaning in relation to its appeal from the Decision of the Labor Arbiter to the NLRC since such a certification is required under Section 5, Rule 7 of the Rules of Court only in initiatory pleadings and since it was respondent technicians, not DNB, who initiated the labor case with their complaint. But insisting on such requirement even on appeal is a prerogative of the NLRC under its rule making power considering the great volume of appeals filed with it from all over the country. In *Maricalum Mining Corp. v. National Labor Relations Commission*, the Court held that substantial compliance with the requirement may be allowed when justified under the circumstances but the Court finds no grave abuse of discretion on NLRC's part when it found no such justification in this case.

APPEARANCES OF COUNSEL

Carpio Law Office for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

ABAD, *J.*:

Petitioner DNB Electronics & Communication Services (DNB) is the business name of petitioner Diones N. Belza. Consequently, any reference made below to DNB includes Belza as well.

DNB hired respondent Danilo T. Canonero in 1996, respondent Antonio N. Esquivel in 2001, and respondent Cezar I. Belza in

1998 as technicians assigned to repair and maintain its clients' electronic and communications equipment. Respondent technicians were particularly assigned at the Makati Medical Center, one of its clients.

In 2005, however, DNB lost in the bidding for the services it was rendering to the medical center. As a consequence, DNB terminated respondent technicians from employment without giving them new assignments or paying them separation pays. On August 4, 2006 these technicians filed a complaint against DNB for constructive illegal dismissal and non-payment of separation pay.

On December 28, 2006, following DNB's failure to file its position paper in the case despite notice, the Labor Arbiter rendered a Decision holding it liable for illegal dismissal and ordering it to pay respondent technicians "backwages from the time they were dismissed up to the filing of the complaint" plus separation pay of one month salary for every year of service, all totaling ₱490,109.63.

DNB appealed but on April 18, 2007 the National Labor Relations Commission (NLRC) dismissed the same as a non-perfected appeal given that DNB did not accompany its memorandum of appeal with the required certification of non-forum shopping.

On April 30, 2007 DNB filed, through new counsel, Atty. J. Antonio Z. Carpio, a motion for reconsideration of the NLRC's dismissal order with a belated certification of non-forum shopping. A few days later or on May 4, 2007 the original counsel of record, Atty. Aventino B. Claveria, filed for DNB a separate motion for reconsideration of the same order.

On July 3, 2007 the NLRC issued a Resolution a) ignoring the motion for reconsideration that Atty. Carpio filed for DNB considering that Atty. Claveria, the counsel of record, had not yet withdrawn from the case; and b) denying the motion for reconsideration that the latter counsel filed for lack of merit. This prompted DNB to appeal to the Court of Appeals (CA) in CA-G.R. SP 100501.

On November 26, 2009 the CA rendered a Decision, dismissing DNB's petition and affirming the Decision of the NLRC. On May 19, 2010 the CA denied DNB's motion for reconsideration, hence, the present petition for review.

Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in failing to hold that the NLRC committed grave abuse of discretion in ignoring the motion for reconsideration that Atty. Carpio filed for it and instead acting on the motion for reconsideration that Atty. Claveria, its former counsel of record, filed; and

2. Whether or not the CA erred in failing to hold that the NLRC gravely abused its discretion in dismissing its appeal on the ground that its memorandum of appeal was not accompanied by a certification of non-forum shopping.

Rulings of the Court

The CA held that the NLRC correctly ignored Atty. Carpio's motion for reconsideration and instead acted on the one that Atty. Claveria filed since the latter had not yet properly withdrawn from the case in accordance with Section 26, Rule 138 of the Rules of Court which provides:

> **Section 26.** ***Change of Attorneys.—*** An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court place of the former one, and written notice of the change shall be given to the adverse party.
>
> A client may at any time dismiss his attorney or substitute another in his place x x x.

The CA ruled that since Atty. Claveria did not file a notice of withdrawal of appearance that bears his client's written consent, Atty. Claveria cannot be regarded as having withdrawn from

the case. Actually, however, this is not a case of improper withdrawal of counsel, which requires the client's consent or a court's permission after hearing for counsel to retire. Rather, it is a case of the client substituting his former counsel with a new one. This is the effect since DNB insists that the NLRC should have acted on Atty. Carpio's motion for reconsideration rather than on the one that Atty. Claveria filed also on its behalf.

A client has of course the right to dismiss and replace his counsel of record as provided in the second paragraph of Section 26 above. But this assumes that such client has given counsel a notice of dismissal so the latter could immediately cease to represent him. Indeed, it would have been more prudent for newly hired counsel to refrain from entering his appearance in the case until he has ascertained that the previous counsel has been dismissed from it. As it happened, apparently unaware that Atty. Carpio had already filed a motion for reconsideration of the NLRC Order dismissing DNB's appeal, Atty. Claveria filed still another motion for reconsideration on its behalf. He had no inkling that his client had decided to replace him.

Clearly, the fault in this case did not lie with the NLRC but with DNB which failed in its duty to inform Atty. Claveria of his dismissal. And, since DNB had no right to file two motions for reconsideration, the NLRC would have been well within its right to altogether disregard both motions. Instead, however, it chose the more lenient option of acting on the one filed by the original counsel of record who had not withdrawn from the case or been properly substituted. This action cannot be regarded as constituting grave abuse of discretion.

DNB points out that the CA erred in not ruling that the NLRC gravely abused its discretion when it dismissed DNB's appeal from the Labor Arbiter's Decision on the ground that no certification of non-forum shopping accompanied its memorandum of appeal. But grave abuse of discretion connotes utter absence of any basis for the NLRC ruling which is not the case here. Section 4, Rule VI of the 2005 Revised Rules of Procedure of the NLRC specifically requires the submission of such

certification of non-forum shopping in appeals to the NLRC. Thus:

Section 4. Requisites for Perfection of Appeal. a) **The appeal shall be:** 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and **5) accompanied by** i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; **iii) a certificate of non-forum shopping**; and iv) proof of service upon the other parties.

b) **A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period of perfecting an appeal**.

x x x x x x x x x

The fact that DNB had not actually engaged in forum shopping is not an excuse for its failure to comply with the requirement, an omission that allowed the period for perfecting the appeal to run inexorably.[1] The NLRC was, therefore, justified in dismissing DNB's appeal.

DNB points out that the requirement of certification of non-forum shopping has no meaning in relation to its appeal from the Decision of the Labor Arbiter to the NLRC since such a certification is required under Section 5, Rule 7 of the Rules of Court only in initiatory pleadings and since it was respondent technicians, not DNB, who initiated the labor case with their complaint. But insisting on such requirement even on appeal is a prerogative of the NLRC under its rule making power considering the great volume of appeals filed with it from all over the country. In *Maricalum Mining Corp. v. National Labor Relations Commission*,[2] the Court held that substantial

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[1] *Spouses Melo v. Court of Appeals*, 376 Phil. 204, 213 (1999).

[2] 358 Phil. 864 (1998).

compliance with the requirement may be allowed when justified under the circumstances but the Court finds no grave abuse of discretion on NLRC's part when it found no such justification in this case.

WHEREFORE, the Court **DENIES** the petition of DNB Electronics & Communication Services and Diones N. Belza and **AFFIRMS** the Court of Appeals Decision in CA-G.R. SP 100501 dated November 26, 2009 and Resolution dated May 19, 2010.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 194612. January 27, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORO MANIGO *Y* MACALUA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT THEREON ARE GIVEN GREAT RESPECT IF NOT CONCLUSIVE EFFECT; EXCEPTION.— "The legal aphorism is that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given great respect if not conclusive effect, unless it ignored, misconstrued, misunderstood, or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case."

2. ID.; ID.; ID.; TESTIMONY OF RAPE VICTIM; A RAPE VICTIM'S ACCOUNT IS SUFFICIENT TO SUPPORT CONVICTION IF IT IS STRAIGHTFORWARD, CANDID AND CORROBORATED BY MEDICAL FINDINGS.— "Where a victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place. A rape victim's account is sufficient to support a conviction for rape if it is straightforward, candid and corroborated by the medical findings of the examining physician, as in the present case." Also, "[c]ourts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, as in this case, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation were it not to condemn an injustice and have the offender apprehended and punished."

3. ID.; ID.; ID.; ID.; INCONSISTENCY BETWEEN THE AFFIDAVIT AND THE TESTIMONY OF THE WITNESS, THE LATTER SHOULD BE GIVEN MORE WEIGHT SINCE AFFIDAVITS ARE USUALLY INCOMPLETE AND INACCURATE.— Insofar as the alleged inconsistency between "AAA's" statements in her affidavit and testimony in open court is concerned, it has often been noted by this Court that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken *ex-parte* are usually incomplete and inaccurate. Besides, the inconsistency respecting the physical appearance of appellant has no bearing on the principal question of whether appellant had carnal knowledge of the victim. Neither the failure of "AAA" to describe the tricycle will dent her credibility. Suffice it to say that these matters are not so material in the prosecution of the crime.

4. ID.; ID.; TESTIMONY OF RAPE VICTIM; DEFECT IN OUT-OF–COURT IDENTIFICATION OF THE ACCUSED IS CURED BY THE POSITIVE IN-COURT IDENTIFICATION.— In *People v. Rivera,* it was ruled that "even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the 'inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification.'"

5. CRIMINAL LAW; REVISED PENAL CODE; RAPE; DENIAL AND ALIBI; DEFENSES OF DENIAL AND ALIBI ARE INHERENTLY WEAK AND MUST BE BRUSHED ASIDE WHEN THE PROSECUTION HAS SUFFICIENTLY AND POSITIVELY ASCERTAINED THE IDENTITY OF THE ACCUSED.— The defenses of denial and alibi proffered by appellant were correctly rejected by the courts below in view of "AAA's" positive testimony and unflawed identification of appellant as the culprit. Alibi and denial are inherently weak defenses and "must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused." And as often stressed, positive testimony prevails over negative testimony. Also, for his defense of alibi to prosper, appellant must prove not only that he was somewhere else when the crime was committed but he must also satisfactorily establish that it was physically impossible for him to be at the crime scene at the time of its commission.

6. ID.; ID.; ID.; IMPOSABLE PENALTY.— Under Article 266-B of the Revised Penal Code, the penalty of *reclusion perpetua* to death shall be imposed whenever the crime of rape is committed through the use of a deadly weapon or by two or more persons. It was sufficiently alleged in the Information and established during trial that appellant used a knife, a deadly weapon, in the commission of rape. Since no other circumstance, whether aggravating or mitigating, attended the commission of the crime, the lesser of the two indivisible penalties which is *reclusion perpetua* shall be imposed pursuant to Article 63 of the same Code. Consequently, the Court sustains the penalty of *reclusion perpetua* imposed by the CA. "It must be emphasized, however, that [appellant] shall not be eligible for parole pursuant to Section 3 of Republic Act No. 9346 which states that 'persons convicted of offenses punished with *reclusion perpetua*, or whose sentence will be reduced by *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended'."

7. ID.; ID.; ID.; CIVIL INDEMNITIES; AWARD OF PROPER DAMAGES, EXPLAINED.— As to the award of damages, the Court sees a need for some modification in line with recent jurisprudence. Thus, "[c]onsidering that the penalty imposable is *reclusion perpetua*, the award of ₱75,000.00 by the CA as

civil indemnity must be reduced to ₱50,000.00." "The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place." Also the award of ₱75,000.00 as moral damages should be reduced to ₱50,000.00. Moral damages are automatically granted to the rape victim without presentation of further proof other than the commission of the crime. With respect to exemplary damages, we increase the same from ₱25,000.00 to ₱30,000.00 in line with prevailing jurisprudence. Exemplary damages should be awarded by reason of the established presence of the qualifying circumstance of use of deadly weapon. In addition, interest at the rate of 6% *per annum* shall be imposed on all damages awarded from the date of finality of this judgment until fully paid likewise pursuant to prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

"[R]ape is generally unwitnessed and oftentimes, the victim is left to testify for herself. Thus, in resolving rape cases, the victim's credibility becomes the primordial consideration. If a victim's testimony is straightforward, convincing and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility and the accused may be convicted solely on the basis thereof."[1]

This is an appeal from the Decision[2] dated July 21, 2010 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00652-

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[1] *People v. Arcosiba*, G.R. No. 181081, September 4, 2009, 598 SCRA 517, 526, citing *People v. Baligod*, 583 Phil. 299, 305 (2008).

[2] CA *rollo*, pp. 63-72; penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justices Edgardo A. Camello and Nina G. Antonio-Valenzuela.

MIN, affirming with modification the October 21, 2007 Decision[3] of the Regional Trial Court (RTC), Branch 2, Tagum City, in Criminal Case No. 13954. The RTC found appellant Floro Manigo *y* Macalua (appellant) guilty beyond reasonable doubt of the crime of rape under Article 266-A in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act (RA) No. 8353, otherwise known as "The Anti-Rape Law of 1997." The trial court sentenced him to suffer the penalty of *reclusion perpetua* and to pay the victim civil indemnity.

The Charge

On October 15, 2004, an Amended Information[4] for rape was filed with the RTC against appellant which contained the following accusations:

> The undersigned accuses FLORO MANIGO *y* MACALUA *alias* JUN of the crime of Rape under Article 266-A, par. 1 in relation to the 2nd par. of Article 266-B of the Revised Penal Code as amended by Republic Act No. 8353 in relation to Republic Act [N]o. 8369, committed as follows:
>
> > That on or about April 16, 2004, in the City of Tagum, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, through force or intimidation, willfully, unlawfully and feloniously had carnal knowledge of "AAA,"[5] a 13-year old minor, against her will.
>
> CONTRARY TO LAW.

During his arraignment on November 17, 2004, appellant with the assistance of counsel entered a plea of not guilty to the

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[3] Records, pp. 100-104; penned by Judge Justino G. Aventurado.

[4] *Id.* at 1.

[5] "The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*) and Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*)"; *People v. Teodoro*, G.R. No. 175876, February 20, 2013, 691 SCRA 324, 326.

charge. After the termination of the pre-trial conference, trial ensued.

Version of the Prosecution

At noontime on April 16, 2004, "AAA," then 13 years of age being born on February 1, 1991,[6] and her classmate "BBB" were outside the compound of Magugpo Pilot Elementary School waiting for a ride home after their summer remedial classes. Momentarily, a tricycle arrived which the two boarded. They told the driver, herein appellant, to bring them first to *Purok* Macasero where "BBB" resides. After "BBB" alighted, the tricycle took a different route prompting "AAA" to ask why. Appellant replied that he would just have the gas tank filled. But instead of going to the gas station, appellant proceeded to a banana plantation and when again asked by "AAA," answered that he was going to take his lunch. When they stopped, appellant alighted and urinated nearby. He then positioned himself beside "AAA" who was still inside the tricycle and told the latter to undress. "AAA" pleaded for appellant not to harm her as she still has younger siblings but the same was unheeded. While pointing a knife on "AAA," appellant took off her panties and his own clothes. "AAA" noticed a tattoo on appellant's right upper hand. After warning "AAA" not to make any movement, appellant forced his penis inside her vagina and made a pumping motion. Once satiated, appellant told "AAA" to dress up. They then left the place and when they reached Makulay Restaurant, appellant gave "AAA" ₱40.00 pesos and allowed her to go home.

The following day, "AAA" disclosed her ordeal to her mother. Together, they went to the Davao Regional Hospital where she was subjected to physical examination that revealed a laceration on her hymen consistent with her claim of sexual abuse.[7] Dr. Suzette A. Perez (Dr. Perez) also found that "AAA" had abrasion which means that there was scratch or swelling or redness on the posterior portion of her vagina. Thereafter,

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[6] Exhibit "C", Certificate of Live Birth, Records, p. 11.

[7] Exhibit "A", Medical Certificate, *id.* at 9.

"AAA" and her mother reported the matter to the Tagum City Police Station.

Version of the Defense

In his defense, appellant raised denial and alibi. According to him, he could not have raped "AAA" since on the day of the alleged incident, he was at their home in Uraya Subdivision, Mankilam, Tagum City, Davao del Norte. He is also happily married to Lyn, a teacher, and is not a tricycle driver but engaged in a lucrative business of money lending. In fact, the first time he saw "AAA" was when he was made to stand in a police line-up with several detainees for identification.

Ruling of the Regional Trial Court

The RTC accorded full faith and credence to the testimony of "AAA" on how the incident happened and her positive identification of the appellant. It rejected appellant's defense of denial. Thus, the dispositive portion of its Decision, *viz*:

> WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of Rape under Article 266-A, Par. 1 in relation to the 2nd par. of Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, in [r]elation to Republic Act No. 8369 and hereby sentences him to suffer the penalty of *reclusion perpetua*.
>
> He is likewise ordered to pay the victim the sum of ₱100,000.00 as civil indemnity.
>
> SO ORDERED.[8]

Ruling of the Court of Appeals

On appeal, the CA affirmed with modification the Decision of the RTC. While it sustained the findings relative to the credibility of "AAA" and her out-of-court identification of appellant, the said court, however, modified the award of damages. The decretal portion of the CA Decision reads:

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[8] *Id.* at 104.

WHEREFORE, the October 21, 2007 Decision of the Regional Trial Court, Branch 2 of Tagum City, Davao del Norte in Criminal Case No. 13954 is hereby AFFIRMED WITH MODIFICATION. Accused-appellant Floro Manigo *y* Macalua is found GUILTY beyond reasonable doubt of Rape under Article 266-A of the Revised Penal Code and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ORDERED to pay AAA ₱75,000.00 as civil indemnity *ex-delicto*, ₱75,000.00 as Moral Damages, and ₱25,000.00 as exemplary damages.

SO ORDERED.[9]

Undeterred, appellant is now before this Court for final review of his conviction. In our Resolution[10] of January 19, 2011, we required the parties to file their respective supplemental briefs if they so desire within 30 days from notice. Per their respective manifestations,[11] both parties opted to adopt the briefs they filed before the CA.

Issue

The pivotal issue in this case hinges on the credibility of "AAA," thus our effort to scrutinize her testimony.

Our Ruling

The appeal is bereft of merit.

"AAA's" testimony deserves full faith and credence.

Appellant points to several flaws in "AAA's" testimony, to wit: (1) she did not make a particular description of the tricycle used at the time of the commission of the crime; (2) her description of appellant's physical features during the trial is different from

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[9] CA *rollo*, pp. 71-72.

[10] *Rollo*, pp. 18-19.

[11] See the Office of the Solicitor General's Manifestation and Motion (Re: Supplemental Brief), *id.* at 20-22 and the Public Attorney's Office's Notice of Appearance with Manifestation, *id.* at 29-32.

what she stated in her affidavit; and, (3) "AAA's" out-of-court identification of appellant is doubtful.

Appellant's contentions basically relate to the trial court's appreciation of the evidence adduced by the prosecution and its factual findings based thereon.

"The legal aphorism is that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative weight are given great respect if not conclusive effect, unless it ignored, misconstrued, misunderstood, or misinterpreted cogent facts and circumstances of substance which, if considered, would alter the outcome of the case."[12] A careful scrutiny of the records reveals that the case at bench is not an exception.

Like the lower courts, we find the narration of "AAA" to be candid, frank and straightforward. There is nothing therein that appears to be unnatural or illogical. Moreover, "AAA's" claim of rape is supported by the medical findings of Dr. Perez, another prosecution witness. "Where a victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place. A rape victim's account is sufficient to support a conviction for rape if it is straightforward, candid and corroborated by the medical findings of the examining physician, as in the present case."[13]

Also, "[c]ourts usually give greater weight to the testimony of a girl who is a victim of sexual assault, especially a minor, as in this case, because no woman would be willing to undergo a public trial and put up with the shame, humiliation and dishonor of exposing her own degradation were it not to condemn an injustice and have the offender apprehended and punished."[14]

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[12] *People v. Oliva*, G.R. No. 187043, September 18, 2009, 600 SCRA 834, 839.

[13] *People v. Corpuz*, 517 Phil. 622, 637 (2006).

[14] *People v. Castro*, 594 Phil. 665, 674 (2008).

Insofar as the alleged inconsistency between "AAA's" statements in her affidavit and testimony in open court is concerned, it has often been noted by this Court that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken *ex-parte* are usually incomplete and inaccurate.[15] Besides, the inconsistency respecting the physical appearance of appellant has no bearing on the principal question of whether appellant had carnal knowledge of the victim. Neither the failure of "AAA" to describe the tricycle will dent her credibility. Suffice it to say that these matters are not so material in the prosecution of the crime.

In yet another attempt to undermine the credibility of "AAA," appellant asserts that his out-of-court identification as the culprit is doubtful. He avers that "AAA" knew beforehand that she was being called to the police station precisely to identify her rapist.

In *Vidar v. People*,[16] the Court laid down the following:

> In ascertaining whether an out-of-court identification is positive or derivative, the Court has adopted the totality of circumstances test wherein the following factors are taken into consideration: (1) the witness's opportunity to view the criminal at the time of the crime; (2) the witness's degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.[17]

Guided by the above, we find "AAA's" out-of-court identification of appellant not tainted with any irregularity. As aptly argued by the appellee in its brief:

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[15] *People v. Villanueva, Jr.*, G.R. No. 187152, July 22, 2009, 593 SCRA 523, 542.

[16] G.R. No. 177361, February 1, 2010, 611 SCRA 216.

[17] *Id.* at 227.

All six (6) factors were substantially satisfied in the present case[:] (1) the victim had more than sufficient time to observe the rapist; (2) the victim's attention was focused on appellant to whom she even pleaded not to hurt her since she still had younger siblings; (3) except for appellant's complexion and hair, the victim gave prior descriptions of appellant which became the source of the cartographic sketch; (4) she immediately pointed to appellant as her rapist from among several men inside the prison cell; (5) the crime was committed on April 16, 2004 and appellant was identified by the victim a few days thereafter, or on April 20, 2004; (6) suggestiveness was non-existent. Even before she was requested to visit the police station, she was already able to describe to the police officers the physical features of her assailant which was made the basis for the cartographic sketch. Noticeably, nobody helped her in identifying the appellant. Verily, the totality of the circumstances in this case shows that her identification of appellant was spontaneous and independent.[18]

It must also be stressed that "AAA" positively identified appellant in court as her assailant. In *People v. Rivera*,[19] it was ruled that "even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the 'inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification.'"

In view of the foregoing, the Court concludes that "AAA's" testimony was correctly given full faith and credence by the lower courts.

Defense of Denial and Alibi Correctly Rejected.

The defenses of denial and alibi proffered by appellant were correctly rejected by the courts below in view of "AAA's" positive testimony and unflawed identification of appellant as the culprit. Alibi and denial are inherently weak defenses and "must be brushed aside when the prosecution has sufficiently and positively

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[18] CA *rollo*, pp. 55-56.

[19] 458 Phil. 856, 877 (2003).

ascertained the identity of the accused."[20] And as often stressed, positive testimony prevails over negative testimony.[21] Also, for his defense of alibi to prosper, appellant must prove not only that he was somewhere else when the crime was committed but he must also satisfactorily establish that it was physically impossible for him to be at the crime scene at the time of its commission. Appellant miserably failed in this regard.

All told, the Court sustains appellant's conviction for the crime of rape.

The Penalty

Under Article 266-B of the Revised Penal Code, the penalty of *reclusion perpetua* to death shall be imposed whenever the crime of rape is committed through the use of a deadly weapon or by two or more persons. It was sufficiently alleged in the Information and established during trial that appellant used a knife, a deadly weapon, in the commission of rape. Since no other circumstance, whether aggravating or mitigating, attended the commission of the crime, the lesser of the two indivisible penalties which is *reclusion perpetua* shall be imposed pursuant to Article 63[22] of the same Code. Consequently, the Court sustains the penalty of *reclusion perpetua* imposed by the CA. "It must be emphasized, however, that [appellant] shall not be eligible for parole pursuant to Section 3 of Republic Act No. 9346 which states that 'persons convicted of offenses punished with *reclusion perpetua*, or whose sentence will be reduced by *reclusion perpetua* by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended'."[23]

The Civil Indemnities

As to the award of damages, the Court sees a need for some modification in line with recent jurisprudence. Thus,

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[20] *People v. Torres*, 559 Phil. 408, 418 (2007).

[21] *People v. Corpuz*, 517 Phil. 622, 638 (2006).

[22] Rules for the Application of Indivisible Penalties.

[23] *People v. Bacatan*, G.R. No. 203315, September 18, 2013.

"[c]onsidering that the penalty imposable is *reclusion perpetua*, the award of ₱75,000.00 by the CA as civil indemnity must be reduced to ₱50,000.00."[24] "The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place."[25] Also the award of ₱75,000.00 as moral damages should be reduced to ₱50,000.00.[26] Moral damages are automatically granted to the rape victim without presentation of further proof other than the commission of the crime.[27] With respect to exemplary damages, we increase the same from ₱25,000.00 to ₱30,000.00 in line with prevailing jurisprudence.[28] Exemplary damages should be awarded by reason of the established presence of the qualifying circumstance of use of deadly weapon.[29]

In addition, interest at the rate of 6% *per annum* shall be imposed on all damages awarded from the date of finality of this judgment until fully paid likewise pursuant to prevailing jurisprudence.[30]

WHEREFORE, the Decision dated July 21, 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 00652-MIN is **AFFIRMED with MODIFICATIONS**. Appellant Floro Manigo *y* Macalua is found **GUILTY** beyond reasonable doubt of RAPE and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay the victim "AAA" ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages

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[24] *Sison v. People*, G.R. No. 187229, February 22, 2012, 666 SCRA 645, 667.

[25] *People v. Delabajan*, G.R. No. 192180, March 21, 2012, 668 SCRA 859, 868.

[26] *People v. Estoya*, G.R. No. 200531, December 5, 2012, 687 SCRA 376, 388-389.

[27] *People v. Diocado*, 591 Phil. 736, 752 (2008).

[28] *People v. Estoya*, *supra* at 389.

[29] *People v. Toriaga*, G.R. No. 177145, February 9, 2011, 642 SCRA 515, 522.

[30] *People v. Dumadag*, G.R. No. 176740, June 22, 2011, 652 SCRA 535, 550.

and ₱30,000.00 as exemplary damages. The award of damages shall earn legal interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 201011. January 27, 2014]

THERESITA, JUAN, ASUNCION, PATROCINIA, RICARDO, and GLORIA, all surnamed DIMAGUILA, *petitioners, vs.* **JOSE and SONIA A. MONTEIRO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSIONS; AN ADMISSION MADE BY A PARTY IN THE COURSE OF THE PROCEEDINGS IN THE SAME CASE DOES NOT REQUIRE PROOF, AND MAY BE CONTRADICTED ONLY BY SHOWING THAT IT WAS MADE THROUGH PALPABLE MISTAKE; PALPABLE MISTAKE, NOT ESTABLISHED IN CASE AT BAR.— Section 4 of Rule 129 of the Rules of Court provides that an admission made by a party in the course of the proceedings in the same case does not require proof, and may be contradicted only by showing that it was made through palpable mistake. The petitioners argue that such admission was the palpable mistake of their former counsel in his rush to file the answer, a copy of which was not provided to them. x x x This contention is unacceptable. It is a purely self-serving claim unsupported by any iota of evidence. Bare allegations, unsubstantiated by evidence, are not equivalent to proof. Furthermore, the Court notes that this

position was adopted by the petitioners only almost eight (8) years after their original answer was filed, in response to the amended complaint of the respondent spouses. In their original answer to the complaint for partition, their claim that there was already a partition into northern-half and southern-half portions, was the very essence of their defense. It was precisely this admission which moved the respondent spouses to amend their complaint. The petitioners cannot now insist that the very foundation of their original defense was a palpable mistake.

2. ID.; ID.; ADMISIBILITY; BEST EVIDENCE RULE; WHEN THE ORIGINAL IS A PUBLIC RECORD IN THE CUSTODY OF A PUBLIC OFFICER OR IS RECORDED IN A PUBLIC OFFICE, AS EXCEPTION; PRESENT IN CASE AT BAR.— Anent the best evidence rule, Section 3(d) of Rule 130 of the Rules of Court provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except when the original is a public record in the custody of a public officer or is recorded in a public office. Section 7 of the same Rule provides that 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. Section 24 of Rule 132 provides that the record of public documents may be evidenced by a copy attested by the officer having the legal custody or the record. Certified true copies of the cadastral map of Liliw and the corresponding list of claimants of the area covered by the map were presented by two public officers. The first was Crisostomo Arves, Clerk III of the Municipal Assessor's Office, a repository of such documents. The second was Dominga Tolentino, a DENR employee, who, as a record officer, certifies and safekeeps records of surveyed land involving cadastral maps. The cadastral maps and the list of claimants, as certified true copies of original public records, fall under the exception to the best evidence rule.

3. ID.; ID.; ID.; HEARSAY RULE; ENTRIES IN OFFICIAL RECORDS AS EXCEPTION, EXPLAINED; APPLICATION IN CASE AT BAR.— As to the hearsay rule, Section 44 of Rule 130 of the Rules of Court similarly provides that entries in official records are an exception to the rule. The rule provides that entries in official records made in the performance of the

duty of a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated. The necessity of this rule consists in the inconvenience and difficulty of requiring the official's attendance as a witness to testify to the innumerable transactions in the course of his duty. The document's trustworthiness consists in the presumption of regularity of performance of official duty. Cadastral maps are the output of cadastral surveys. The DENR is the department tasked to execute, supervise and manage the conduct of cadastral surveys. It is, therefore, clear that the cadastral map and the corresponding list of claimants qualify as entries in official records as they were prepared by the DENR, as mandated by law. As such, they are exceptions to the hearsay rule and are *prima facie* evidence of the facts stated therein.

4. CIVIL LAW; ESTOPPEL; AN ADMISSION IS RENDERED CONCLUSIVE UPON THE PERSON MAKING IT, AND CANNOT BE DENIED OR DISPROVED AS AGAINST THE PERSON RELYING THEREON; PRESENT IN CASE AT BAR.— Article 1431 of the Civil Code provides that through estoppel, an admission is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. The respondent spouses had clearly relied on the petitioners' admission and so amended their original complaint for partition to one for recovery of possession of a portion of the subject property. Thus, the petitioners are now estopped from denying or attempting to prove that there was no partition of the property. Considering that an admission does not require proof, the admission of the petitioners would actually be sufficient to prove the partition even without the documents presented by the respondent spouses. If anything, the additional evidence they presented only served to corroborate the petitioners' admission.

5. ID.; PROPERTY; CO-OWNERSHIP; AS A RULE, ONLY FELLOW CO-OWNERS HAVE PERSONALITY TO ASSAIL THE SALE OF A PORTION OF PROPERTY TO WHICH HE HAS A CLAIM; APPLICATION IN CASE AT BAR.— In any case, as correctly held by the lower courts, the petitioners, as heirs of Vitaliano, who inherited the northern-half portion of the subject property, do not possess the necessary personality to assail the sale of the southern-half portion between

Spouses Monteiro and the heirs of Pedro. They are not real parties-in-interest who stand to be benefited or injured by the sale of the 1/3 portion of the southern-half over which they have absolutely no right. As correctly ruled by the courts below, only fellow co-owners have the personality to assail the sale, namely, the heirs of Pedro's siblings, Esperanza and Leandro. They have, however, expressly acquiesced to the sale and waived their right to the property in the affidavit presented by Spouses Monteiro. As such, the petitioners have no right to their counterclaims of demolition of improvements and payment of damages.

6. ID.; ID.; ID.; WHEN CLAIM OVER THE SUBJECT PROPERTY IS SUFFICIENTLY PROVED, AWARD OF POSSESSION, RENTALS, ATTORNEY'S FEES, AND LITIGATION EXPENSES TO CLAIMANTS IS PROPER; CASE A BAR.— With Spouses Monteiro having sufficiently proved their claim over the subject I/3 portion of the southern-half of the property through the *Bilihan*, the lower courts did not err in awarding possession, rentals, attorney's fees, and litigation expenses to them. The Court, however, finds that the award of rentals should be reckoned from January 2, 2001, the date the Spouses Monteiro filed their Amended Complaint seeking recovery of the subject portion. Interest at the rate of 6% per annum shall also be imposed on the total amount of rent due from finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Riguera & Riguera Law Office for petitioners.
Edgardo M. Salandanan for respondents.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the August 15, 2011 Decision[1]

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[1] *Rollo*, pp. 29-43; penned by Associate Justice Hakim S. Abdulwahid, with Associate Justice Ricardo R. Rosario and Associate Justice Rodil V. Zalameda, concurring.

and the March 5, 2012 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. CV No. 92707, which affirmed the August 23, 2007 Decision[3] of the Regional Trial Court, Branch 27, Santa Cruz, Laguna (*RTC*), in Civil Case No. SC-3108.

The Facts

On July 5, 1993, the respondent spouses, Jose and Sonia Monteiro *(Spouses Monteiro)*, along with Jose, Gerasmo, Elisa, and Clarita Nobleza, filed their Complaint for Partition and Damages before the RTC, against the petitioners, Theresita, Juan, Asuncion, Patrocinia, Ricardo, and Gloria Dimaguila *(The Dimaguilas)*, together with Rosalina, Jonathan, Eve, Sol, Venus, Enrique, Nina, Princess Arieta, and Evangelina Borlaza. The complaint alleged that all the parties were co-owners and prayed for the partition of a residential house and lot located at Gat. Tayaw St., Liliw, Laguna, with an area of 489 square meters, and covered by Tax Declaration No. 1453. Spouses Monteiro anchored their claim on a deed of sale executed in their favor by the heirs of Pedro Dimaguila *(Pedro)*.

In their Answer, the Dimaguilas and the other defendants countered that there was no co-ownership to speak of in the first place. They alleged that the subject property, then owned by Maria Ignacio Buenaseda, had long been partitioned equally between her two sons, Perfecto and Vitaliano Dimaguila, through a Deed of Extrajudicial Partition, with its southern-half portion assigned to Perfecto and the northern-half portion to Vitaliano. They claimed that they were the heirs of Vitaliano and that Spouses Monteiro had nothing to do with the property as they were not heirs of either Perfecto or Vitaliano.

During the course of the proceedings, several incidents were initiated, namely: (a) Motion to Dismiss for lack of legal capacity to sue of Spouses Monteiro and for lack of cause of action; (b) Motion for Reconsideration of the Order of denial thereof, which was denied; (c) Motion for Production and Inspection of

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[2] *Id.* at 44-45.

[3] *Id.* at 144-157.

Documents; (d) Motion for Reconsideration of the Order granting the same, which was denied; (e) Motion to Defer Pre-trial; (f) Notice of Consignation by the petitioners in the exercise of their alleged right of redemption of the share being claimed by the Spouses Monteiro in light of the deed of sale they produced and claimed to have been executed by the heirs of Pedro in their favor; (g) Motion to Remove Sonia Monteiro *(Sonia)* as plaintiff, which was denied; (h) Motion for Reconsideration thereof, which was also denied; (i) Motion for Clarification and/or Extended Resolution; and (j) Motion to Suspend Proceedings due to a pending Petition for *Certiorari* before the CA assailing several of the RTC orders. The proceedings resumed after the promulgation by the CA of its April 5, 2000 Resolution in CA-G.R. No. SP 52833, which upheld the assailed RTC orders.

On January 2, 2001, upon resumption of the proceedings, Spouses Monteiro filed their Motion for Leave to Amend and/or Admit Amended Complaint.[4] The RTC granted their motion. The amended complaint abandoned the original claim for partition and instead sought the recovery of possession of a portion of the subject property occupied by the Dimaguilas and other defendants, specifically, the portion sold to the couple by the heirs of Pedro. Furthermore, only Spouses Monteiro were retained as plaintiffs and the Dimaguilas as defendants.

In amending their complaint, Spouses Montiero adopted the Dimaguilas' admission in their original answer that the subject property had already been partitioned between Perfecto and Vitaliano, through a Deed of Extrajudicial Partition, dated October 5, 1945, and that during their lifetime, the brothers agreed that Perfecto would become the owner of the southern-half portion and Vitaliano of the northern-half portion, which division was observed and respected by them as well as their heirs and successors-in-interest.

Spouses Monteiro further averred that Perfecto was survived by Esperanza, Leandro and Pedro, who had divided the southern-half portion equally amongst themselves, with their respective

[4] Records, Vol. II, pp. 289-308.

1/3 shares measuring 81.13 square meters each; that Pedro's share pertains to the 1/3 of the southern-half immediately adjacent to the northern-half adjudicated to the Dimaguilas as heirs of Vitaliano; that on September 29, 1992, Pedro's share was sold by his heirs to them through a *Bilihan ng Lahat Naming Karapatan* (*Bilihan*) with the acquiescence of the heirs of Esperanza and Leandro appearing in an Affidavit of Conformity and Waiver; and that when they attempted to take possession of the share of Pedro, they discovered that the subject portion was being occupied by the Dimaguilas.

In their Answer[5] to the amended complaint, the Dimaguilas admitted that the subject property was inherited by, and divided equally between Perfecto and Vitaliano, but denied the admission in their original answer that it had been actually divided into southern and northern portions. Instead, they argued that the Extrajudicial Partition mentioned only the division of the subject property "into two and share and share alike." In effect, they argued the existence of a co-owenrship, contrary to their original position. The Dimaguilas further argued that the *Bilihan* did not specify the metes and bounds of the property sold, in violation of Article 1458 of the Civil Code. Even assuming that such had been specified, they averred that the sale of a definite portion of a property owned in common was void since a co-owner could only sell his undivided share in the property.

During the trial, Spouses Monteiro presented Pedrito Adrieta, brother of Sonia Monteiro *(Sonia),* who testified that Perfecto was his grandfather and that at the time of Perfecto's death, he had two properties, one of which was the subject property in Liliw, Laguna, which went to his children, Esperanza, Leonardo and Pedro. Pedro was survived by his children Pedrito, Theresita, Francisco, and Luis, who, in turn, sold their rights over the subject property to Sonia.

Sonia testified that she was approached by Pedro's son, Francisco, and was asked if she was interested in purchasing

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[5] *Id.* at 315-328.

Pedro's 1/3 share of the southern portion of the *Bahay na Bato*, and that he showed her a deed of extrajudicial partition executed by and between Perfecto and Vitaliano, as well as the tax declaration of the property to prove that the property had already been partitioned between the two brothers.

Engineer Baltazar F. Mesina testified that he was the geodetic engineer hired by Spouses Monteiro to survey the property in Liliw, and recounted that he checked the boundary of the subject property, subdivided the lot into two and came up with a survey plan.

Crisostomo Arves, an employee from the Office of the Municipal Assessor, presented a certified true copy of the cadastral map of Liliw and a list of claimants/owners.

Dominga Tolentino, a record officer of the Department of Environment and Natural Resources *(DENR)*, testified that as part of her duties, she certifies and safekeeps the records of surveyed land, including cadastral maps from the region.

One of the Dimaguilas, Asuncion, was the sole witness for the defendants. She testified that their first counsel made a mistake when he alleged in their original answer that the property had already been partitioned into northern and southern portions between the two brothers, as the original answer had been rushed and they were never given a copy of it. She claimed that the mistake was only pointed out to her by their new counsel after their former counsel withdrew due to cancer. She further testified that there was no intention to partition the "*bahay na bato*" which stood on the subject property, in order to preserve its historical and sentimental value.

Ruling of the RTC

In its August 23, 2007 Decision, the RTC ruled in favor of Spouses Monteiro and ordered the Dimaguilas to turn over the possession of the subject 1/3 portion of the southern-half of the property, to wit:

WHEREOF, judgment is hereby rendered in favor of the plaintiffs and against the defendants:

a. Ordering the defendants and all persons claiming rights under them to peacefully vacate and turn-over possession of 1/3 of the southern portion of the property covered by Tax Declaration No. 1453, specifically described as "A" of Lot 877 in the sketch plan marked as Exhibit "I", within 60 days from the finality of this Decision, failing which let a writ of possession issue;

b. Ordering the defendants to pay the plaintiffs, jointly and solidarily, the amount of ₱500 per month in the form of rent for the use of the property from July 1993 until the property is vacated;

c. Ordering the defendants to pay the plaintiffs, jointly and solidarily, attorney's fees of ₱30,000 and litigation expense of ₱20,000.

SO ORDERED.[6]

The RTC found that although the extrajudicial partition merely divided the property into two share and share alike, evidence *aliunde* was appreciated to show that there was an actual division of the property into south and north between Perfecto and Vitaliano, and that such partition was observed and honored by their heirs. These pieces of evidence were the cadastral map of Liliw[7] and a corresponding list of claimants, which showed that the subject property had long been registered as Lot 876 (northern-half), claimed by Buenaventura Dimaguila *(Buenaventura)*, an heir of Vitaliano, and Lot 877 (southern-half), claimed by Perfecto.

The RTC held that the manner of partition was admitted by the Dimaguilas themselves in their original answer. It gave no credence to the claim of Asuncion that such admission was an error of their former counsel and that she was unaware of the contents of their original answer. It noted that the Dimaguilas had strongly maintained their theory of partition from 1992 when the complaint was first filed, and only changed their defense

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[6] *Rollo*, pp. 156-157.

[7] Records, Vol. I, Exhibit "A", pp. 24-25.

in 2001 when Spouses Monteiro filed their amended complaint. It keenly observed that it was precisely their admission which propelled Spouses Monteiro to amend their complaint from one of partition to recovery of possession. Thus, the RTC concluded that there was indeed a partition of the subject property into southern-half and northern-half portions between Perfecto and Vitaliano and that the Dimaguilas were estopped from denying the same.

As to the authenticity of the *Bilihan*, where the 1/3 share of Pedro was sold to Spouses Monteiro, the RTC found the document to be regular and authentic absent any piece of evidence to the contrary. It stated that the proper persons to contest the sale were not the Dimaguilas, who were the heirs of Vitaliano, but the heirs of Perfecto. It noted that the records showed that the heirs of Esperanza and Leandro (Pedro's siblings), had signified their conformity to the partition and to the sale of Pedro's 1/3 portion.

Ruling of the CA

In its assailed August 15, 2011 Decision, the CA affirmed the ruling of the RTC.

The CA found that Spouses Monteiro had established their case by a preponderance of evidence thru their presentation of the Deed of Extrajudicial Partition,[8] the cadastral map and the municipal assessor's records.[9] It noted, more importantly, that the Dimaguilas themselves corroborated the claim of partition in their original answer. It likewise ruled that the petitioners were estopped from denying their admission of partition after the respondent spouses had relied on their judicial admission.

The Dimaguilas also insisted on their argument, which was raised before the RTC, but not addressed, that the *Bilihan* should not have been admitted as evidence for lack of a documentary stamp tax, in accordance with Section 201 of the National Internal

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[8] Records, Vol. III, Exhibit "J", p. 519.

[9] Records, Vol. I, Exhibit "A", pp. 24-25.

Revenue Code (*NIRC*). Citing *Gabucan v. Manta*[10] and *Del Rosario v. Hamoy*,[11] the CA, however, ruled that if a document which did not bear the required documentary stamp was presented in evidence, the court should require the proponent to affix the requisite stamp. The CA noted that the RTC had failed to direct Spouses Monteiro to affix the stamp and merely reminded the presiding judge to be more vigilant on similar situations in the future. Nonetheless, it held that the petitioners did not possess the necessary personality to assail the sale between Spouses Monteiro and the heirs of Pedro because it pertained to the southern-half of the property to which they had no claim.

The CA likewise found sufficient basis for the award of rentals as compensatory damages since Spouses Monteiro were wrongfully deprived of possession of the 1/3 portion of the southern-half of the subject property. It also upheld the award of attorney's fees and litigation expenses by the RTC, considering that Spouses Monteiro were compelled to litigate and incur expenses to protect their rights and interest.

In its assailed March 5, 2012 Resolution, the CA denied the petitioners' motion for reconsideration for lack of merit.

Hence, this petition.

ASSIGNMENT OF ERRORS

I

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THERE WAS AN ACTUAL PARTITION OF THE PROPERTY COVERED BY TAX DECLARATION NO. 1453.

II

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE 1/3 PORTION OF THE SOUTHERN HALF OF THE PROPERTY WAS SOLD TO THE RESPONDENTS.

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[10] 184 Phil. 588 (1980).

[11] 235 Phil. 719 (1987).

III

THE COURT OF APPEALS GRAVELY ERRED IN ADMITTING IN EVIDENCE EXHIBIT C, THE *BILIHAN NG LAHAT NAMING KARAPATAN*.

IV

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE RESPONDENTS ARE ENTITLED TO RECOVER POSSESSION OF THE 1/3 PORTION OF THE SOUTHERN HALF OF THE PROPERTY.

V

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE PETITIONERS LIABLE FOR RENTALS FOR THE USE OF THE PROPERTY FROM JULY 1993 UNTIL VACATED.

VI

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THE PETITIONERS LIABLE FOR ATTORNEY'S FEES AND LITIGATION EXPENSES.

VII

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO CONSIDER THE PETITIONERS' SUPPLEMENTAL ANSWER TO AMENDED COMPLAINT AND TO GRANT THE COUNTERCLAIMS INTERPOSED THEREIN.[12]

The Dimaguilas argue that their original allegation regarding the partition of the subject property into northern and southern portions was a mistake of their former counsel, and it was not their intention to partition the property because to do so would damage the house thereon. Even assuming an admission was made, the petitioners aver that such was made only by some, but not all, of the co-owners; and that partition can only be made by all co-owners, and allowing the admission is tantamount to effecting partition by only some co-owners. Spouses Monteiro themselves, in their original complaint, made an admission that

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[12] *Rollo,* pp. 13-14.

they were co-owners of the property and asserted that there was no partition. The evidence *aliunde* considered by the RTC, consisting of the cadastral map and the list of claimants, were timely objected to during the trial as hearsay and a violation of the best evidence rule.

The petitioners reiterate that the *Bilihan* should not have been admitted into evidence because it lacked the documentary stamp tax required by Section 201 of the NIRC, providing that no document shall be admitted in evidence until the requisite stamps have been affixed thereto. They argue that the ruling of petitioners' lack of personality to assail the deed of sale is different from the issue of the deed of sale's admissibility as evidence. They conclude that considering that no documentary stamp was ever affixed on the deed of sale, such should never have been admitted into evidence and consequently, should not have been relied upon by the lower courts to prove the sale of 1/3 of the southern portion; and that considering that the *Bilihan* is inadmissible as evidence, the respondent spouses have no basis for their claim to the subject 1/3 portion of the southern-half of the property. Thus, they insist that the lower courts erred in awarding to Spouses Monteiro the possession of the subject property, the rentals, attorney's fees and litigation expenses, and in failing to rule on their counterclaim for demolition of improvements and payment of damages.

The assignment of errors boils down to two main issues:

1. Whether there was a partition of the subject property; and
2. Whether the 1/3 portion of the southern-half of the subject property was sold to the respondent spouses.

Ruling of the Court

At the outset, it must be pointed out that the petitioners' assignment of errors calls for the Court to again evaluate the evidence to determine whether there was a partition of the property and whether the 1/3 portion of the southern half was sold to the respondent spouses. These clearly entail questions of fact which are beyond the Court's ambit of review under Rule 45 of the

Rules of Court, especially considering that the findings of fact of the RTC were affirmed by the CA.[13] On this ground alone, the present petition must be denied. Nonetheless, the Court shall delve into these factual issues to finally put this case to rest.

Partition of the Subject Property

Spouses Monteiro, as plaintiffs in the original case, had the burden of proof to establish their case by a preponderance of evidence, which is the weight, credit, and value of the aggregate evidence on either side, synonymous with the term "greater weight of the evidence." Preponderance of evidence is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[14]

To prove their claim of partition, the respondent spouses presented the following: (1) the Deed of Extrajudicial Partition, dated October 5, 1945, executed by and between the brothers Perfecto and Vitaliano; (2) the cadastral map of Liliw Cadm-484,[15] dated August 6, 1976, showing that the subject property had been divided into southern and northern portions, registered as Lot Nos. 876 and 877; and (3) the Municipal Assessor's records[16] showing that the said lots were respectively claimed by Buenaventura and Perfecto.

It is undisputed that the Deed of Extrajudicial Partition stated that Perfecto and Vitaliano agreed "to divide between them into two and share and share alike" the subject property, including the house situated thereon. It appears, however, that the property was actually partitioned into definite portions, namely, southern and northern halves, as reflected in the cadastral map of Liliw, which were respectively claimed by an heir of Vitaliano and

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[13] *Heirs of Vda. de Dela Cruz v. Heirs of Fajardo*, G.R. No. 184966, May 30, 2011, 649 SCRA 463, 470.

[14] *Bank of the Philippine Islands v. Spouses Royeca*, 581 Phil. 188, 194 (2008).

[15] Records, Vol. III, Exhibit "J", p. 519.

[16] Records, Vol. III, Exhibit "L", p. 556.

Perfecto himself. It, thus, appears that the subject property had already been partitioned into definite portions more than 20 years prior to the original complaint for partition filed in 1993, and that such division had been observed by the brothers' heirs. As earlier pointed out, the petitioners themselves admitted to this very fact in their original answer, to wit:

> (b) On September 5, 1945 the brothers PERFECTO and VITALIANO DIMAGUILA executed a deed of EXTRA JUDICIAL PARTITION of the aforedescribed property dividing the same into two (2) equal parts as indicated in the aforesaid deed as follows, to wit:
>
> x x x x x x x x x
>
> (c) As a result of the foregoing partition and as known by all the parties in this case from the beginning or as soon as they reached the age of discernment PERFECTO DIMAGUILA became the sole and exclusive owner of the **southern half** of the aforedescribed property and VITALIANO DIMAGUILA became the sole owner of the **northern half** of the same property; the house that was built thereon and still existing up to this time was likewise equally divided between the two (2) DIMAGUILA brothers in accordance with the extrajudicial partition of half equal shares;
>
> x x x x x x x x x
>
> 2. In other words, the share of VITALIANO DIMAGUILA in the above described property has already been long segregated and had passed on to his heirs as is very well known by all the parties in this case;[17]
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> x x x x x x x x x
>
> (Emphases in the Original)

Section 4[18] of Rule 129 of the Rules of Court provides that an admission made by a party in the course of the proceedings

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[17] Records, Vol. I, pp. 11-12.

[18] Section 4. *Judicial admissions.* — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does

in the same case does not require proof, and may be contradicted only by showing that it was made through palpable mistake. The petitioners argue that such admission was the palpable mistake of their former counsel in his rush to file the answer, a copy of which was not provided to them. Petitioner Asuncion testified:

> Q So, why was that allegations (sic) made in the Answer?
>
> A May be, (sic) in his rush to file the Answer, Atty. Paredes filed the same without giving us a copy…[19]

This contention is unacceptable. It is a purely self-serving claim unsupported by any iota of evidence. Bare allegations, unsubstantiated by evidence, are not equivalent to proof.[20] Furthermore, the Court notes that this position was adopted by the petitioners only almost eight (8) years after their original answer was filed, in response to the amended complaint of the respondent spouses. In their original answer to the complaint for partition, their claim that there was already a partition into northern-half and southern-half portions, was the very essence of their defense. It was precisely this admission which moved the respondent spouses to amend their complaint. The petitioners cannot now insist that the very foundation of their original defense was a palpable mistake.

Article 1431[21] of the Civil Code provides that through estoppel, an admission is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. The respondent spouses had clearly relied on the petitioners' admission and so amended their original complaint for partition to one for recovery of possession of a portion of the subject property. Thus, the petitioners are now estopped

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not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

[19] TSN, December 1, 2005, p. 15.

[20] *Rosaroso v. Soria*, G.R. No. 194846, June 19, 2013.

[21] Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

from denying or attempting to prove that there was no partition of the property.

Considering that an admission does not require proof, the admission of the petitioners would actually be sufficient to prove the partition even without the documents presented by the respondent spouses. If anything, the additional evidence they presented only served to corroborate the petitioners' admission.

The petitioners argue that they timely objected to the cadastral map and the list of claimants presented by the respondent spouses, on the ground that they violated the rule on hearsay and the best evidence rule.

Anent the best evidence rule, Section 3(d) of Rule 130 of the Rules of Court provides that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except when the original is a public record in the custody of a public officer or is recorded in a public office.[22] Section 7 of the same Rule provides that 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.[23] Section 24 of Rule 132 provides that the record of public documents may be evidenced by a copy attested by the officer having the legal custody or the record.[24]

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[22] Section 3. *Original document must be produced*; *exceptions*. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

x x x x x x x x x

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

[23] Section 7. *Evidence admissible when original document is a public record*. — When the original of document is in the custody of 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.

[24] Section 24. *Proof of official record*. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose,

Certified true copies of the cadastral map of Liliw and the corresponding list of claimants of the area covered by the map were presented by two public officers. The first was Crisostomo Arves, Clerk III of the Municipal Assessor's Office, a repository of such documents. The second was Dominga Tolentino, a DENR employee, who, as a record officer, certifies and safekeeps records of surveyed land involving cadastral maps. The cadastral maps and the list of claimants, as certified true copies of original public records, fall under the exception to the best evidence rule.

As to the hearsay rule, Section 44 of Rule 130 of the Rules of Court similarly provides that entries in official records are an exception to the rule.[25] The rule provides that entries in official records made in the performance of the duty of a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated. The necessity of this rule consists in the inconvenience and difficulty of requiring the official's attendance as a witness to testify to the innumerable transactions in the course of his duty. The document's trustworthiness consists in the presumption of regularity of performance of official duty.[26]

Cadastral maps are the output of cadastral surveys. The DENR is the department tasked to execute, supervise and manage the

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may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[25] Section 44. *Entries in official records*. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

[26] Oscar M. Herrera, *Remedial Law: Vol. V*, (Quezon City, Philippines, Rex Printing Company, Inc., 2004), p. 740.

conduct of cadastral surveys.[27] It is, therefore, clear that the cadastral map and the corresponding list of claimants qualify as entries in official records as they were prepared by the DENR, as mandated by law. As such, they are exceptions to the hearsay rule and are *prima facie* evidence of the facts stated therein.

Even granting that the petitioners had not admitted the partition, they presented no evidence to contradict the evidence of the respondent spouses. Thus, even without the admission of the petitioners, the respondent spouses proved by a preponderance of evidence that there had indeed been a partition of the subject property.

Sale of 1/3 Portion of the Southern-half

To prove that 1/3 of the southern-half portion of the subject property was sold to them, Spouses Monteiro presented a deed of sale entitled *Bilihan ng Lahat Naming Karapatan*,[28] dated September 29, 1992, wherein Pedro's share was sold by his heirs to them, with the acquiescence of the heirs of Esperanza and Leandro in an Affidavit of Conformity and Waiver.[29] The petitioners argue that the *Bilihan* should not have been admitted into evidence because it lacked the documentary stamp tax required by Section 201 of the NIRC.

On August 29, 1994, the petitioners filed a motion for the production and/or inspection of documents,[30] praying that Spouses Monteiro be ordered to produce the deed of sale, which they cited as the source of their rights as co-owners. On November 20, 1995, Spouses Monteiro submitted their compliance,[31] furnishing the RTC and the petitioners with a copy[32] of the *Bilihan*. On January 3, 1996, the petitioners filed a notice of

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[27] DENR Admin. Order 2001-23.

[28] Records, Vol. III, Exhibit "C", p. 514.

[29] Records, Vol. I, pp. 303-305.

[30] *Id.* at 75-76.

[31] *Id.* at 111.

[32] *Id.* at 112.

consignation,[33] manifesting that they had attempted to exercise their right of redemption as co-owners of the 1/3 portion of the southern half of the property under Article 1623[34] of the Civil Code by sending and tendering payment of redemption to Spouses Monteiro, which was, however, returned.

By filing the notice of consignation and tendering their payment for the redemption of the 1/3 portion of the southern-half of the property, the petitioners, in effect, admitted the existence, due execution and validity of the *Bilihan*. Consequently, they are now estopped from questioning its admissiblity in evidence for relying on such for their right of redemption. Additionally, the Court notes that the copy[35] of the *Bilihan* which was originally submitted by Spouses Monteiro with its compliance filed on November 20, 1995, does in fact bear a documentary stamp tax. It could only mean that the documentary stamp tax on the sale was properly paid. The *Bilihan* was, therefore, properly admitted into evidence and considered by the RTC.

In any case, as correctly held by the lower courts, the petitioners, as heirs of Vitaliano, who inherited the northern-half portion of the subject property, do not possess the necessary personality to assail the sale of the southern-half portion between Spouses Monteiro and the heirs of Pedro. They are not real parties-in-interest who stand to be benefited or injured by the sale of the 1/3 portion of the southern-half over which they have absolutely no right. As correctly ruled by the courts below, only fellow co-owners have the personality to assail the sale,

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

[34] Art. 1623. The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor, as the case may be. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.

The right of redemption of co-owners excludes that of adjoining owners.

[35] Records, Vol. I, p. 112.

namely, the heirs of Pedro's siblings, Esperanza and Leandro. They have, however, expressly aquiesced to the sale and waived their right to the property in the affidavit presented by Spouses Monteiro.[36] As such, the petitioners have no right to their counterclaims of demolition of improvements and payment of damages.

With Spouses Monteiro having sufficiently proved their claim over the subject 1/3 portion of the southern-half of the property through the *Bilihan*, the lower courts did not err in awarding possession, rentals, attorney's fees, and litigation expenses to them.

The Court, however, finds that the award of rentals should be reckoned from January 2, 2001, the date the Spouses Monteiro filed their Amended Complaint seeking recovery of the subject portion. Interest at the rate of 6% per annum shall also be imposed on the total amount of rent due from finality of this Decision until fully paid.[37]

WHEREFORE, the petition is **DENIED**. The August 15, 2011 Decision and the March 5, 2012 Resolution of the Court of Appeals, in CA-G.R. CV No. 92707 are **AFFIRMED** with **MODIFICATION**, in that:

a. The award of rent at the rate of ₱500.00 per month shall be reckoned from January 2, 2001 until the property is vacated; and

b. Interest at the rate of 6% *per annum* shall be imposed on the total amount of rent due from finality of this Decision until fully paid.

SO ORDERED.

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

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[36] *Id.* at 303-304.

[37] *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013.

EN BANC

[A.C. No. 9872. January 28, 2014]

NATIVIDAD P. NAVARRO and HILDA S. PRESBITERO, *complainants, vs.* **ATTY. IVAN M. SOLIDUM, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER MAY BE DISCIPLINED FOR MISCONDUCT COMMITTED EITHER IN HIS PROFESSIONAL OR PRIVATE CAPACITY; CASE AT BAR.— It is clear that respondent violated Rule 1.01 of the Code of Professional Responsibility. We have ruled that conduct, as used in [Rule 1.01 of the Code of Professional Responsibility], is not confined to the performance of a lawyer's professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court. In this case, the loan agreements with Navarro were done in respondent's private capacity. Although Navarro financed the registration of Yulo's lot, respondent and Navarro had no lawyer-client relationship. However, respondent was Presbitero's counsel at the time she granted him a loan. It was established that respondent misled Presbitero on the value of the property he mortgaged as a collateral for his loan from her. To appease Presbitero, respondent even made a Deed of Undertaking that he would give her another 1,000-square-meter lot as additional collateral but he failed to do so. Clearly, respondent is guilty of engaging in dishonest and deceitful conduct, both in his professional capacity with respect to his client, Presbitero, and in his private capacity with respect to complainant Navarro. Both Presbitero and Navarro allowed respondent to draft the terms of the loan agreements. Respondent drafted the MOAs knowing that the interest rates were exorbitant. Later, using his knowledge of the law, he assailed the validity of the same MOAs he prepared. He issued checks that were drawn from his son's account whose

name was similar to his without informing complainants. Further, there is nothing in the records that will show that respondent paid or undertook to pay the loans he obtained from complainants.

2. ID.; ID.; THE FIDUCIARY NATURE OF THE RELATIONSHIP BETWEEN COUNSEL AND HIS CLIENT IMPOSES ON THE LAWYER THE DUTY TO ACCOUNT FOR THE MONEY OR PROPERTY COLLECTED OR RECEIVED FOR OR FROM HIS CLIENT; VIOLATION IN CASE AT BAR; DISBARMENT AS PENALTY.— The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client. We agree with the IBP-CBD that respondent failed to fulfill this duty. In this case, the IBP-CBD pointed out that respondent received various amounts from complainants but he could not account for all of them. x x x Clearly, respondent had been negligent in properly accounting for the money he received from his client, Presbitero. Indeed, his failure to return the excess money in his possession gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of the trust reposed in him by, the client.x x x While respondent's loan from Presbitero was secured by a MOA, postdated checks and real estate mortgage, it turned out that respondent misrepresented the value of the property he mortgaged and that the checks he issued were not drawn from his account but from that of his son. Respondent eventually questioned the terms of the MOA that he himself prepared on the ground that the interest rate imposed on his loan was unconscionable. Finally, the checks issued by respondent to Presbitero were dishonored because the accounts were already closed. The interest of his client, Presbitero, as lender in this case, was not fully protected. Respondent violated Rule 16.04 of the Code of Professional Responsibility, which presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. In his dealings with his client Presbitero, respondent took advantage of his knowledge of the law as well as the trust and confidence reposed in him by his client. x x x Given the facts of the case, we see no reason to deviate from the recommendation of the IBP-CBD imposing on respondent the penalty of disbarment.

Respondent failed to live up to the high standard of morality, honesty, integrity, and fair dealing required of him as a member of the legal profession. Instead, respondent employed his knowledge and skill of the law and took advantage of his client to secure undue gains for himself that warrants his removal from the practice of law.

3. REMEDIAL LAW; DISCIPLINE OF LAWYERS; THE ONLY ISSUE IN DISCIPLINARY PROCEEDINGS AGAINST A LAWYER IS WHETHER THE OFFICER OF THE COURT IS STILL FIT TO BE ALLOWED TO CONTINUE AS MEMBER OF THE BAR; CASE AT BAR.— We cannot sustain the IBP Board of Governors' recommendation ordering respondent to return his unpaid obligation to complainants, except for advances for the expenses he received from his client, Presbitero, that were not accounted at all. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other. Nevertheless, when a lawyer receives money from a client for a particular purpose involving the client-attorney relationship, he is bound to render an accounting to the client showing that the money was spent for that particular purpose. If the lawyer does not use the money for the intended purpose, he must immediately return the money to his client. Respondent was given an opportunity to render an accounting, and he failed. He must return the full amount of the advances given him by Presbitero, amounting to ₱50,000.

APPEARANCES OF COUNSEL

Bimbo Lavides for respondent.

D E C I S I O N

***PER CURIAM*:**

This case originated from a complaint for disbarment, dated 26 May 2008, filed by Natividad P. Navarro (Navarro) and Hilda S. Presbitero (Presbitero) against Atty. Ivan M. Solidum,

Jr. (respondent) before the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD).

From the Report, dated 1 July 2009, of the IBP-CBD, we gathered the following facts of the case:

On 4 April 2006, respondent signed a retainer agreement with Presbitero to follow up the release of the payment for the latter's 2.7-hectare property located in Bacolod which was the subject of a Voluntary Offer to Sell (VOS) to the Department of Agrarian Reform (DAR). The agreement also included the payment of the debts of Presbitero's late husband to the Philippine National Bank (PNB), the sale of the retained areas of the property, and the collection of the rentals due for the retained areas from their occupants. It appeared that the DAR was supposed to pay ₱700,000 for the property but it was mortgaged by Presbitero and her late husband to PNB for ₱1,200,000. Presbitero alleged that PNB's claim had already prescribed, and she engaged the services of respondent to represent her in the matter. Respondent proposed the filing of a case for quieting of title against PNB. Respondent and Presbitero agreed to an attorney's fee of 10% of the proceeds from the VOS or the sale of the property, with the expenses to be advanced by Presbitero but deductible from respondent's fees. Respondent received ₱50,000 from Presbitero, supposedly for the expenses of the case, but nothing came out of it.

In May 2006, Presbitero's daughter, Ma. Theresa P. Yulo (Yulo), also engaged respondent's services to handle the registration of her 18.85-hectare lot located in Nasud-ong, Caradio-an, Himamaylan, Negros. Yulo convinced her sister, Navarro, to finance the expenses for the registration of the property. Respondent undertook to register the property in consideration of 30% of the value of the property once it is registered. Respondent obtained ₱200,000 from Navarro for the registration expenses. Navarro later learned that the registration decree over the property was already issued in the name of one Teodoro Yulo. Navarro alleged that she would not have spent for the registration of the property if respondent only apprised her of the real situation of the property.

On 25 May 2006, respondent obtained a loan of ₱1,000,000 from Navarro to finance his sugar trading business. Respondent and Navarro executed a Memorandum of Agreement (MOA) and agreed that the loan (a) shall be for a period of one year; (b) shall earn interest at the rate of 10% per month; and (c) shall be secured by a real estate mortgage over a property located in Barangay Alijis, Bacolod City, covered by Transfer Certificate of Title No. 304688. They also agreed that respondent shall issue postdated checks to cover the principal amount of the loan as well as the interest thereon. Respondent delivered the checks to Navarro, drawn against an account in Metrobank, Bacolod City Branch, and signed them in the presence of Navarro.

In June 2006, respondent obtained an additional loan of ₱1,000,000 from Navarro, covered by a second MOA with the same terms and conditions as the first MOA. Respondent sent Navarro, through a messenger, postdated checks drawn against an account in Bank of Commerce, Bacolod City Branch. Respondent likewise discussed with Navarro about securing a "Tolling Agreement" with Victorias Milling Company, Inc. but no agreement was signed.

At the same time, respondent obtained a loan of ₱1,000,000 from Presbitero covered by a third MOA, except that the real estate mortgage was over a 263-square-meter property located in Barangay Taculing, Bacolod City. Respondent sent Presbitero postdated checks drawn against an account in Metrobank, Bacolod City Branch.

Presbitero was dissatisfied with the value of the 263-square-meter property mortgaged under the third MOA, and respondent promised to execute a real estate mortgage over a 1,000-square-meter parcel of land adjacent to the 4,000-square-meter property he mortgaged to Navarro. However, respondent did not execute a deed for the additional security.

Respondent paid the loan interest for the first few months. He was able to pay complainants a total of ₱900,000. Thereafter, he failed to pay either the principal amount or the interest thereon. In September 2006, the checks issued by respondent to complainants could no longer be negotiated because the accounts

against which they were drawn were already closed. When complainants called respondent's attention, he promised to pay the agreed interest for September and October 2006 but asked for a reduction of the interest to 7% for the succeeding months.

In November 2006, respondent withdrew as counsel for Yulo. On the other hand, Presbitero terminated the services of respondent as counsel. Complainants then filed petitions for the judicial foreclosure of the mortgages executed by respondent in their favor. Respondent countered that the 10% monthly interest on the loan was usurious and illegal. Complainants also filed cases for estafa and violation of Batas Pambansa Blg. 22 against respondent.

Complainants alleged that respondent induced them to grant him loans by offering very high interest rates. He also prepared and signed the checks which turned out to be drawn against his son's accounts. Complainants further alleged that respondent deceived them regarding the identity and value of the property he mortgaged because he showed them a different property from that which he owned. Presbitero further alleged that respondent mortgaged his 263-square-meter property to her for ₱1,000,000 but he later sold it for only ₱150,000.

Respondent, for his defense, alleged that he was engaged in sugar and realty business and that it was Yulo who convinced Presbitero and Navarro to extend him loans. Yulo also assured him that Presbitero would help him with the refining of raw sugar through Victorias Milling Company, Inc. Respondent alleged that Navarro fixed the interest rate and he agreed because he needed the money. He alleged that their business transactions were secured by real estate mortgages and covered by postdated checks. Respondent denied that the property he mortgaged to Presbitero was less than the value of the loan. He also denied that he sold the property because the sale was actually rescinded. Respondent claimed that the property he mortgaged to Navarro was valuable and it was actually worth more than ₱8,000,000.

Respondent alleged that he was able to pay complainants when business was good but he was unable to continue paying when the price of sugar went down and when the business with

Victorias Milling Company, Inc. did not push through because Presbitero did not help him. Respondent also denied that he was hiding from complainants.

Respondent further alleged that it was Yulo who owed him ₱530,000 as interest due for September to December 2005. He denied making any false representations. He claimed that complainants were aware that he could no longer open a current account and they were the ones who proposed that his wife and son issue the checks. Respondent further alleged that he already started with the titling of Yulo's lot but his services were terminated before it could be completed.

A supplemental complaint was filed charging respondent with accepting cases while under suspension. In response, respondent alleged that he accepted Presbitero's case in February 2006 and learned of his suspension only in May 2006.

After conducting a hearing and considering the position papers submitted by the parties, the IBP-CBD found that respondent violated the Code of Professional Responsibility.

The IBP-CBD found that respondent borrowed ₱2,000,000 from Navarro and ₱1,000,000 from Presbitero which he failed to pay in accordance with the MOAs he executed. The IBP-CBD found that based on the documents presented by the parties, respondent did not act in good faith in obtaining the loans. The IBP-CBD found that respondent either promised or agreed to pay the very high interest rates of the loans although he knew them to be exorbitant in accordance with jurisprudence. Respondent likewise failed to deny that he misled Navarro and her husband regarding the identity of the property mortgaged to them. Respondent also mortgaged a property to Presbitero for ₱1,000,000 but documents showed that its value was only ₱300,000. Documents also showed that he sold that property for only ₱150,000. Respondent conspired with Yulo to secure loans by promising her a 10% commission and later claimed that they agreed that Yulo would "ride" on the loan by borrowing ₱300,000 from the amount he obtained from Navarro and Presbitero. Respondent could not explain how he lost all the

money he borrowed in three months except for his claim that the price of sugar went down.

The IBP-CBD found that respondent misled Navarro and Presbitero regarding the issuance of the postdated checks, and there was nothing in the records that would show that he informed them that it would be his wife or son who would issue the checks. The IBP-CBD also found that respondent had not been transparent in liquidating the money he received in connection with Presbitero's VOS with DAR. He was also negligent in his accounting regarding the registration of Yulo's property which was financed by Navarro.

The IBP-CBD found that respondent was guilty of violating Rule 1.01 of the Code of Professional Responsibility for committing the following acts:

(1) signing drawn checks against the account of his son as if they were from his own account;

(2) misrepresenting to Navarro the identity of the lot he mortgaged to her;

(3) misrepresenting to Presbitero the true value of the 263-square- meter lot he mortgaged to her;

(4) conspiring with Yulo to obtain the loans from complainants;

(5) agreeing or promising to pay 10% interest on his loans although he knew that it was exorbitant; and

(6) failing to pay his loans because the checks he issued were dishonored as the accounts were already closed.

The IBP-CBD also found that respondent violated Canon 16 and Rule 16.01 of the Code of Professional Responsibility when he failed to properly account for the various funds he received from complainants.

In addition, the IBP-CBD found that respondent violated Rule 16.04 of the Code of Professional Responsibility which prohibits borrowing money from a client unless the client's interest is fully protected or the client is given independent advice.

On the matter of practicing law while under suspension, the IBP-CBD found that the records were not clear whether the notice of suspension respondent received on 29 May 2006 was the report and recommendation of the IBP-CBD or the final decision of this Court. The IBP-CBD likewise found that there was insufficient evidence to prove that respondent mishandled his cases.

The IBP-CBD recommended that respondent be meted the penalty of disbarment.

In Resolution No. XIX-2011-267 dated 14 May 2011, the IBP Board of Governors adopted and approved the recommendation of the IBP-CBD with modification by reducing the recommended penalty from disbarment to suspension from the practice of law for two years. The IBP Board of Governors likewise ordered respondent to return the amount of his unpaid obligation to complainants.

Complainants filed a motion for reconsideration, praying that the penalty of disbarment be instead imposed upon respondent.

The only issue in this case is whether respondent violated the Code of Professional Responsibility.

The records show that respondent violated at least four provisions of the Code of Professional Responsibility.

Rule 1.01 of the Code of Professional Responsibility provides:

> Rule 1.01. — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

With respect to his client, Presbitero, it was established that respondent agreed to pay a high interest rate on the loan he obtained from her. He drafted the MOA. Yet, when he could no longer pay his loan, he sought to nullify the same MOA he drafted on the ground that the interest rate was unconscionable. It was also established that respondent mortgaged a 263-square-meter property to Presbitero for ₱1,000,000 but he later sold the property for only ₱150,000, showing that he deceived his client as to the real value of the mortgaged property. Respondent's

allegation that the sale was eventually rescinded did not distract from the fact that he did not apprise Presbitero as to the real value of the property.

Respondent failed to refute that the checks he issued to his client Presbitero and to Navarro belonged to his son, Ivan Garcia Solidum III whose name is similar to his name. He only claimed that complainants knew that he could no longer open a current bank account, and that they even suggested that his wife or son issue the checks for him. However, we are inclined to agree with the IBP-CBD's finding that he made complainants believe that the account belonged to him. In fact, respondent signed in the presence of Navarro the first batch of checks he issued to Navarro. Respondent sent the second batch of checks to Navarro and the third batch of checks to Presbitero through a messenger, and complainants believed that the checks belonged to accounts in respondent's name.

It is clear that respondent violated Rule 1.01 of the Code of Professional Responsibility. We have ruled that conduct, as used in the Rule, is not confined to the performance of a lawyer's professional duties.[1] A lawyer may be disciplined for misconduct committed either in his professional or private capacity.[2] The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court.[3]

In this case, the loan agreements with Navarro were done in respondent's private capacity. Although Navarro financed the registration of Yulo's lot, respondent and Navarro had no lawyer-client relationship. However, respondent was Presbitero's counsel at the time she granted him a loan. It was established that respondent misled Presbitero on the value of the property he mortgaged as a collateral for his loan from her. To appease Presbitero, respondent even made a Deed of Undertaking that

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

[2] *Id.*

[3] *Id.*

he would give her another 1,000-square-meter lot as additional collateral but he failed to do so.

Clearly, respondent is guilty of engaging in dishonest and deceitful conduct, both in his professional capacity with respect to his client, Presbitero, and in his private capacity with respect to complainant Navarro. Both Presbitero and Navarro allowed respondent to draft the terms of the loan agreements. Respondent drafted the MOAs knowing that the interest rates were exorbitant. Later, using his knowledge of the law, he assailed the validity of the same MOAs he prepared. He issued checks that were drawn from his son's account whose name was similar to his without informing complainants. Further, there is nothing in the records that will show that respondent paid or undertook to pay the loans he obtained from complainants.

Canon 16 and Rule 16.01 of the Code of Professional Responsibility provide:

> CANON 16. — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.
>
> Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client.[4] We agree with the IBP-CBD that respondent failed to fulfill this duty. In this case, the IBP-CBD pointed out that respondent received various amounts from complainants but he could not account for all of them.

Navarro, who financed the registration of Yulo's 18.85-hectare lot, claimed that respondent received ₱265,000 from her. Respondent countered that ₱105,000 was paid for real estate taxes but he could not present any receipt to prove his claim. Respondent also claimed that he paid ₱70,000 to the surveyor

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[4] *Belleza v. Macasa,* A.C. No. 7815, 23 July 2009, 593 SCRA 549.

but the receipt was only for ₱15,000. Respondent claimed that he paid ₱50,000 for filing fee, publication fee, and other expenses but again, he could not substantiate his claims with any receipt. As pointed out by the IBP-CBD, respondent had been less than diligent in accounting for the funds he received from Navarro for the registration of Yulo's property. Unfortunately, the records are not clear whether respondent rendered an accounting to Yulo who had since passed away.

As regards Presbitero, it was established during the clarificatory hearing that respondent received ₱50,000 from Presbitero. As the IBP-CBD pointed out, the records do not show how respondent spent the funds because he was not transparent in liquidating the money he received from Presbitero.

Clearly, respondent had been negligent in properly accounting for the money he received from his client, Presbitero. Indeed, his failure to return the excess money in his possession gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of the trust reposed in him by, the client.[5]

Rule 16.04 of the Code of Professional Responsibility provides:

> Rule 16.04. — A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. 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.

Here, respondent does not deny that he borrowed ₱1,000,000 from his client Presbitero. At the time he secured the loan, respondent was already the retained counsel of Presbitero.

While respondent's loan from Presbitero was secured by a MOA, postdated checks and real estate mortgage, it turned out that respondent misrepresented the value of the property he mortgaged and that the checks he issued were not drawn from his account but from that of his son. Respondent eventually

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[5] *Id.*

questioned the terms of the MOA that he himself prepared on the ground that the interest rate imposed on his loan was unconscionable. Finally, the checks issued by respondent to Presbitero were dishonored because the accounts were already closed. The interest of his client, Presbitero, as lender in this case, was not fully protected. Respondent violated Rule 16.04 of the Code of Professional Responsibility, which presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation.[6] In his dealings with his client Presbitero, respondent took advantage of his knowledge of the law as well as the trust and confidence reposed in him by his client.

We modify the recommendation of the IBP Board of Governors imposing on respondent the penalty of suspension from the practice of law for two years. Given the facts of the case, we see no reason to deviate from the recommendation of the IBP-CBD imposing on respondent the penalty of disbarment. Respondent failed to live up to the high standard of morality, honesty, integrity, and fair dealing required of him as a member of the legal profession.[7] Instead, respondent employed his knowledge and skill of the law and took advantage of his client to secure undue gains for himself[8] that warrants his removal from the practice of law. Likewise, we cannot sustain the IBP Board of Governors' recommendation ordering respondent to return his unpaid obligation to complainants, except for advances for the expenses he received from his client, Presbitero, that were not accounted at all. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar.[9] Our only concern is the determination of respondent's administrative liability.[10] Our findings have no material bearing on other judicial

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[6] *Frias v. Atty. Lozada*, 513 Phil. 512 (2005).

[7] *Tabang v. Atty. Gacott*, A.C. No. 6490, 9 July 2013.

[8] *Id.*

[9] *Roa v. Moreno*, *supra* note 1.

[10] *Id.*

action which the parties may choose to file against each other.[11] Nevertheless, when a lawyer receives money from a client for a particular purpose involving the client-attorney relationship, he is bound to render an accounting to the client showing that the money was spent for that particular purpose.[12] If the lawyer does not use the money for the intended purpose, he must immediately return the money to his client.[13] Respondent was given an opportunity to render an accounting, and he failed. He must return the full amount of the advances given him by Presbitero, amounting to ₱50,000.

WHEREFORE, the Court finds Atty. Ivan M. Solidum, Jr. **GUILTY** of violating Rule 1.01, Canon 16, Rule 16.01, and Rule 16.04 of the Code of Professional Responsibility. Accordingly, the Court **DISBARS** him from the practice of law effective immediately upon his receipt of this Decision.

Atty. Solidum is **ORDERED** to return the advances he received from Hilda S. Presbitero, amounting to ₱50,000, and to submit to the Office of the Bar Confidant his compliance with this order within thirty days from finality of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for dissemination to all courts all over the country. Let a copy of this Decision be attached to the personal records of respondent.

SO ORDERED.

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

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[11] *Id.*

[12] *Freeman v. Reyes,* A.C. No. 6246, 15 November 2011, 660 SCRA 48.

[13] *Id.*

EN BANC

[A.M. No. P-13-3171. January 28, 2014]
(Formerly A.M. OCA IPI No. 11-11-116-MeTC)

RE: HABITUAL TARDINESS OF CESAR E. SALES, CASH CLERK III, METROPOLITAN TRIAL COURT, OFFICE OF THE CLERK OF COURT, MANILA.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ALL GOVERNMENT OFFICIALS AND EMPLOYEES ARE REQUIRED TO RENDER NOT LESS THAN EIGHT HOURS OF WORK PER DAY FOR FIVE DAYS A WEEK; WHEN MAY AN OFFICER OR EMPLOYEE OF THE CIVIL SERVICE BE CONSIDERED HABITUALLY TARDY AND/OR HABITUALLY ABSENT; EXPLAINED.— All government officials and employees are required to render not less than eight hours of work per day for five days a week, or a total of 40 hours of work per week, exclusive of time for lunch. Generally, these hours are from eight o'clock in the morning to five o'clock in the afternoon, with lunch break between 12 noon and one o'clock in the afternoon. Under CSC Memorandum Circular No. 04, s. 1991, an officer or employee shall be considered habitually tardy if he is late for work, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester, or at least two (2) consecutive months during the year. x x x An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester, or at least (3) consecutive months during the year. x x x Under Memorandum Circular No. 04, s. 1991, of the Civil Service Commission and reiterated by the Court in Administrative Circular No. 14- 2002, dated March 18, 2002, the taking and the approval of leave of absence follow a formal process, – an application for leave must be duly approved by the authorized officer. "By reason of the nature and functions of their office, officials

and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a public trust." Pursuant to this *dictum*, the Court issued Memorandum Circular No. 49-2003, dated December 1, 2003, reminding all government officials and employees to be accountable at all times to the people and exercise utmost responsibility, integrity, loyalty and efficiency. They must give every minute of their prescribed official time in the service to the public and must work for every centavo paid to them by the government. "This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible."

2. ID.; ID.; GRAVE OFFENSES; THE CIVIL SERVICE COMMISSION MEMORANDUM CIRCULAR CLASSIFIES FREQUENT UNAUTHORIZED ABSENCES AND TARDINESS IN REPORTING FOR DUTY AS GRAVE OFFENSES; PENALTIES.— Section 52, Rule IV of CSC Memorandum Circular No. 19, s. 1999, classifies frequent unauthorized absences and tardiness in reporting for duty as grave offenses, punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense and dismissal from the service for the second offense. In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the crime shall be considered.

3. ID.; ID.; ID.; LENGTH OF SERVICE IS AN ALTERNATIVE CIRCUMSTANCE IN DETERMINING THE IMPOSABLE PENALTY OF AN ERRING GOVERNMENT OFFICIAL OR EMPLOYEE; APPLICATION IN CASE AT BAR.— In the present case, we do not find any circumstance that would mitigate Sales' liability. True, Sales has been in the Judiciary for almost 17 years, but length of service, as a factor in determining the imposable penalty in administrative cases, is a double-edged sword. It is not a circumstance that, once invoked, will automatically be considered as a mitigating in favor of the party invoking it. While it can sometimes help

mitigate the penalty, it can also justify a more serious sanction. Length of service, in other words, is an alternative circumstance. This is clear from Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, which amended the Omnibus Civil Service Rules and Regulations dated 27 December 1991. The title and opening paragraph of Section 53 provides that the attendant circumstances enumerated therein may either be considered as mitigating, aggravating or alternative circumstances by the disciplining body. Having been repeatedly warned that a repetition of the same or similar offense of habitual tardiness shall be dealt with more severely, his length of service cannot mitigate the gravity of his offense or the penalty he deserves.

D E C I S I O N

***PER CURIAM*:**

A Report[1] submitted by the Leave Division, Office of the Court Administrator (*OCA*) dated October 19, 2011 shows that respondent Cesar E. Sales, Cash Clerk III, Office of the Clerk of Court, Metropolitan Trial Court, Manila, had always been tardy in going to the office for the months of January to September 2011, as follows:

January	-	20 times
February	-	14 times
March	-	10 times
April	-	13 times
May	-	17 times
June	-	13 times
July	-	15 times
August	-	11 times
September	-	12 times

[1] *Rollo,* p. 2.

In the 21 working days of January 2011, Sales' Daily Time Records (*DTRs*) show that he was tardy 20 times and came on time only once, on January 3, 2011 at 8:00 a.m. In February, he arrived on time only on the 15th, 23rd, and 25th, and was on sick leave on the 8th, 9th, and 28th. In March, he had 10 incidents of tardiness, and applied for sick leave on the 7th and was on forced leave on the 14th to 18th. In April, he came on time only on the 7th and was late 13 times. He was also on sick leave for five days, on the 5th and on the 26th up to the 29th. During the month of May, he was tardy on all the days he went to the office and was on sick leave for five days. In June, he reported on time only on the 6th and was on sick leave on the 7th up to the 10th, and on the 17th and 27th. He was tardy on the days he reported to the office during the month of July and went on sick leave six times on different dates. In August, he was tardy during the days he went to the office. He was also on sick leave for 7 days and was on vacation leave for three days. During the month of September, there were 21 working days but he reported to the office only 12 times and was tardy on all these days. He was on sick leave for six days and on vacation leave for three days. On the days he was on leave, he indicated in his DTRs "sick leave applied," "vacation leave applied" or "forced leave applied." However, it was not shown whether his applications have been approved by his superiors.[2]

In a 1st Indorsement dated November 21, 2011, the OCA required Sales to comment on the charge of habitual tardiness.[3]

In his comment[4] dated January 17, 2012, Sales admitted his frequent tardiness in going to the office. Although he was aware that he could be dismissed from the service anytime because of his habitual tardiness, he continued to report for work late in the hope that the Court would be lenient and would give him the chance to continue serving the Judiciary. He claimed that the thought of losing his job had greatly affected his health. He

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[2] *Id.* at 3-11.

[3] *Id.* at 12.

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

expressed deep remorse and sought the liberal treatment of the Court in considering his violations.

In an Agenda Report[5] dated May 21, 2013, the OCA recommended that –

(1) The Report dated 19 October 2011 x x x of the Leave Division, Office of Administrative Services, Office of the Court Administrator, be RE-DOCKETED as a regular administrative matter against Mr. Cesar E. Sales x x x for habitual tardiness; and

(2) x x x Sales be FOUND GUILTY of habitual tardiness and accordingly DISMISSED from the service with forfeiture of retirement benefits except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.[6]

All government officials and employees are required to render not less than eight hours of work per day for five days a week, or a total of 40 hours of work per week, exclusive of time for lunch. Generally, these hours are from eight o'clock in the morning to five o'clock in the afternoon, with lunch break between 12 noon and one o'clock in the afternoon.[7] Under CSC Memorandum Circular No. 04, s. 1991, an officer or employee shall be considered habitually tardy if he is late for work, regardless of the number of minutes, ten (10) times a month for at least two (2) months in a semester, or at least two (2) consecutive months during the year.[8]

In the case of Sales, he had continuously incurred tardiness during the months of January to September 2011 for more than 10 times each month, except during the month of March when he only came in late 10 times.

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

[6] *Id.* at 17.

[7] CSC Memorandum Circular No. 21 dated June 24, 1991.

[8] See also Supreme Court Administrative Circular No. 14-2002 dated March 18, 2002.

This is the third time that Sales has been charged of habitual tardiness. The OCA Report[9] shows that he has previously been penalized for habitual tardiness. He was reprimanded in A.M. No. P-08-2499, suspended for 30 days without pay in A.M. No. P-05-2049, and suspended for 3 months without pay in A.M. No. P-11-3022. Despite previous warnings that a repetition of the same offense would be dealt with more severely, Sales failed to mend his ways.

Sales' DTRs show that he is not only habitually tardy but also habitually absent from office. An officer or employee in the civil service shall be considered habitually absent if he incurs unauthorized absences exceeding the allowable 2.5 days monthly leave credit under the leave law for at least three (3) months in a semester, or at least (3) consecutive months during the year.

Sales' absences for the months of January to September 2011 exceeded the allowable 2.5 days monthly leave credit. For every month during this period, he was absent for more than 2.5 days. Although he indicated in his DTRs "sick leave applied," "vacation leave applied" and "forced leave applied," he failed to submit proof that his applications for leave had been approved by the proper authorities.

Under Memorandum Circular No. 04, s. 1991, of the Civil Service Commission and reiterated by the Court in Administrative Circular No. 14-2002,[10] dated March 18, 2002, the taking and the approval of leave of absence follow a formal process, – an application for leave must be duly approved by the authorized officer.[11]

Section 52, Rule IV of CSC Memorandum Circular No. 19, s. 1999, classifies frequent unauthorized absences and tardiness in reporting for duty as grave offenses, punishable by suspension of six (6) months and one (1) day to one (1)

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[9] *Rollo*, pp. 15-17.

[10] *Supra* note 8.

[11] *Estardo-Teodoro v. Segismundo*, A.M. No. P-08-2523, April 7, 2009, 584 SCRA 18, 29.

year for the first offense and dismissal from the service for the second offense.

In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the crime shall be considered.[12]

In the present case, we do not find any circumstance that would mitigate Sales' liability. True, Sales has been in the Judiciary for almost 17 years, but length of service, as a factor in determining the imposable penalty in administrative cases, is a double-edged sword.[13] It is not a circumstance that, once invoked, will automatically be considered as a mitigating in favor of the party invoking it.[14] While it can sometimes help mitigate the penalty, it can also justify a more serious sanction.[15] Length of service, in other words, is an alternative circumstance. This is clear from Section 53 of the Uniform Rules on Administrative Cases in the Civil Service, which amended the Omnibus Civil Service Rules and Regulations dated 27 December 1991. The title and opening paragraph of Section 53 provides that the attendant circumstances enumerated therein may either be considered as mitigating, aggravating or alternative circumstances by the disciplining body.

Having been repeatedly warned that a repetition of the same or similar offense of habitual tardiness shall be dealt with more severely, his length of service cannot mitigate the gravity of his offense or the penalty he deserves.

"By reason of the nature and functions of their office, officials and employees of the Judiciary must be role models in the faithful observance of the constitutional canon that public office is a

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[12] CSC Memorandum Circular No. 19, s. 1999, Section 53.

[13] *Mariano v. Nacional*, A.M. No. MTJ-07-1688, February 10, 2009, 578 SCRA 181, 188.

[14] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 605.

[15] *Supra* note 13 at 188.

public trust."[16] Pursuant to this *dictum*, the Court issued Memorandum Circular No. 49-2003, dated December 1, 2003, reminding all government officials and employees to be accountable at all times to the people and exercise utmost responsibility, integrity, loyalty and efficiency. They must give every minute of their prescribed official time in the service to the public and must work for every centavo paid to them by the government. "This duty calls for the observance of prescribed office hours and the efficient use of official time for public service, if only to recompense the government, and ultimately, the people who shoulder the cost of maintaining the judiciary. Thus, to inspire public respect for the justice system, court officials and employees should at all times strictly observe official time. As punctuality is a virtue, absenteeism and tardiness are impermissible."[17]

WHEREFORE, the Court finds respondent Cesar E. Sales, Cash Clerk III, Office of the Clerk of Court, Metropolitan Trial Court, Manila, **GUILTY** of habitual tardiness and habitual absenteeism. He is hereby ordered **DISMISSED** from the service, with forfeiture of all benefits, except accrued leave credits (if any), and with prejudice to re-employment in any government branch or instrumentality, including government-owned or controlled corporations.

SO ORDERED.

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

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[16] *Re: Employees Incurring Habitual Tardiness in the 1st Semester of 2007,* 576 SCRA 121, 133.

[17] *Cabato v. Centino,* A.M. No. P-08-2572, November 19, 2008, 571 SCRA 390, 395.

EN BANC

[G.R. No. 196231. January 28, 2014]

EMILIO A. GONZALES III, *petitioner, vs.* **OFFICE OF THE PRESIDENT OF THE PHILIPPINES, ACTING THROUGH AND REPRESENTED BY EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., SENIOR DEPUTY EXECUTIVE SECRETARY JOSE AMOR M. AMORANDO, OFFICER-IN-CHARGE — OFFICE OF THE DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, ATTY. RONALDO A. GERON, DIR. ROWENA TURINGAN-SANCHEZ, and ATTY. CARLITO D. CATAYONG,** *respondents.*

[G.R. No. 196232. January 28, 2014]

WENDELL BARRERAS-SULIT, *petitioner, vs.* **ATTY. PAQUITO N. OCHOA, JR., IN HIS CAPACITY AS EXECUTIVE SECRETARY, OFFICE OF THE PRESIDENT, ATTY. DENNIS F. ORTIZ, ATTY. CARLO D. SULAY and ATTY. FROILAN D. MONTALBAN, JR., IN THEIR CAPACITIES AS CHAIRMAN and MEMBERS OF OFFICE OF MALACAÑANG LEGAL AFFAIRS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; SEC. 8(2) REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); ACT OF PRESIDENT REMOVING A DEPUTY OMBUDSMAN, UNCONSTITUTIONAL.— Section 8(2) of RA No. 6770 unconstitutional with respect to the Office of the Ombudsman. This conclusion does not apply to Sulit as the grant of independence is solely with respect to the Office of the Ombudsman which does not include the Office of the Special Prosecutor under the Constitution.

2. ID.; ID.; ID.; ID.; ADMINISTRATIVE DISCIPLINARY JURISDICTION OF THE PRESIDENT OVER DEPUTY OMBUDSMAN IS A JUSTICIABLE QUESTION.— The issue of whether a Deputy Ombudsman may be subjected to the administrative disciplinary jurisdiction of the President (concurrently with that of the Ombudsman) is a justiciable – not a political – question. A justiciable question is one which is inherently susceptible of being decided on grounds recognized by law, as where the court finds that there are constitutionally-imposed limits on the exercise of the powers conferred on a political branch of the government. In resolving the petitions, we do not inquire into the wisdom of the Congress' choice to grant concurrent disciplinary authority to the President. Our inquiry is limited to whether such statutory grant violates the Constitution, particularly whether Section 8(2) of RA No. 6770 violates the core constitutional principle of the independence of the Office of the Ombudsman as expressed in Section 5, Art. XI of the Constitution.

3. ID.; ID.; ID.; ID.; OFFICIALS SUBJECT TO DISCIPLINARY AUTHORITY OF THE OMBUDSMAN.— Section 12, Article XI of the 1987 Constitution, the Office of the Ombudsman is envisioned to be the "protector of the people" against the inept, abusive, and corrupt in the Government, to function essentially as a complaints and action bureau. This constitutional vision of a Philippine Ombudsman practically intends to make the Ombudsman an authority to directly check and guard against the ills, abuses and excesses of the bureaucracy. Pursuant to Section 13(8), Article XI of the 1987 Constitution, Congress enacted RA No. 6770 to enable it to further realize the vision of the Constitution. Section 21 of RA No. 6770 provides: Section 21. *Official Subject to Disciplinary Authority; Exceptions*. — The Office of the Ombudsman **shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries**, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary. Ombudsman's broad investigative and disciplinary powers include all acts of malfeasance, misfeasance, and nonfeasance of all public officials***, including Members of the Cabinet and key Executive officers, during their tenure***.

It has powers, both constitutional and statutory, that are commensurate with its daunting task of enforcing accountability of public officers.

4. ID.; ID.; ID.; INDEPENDENCE OF THE OMBUDSMAN.— Under the Constitution, several constitutional bodies have been ***expressly labeled as "independent***." The extent of the independence enjoyed by these constitutional bodies however varies and is to be interpreted with two significant considerations in mind: *first*, the functions performed or the powers involved in a given case; and *second*, consistency of any allowable interference to these powers and functions, with the principle of checks and balances. Notably, *the independence enjoyed by the Office of the Ombudsman and by the Constitutional Commissions shares certain characteristics* – they do not owe their existence to any act of Congress, but are created by the Constitution itself.

5. ID.; ID.; ID.; ID.; DISCIPLINE AND REMOVAL BY THE PRESIDENT OVER DEPUTY OMBUDSMAN.— Subjecting the Deputy Ombudsman to discipline and removal by the President, *whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority*, cannot but seriously place at risk the independence of the Office of the Ombudsman itself. The Office of the Ombudsman, by express constitutional mandate, includes its key officials, all of them tasked to support the Ombudsman in carrying out her mandate. Unfortunately, intrusion upon the constitutionally-granted independence is what Section 8(2) of RA No. 6770 exactly did. By so doing, the law directly collided not only with the independence that the Constitution guarantees to the Office of the Ombudsman, but inevitably with the principle of checks and balances that the creation of an Ombudsman office seeks to revitalize. **Section 8(2) of RA No. 6770 (providing that the President may remove a Deputy Ombudsman)** should be declared void.

6. POLITICAL LAW; CONSTITUTIONAL LAW; SEC. 2, ART. XI OF THE 1987 CONSTITUTION; LEGISLATIVE DEPARTMENT; POWER OF THE CONGRESS TO DETERMINE THE MODES OF REMOVAL FROM OFFICE OF ALL PUBLIC OFFICERS; ELUCIDATED.— Congress is empowered to determine the modes of removal from office of all public officers and employees except the

President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman, who are all impeachable officials. The congressional determination of the identity of the disciplinary authority is not a blanket authority for Congress to repose it on whomsoever Congress chooses without running afoul of the independence enjoyed by the Office of the Ombudsman and without disrupting the delicate check and balance mechanism under the Constitution. Properly viewed from this perspective, the core constitutional principle of independence is observed and any possible absurdity resulting from a contrary interpretation is avoided. In other words, while the Constitution itself vested Congress with the power to determine the manner and cause of removal of all non-impeachable officials, this power must be interpreted *consistent with the core constitutional principle of independence of the Office of the Ombudsman*.

7. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS; GROSS NEGLECT OF DUTY OR INEFFICIENCY; ELUCIDATED.— Gross negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. In the case of public officials, there is gross negligence when a breach of duty is flagrant and palpable. Gonzales cannot be guilty of gross neglect of duty and/or inefficiency since he acted on the case forwarded to him **within nine days**. In finding Gonzales guilty, the OP relied on Section 8, Rule III of Administrative Order No. 7 (or the Rules of Procedure of the Office of the Ombudsman, series of 1990, as amended) in ruling that Gonzales should have acted on Mendoza's Motion for Reconsideration within five days. Section 8. Motion for reconsideration or reinvestigation: Grounds – Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds: a) New evidence had been discovered which materially affects the order, directive or decision; b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant. Only one motion for reconsideration or reinvestigation shall be allowed, and the **Hearing Officer** shall resolve the same within five

(5) days from the date of submission for resolution. Even if we consider this provision to be mandatory, the period it requires cannot apply to Gonzales since he is a Deputy Ombudsman whose obligation is to review the case; he is not simply a Hearing Officer tasked with the initial resolution of the motion. In Section 6 of Administrative Order No. 7 on the resolution of the case and submission of the proposed decision, the period for resolving the case does not cover the period within which it should be reviewed: *Section 6.* Rendition of decision**. –** Not later than thirty (30) days after the **case is declared submitted for resolution,** the Hearing Officer shall submit a proposed ***decision*** containing his findings and recommendation for the approval of the Ombudsman. **Said proposed decision shall be reviewed by the Directors, Assistant Ombudsmen and Deputy Ombudsmen concerned. With respect to low ranking public officials, the Deputy Ombudsman concerned shall be the approving authority.** Upon approval, copies thereof shall be served upon the parties and the head of the office or agency of which the respondent is an official or employee for his information and compliance with the appropriate directive contained therein.

8. ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; SEC. 8(2), REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989).— We declared **Section 8(2) of RA No. 6770 unconstitutional** by granting disciplinary jurisdiction to the President *over a Deputy Ombudsman*, in violation of the independence of the Office of the Ombudsman. However, by another vote of 8-7, the Court resolved **to maintain the validity of Section 8(2) of RA No. 6770 *insofar as Sulit*** is concerned. The Court did not consider the Office of the Special Prosecutor to be constitutionally within the Office of the Ombudsman and is, hence, not entitled to the independence the latter enjoys under the Constitution.

PERLAS-BERNABE, *J.*, *concurring and dissenting opinion*:

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; SEC. 8(2), REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989).— Section 8(2) of RA 6770, which confers the OP with

jurisdiction to discipline not only the Special Prosecutor but also the Deputy Ombudsmen, is wholly constitutional. To this end, I join the majority in upholding the provision's constitutionality insofar as the Special Prosecutor is concerned, but register my dissent against declaring the provision unconstitutional insofar as the Deputy Ombudsmen are concerned. In dealing with constitutional challenges, one must be cognizant of the rule that every law is presumed constitutional and therefore should not be stricken down unless its provisions clearly and unequivocally, and not merely doubtfully, breach the Constitution. It is well-established that this presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.

2. ID.; ID.; ID.; ID.; PRESIDENT'S DISCIPLINARY AUTHORITY OVER THE SPECIAL PROSECUTOR AND THE DEPUTY OMBUDSMEN.— Section 8(2) of RA 6770, both with respect to the OP's disciplinary authority over the Special Prosecutor and the Deputy Ombudsmen, should be upheld in its entirety since it has not been shown that said provision "clearly and unequivocally" offends any constitutional principle. By constitutional design, disciplinary authority over non-impeachable officers, such as the Special Prosecutor and Deputy Ombudsmen, was left to be determined by future legislation. This much is clear from the text of the Constitution. Section 2, Article XI of the 1987 Constitution explicitly provides that non-impeachable officers may be removed from office as may be provided by law: Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. **All other public officers and employees may be removed from office as provided by law, but not by impeachment**.

3. ID.; ID.; ID.; INDEPENDENCE OF THE OFFICE OF THE OMBUDSMAN; POWER OF CONTROL AND POWER OF SUPERVISION; DISTINGUISHED.— The power of

control is the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. On the other hand, the power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties." If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law.

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

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; JURISDICTION.—** This court is a court of general jurisdiction. It has the ability to determine the scope of the issues it can decide on in order to fulfill its constitutional duty to exercise its judicial power. This power must be fully exercised to achieve the ends of justice. Judicial power includes determining the constitutionality of the actions of a branch of government.

2. **ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; SEC. 8(2), REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989); POWER OF THE PRESIDENT TO REMOVE THE SPECIAL PROSECUTOR.—** By clear provision of the Constitution, it is only the Office of the Ombudsman, which includes her Deputies, that is endowed with constitutional independence. The inclusion of the Office of the Special Prosecutor with the Office of the Ombudsman in Section 3 of Republic Act No. 6770 does not *ipso facto* mean that the Office of the Special Prosecutor must be afforded the same levels of constitutional independence as that of the Ombudsman and the Deputy Ombudsman. The law simply defines how the Office of the Special Prosecutor is attached and, therefore, coordinated with the Office of the Ombudsman. Thus, the provision of Section

8, Paragraph (2) of Republic Act No. 6770 which provides for the power of the President to remove the Special Prosecutor is valid and constitutional.

APPEARANCES OF COUNSEL

Poncevic M. Ceballos for petitioner in G.R. No. 196231.

Camara Meris & Associates Law Office for petitioner in G.R. No. 196232.

The Solicitor General for public respondents.

D E C I S I O N

BRION, *J.*:

We resolve the Office of the President's (*OP's*) motion for reconsideration of our September 4, 2012 Decision[1] which ruled on the petitions filed by Deputy Ombudsman Emilio Gonzales III and Special Prosecutor Wendell Barreras-Sulit. Their petitions challenged the constitutionality of Section 8(2) of Republic Act (*RA*) No. 6770.[2]

In the challenged Decision, the Court **upheld** the constitutionality of Section 8(2) of RA No. 6770 and ruled that the President has disciplinary jurisdiction over a Deputy Ombudsman and a Special Prosecutor. The Court, however, **reversed** the OP ruling that: (i) found Gonzales guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust; and (ii) imposed on him the penalty of dismissal.

Sulit, who had not then been dismissed and who simply sought to restrain the disciplinary proceedings against her, solely questioned the jurisdiction of the OP to subject her to disciplinary proceedings. The Court affirmed the continuation of the

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[1] *Rollo* (G.R. No. 196231), pp. 951-1000.

[2] The Ombudsman Act of 1989.

proceedings against her after upholding the constitutionality of Section 8(2) of RA No. 6770.

The *fallo* of our assailed Decision reads:

> WHEREFORE, in G.R. No. 196231, the decision of the Office of the President in OP Case No. 10-J-460 is REVERSED and SET ASIDE. Petitioner Emilio A. Gonzales III is ordered REINSTATED with payment of backwages corresponding to the period of suspension effective immediately, even as the Office of the Ombudsman is directed to proceed with the investigation in connection with the above case against petitioner. In G.R. No. 196232, We AFFIRM the continuation of OP-DC Case No. 11-B-003 against Special Prosecutor Wendell Barreras-Sulit for alleged acts and omissions tantamount to culpable violation of the Constitution and a betrayal of public trust, in accordance with Section 8(2) of the Ombudsman Act of 1989.[3]

In view of the Court's ruling, the OP filed the present motion for reconsideration through the Office of the Solicitor General (*OSG*).

We briefly narrate the facts that preceded the filing of the petitions and the present motion for reconsideration.

I. ANTECEDENTS

A. Gonzales' petition (G.R. No. 196231)

a. Factual antecedents

On May 26, 2008, Christian Kalaw filed separate charges with the Philippine National Police Internal Affairs Service (*PNP-IAS*) and with the Manila City Prosecutor's Office against Manila Police District Senior Inspector Rolando Mendoza and four others (*Mendoza, et al.*) for robbery, grave threat, robbery extortion and physical injury.[4]

On May 29, 2008, Police Senior Superintendent Atty. Clarence Guinto filed an administrative charge for grave misconduct with the National Police Commission (*NAPOLCOM*) PNP-NCRPO

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[3] *Rollo* (G.R. No. 196231), p. 998.

[4] Docketed as I.S. No. 08E-09512; *id.* at 113-116.

against Mendoza, *et al*. based on the same allegations made by Kalaw before the PNP-IAS.[5]

On July 2, 2008, Gonzales, Deputy Ombudsman for Military and Other Law Enforcement Officers (*MOLEO*), directed the NAPOLCOM to turn over the records of Mendoza's case to his office. The Office of the Regional Director of the NAPOLCOM duly complied on July 24, 2008.[6] Mendoza, *et al*. filed their position papers with Gonzales, in compliance with his Order. [7]

Pending Gonzales' action on Mendoza, *et al.*'s case (on August 26, 2008), the Office of the City Prosecutor of Manila City dismissed Kalaw's complaint against Mendoza, *et al.* for his failure to substantiate his allegations.[8] Similarly, on October 17, 2008, the PNP-IAS recommended the dismissal without prejudice of the administrative case against Mendoza, *et al.* for Kalaw's failure to prosecute.[9]

On February 16, 2009, after preparing a draft decision on Mendoza, *et al.*'s case, Gonzales forwarded the entire records to the Office of then Ombudsman Merceditas Gutierrez for her review.[10] In his draft decision, Gonzales found Mendoza, *et al*. guilty of grave misconduct and imposed on them the penalty of dismissal from the service.[11]

Mendoza, *et al.* received a copy of the Ombudsman's decision that approved Gonzales' recommendation on October 30, 2009. Mendoza, *et al.* filed a motion for reconsideration[12] on November

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[5] *Id.* at 87.

[6] *Id.* at 231.

[7] *Id.* at 88.

[8] *Id.* at 233-235.

[9] *Id.* at 128.

[10] *Id.* at 91.

[11] *Id.* at 92-97.

[12] *Id.* at 137-152.

5, 2009, followed by a Supplement to the Motion for Reconsideration.[13]

On December 10, 2009, the MOLEO-Records Section forwarded Mendoza, *et al.*'s case records to the Criminal Investigation, Prosecution and Administrative Bureau-MOLEO. On **December 14, 2009**, the case was assigned to Graft Investigation and Prosecution Officer (*GIPO*) Dennis Garcia for review and recommendation.[14]

GIPO Garcia released a draft order[15] to his immediate superior, Director Eulogio S. Cecilio, for appropriate action on **April 5, 2010**. Dir. Cecilio signed and forwarded the draft order to Gonzales' office on **April 27, 2010**. Gonzales reviewed the draft and endorsed the order, together with the case records, on **May 6, 2010** for the final approval by the Ombudsman.[16]

On August 23, 2010, pending final action by the Ombudsman on Mendoza, *et al.*'s case, Mendoza hijacked a tourist bus and held the 21 foreign tourists and the four Filipino tour assistants on board as hostages. While the government exerted earnest attempts to peacefully resolve the hostage-taking, it ended tragically, resulting in the deaths of Mendoza and several others on board the hijacked bus.

In the aftermath, President Benigno C. Aquino III directed the Department of Justice and the Department of Interior and Local Government to conduct a joint thorough investigation of the incident. The two departments issued Joint Department Order No. 01-2010, creating an Incident Investigation and Review Committee (*IIRC*).

In its September 16, 2010 First Report, the IIRC found the Ombudsman and Gonzales accountable for their "gross negligence

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[13] *Id.* at 132-136.

[14] *Id.* at 15.

[15] *Id.* at 15, 244-248.

[16] *Id.* at 16.

and grave misconduct in handling the case against Mendoza."[17] The IIRC stated that the Ombudsman and Gonzales' failure to promptly resolve Mendoza's motion for reconsideration, "without justification and despite repeated pleas" xxx "precipitated the desperate resort to hostage-taking."[18] The IIRC recommended the referral of its findings to the OP for further determination of possible administrative offenses and for the initiation of the proper administrative proceedings.[19]

Accordingly, on October 15, 2010, Gonzales was formally charged before the OP for Gross Neglect of Duty and/or Inefficiency in the Performance of Official Duty and for Misconduct in Office.[20]

b. The OP ruling

On March 31, 2011, the OP found Gonzales guilty as charged and dismissed him from the service.[21] According to the OP, "the inordinate and unjustified delay in the resolution of [Mendoza's] Motion for Reconsideration ['that spanned for nine (9) long months'] xxx amounted to gross neglect of duty" and "constituted a flagrant disregard of the Office of the Ombudsman's own Rules of Procedure."[22]

c. The Petition

Gonzales posited in his petition that the OP has no administrative disciplinary jurisdiction over a Deputy Ombudsman. Under Section 21 of RA No. 6770, it is the Ombudsman who exercises administrative disciplinary jurisdiction over the Deputy Ombudsman.

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[17] http://www.gov.ph/2010/09/17/first-report-of-the-iirc-on-the-rizal-park-hostage-taking-incident/ (last accessed on February 2, 2014).

[18] *Ibid.*

[19] *Ibid.*

[20] *Rollo* (G.R. No. 196231), p. 322.

[21] *Id.* at 85.

[22] *Id.* at 80.

On the merits, Gonzales argued that his office received the draft order from GIPO Garcia on April 27, 2010. On May 6, 2010, he completed his review of the draft, approved it, and transmitted it to the Office of the Ombudsman for final approval. Since the draft order on Mendoza's motion for reconsideration had to undergo different levels of preparation, review and approval, the period it took to resolve the motion could not be unjustified, since he himself acted on the draft order only within nine (9) calendars days from his receipt of the order.[23]

B. Sulit's petition (G.R. No. 196232)

In April 2005, the Office of the Ombudsman charged Major General Carlos F. Garcia and several others, before the Sandiganbayan, with plunder and money laundering. On May 7, 2007, Garcia filed an Urgent Petition for Bail which the prosecution opposed. The Sandiganbayan denied Garcia's urgent petition for bail on January 7, 2010, in view of the strength of the prosecution's evidence against Garcia.

On February 25, 2010, the Office of the Ombudsman, through Sulit and her prosecutorial staff, entered into a plea bargaining agreement (*Agreement*) with Garcia.[24] Garcia thereby agreed to: (i) withdraw his plea of not guilty to the charge of plunder and enter a plea of guilty to the lesser offense of indirect bribery; and (ii) withdraw his plea of not guilty to the charge of money laundering and enter a guilty plea to the lesser offense of facilitating money laundering. In exchange, he would convey to the government his ownership, rights and other interests over the real and personal properties enumerated in the Agreement and the bank deposits alleged in the information.[25]

The Sandiganbayan approved the Agreement on May 4, 2010[26] based on the parties' submitted Joint Motion for Approval.[27]

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[23] *Id.* at 49-50.

[24] *Rollo* (G.R. No. 196232), pp. 27, 36-42.

[25] *Id.* at 37-41.

[26] *Id.* at 98.

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

The apparent one-sidedness of the Agreement drew public outrage and prompted the Committee on Justice of the House of Representatives to conduct an investigation. After public hearings, the Committee found that Sulit, her deputies and assistants committed culpable violations of the Constitution and betrayal of public trust – grounds for removal under Section 8(2) of RA No. 6770.[28] The Committee recommended to the President the dismissal from the service of Sulit and the filing of appropriate charges against her deputies and assistants before the appropriate government office.

Accordingly, the OP initiated an administrative disciplinary proceeding against Sulit.[29] On March 24, 2011, Sulit filed her Written Explanation, *questioning the OP's jurisdiction*.[30] The question of jurisdiction notwithstanding, the OP set the case for preliminary investigation on April 15, 2011, prompting Sulit to seek relief from this Court.

II. COURT'S RULING

On motion for reconsideration and further reflection, the Court votes to **grant** Gonzales' petition and to declare Section 8(2) of RA No. 6770 unconstitutional with respect to the Office of the Ombudsman. (As the full explanation of the Court's vote describes below, this conclusion does not apply to Sulit as the grant of independence is solely with respect to the Office of the Ombudsman which does not include the Office of the Special Prosecutor under the Constitution. The prevailing ruling on this latter point is embodied in the Concurring and Dissenting Opinion of J. Marvic Mario Victor Leonen).

A. *Preliminary considerations:*

a. Absence of motion for reconsideration on the part of the petitioners

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[28] *Id.* at 27-30.

[29] *Id.* at 364-365.

[30] *Id.* at 9, 367-375.

At the outset, the Court notes that Gonzales and Sulit did not file a motion for reconsideration of the Court's September 4, 2012 Decision; only the OP, through the OSG, moved for the reconsideration of our ruling reinstating Gonzales.

This omission, however, poses no obstacle for the Court's review of its ruling on the whole case since a serious constitutional question has been raised and is one of the underlying bases for the validity or invalidity of the presidential action. If the President does not have any constitutional authority to discipline a Deputy Ombudsman and/or a Special Prosecutor in the first place, then any ruling on the legal correctness of the OP's decision on the merits will be an empty one.

In other words, since the validity of the OP's decision on the merits of the dismissal is inextricably anchored on the final and correct ruling on the constitutional issue, the whole case – including the constitutional issue – remains alive for the Court's consideration on motion for reconsideration.

b. The justiciability of the constitutional issue raised in the petitions

We clarify, too, that the issue of whether a Deputy Ombudsman may be subjected to the administrative disciplinary jurisdiction of the President (concurrently with that of the Ombudsman) is a justiciable – not a political – question. A justiciable question is one which is inherently susceptible of being decided on grounds recognized by law,[31] as where the court finds that there are constitutionally-imposed limits on the exercise of the powers conferred on a political branch of the government.[32]

In resolving the petitions, we do not inquire into the wisdom of the Congress' choice to grant concurrent disciplinary authority to the President. Our inquiry is limited to whether such statutory

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[31] *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 637 (2000).

[32] Separate Opinion of Justice Puno in *Integrated Bar of the Philippines v. Zamora; id.* at 661.

grant violates the Constitution, particularly whether Section 8(2) of RA No. 6770 violates the core constitutional principle of the independence of the Office of the Ombudsman as expressed in Section 5, Art. XI of the Constitution.

To be sure, neither the Executive nor the Legislative can create the power that Section 8(2) of RA No. 6770 grants where the Constitution confers none. When exercised authority is drawn from a vacuum, more so when the authority runs counter to a core constitutional principle and constitutional intents, the Court is duty-bound to intervene under the powers and duties granted and imposed on it by Article VIII of the Constitution.

B. *The Deputy Ombudsman: Constitutional Issue*

a. The Philippine Ombudsman

Prior to the 1973 Constitution, past presidents established several Ombudsman-like agencies to serve as the people's medium for airing grievances and for direct redress against abuses and misconduct in the government. Ultimately, however, these agencies failed to fully realize their objective *for lack of the political independence* necessary for the effective performance of their function as government critic.[33]

It was under the 1973 Constitution that the Office of the Ombudsman became a ***constitutionally-mandated*** office to give it political independence and adequate powers to enforce its mandate. Pursuant to the 1973 Constitution, President Ferdinand Marcos enacted Presidential Decree (*PD*) No. 1487, as amended by PD No. 1607 and PD No. 1630, creating the Office of the Ombudsman to be known as Tanodbayan. It was tasked principally to investigate, on complaint or *motu proprio*, any administrative act of any administrative agency, including any government-owned or controlled corporation. When the Office of the Tanodbayan was reorganized in 1979, the powers previously vested in the Special Prosecutor were transferred to the Tanodbayan himself. He was given the exclusive authority to

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[33] Furthermore, their powers extended to no more than fact-finding and recommending. *Uy v. Sandiganbayan*, 407 Phil. 154, 167 (2001).

conduct preliminary investigation of all cases cognizable by the Sandiganbayan, file the corresponding information, and control the prosecution of these cases.[34]

With the advent of the 1987 Constitution, a new Office of the Ombudsman was ***created by constitutional fiat***. Unlike in the 1973 Constitution, its independence was expressly and constitutionally guaranteed. Its objectives are to enforce the state policy in Section 27, Article II[35] and the standard of accountability in public service under Section 1, Article XI of the 1987 Constitution. These provisions read:

> Section 27. The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.
>
> Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Under Section 12, Article XI of the 1987 Constitution, the Office of the Ombudsman is envisioned to be the "protector of the people" against the inept, abusive, and corrupt in the Government, to function essentially as a complaints and action bureau.[36] This constitutional vision of a Philippine Ombudsman practically intends to make the Ombudsman an authority to directly check and guard against the ills, abuses and excesses of the bureaucracy. Pursuant to Section 13(8), Article XI of the 1987 Constitution, Congress enacted RA No. 6770 to enable it to further realize the vision of the Constitution. Section 21 of RA No. 6770 provides:

> Section 21. *Official Subject to Disciplinary Authority; Exceptions.* — The Office of the Ombudsman **shall have disciplinary authority**

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

[35] *Office of the Ombudsman v. Samaniego*, G.R. No. 175573, September 11, 2008, 564 SCRA 567, 573.

[36] *Ledesma v. Court of Appeals*, 503 Phil. 396, 408; and *Office of the Ombudsman v. Samaniego, id.*

over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary. [emphasis ours, italics supplied]

As the Ombudsman is expected to be an "activist watchman,"[37] the Court has upheld its actions, although not squarely falling under the broad powers granted it by the Constitution and by RA No. 6770, if these actions are reasonably in line with its official function and consistent with the law and the Constitution.[38]

The Ombudsman's broad investigative and disciplinary powers include all acts of malfeasance, misfeasance, and nonfeasance of all public officials***, including Members of the Cabinet and key Executive officers, during their tenure***. To support these broad powers, the Constitution saw it fit to insulate the Office of the Ombudsman from the pressures and influence of officialdom and partisan politics and from fear of external reprisal by making it an "independent" office. Section 5, Article XI of the Constitution expressed this intent, as follows:

Section 5. There is hereby created the **independent** Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed. [emphasis ours]

Given the scope of its disciplinary authority, the Office of the Ombudsman is a very powerful government constitutional agency that is considered "a notch above other grievance-handling investigative bodies."[39] **It has powers, both constitutional**

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[37] *Office of the Ombudsman v. Lucero*, G.R. No. 168718, 24 November 2006, 508 SCRA 106, 115.

[38] *Office of the Ombudsman v. Samaniego*, *supra* note 35.

[39] *Department of Justice v. Liwag*, G.R. No. 149311, February 11, 2005, 491 Phil. 270, 283.

and statutory, that are commensurate with its daunting task of enforcing accountability of public officers.[40]

b. "Independence" of constitutional bodies vis-a-vis the Ombudsman's independence

Under the Constitution, several constitutional bodies have been ***expressly labeled as "independent***."[41] The extent of the independence enjoyed by these constitutional bodies however varies and is to be interpreted with two significant considerations in mind: *first*, the functions performed or the powers involved in a given case; and *second*, consistency of any allowable interference to these powers and functions, with the principle of checks and balances.

Notably, *the independence enjoyed by the Office of the Ombudsman and by the Constitutional Commissions shares certain characteristics* – they do not owe their existence to any act of Congress, but are created by the Constitution itself; additionally, they all enjoy fiscal autonomy. In general terms, the framers of the Constitution intended that these "independent" bodies be insulated from political pressure to the extent that the absence of "independence" would result in the ***impairment of their core functions***.

In *Bengzon v. Drilon*,[42] involving the fiscal autonomy of the Judiciary, we ruled against the interference that the President

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[40] It is not only given an "active role" in the enforcement of laws on anti-graft and corrupt practices and related offenses (*Uy v. Sandiganbayan*, *supra* note 33), its recommendation to a concerned public officer of taking an appropriate action against an erring subordinate is not merely advisory but mandatory within the bounds of law (*Ledesma v. Office of the Ombudsman*, Section 13(3), Article XI of the 1987 Constitution, Section 15(3) of RA No. 6770).

[41] Referring to the Constitutional Commissions (Commission on Elections, Commission on Audit, and the Civil Service Commission), the Commission on Human Rights, a central monetary authority, and, to a certain extent, the National Economic Development Authority.

[42] G.R. No. 103524 and A.M. No. 91-8-225-CA, April 15, 1992, 208 SCRA 133, 150; emphasis and underscore ours.

may bring and maintained that the independence and the flexibility of the Judiciary, the Constitutional Commissions and the **Office of the Ombudsman** are crucial to our legal system.

The Judiciary, the Constitutional Commissions, and the **Ombudsman must have the independence and flexibility needed in the discharge of their constitutional duties**. The imposition of restrictions and constraints on the manner the independent constitutional offices allocate and utilize the funds appropriated for their operations is anathema to fiscal autonomy and violative not only the express mandate of the Constitution but especially as regards the Supreme Court, of the independence and separation of powers upon which the entire fabric of our constitutional system is based.

The constitutional deliberations explain the Constitutional Commissions' need for independence. In the **deliberations of the 1973 Constitution**, the delegates amended the 1935 Constitution by providing for a constitutionally-created Civil Service Commission, instead of one created by law, on the premise that the effectivity of this body is dependent on its freedom from the tentacles of politics.[43] In a similar manner, the deliberations of the **1987 Constitution** on the Commission on Audit highlighted the developments in the past Constitutions geared towards insulating the Commission on Audit from political pressure.[44]

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[43] Speech, Session of February 18, 1972, as cited in "*The 1987 Constitution of the Republic of the Philippines: A Commentary*" by Joaquin Bernas, 2003 ed., p. 1009.

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[b] because we believe that the Civil Service created by law has not been able to eradicate the ills and evils envisioned by the framers of the 1935Constitution; because we believe that the Civil Service created by law is beholden to the creators of that law and is therefore not politics-free, not graft-free and not corruption-free; because we believe that as long as the law is the reflection of the will of the ruling class, the Civil Service that will be created and recreated by law will not serve the interest of the people but only the personal interest of the few and the enhancement of family power, advancement and prestige.

[44] Record of the Constitutional Commission, Vol. 1, July 15, 1986, pp. 532-533.

Notably, the Constitution also created an "independent" Commission on Human Rights, although it enjoys a lesser degree of independence since it is not granted fiscal autonomy in the manner fiscal autonomy is granted to the constitutional commissions. The lack of fiscal autonomy notwithstanding, the framers of the 1987 Constitution clearly expressed their desire *to keep the Commission independent from the executive branch and other political leaders*:

MR. MONSOD. We see the merits of the arguments of Commissioner Rodrigo. If we explain to him our concept, he can advise us on how to reconcile his position with ours. The position of the committee is that we need a body that would be able to work and cooperate with the executive because the Commissioner is right. Many of the services needed by this commission would need not only the cooperation of the executive branch of the government but also of the judicial branch of government. This is going to be a permanent constitutional commission over time. **We also want a commission to function even under the worst circumstance when the executive may not be very cooperative.** However, the question in our mind is: Can it still function during that time? Hence, we are willing to accept suggestions from Commissioner Rodrigo on how to reconcile this. We realize the need for coordination and cooperation. **We also would like to build in some safeguards that it will not be rendered useless by an uncooperative executive.**

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MR. GARCIA. xxx Very often, when international commissions or organizations on human rights go to a country, the most credible organizations are independent human rights bodies. Very often these are private organizations, many of which are prosecuted, such as those we find in many countries in Latin America. **In fact, what we are proposing is an independent body on human rights, which would provide governments with credibility precisely because**

MR. JAMIR. xxx When the 1935 Constitution was enacted, the auditing office was constitutionalized because of the increasing necessity of empowering the auditing office to withstand political pressure. Finding a single Auditor to be quite insufficient to withstand political pressure, the 1973 Constitution established the Commission consisting of three members — a chairman and two commissioners.

it is independent of the present administration. Whatever it says on the human rights situation will be credible because it is not subject to pressure or control from the present political leadership.

Secondly, we all know how political fortunes come and go. Those who are in power yesterday are in opposition today and those who are in power today may be in the opposition tomorrow. **Therefore, if we have a Commission on Human Rights that would investigate and make sure that the rights of each one is protected, then we shall have a body that could stand up to any power, to defend the rights of individuals against arrest, unfair trial, and so on.**[45]

These deliberative considerations abundantly show that the independent constitutional commissions have been consistently intended by the framers to be ***independent from executive control or supervision or any form of political influence*. At least insofar as these bodies are concerned, jurisprudence is not scarce on how the "independence" granted to these bodies prevents presidential interference**.

In *Brillantes, Jr. v. Yorac*,[46] we emphasized that the Constitutional Commissions, which have been characterized under the Constitution as "independent," are *not under the control of the President, even if they discharge functions that are executive in nature*. The Court declared as unconstitutional the President's act of temporarily appointing the respondent in that case as Acting Chairman of the Comelec "however well-meaning"[47] it might have been.

In *Bautista v. Senator Salonga*,[48] the Court categorically stated that the tenure of the commissioners of the independent Commission on Human Rights could not be placed under the discretionary power of the President:

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[45] Records of the Constitutional Commission, Vol. 3, August 27, 1986, pp. 748-749; emphases ours.

[46] G.R. No. 93867, December 18, 1990, 192 SCRA 358.

[47] *Id.* at 361.

[48] 254 Phil. 156, 179 (1989); emphases and underscores supplied.

Indeed, the Court finds it extremely difficult to conceptualize **how an office conceived and created by the Constitution to be independent – as the Commission on Human Rights – and vested with the delicate and vital functions** of investigating violations of human rights, pinpointing responsibility and recommending sanctions as well as remedial measures therefor, **can truly function with independence and effectiveness, when the tenure in office of its Chairman and Members is made dependent on the pleasure of the President**. Executive Order No. 163-A, being antithetical to the constitutional mandate of independence for the Commission on Human Rights has to be declared unconstitutional.

Again, in *Atty. Macalintal v. Comelec*,[49] the Court considered even the mere review of the rules of the Commission on Elections by Congress a "trampling" of the constitutional mandate of independence of this body. Obviously, the mere review of rules places considerably less pressure on a constitutional body than the Executive's power to discipline and remove key officials of the Office of the Ombudsman, yet the Court struck down the law as unconstitutional.

The kind of independence enjoyed by the Office of the Ombudsman certainly cannot be inferior – but is similar in degree and kind – to the independence similarly guaranteed by the Constitution to the Constitutional Commissions since all these offices fill the political interstices of a republican democracy that are crucial to its existence and proper functioning.[50]

c. Section 8(2) of RA No. 6770 vesting disciplinary authority in the President over the Deputy Ombudsman violates the independence of the Office of the Ombudsman and is thus unconstitutional

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[49] 453 Phil. 586, 658-659 (2003).

[50] Accordingly, there is no point discussing, even for purposes of comparing and contrasting, the "independence" of the National Economic Development Authority and the central monetary authority, whose major concern is primarily the direction of the country's economy, both in its micro and macro aspects.

Our discussions, particularly the Court's expressed caution against presidential interference with the constitutional commissions, on one hand, and those expressed by the framers of the 1987 Constitution, on the other, in protecting the independence of the Constitutional Commissions, speak for themselves as overwhelming reasons to invalidate Section 8(2) of RA No. 6770 for violating the independence of the Office of the Ombudsman.

In more concrete terms, we rule that **subjecting the Deputy Ombudsman to discipline and removal by the President, *whose own alter egos and officials in the Executive Department are subject to the Ombudsman's disciplinary authority,* cannot but seriously place at risk the independence of the Office of the Ombudsman itself.** The Office of the Ombudsman, by express constitutional mandate, includes its key officials, all of them tasked to support the Ombudsman in carrying out her mandate. Unfortunately, intrusion upon the constitutionally-granted independence is what Section 8(2) of RA No. 6770 exactly did. By so doing, the law directly collided not only with the independence that the Constitution guarantees to the Office of the Ombudsman, but inevitably with the principle of checks and balances that the creation of an Ombudsman office seeks to revitalize.

What is true for the Ombudsman must be equally and necessarily true for her Deputies who act as agents of the Ombudsman in the performance of their duties. The Ombudsman can hardly be expected to place her complete trust in her subordinate officials who are not as independent as she is, if only because they are subject to pressures and controls external to her Office. This need for complete trust is true in an ideal setting and truer still in a young democracy like the Philippines where graft and corruption is still a major problem for the government. For these reasons, **Section 8(2) of RA No. 6770 (providing that the President may remove a Deputy Ombudsman)** should be declared void.

The deliberations of the Constitutional Commission on the independence of the Ombudsman fully support this position.

Commissioner Florenz Regalado of the Constitutional Commission expressed his apprehension that any form of presidential control over the Office of the Ombudsman would diminish its independence.[51] The following exchanges between Commissioners Blas Ople and Christian Monsod further reveal the constitutional intent to keep the Office of the Ombudsman independent from the President:

MR. OPLE. xxx

May I direct a question to the Committee? xxx [W]ill the Committee consider later an amendment xxx, by way of designating the office

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[51] Record of the Constitutional Commission, Vol. 2, July 26, 1986, p. 294.

In other words, Madam President, what actually spawned or caused the failure of the justices of the Tanodbayan insofar as monitoring and fiscalizing the government offices are concerned was due to two reasons: First, almost all their time was taken up by criminal cases; and second, since they were under the Office of the President, their funds came from that office. I have a sneaking suspicion that they were prevented from making administrative monitoring because of the sensitivity of the then head of that office, **because if the Tanodbayan would make the corresponding reports about failures, malfunctions or omissions of the different ministries, then that would reflect upon the President who wanted to claim the alleged confidence of the people**.

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It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him **independent of the Office of the President** because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan de la Cruz. xxx. There is supposed to be created a constitutional office — constitutionalized to free it from those tentacles of politics — and we give it more teeth and have the corresponding legislative provisions for its budget, not a budget under the Office of the President.

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xxx. For that reason, Madam President, I support this committee report on a constitutionally created Ombudsman and I further ask that to avoid having a toothless tiger, there should be further provisions for statistical and logistical support. (Emphases ours.)

of the Ombudsman as a constitutional arm for good government, efficiency of the public service and the integrity of the President of the Philippines, instead of creating another agency in a kind of administrative limbo which would be accountable to no one on the pretext that it is a constitutional body?

MR. MONSOD. The Committee discussed that during our committee deliberations and when we prepared the report, it was the opinion of the Committee — and I believe it still is — that it may not contribute to the effectiveness of this office of the Ombudsman precisely because many of the culprits in inefficiency, injustice and impropriety are in the executive department. Therefore, as we saw the wrong implementation of the Tanodbayan which was under the tremendous influence of the President, it was an ineffectual body and was reduced to the function of a special fiscal. The whole purpose of our proposal is precisely to separate those functions and to produce a vehicle that will give true meaning to the concept of Ombudsman. Therefore, we regret that we cannot accept the proposition.[52]

The statements made by Commissioner Monsod emphasized a very logical principle: **the Executive power to remove and discipline key officials of the Office of the Ombudsman, or to exercise any power over them, would result in an *absurd* situation wherein the Office of the Ombudsman is given the duty to adjudicate on the integrity and competence of the very persons who can remove or suspend its members**. Equally relevant is the impression that would be given to the public if the rule were otherwise. A complainant with a grievance against a high-ranking official of the Executive, who appears to enjoy the President's favor, would be discouraged from approaching the Ombudsman with his complaint; the complainant's impression (even if misplaced), that the Ombudsman would be susceptible to political pressure, cannot be avoided. To be sure, such an impression would erode the constitutional intent of creating an Office of the Ombudsman as champion of the people against corruption and bureaucracy.

d. The mutual-protection argument for crafting Section 8(2)of RA No. 6770

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[52] *Id.* at 294.

In crafting Section 8(2) of RA No. 6770, Congress apparently addressed the concern that a lack of an external check against the Deputy Ombudsman would result in mutual protection between the Ombudsman and her Deputies.

While the preceding discussion already suffices to address this concern, it should be added that this concern stands on shaky grounds since it ignores the existing checks and balances already in place. On the one hand, the Ombudsman's Deputies cannot protect the Ombudsman because she is subject to the impeachment power of Congress. On the other hand, the Ombudsman's attempt to cover up the misdeeds of her Deputies can be questioned before the Court on appeal or *certiorari*. The same attempt can likewise subject her to impeachment.

The judicial recourse available is only consistent with the nature of the Supreme Court as a non-political independent body mandated by the Constitution to settle judicial and quasi-judicial disputes, whose judges and employees are not subject to the disciplinary authority of the Ombudsman and whose neutrality would be less questionable. The Members of the Court themselves may be subjected to the impeachment power of Congress.

In these lights, the appeal, if any, of the mutual protection argument becomes distinctly implausible. At the same time, the Court remains consistent with its established rulings - that the independence granted to the Constitutional Commissions bars any undue interference from either the Executive or Congress – and is in full accord with constitutional intent.

e. Congress' power determines the manner and causes for the removal of non-impeachable officers is not a carte blanch authority

Under Section 2, Article XI of the 1987 Constitution,[53] Congress is empowered to determine the modes of removal from

[53] This provision reads:

Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable

office of all public officers and employees except the President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman, who are all impeachable officials.

The intent of the framers of the Constitution in providing that "[a]ll other public officers and employees may be removed from office as provided by law, but not by impeachment" in the second sentence of Section 2, Article XI is to prevent Congress from extending the more stringent rule of "removal only by impeachment" to favored public officers.[54] Understandably so, impeachment is the most difficult and cumbersome mode of removing a public officer from office. It is, by its nature, a *sui generis* politico-legal process[55] that signals the need for a judicious and careful handling as shown by the process required to initiate the proceeding;[56] the one-year limitation or bar for its initiation;[57] the limited grounds for impeachment;[58] the defined instrumentality given the power to try impeachment cases;[59] and the number of votes required for a finding of guilt.[60] All these argue against the extension of this removal mechanism beyond those mentioned in the Constitution.

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violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

[54] The Framers' concern in inserting the second sentence of Section 2, Article XI is fully supported by the intent expressed in the constitutional debates.

[55] Dennis Funa, *Law on Administrative Accountability of Public Officers*, p. 720. *Fundamentals of Impeachment*, Antonio R. Tupaz and Edsel C.F. Tupaz, p. 7; *See* Opinion of Justice Vitug in *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 957 (2003).

[56] CONSTITUTION, Art. XI, Section 3(1).

[57] CONSTITUTION, Art. XI, Section 3(5).

[58] CONSTITUTION, Art. XI, Section 2.

[59] CONSTITUTION, Art. XI, Section 3(6).

[60] *Ibid.*

On the practical side, our nation has witnessed the complications and problems an impeachment proceeding entails, thus justifying its limited application only to the officials occupying the highest echelons of responsibility in our government. To name a few, some of the negative practical effects of impeachment are: it stalls legislative work; it is an expensive process in terms of the cost of prosecution alone; and, more importantly, it is inherently divisive of the nation.[61] Thus, in a cost-benefit analysis of adopting impeachment as a mechanism, limiting Congress' power to otherwise legislate on the matter is far more advantageous to the country.

It is in these lights that the second sentence in Section 2, Article XI of the 1987 Constitution should be read. Contrary to the implied view of the minority, in no way can this provision be regarded as blanket authority for Congress to provide for any ground of removal it deems fit. While the manner and cause of removal are left to congressional determination, this must still be *consistent with constitutional guarantees and principles, namely: the right to procedural and substantive due process; the constitutional guarantee of security of tenure*; *the principle*

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[61] Thus, impeachment is characterized as essentially raising political questions or questions of policies created by large historical forces. Alexander Hamilton observed:

> A well-constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself. **The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other**; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt. (The Federalist No. 65 [www.constitution.org/fed/federa65, accessed on February 3, 2014].)

of separation of powers; and the principle of checks and balances.[62]

In short, the authority granted by the Constitution to Congress to provide for the manner and cause of removal of all other public officers and employees does not mean that Congress can ignore the basic principles and precepts established by the Constitution.

In the same manner, the congressional determination of the identity of the disciplinary authority is not a blanket authority for Congress to repose it on whomsoever Congress chooses without running afoul of the independence enjoyed by the Office of the Ombudsman and without disrupting the delicate check and balance mechanism under the Constitution. Properly viewed from this perspective, the core constitutional principle of independence is observed and any possible absurdity resulting from a contrary interpretation is avoided. In other words, while the Constitution itself vested Congress with the power to determine the manner and cause of removal of all non-impeachable officials, this power must be interpreted *consistent with the core constitutional principle of independence of the Office of the Ombudsman*. Our observation in *Macalintal v. Comelec*[63] is apt:

> The ambit of legislative power under Article VI of the Constitution is circumscribed by other constitutional provisions. One such provision is Section 1 of Article IX-A of the 1987 Constitution ordaining that constitutional commissions such as the COMELEC shall be "independent."

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[62] Even the second restriction (on due process) on the President's exercise of his power of removal of the Deputy Ombudsman does not emanate from Congress but from the Constitution itself. The fact that the Office of the Ombudsman is a constitutional office that enjoys independence from the three branches of government argues against any suggestion that the President can remove a Deputy Ombudsman at will without the requirement of observance of due process under Section 8(2) of RA No. 6770.

[63] *Supra* note 49, at 658.

While one may argue that the grounds for impeachment under Section 8(2) of RA No. 6770 is intended as a measure of protection for the Deputy Ombudsman and Special Prosecutor – since these grounds are not intended to cover all kinds of official wrongdoing and plain errors of judgment - this argument seriously overlooks the erosion of the independence of the Office of the Ombudsman that it creates. The mere fact that a statutorily-created sword of Damocles hangs over the Deputy Ombudsman's head, by itself, opens up all the channels for external pressures and influence of officialdom and partisan politics. The fear of external reprisal ***from the very office he is to check for excesses and abuses*** defeats the very purpose of granting independence to the Office of the Ombudsman.

That a judicial remedy is available (to set aside dismissals that do not conform to the high standard required in determining whether a Deputy Ombudsman committed an impeachable offense) and that the President's power of removal is limited to specified grounds are dismally inadequate when balanced with the constitutional principle of independence. **The mere filing of an administrative case against the Deputy Ombudsman and the Special Prosecutor before the OP can already result in their suspension and can interrupt the performance of their functions**, in violation of Section 12, Article XI of the Constitution. With only one term allowed under Section 11, a Deputy Ombudsman or Special Prosecutor, if removable by the President, can be reduced to the very same ineffective Office of the Ombudsman that the framers had foreseen and carefully tried to avoid by making these offices independent constitutional bodies.

At any rate, even assuming that the OP has disciplinary authority over the Deputy Ombudsman, its decision finding Gonzales guilty of Gross Neglect of Duty and Grave Misconduct constituting betrayal of public trust is *patently* erroneous. The OP's decision perfectly illustrates why the requirement of impeachment-grounds in Section 8(2) of RA No. 6770 cannot be considered, even at a minimum, a measure of protection of the independence of the Office of the Ombudsman.

C. *The Deputy Ombudsman: The Dismissal Issue*

a. The Office of the President's finding of gross negligence has no legal and factual leg to stand on

The OP's decision found Gonzales guilty of Gross Neglect of Duty and of Grave Misconduct. The assailed Decision of the OP reads:

> Upon consideration of the First Report, the evidence and allegations of respondent Deputy Ombudsman himself, and other documentary evidence gathered, this Office finds that the inordinate and unjustified delay in the resolution of Captain Mendoza's Motion for Reconsideration timely filed on 5 November 2009 xxx amounted to gross neglect of duty and/or inefficiency in the performance of official duty.[64]

b. No gross neglect of duty or inefficiency

Let us again briefly recall the facts.

1. November 5, 2009 — Mendoza filed a Motion for Reconsideration of the decision of the Ombudsman,[65] which was followed by a Supplement to the Motion for Reconsideration;[66]
2. December 14, 2009[67] — GIPO Garcia, who was assigned to review these motions and make his recommendation for the appropriate action, received the records of the case;
3. April 5, 2010 – GIPO Garcia released a draft order to be reviewed by his immediate superior, Dir. Cecilio;[68]

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[64] *Rollo* (G.R. No. 196231), p. 80.

[65] *Id.* at 137-152.

[66] *Id.* at 132-136.

[67] *Id.* at 15, 240.

[68] *Id.* at 241.

4. April 27, 2010 – Dir. Cecilio signed and forwarded to Gonzales this draft order;[69]

5. May 6, 2010 (or nine days after the records were forwarded to Gonzales) – Gonzales endorsed the draft order for the final approval of the Ombudsman.[70]

Clearly, when Mendoza hijacked the tourist bus on August 23, 2010, the records of the case were already pending before Ombudsman Gutierrez.

Gross negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. In the case of public officials, there is gross negligence when a breach of duty is flagrant and palpable.[71]

Gonzales cannot be guilty of gross neglect of duty and/or inefficiency since he acted on the case forwarded to him **within nine days**. In finding Gonzales guilty, the OP[72] relied on Section 8, Rule III of Administrative Order No. 7 (or the Rules of Procedure of the Office of the Ombudsman, series of 1990, as amended) in ruling that Gonzales should have acted on Mendoza's Motion for Reconsideration within five days:

Section 8. Motion for reconsideration or reinvestigation: Grounds – Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt

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[69] *Id.* at 242.

[70] *Id.* at 236 and 343. The case was endorsed to the Ombudsman on May 5, 2010; the period within which Gonzales finished his work would only be eight days. However, Gonzales stated in his pleading that it took him nine days to review the Resolution of the Motion for Reconsideration, and the OP does not dispute this. The records of the case were forwarded to the Records Section on May 7, 2010.

[71] *Brucal v. Desierto*, 501 Phil. 453, 465-466 (2005).

[72] *Rollo* (G.R. No. 196231), pp. 578-579.

of the decision or order by the party on the basis of any of the following grounds:

a) New evidence had been discovered which materially affects the order, directive or decision;

b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the **Hearing Officer** shall resolve the same within five (5) days from the date of submission for resolution. [emphasis and underscore ours]

Even if we consider this provision to be mandatory, the period it requires cannot apply to Gonzales since he is a Deputy Ombudsman whose obligation is to review the case; he is not simply a Hearing Officer tasked with the initial resolution of the motion. In Section 6 of Administrative Order No. 7 on the resolution of the case and submission of the proposed decision, the period for resolving the case does not cover the period within which it should be reviewed:

Section 6. Rendition of decision. – Not later than thirty (30) days after the **case is declared submitted for resolution**, the Hearing Officer shall submit a proposed ***decision*** containing his findings and recommendation for the approval of the Ombudsman. **Said proposed decision shall be reviewed by the Directors, Assistant Ombudsmen and Deputy Ombudsmen concerned. With respect to low ranking public officials, the Deputy Ombudsman concerned shall be the approving authority.** Upon approval, copies thereof shall be served upon the parties and the head of the office or agency of which the respondent is an official or employee for his information and compliance with the appropriate directive contained therein. [italics and emphases supplied]

Thus, the OP's ruling that Gonzales had been grossly negligent for taking nine days, instead of five days, to review a case was totally baseless.

c. No actionable failure to supervise subordinates

The OP's claims that Gonzales could have supervised his subordinates to promptly act on Mendoza's motion and apprised the Tanodbayan of the urgency of resolving the same are similarly groundless.

The Office of the Ombudsman is not a corner office in our bureaucracy. It handles numerous cases that involve the potential loss of employment of *many other* public employees. We cannot conclusively state, as the OP appears to suggest, that Mendoza's case should have been prioritized over other similar cases. The Court has already taken judicial notice of the steady stream of cases reaching the Office of the Ombudsman.[73] This consideration certainly militates against the OSG's observation that there was "a grossly inordinate and inexcusable delay"[74] on the part of Gonzales.

Equally important, the constitutional guarantee of "speedy disposition of cases" before, among others, quasi-judicial bodies,[75] like the Office of the Ombudsman, is itself a *relative* concept.[76]

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[73] In *Dansal v. Judge Fernandez, Sr.*, 383 Phil. 897, 908-910 (2000), the Court said: "Judicial notice should be taken of the fact that the nature of the Office of the Ombudsman encourages individuals who clamor for efficient government service to freely lodge their Complaints against wrongdoings of government personnel, thus resulting in a steady stream of cases reaching the Office of the Ombudsman."

[74] Motion for Reconsideration, p. 10.

[75] CONSTITUTION, Art. III, Section 16.

[76] *Caballero v. Alfonso*, 237 Phil. 154 (1987); *Roquero v. The Chancellor of U.P. Manila*, G.R. No. 181851, March 9, 2010, 614 SCRA 723, 732-733. In fact, in *Mendoza-Ong v. Sandiganbayan* (483 Phil. 451, 454-455 [2004]), the Court had this to say:

In this case, the Graft Investigation Officer released his resolution finding probable cause against petitioner on August 16, 1995, less than six months from the time petitioner and her co-accused submitted their counter-affidavits. On October 30, 1995, only two and a half months later, Ombudsman Aniano Desierto had reviewed the case and had approved the resolution. Contrary to petitioner's contention, the lapse of only ten months from the filing of the complaint on December 13, 1994, to the approval of the resolution on October 30, 1995, is by no means oppressive. "Speedy disposition of cases" is consistent with reasonable delays.

Thus, the delay, if any, must be measured in this objective constitutional sense. Unfortunately, because of the very statutory grounds relied upon by the OP in dismissing Gonzales, the political and, perhaps, "practical" considerations got the better of what is legal and constitutional.

The facts do not show that Gonzales' subordinates had in any way been grossly negligent in their work. While GIPO Garcia reviewed the case and drafted the order for more than three months, it is noteworthy that he had not drafted the initial decision and, therefore, had to review the case for the first time.[77] Even the Ombudsman herself could not be faulted for acting on a case within four months, given the amount of cases that her office handles.

The point is that these are not inordinately long periods for the work involved: examination of the records, research on the pertinent laws and jurisprudence, and exercise of legal judgment and discretion. If this Court rules that these periods *per se* constitute gross neglect of duty, the Ombudsman's constitutional mandate to prosecute all the erring officials of this country would be subjected to an unreasonable and overwhelming constraint. Similarly, if the Court rules that these periods *per se* constitute gross neglect of duty, then we must be prepared to reconcile this with the established concept of the right of speedy disposition of cases – something the Court may be hard put to justify.

d. No undue interest

The OP also found Gonzales guilty of showing undue interest in Mendoza's case by having the case endorsed to the Office of the Ombudsman and by resolving it against Mendoza on the basis of the unverified complaint-affidavit of the alleged victim, Kalaw.

The fact that Gonzales had Mendoza's case endorsed to his office lies within his mandate, even if it were based merely on the request of the alleged victim's father. The Constitution

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[77] *Rollo* (G.R. No. 196231), p. 96. The decision was drafted by Graft Investigation and Prosecution Officer Rebecca A. Guillen-Ubaña.

empowers the Ombudsman and her Deputies to act promptly on complaints filed in any form or manner against any public official or employee of the government.[78] This provision is echoed by Section 13 of RA No. 6770,[79] and by Section 3, Rule III of Administrative Order No. 7, series of 1990, as amended.[80]

Moreover, Gonzales and his subordinates did not resolve the complaint only on the basis of the unverified affidavit of Kalaw. Based on the prosecution officer's recommendations, the finding of guilt on the part of Mendoza, *et al*. was based on their admissions as well. Mendoza, *et al.* admitted that they had arrested Kalaw based on two traffic violations and allowed him to stay the whole night until the following morning in the police precinct. The next morning, Kalaw was allowed to leave the precinct

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[78] Section 12, Article XI of the 1987 Constitution reads:

Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on **complaints filed in any form or manner** against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof. [emphasis ours]

[79] Section 13 of RA No. 6770 reads:

Section 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on **complaints filed in any form or manner** against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. (emphasis ours)

[80] This provision reads:

Section 3. How initiated. – An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge. Such complaint shall be accompanied by a Certificate of Non-Forum Shopping duly subscribed and sworn to by the complainant or his counsel. **An administrative proceeding may also be ordered by the Ombudsman or the respective Deputy Ombudsman on his initiative or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance**. (emphasis ours)

despite his failure to show a valid license and based merely on his promise to return with the proper documents.[81] These admissions led Gonzales and his staff to conclude that Mendoza, *et al*. irregularly acted in apprehending Kalaw, since the proper procedure for the apprehension of traffic violators would be to give them a ticket and to file a case, when appropriate.[82]

Lastly, we cannot deduce undue interest simply because Gonzales' decision differs from the decision of the PNP-IAS (which dismissed the complaint against Mendoza). To be sure, we cannot tie the hands of any judicial or quasi-judicial body by ruling that it should always concur with the decisions of other judicial or quasi-judicial bodies which may have also taken cognizance of the case. To do so in the case of a Deputy Ombudsman would be repugnant to the independence that our Constitution has specifically granted to this office and would nullify the very purpose for which it was created.

e. Penalty of dismissal totally incommensurate with established facts

Given the lack of factual basis for the charges against Gonzales, the penalty of removal imposed by the OP necessarily suffers grave infirmity. ***Basic strictures of fair play dictate that we can only be held liable for our own misdeeds; we can be made to account only for lapses in our responsibilities. It is notable that of all the officers, it was Gonzales who took the least time — nine days — followed by Cecilio, who took 21 days; Garcia — the writer of the draft — took less than four months, and the Ombudsman, less than four months until the kidnapping incident rendered Mendoza's motion moot***.

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[81] *Rollo* (G.R. No. 196231), pp. 94-95.

[82] *Id.* at 95. The pertinent part of the decision reads:

Moreover, we find the defenses of respondents highly unbelievable. The accommodation afforded to Christian by respondents casts doubt on their purpose of keeping him inside the station. It is not plausible that policemen who catch a traffic violator require him to return and show documents to absolve him from liability.

In these lights, the decision of the OP is clearly and patently wrong. This conclusion, however, does not preclude the Ombudsman from looking into any other possible administrative liability of Gonzales under existing Civil Service laws, rules and regulations.

D. ***The Special Prosecutor: The Constitutional Issue***

The 1987 Constitution created a new, independent Office of the Ombudsman. The existing Tanodbayan at the time[83] became the Office of the Special Prosecutor under the 1987 Constitution. While the composition of the independent Office of the Ombudsman under the 1987 Constitution does not textually include the Special Prosecutor, the weight of the foregoing discussions on the unconstitutionality of Section 8(2) of RA No. 6770 should **equally apply** to the Special Prosecutor on the basis of the legislative history of the Office of the Ombudsman as expounded in jurisprudence.

Under the 1973 Constitution,[84] the legislature was mandated to create the Office of the Ombudsman, known as the Tanodbayan, with investigative and prosecutorial powers. Accordingly, on June 11, 1978, President Ferdinand Marcos enacted PD No. 1487.[85]

Under PD No. 1486,[86] however, the "Chief Special Prosecutor" (*CSP*) was given the "exclusive authority" to conduct preliminary investigation and to prosecute cases that are within the jurisdiction of the Sandiganbayan.[87] PD No. 1486 expressly **gave the**

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[83] Under Section 6, Article XIII of the 1973 Constitution, Congress was mandated to create an Office of the Ombudsman to be known as the Tanodbayan.

[84] 1973 CONSTITUTION, Article XIII, Section 6.

[85] Known as the Tanodbayan Decree of 1977 (June 11, 1978). Section 17 of PD No. 1487 gave the Tanodbayan prosecutorial functions.

[86] Creating a Special Court to be known as "Sandiganbayan" and for Other Purposes; likewise enacted on June 11, 1978.

[87] PD No. 1486, Section 4.

Secretary of Justice the power of control and supervision over the Special Prosecutor.[88] Consistent with this grant of power, the law also authorized the Secretary of Justice to appoint or detail to the Office of the CSP "any officer or employee of Department of Justice or any Bureau or Office under the executive supervision thereof" to assist the Office of the CSP.

In December 1978, PD No. 1607[89] practically gave back to the Tanodbayan the powers taken away from it by the Office of the CSP. The law "created in the Office of the Tanodbayan an Office of the Chief Special Prosecutor" **under the Tanodbayan's control**,[90] with the exclusive authority to conduct preliminary investigation and prosecute all cases cognizable by the Sandiganbayan. Unlike the earlier decree, the law also empowered the Tanodbayan to appoint Special Investigators and subordinate personnel and/or to detail to the Office of the CSP any public officer or employees who "shall be under the supervision and control of the Chief Special Prosecutor."[91] In 1979, PD No. 1630 further amended the earlier decrees by **transferring the powers previously vested in the Special Prosecutor directly to the Tanodbayan himself**.[92]

This was the state of the law at the time the 1987 Constitution was ratified. Under the 1987 Constitution, an "independent Office

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[88] PD No. 1486, Section 14.

[89] Known as the Tanodbayan Decree, Revising PD No. 1487.

[90] The last paragraph of Section 17 of PD 1607 reads:

The Chief Special Prosecutor, Assistant State Prosecutor, Special Prosecutor and those designated to assist them as herein provided for shall be under the control and supervision of the Tanodbayan and their resolutions and actions shall not be subject to review by any administrative agency.

However, the law also allowed the President "to designate the Chief State Prosecutor of the Ministry of Justice or any other ranking official in the prosecutory arm of the government as *Ex-Officio* Chief Special Prosecutor and/or Assistant Chief Special Prosecutor" (Section 17, PD No. 1607).

[91] PD No. 1607, Section 18.

[92] PD No. 1630, Sections 10 and 17.

of the Ombudsman" is created.[93] **The existing Tanodbayan is made the Office of the Special Prosecutor**, "who shall continue to function and exercise its powers as *now*[94] *or hereafter may be provided by law*."[95]

Other than the Ombudsman's Deputies, the Ombudsman shall appoint all other officials and employees of the Office of the Ombudsman.[96] Section 13(8), Article XI of the 1987 Constitution provides that the Ombudsman may exercise "*such other powers or perform such functions or duties* as may be *provided by law*." Pursuant to this constitutional command, Congress enacted RA No. 6770 to provide for the functional and structural organization of the Office of the Ombudsman and the extent of its disciplinary authority.

In terms of composition, Section 3 of RA No. 6770 defines the composition of the Office of the Ombudsman, including in this Office not only the offices of the several Deputy Ombudsmen but the *Office of the Special Prosecutor* as well. In terms of appointment, the law gave the President the authority to appoint the Ombudsman, his Deputies and *the Special Prosecutor*, from a list of nominees prepared by the Judicial and Bar Council. In case of vacancy in these positions, the law requires that the vacancy be filled within three (3) months from occurrence.[97]

The law also imposes on the Special Prosecutor the same qualifications it imposes on the Ombudsman himself/herself and

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[93] CONSTITUTION, Article XI, Section 5.

[94] PD No. 1630.

[95] CONSTITUTION, Article XI, Section 7.

[96] Under RA No. 6770, however, it is the President himself which appoints the Special Prosecutor. This may even be an argument of the legislative intent to treat the Special Prosecutor, in much the same way, as the Ombudsman's Deputies themselves that justify the same recognition of freedom from the disciplinary authority of the President on the same ground of independence of the Office of the Ombudsman.

[97] RA No. 6770, Section 4.

his/her deputies.[98] Their terms of office,[99] prohibitions and qualifications,[100] rank and salary are likewise the same.[101] The requirement on disclosure[102] is imposed on the Ombudsman, the Deputies and the Special Prosecutor as well. In case of vacancy in the Office of the Ombudsman, the Overall Deputy cannot assume the role of Acting Ombudsman; the President may designate any of the Deputies or the Special Prosecutor as Acting Ombudsman.[103] The power of the Ombudsman and his or her deputies to require other government agencies to render assistance to the Office of the Ombudsman is likewise enjoyed by the Special Prosecutor.[104]

Given this legislative history, the present overall legal structure of the Office of the Ombudsman, both under the 1987 Constitution and RA No. 6770, militates against an interpretation that would insulate the Deputy Ombudsman from the disciplinary authority of the OP and yet expose the Special Prosecutor to the same ills that a grant of independence to the Office of the Ombudsman was designed for.

Congress recognized the importance of the Special Prosecutor as a necessary adjunct of the Ombudsman, aside from his or her deputies, by making the Office of the Special Prosecutor an organic component of the Office of the Ombudsman and by granting the Ombudsman control and supervision over that office.[105] This power of control and supervision includes vesting the Office of the Ombudsman with the power to assign duties to the Special Prosecutor as he/she may deem fit. Thus, by

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[98] RA No. 6770, Section 5.

[99] RA No. 6770, Section 7.

[100] RA No. 6770, Section 9.

[101] RA No. 6770, Section 6.

[102] RA No. 6770, Section 10.

[103] RA No. 6770, Section 8(3).

[104] RA No. 6770, Section 33.

[105] RA No. 6770, Section 11(3) and (4).

constitutional design, **the Special Prosecutor is by no means an *ordinary* subordinate but one who effectively and directly aids the Ombudsman in the exercise of his/her duties, which include investigation and prosecution of officials in the Executive Department**.

Under Section 11(4) of RA No. 6770, the Special Prosecutor handles the prosecution of criminal cases within the jurisdiction of the Sandiganbayan and this prosecutorial authority includes high-ranking executive officials. For emphasis, subjecting the Special Prosecutor to disciplinary and removal powers of the President, *whose own alter egos and officials in the Executive Department are subject to the prosecutorial authority of the Special Prosecutor,* would seriously place the independence of the Office of the Ombudsman itself at risk.

Thus, even if the Office of the Special Prosecutor is not expressly made part of the composition of the Office of the Ombudsman, the role it performs as an organic component of that Office militates against a differential treatment between the Ombudsman's Deputies, on one hand, and the Special Prosecutor himself, on the other. **What is true for the Ombudsman must be equally true, not only for her Deputies but, also for other lesser officials of that Office who act directly as agents of the Ombudsman herself in the performance of her duties.**

In *Acop v. Office of the Ombudsman*,[106] the Court was confronted with an argument that, at bottom, the Office of the Special Prosecutor is not a subordinate agency of the Office of the Ombudsman and is, in fact, separate and distinct from the latter. In debunking that argument, the Court said:

> Firstly, **the petitioners misconstrue Commissioner Romulo's statement as authority to advocate that the intent of the framers of the 1987 Constitution was to place the Office of the Special Prosecutor under the Office of the President**. xxx

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[106] G.R. No. 120422, September 27, 1995, 248 SCRA 568.

In the second place, Section 7 of Article XI expressly provides that the then existing Tanodbayan, to be henceforth known as the Office of the Special Prosecutor, "shall continue to function and exercise *its powers as now or hereafter may be provided by law*, except those conferred on the Office of the Ombudsman created under this Constitution." The underscored phrase evidently refers to the Tanodbayan's powers under P.D. No. 1630 *or* subsequent amendatory legislation. It follows then that Congress may remove any of the Tanodbayan's/Special Prosecutor's powers under P.D. N0. 1630 or grant it other powers, except those powers conferred by the Constitution on the Office of the Ombudsman.

Pursuing the present line of reasoning, when one considers that by express mandate of paragraph 8, Section 13, Article XI of the Constitution, the Ombudsman may "exercise such other powers or perform functions or duties *as may be provided by law*," it is indubitable then that Congress has the power to place the Office of the Special Prosecutor under the Office of the Ombudsman.[107]

Thus, under the present Constitution, there is every reason to treat the Special Prosecutor to be at par with the Ombudsman's deputies, at least insofar as an extraneous disciplinary authority is concerned, and must also enjoy the same grant of independence under the Constitution.

III. SUMMARY OF VOTING

In the voting held on January 28, 2014, by a vote of 8-7,[108] the Court resolved to ***reverse*** its September 4, 2012 Decision ***insofar as petitioner Gonzales is concerned*** (G.R. No. 196231). We declared **Section 8(2) of RA No. 6770 unconstitutional** by granting disciplinary jurisdiction to the President *over a Deputy*

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[107] *Id.* at 580-581.

[108] The eight (8) Justices in the majority are: Presbitero J. Velasco, Jr., Teresita J. Leonardo-De Castro, Arturo D. Brion, Lucas P. Bersamin, Roberto A. Abad, Jose Portugal Perez, Jose Catral Mendoza, and Marvic Mario Victor F. Leonen. The seven (7) dissenting Justices are: Chief Justice Maria Lourdes P. A. Sereno, Antonio T. Carpio, Diosdado M. Peralta, Mariano C. del Castillo, Martin S. Villarama, Jr., Bienvenido L. Reyes, and Estela M. Perlas-Bernabe.

Ombudsman, in violation of the independence of the Office of the Ombudsman.

However, by another vote of 8-7,[109] the Court resolved **to maintain the validity of Section 8(2) of RA No. 6770 *insofar as Sulit*** is concerned. The Court did not consider the Office of the Special Prosecutor to be constitutionally within the Office of the Ombudsman and is, hence, not entitled to the independence the latter enjoys under the Constitution.

WHEREFORE, premises considered, the Court resolves to declare Section 8(2) **UNCONSTITUTIONAL**. This ruling renders any further ruling on the dismissal of Deputy Ombudsman Emilio Gonzales III unnecessary, but is without prejudice to the power of the Ombudsman to conduct an administrative investigation, if warranted, into the possible administrative liability of Deputy Ombudsman Emilio Gonzales III under pertinent Civil Service laws, rules and regulations.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, Bersamin, Abad, Perez, and *Mendoza, JJ.,* concur.

Sereno, C.J., Peralta, del Castillo, Villarama, Jr., and *Reyes, JJ.,* join *J.* Bernabe's opinion.

Carpio, J., joins *J.* Bernabe's dissenting opinion.

Perlas-Bernabe and *Leonen, JJ.,* see concurring and dissenting opinions.

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[109] The eight (8) Justices in the majority are: Chief Justice Maria Lourdes P. A. Sereno, Antonio T. Carpio, Diosdado M. Peralta, Mariano C. del Castillo, Martin S. Villarama, Jr., Bienvenido L. Reyes, Estela M. Perlas-Bernabe and Marvic Mario Victor F. Leonen. The seven (7) dissenting Justices are: Presbitero J. Velasco, Jr., Teresita J. Leonardo-De Castro, Arturo D. Brion, Lucas P. Bersamin, Roberto A. Abad, Jose Portugal Perez, and Jose Catral Mendoza.

CONCURRING AND DISSENTING OPINION

PERLAS-BERNABE, *J.*:

I concur with the *ponencia* in finding the Decision dated March 31, 2011 of the Office of the President of the Philippines (OP) to be patently erroneous considering that the acts therein attributed to petitioner Emilio A. Gonzales III (Gonzales), in his capacity as Deputy Ombudsman, do not constitute betrayal of public trust. In the Court's Decision dated September 4, 2012 in the main,[1] it was explained that the phrase "betrayal of public trust" refers to acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism, and gross exercise of discretionary powers. In other words, acts that should constitute betrayal of public trust as to warrant removal from office may be less than criminal but must be attended by bad faith and of such gravity and seriousness as the other grounds for impeachment.[2] The OP, however, dismissed Gonzales based on acts which, as thoroughly detailed and discussed in the *ponencia*, do not fit the foregoing legal description. Accordingly, its (OP) decision was tainted with patent error.

Nevertheless, since the majority voted to declare the jurisdictional basis for the OP's authority to discipline the Deputy Ombudsmen under Section 8(2)[3] of Republic Act No. (RA)

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[1] *Gonzales III v. OP*, G.R. Nos. 196231 and 196232, September 4, 2012, 679 SCRA 614.

[2] *Id.* at 664-665.

[3] Section 8(2) of RA 6770, otherwise known as the "Ombudsman Act," reads:

Sec. 8. *Removal; Filling of Vacancy*. –

x x x x x x x x x

(2) A Deputy, or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

6770[4] as unconstitutional, the *fallo* of the *ponencia* states that any further ruling on the dismissal of Gonzales is rendered unnecessary, *viz.*:[5]

> **WHEREFORE**, premises considered, the Court resolves to declare Section 8(2) **UNCONSTITUTIONAL**. This ruling renders any further ruling on the dismissal of Deputy Ombudsman Emilio Gonzales III unnecessary, but is without prejudice to the power of the Ombudsman to conduct an administrative investigation, if warranted, into the possible administrative liability of Deputy Ombudsman Emilio Gonzales III under pertinent Civil Service laws, rules and resgulations.
>
> **SO ORDERED**.

I dissent.

To my mind, Section 8(2) of RA 6770, which confers the OP with jurisdiction to discipline not only the Special Prosecutor but also the Deputy Ombudsmen, is wholly constitutional. To this end, I join the majority in upholding the provision's constitutionality insofar as the Special Prosecutor is concerned, but register my dissent against declaring the provision unconstitutional insofar as the Deputy Ombudsmen are concerned.[6] The reasons therefor are explained in the ensuing discussion.

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[4] "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES."

[5] *Gonzales III v. OP*, G.R. Nos. 196231 and 196232, January 28, 2014, p. 27.

[6] *Id.* The Summary of Voting section of the *ponencia* reads as follows:

> In the voting held on January 28, 2014, by a vote of 8-7, the Court resolved to ***reverse*** its September 4, 2014 Decision ***insofar as petitioner Gonzales is concerned*** (G.R. No. 196231). We declared **Section 8(2) of RA No. 6770 unconstitutional** by granting disciplinary jurisdiction to the President *over a Deputy Ombudsman*, in violation of the independence of the Office of the Ombudsman.
>
> However, by another vote of 8-7, the Court resolved **to maintain the validity of Section 8(2) of RA No. 6770 *insofar as Sulit*** is concerned. The Court did not consider the Office of the Special Prosecutor to be

In dealing with constitutional challenges, one must be cognizant of the rule that every law is presumed constitutional and therefore should not be stricken down unless its provisions clearly and unequivocally, and not merely doubtfully, breach the Constitution.[7] It is well-established that this presumption of constitutionality can be overcome only by the clearest showing that there was indeed an infraction of the Constitution, and only when such a conclusion is reached by the required majority may the Court pronounce, in the discharge of the duty it cannot escape, that the challenged act must be struck down.[8]

In *Victoriano v. Elizalde Rope Workers' Union*,[9] the judicious instruction is that the "challenger must negate all possible bases" and the adjudicating tribunal must not concern itself with the "wisdom, justice, policy, or expediency of a statute"; "if any reasonable basis may be conceived which supports the statute, it will be upheld":[10]

All presumptions are indulged in favor of constitutionality; one who attacks a statute, alleging unconstitutionality must prove its invalidity beyond a reasonable doubt, that a law may work hardship does not render it unconstitutional; that **if any reasonable basis**

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constitutionally within the Office of the Ombudsman and is, hence, not entitled to the independence the latter enjoys under the Constitution. (Emphases in the original; citations omitted)

[7] "To justify the nullification of the law or its implementation, **there must be a clear and unequivocal, not a doubtful, breach of the Constitution**. In case of doubt in the sufficiency of proof establishing unconstitutionality, the Court must sustain legislation because 'to invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.'" (*Lawyers Against Monopoly and Poverty [LAMP] v. Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 386-387, citing *ABAKADA GURO Party List v. Purisima*, 584 Phil. 246, 268 [2008]; emphasis supplied.)

[8] *Drilon v. Lim*, G.R. No. 112497, August 4, 1994, 235 SCRA 135, 140.

[9] 158 Phil. 60 (1974).

[10] *Id.* at 74.

may be conceived which supports the statute, it will be upheld, and the challenger must negate all possible bases; that the courts are not concerned with the wisdom, justice, policy, or expediency of a statute; and that a liberal interpretation of the constitution in favor of the constitutionality of legislation should be adopted. (Emphasis supplied)

Similarly, as held in *Salvador v. Mapa*,[11] it was held that an "arguable implication" is not enough to strike down the statute subject of constitutional scrutiny; thus, the guiding notion is that "**to doubt is to sustain**":[12]

> The constitutionality of laws is presumed. To justify nullification of a law, there must be a clear and unequivocal breach of the Constitution, not a doubtful or **arguable implication**; a law shall not be declared invalid unless the conflict with the Constitution is clear beyond reasonable doubt. The presumption is always in favor of constitutionality. **To doubt is to sustain**. x x x. (Emphases supplied)

Applying this framework, Section 8(2) of RA 6770, both with respect to the OP's disciplinary authority over the Special Prosecutor and the Deputy Ombudsmen, should be upheld in its entirety since it has not been shown that said provision "clearly and unequivocally" offends any constitutional principle. By constitutional design, disciplinary authority over non-impeachable officers, such as the Special Prosecutor and Deputy Ombudsmen, was left to be determined by future legislation. This much is clear from the text of the Constitution. Section 2, Article XI of the 1987 Constitution explicitly provides that non-impeachable officers may be removed from office as may be provided by law:

> Section 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public

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[11] 564 Phil. 31 (2007).

[12] *Id.* at 44.

trust. **All other public officers and employees may be removed from office as provided by law, but not by impeachment**. (Emphasis and underscoring supplied)

While Section 5, Article XI of the 1987 Constitution "created the independent Office of the Ombudsman" – the provision which is the legal anchor of the majority's position on this matter – the Constitution neither defines what this principle of Ombudsman independence means nor prohibits the office's subjection to an external disciplining authority. Meanwhile, what is discoverable from the deliberations of the Constitutional Commission on Article XI, particularly those which are quoted in the *ponencia*,[13] is that the Office of the Ombudsman was merely intended to be

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[13] The Record of the Constitutional Commision, Vol. 2, July 26, 1986, p. 294, as cited in page 14 of the *ponencia* reads:

MR. OPLE. xxx

May I direct a question to the Committee? xxx [W]ill the Committee consider later an amendment xxx, **by way of designating the office of the Ombudsman as a constitutional arm for good government**, efficiency of the public service and the integrity of the President of the Philippines, **instead of creating another agency in a kind of administrative limbo** which would be accountable to no one on the pretext that it is a constitutional body?

MR. MONSOD. The Committee discussed that during our committee deliberations and when we prepared the report, it was the opinion of the Committee – and I believe it still is – that it may not contribute to the effectiveness of this office of the Ombudsman precisely because many of the culprits in inefficiency, injustice and impropriety are in the executive department. Therefore, as we saw the wrong implementation of the Tanodbayan which was under the tremendous influence of the President, it was an ineffectual body and was reduced to the function of a special fiscal. **The whole purpose of our proposal is precisely to separate those functions and to produce a vehicle that will give true meaning to the concept of Ombudsman.** Therefore, we regret that we cannot accept the proposition. (Emphases supplied)

The Record of the Constitutional Commision, Vol. 2, July 26, 1986, p. 294, as cited in footnote 50, page 14 of the *ponencia* reads:

In other words, Madam President, what actually spawned or cause the failure of the justices of the Tanodbayan insofar as monitoring and fiscalizing the government offices are concerned was due to two reasons: **First, almost all their time was taken up by criminal cases; and second, since they**

a separate office from the Executive. This idea of organizational separation was meant to obviate the Executive Department from exercising the encompassing powers of control and supervision over the Office of the Ombudsman. It is only in this regard that the Office of the Ombudsman was deemed by the Framers as independent.

To be sure, the power of control is the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. An officer in control lays down the rules in the doing of an act. If they are not followed, he may, in his discretion, order the act undone or re-done by his subordinate or he may even decide to do it himself. On the other hand, the power of supervision means "overseeing or the authority of an officer to see to it that the subordinate

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were under the Offices of the President, their funds came from that office. I have a sneaking suspicion that they were prevented from making **administrative monitoring** because of the sensitivity of the then head of that office, **because if the Tanodbayan would make the corresponding reports about failures, malfunctions or omissions of the different ministries, then that would reflect upon the President who wanted to claim the alleged confidence of the people.**

x x x x x x x x x

It is said here that the Tanodbayan or the Ombudsman would be a toothless or a paper tiger. That is not necessarily so. If he is toothless, then let us give him a little more teeth by making him **independent of the Office of the President** because it is now a constitutional creation, so that the insidious tentacles of politics, as has always been our problem, even with PARGO, PCAPE and so forth, will not deprive him of the opportunity to render service to Juan de la Cruz. xxx. There is supposed to be created a constitutional office – constitutionalized to free it from those tentacles of politics – and **we give it more teeth and have the corresponding legislative provisions for its budget, not a budget under the Office of the President.**

x x x x x x x x x

xxx. For that reason, Madam President, I support this committee report on a constitutionally created Ombudsman and I further ask that to avoid having a toothless tiger, there should be further provisions for statistical and logistical support. (Emphases in the original retained with additional emphases supplied)

(*Gonzales III v. OP*, *supra* note 5, pp. 14-15.)

officers perform their duties." If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties. Essentially, the power of supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. The supervisor or superintendent merely sees to it that the rules are followed, but he does not lay down the rules, nor does he have discretion to modify or replace them.[14] By virtue of these definitions, it is easy to envision how the Office of the Ombudsman's functions would be unduly hampered if it was to be subjected to executive control and supervision: with control, the Office of the Ombudsman's actions could be altered, modified or substituted by that of the President, and with supervision, the office would operate under constant scrutiny of a separate but superior authority. With this in mind, the Office of the Ombudsman's independence should only be construed in the context of organizational separation which does not, as it should not, obviate the possibility of having an external disciplining authority over some of its officials pursuant to the checks and balances principle.

Verily, the principle of checks and balances is not a general apothegm for total insulation but rather of functional interrelation. It is clear that no one office of government works in absolute autonomy. To determine the gradations and contours of institutional independence, one must look into the blueprint of the Constitution which embodies the will and wisdom of the people. This is precisely what Section 2, Article XI of the 1987 Constitution states: non-impeachable officers, such as the Special Prosecutor and the Deputy Ombudsmen, may be removed from office as may be provided by law. Indeed, this provision coupled with the Framers' silence on the meaning of Ombudsman independence should carve out space for Congress to define, by its plenary legislative power acting as representatives of the people, the parameters of discipline over these so-called non-

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[14] *Ambil, Jr. v. Sandiganbayan*, G.R. Nos. 175457 and 175482, July 6, 2011, 653 SCRA 576, 596.

impeachable officers, including, among others, the Special Prosecutor and the Deputy Ombudsmen.

In any event, without a prohibition that may be clearly and unequivocally ascertained from the text and deliberations of the Constitution against the disciplinary authority provided under Section 8(2) of RA 6770, the overriding approach should operate – to doubt is to sustain; all doubts are to be construed in favor of constitutionality.

Accordingly, I vote to uphold the constitutionality of Section 8(2) of RA 6770 in its entirety.

CONCURRING AND DISSENTING OPINION

LEONEN, *J.*:

I vote to dismiss the motion for partial reconsideration.[1] However, the constitutional challenge to Section 8, Paragraph (2) of Republic Act No. 6770[2] or the Ombudsman Act insofar as the Deputy Ombudsman is concerned should succeed.

On August 23, 2010, dismissed Manila Police District Police Senior Inspector (Captain) Rolando del Rosario Mendoza took hostage a Hong Kong tour group with three families, two couples, a mother and daughter, and a tour leader at the Quirino Grandstand.[3] Apparently, he was driven to despondency by many

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[1] *Rollo,* pp. 514-535 (G.R. No. 196231).

[2] Rep. Act No. 6770 (1989), Sec. 8, par. (2):

Section 8. *Removal; Filling of Vacancy*. —

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(2) A Deputy, or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

[3] *Rollo,* p. 272 (G.R. No. 196231), First Report of the Incident Investigation and Review Committee on the August 23, 2010 Rizal Park Hostage-taking Incident: Sequence of Events, Evaluation and Recommendations, September 16, 2010.

causes. This included his frustration with a case[4] pending against him at the Office of the Ombudsman. In a decision[5] dated February 16, 2009, the Office of the Ombudsman found Mendoza and four others liable for grave misconduct. This led to Mendoza's dismissal from the Philippine National Police as well as the forfeiture of his retirement benefits.

The Ombudsman exercised jurisdiction over this case by virtue of a letter which was issued *motu proprio* by petitioner, Emilio Gonzales III, to endorse the pending case to his office for administrative adjudication.[6] This was despite the fact that the same case against Rolando Mendoza was already "dismissed by the Manila City Prosecutors Office for lack of probable cause and by the [Philippine National Police–National Capital Region] Internal Affairs Service for failure of the complainant to submit evidence and prosecute the case."[7]

According to the Office of the President, petitioner Gonzales did not state a reason for the endorsement of the case to the Office of the Ombudsman.[8] The Office of the President also found that the Office of the Deputy Ombudsman made Atty. Clarence V. Guinto of the Philippine National Police-Criminal Investigation and Detection Group-National Capital Region serve as the nominal complainant in the case against Mendoza.[9] Atty. Guinto did not even summon or compel Christian Kalaw, the original complainant in the case against Mendoza, to affirm his complaint-affidavit[10] before the Ombudsman or require Kalaw to "submit any position paper as required."[11]

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[4] OMB-P-A-08-0670-H for: Grave Misconduct.

[5] *Rollo*, pp. 92-97 (G.R. No. 196231), decision, Office of the Ombudsman, Annex D-2.

[6] *Id.* at 73-74, decision in OP Case No. 10-J-460, Office of the President.

[7] *Id.* at 73.

[8] *Id.* at 74.

[9] *Id.*

[10] *Id.* at 87.

[11] *Id.* at 74.

At one point during the hostage-taking incident, Manila City Vice Mayor Francisco "Isko" Moreno interceded. He was already at the Office of the Ombudsman when he asked Mendoza if there was someone there that he wanted to talk to. Mendoza was very thankful to Vice Mayor Moreno and requested if he could talk to a certain Director Gonzales of the Office of the Ombudsman.

Mendoza spoke to Deputy Ombudsman Gonzales. After some time, Mendoza was heard shouting and uttering invectives: "*Putang ina mo, humihingi ka pa ng 150,000 para sa kaso ko, kung may mamamatay dito kasalanan mo lahat! (You son of a bitch, you are asking for 150,000 for my case, if anyone dies here it's all your fault!).*"[12]

Moreno overheard Gonzales say, "*O wala akong alam diyan* (*I don't know anything about that).*"[13]

Emilio Gonzales III could have betrayed the public trust.

The Office of the President acted on what it saw as substantial evidence that Deputy Ombudsman Gonzales delayed acting on the motion for reconsideration[14] of the late Rolando Mendoza and that Gonzales asked for 150,000.00 to decide on the case. This was also the finding of the Incident Investigation and Review Committee[15] created after the hostage-taking incident.

The duties of the Ombudsman and Deputy Ombudsman are provided for in Article XI, Section 13 of the 1987 Constitution.[16]

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[12] *Rollo*, p. 300, First Report of the Incident Investigation and Review Committee on the August 23, 2010 Rizal Park Hostage-taking Incident: Sequence of Events, Evaluation and Recommendations, September 16, 2010.

[13] *Id.*

[14] *Id.* at 137-202.

[15] *Id.* at 80-85, decision, Office of the President; See also *rollo*, p. 300 (G.R. No. 196231), First Report of the Incident Investigation and Review Committee on the August 23, 2010 Rizal Park Hostage-taking Incident: Sequence of Events, Evaluation and Recommendations, September 16, 2010.

[16] Consti., Art. XI, Sec. 13:

The Office of the Ombudsman shall have the following powers, functions, and duties:

These include the duty to direct any public official or employee of the government to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.[17] Certainly, it would be betrayal of public trust in the highest order when a Deputy Ombudsman himself committed actions that he is constitutionally mandated to curtail.

This case came to this court through a petition for *certiorari*[18] filed by Emilio Gonzales III (docketed as G.R. No. 196231) alleging grave abuse of discretion on the part of the Office of the President for its decision[19] dated March 31, 2011. This was consolidated with G.R. No. 196232, a petition for *certiorari* and prohibition[20] filed by Wendell Barreras-Sulit against the order[21] of the Office of the Executive Secretary.

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1. Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

2. Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

3. Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

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7. Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

[17] Consti., Art. XI, Sec. 13, par. (2).

[18] *Rollo*, pp. 6-71 (G.R. No. 196231).

[19] *Id.* at 72-86, decision, Office of the President, Annex "A".

[20] *Rollo*, pp. 3-25 (G.R. No. 196232).

[21] *Id.* at 26, order docketed as OP-DC-Case No. 11-B-003, Annex "A".

The other case consolidated with the case of Emilio Gonzalez III involves an order issued by the Office of the Executive Secretary to petitioner Special Prosecutor Wendell Barreras-Sulit. The order required her to submit a written explanation why no disciplinary action should be taken against her, based on her role in securing a plea bargaining agreement in favor of Major Carlos P. Garcia.

Major Carlos P. Garcia was accused of embezzling millions of pesos and dollars as well as amassing properties in violation of the Plunder Law. The Committee on Justice of the House of Representatives found that petitioner Barreras-Sulit committed acts that were tantamount to culpable violation of the Constitution and betrayal of public trust. Hence, a case docketed as OP-DC-Case No. 11-B-003 was filed by the Office of the President against petitioner Barreras-Sulit and was set for preliminary investigation.

Both cases were consolidated because they raised the issue of the constitutionality of Section 8, Paragraph (2) of Republic Act No. 6770 or the Ombudsman Act. Petitioners questioned the constitutionality of this provision, which states that the Office of the President may remove the Deputy Ombudsman and Special Prosecutor from office on the grounds of removal of the Ombudsman and after due process.

The initial voting of this court on whether Gonzales could be found liable for betrayal of the public trust was 14-0. All the Justices then agreed that there was no substantial basis to support the finding of the Office of the President. On the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act, the vote was evenly split. Seven voted to declare the provision unconstitutional. The other seven voted to uphold. Thus, in its September 4, 2012 decision,[22] this court denied the challenge

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[22] *Gonzales III v. Office of the President of the Philippines, et al.* and *Barreras-Sulit v. Ochoa*, G.R. No. 196231 and G.R. No. 196232, September 4, 2012, 679 SCRA 614. The voting in this decision was the following: Eight (8) voted in favor of the constitutionality of Sec. 8, Par. (2) of Republic Act No. 6770, and six (6) voted against it. Seven (7) Justices concurred

to the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act and ordered the reinstatement of Gonzales and the continuation of the proceedings against Barreras-Sulit.[23] This court then granted Gonzales' petition for *certiorari*,[24] insofar as it reversed the public respondent Office of the President's decision in OP Case No. 10-J-460.

The Office of the Solicitor General then filed a motion for partial reconsideration[25] dated October 10, 2012 of the September 4, 2012 decision of this court. As its sole ground for allowance, the motion for partial reconsideration raised that the Office of the President did not gravely abuse its discretion when it found "petitioner Gonzales guilty of betrayal of public trust and imposed upon him the penalty of dismissal from office."[26]

In my view, the motion for partial reconsideration raises three issues that require discussion.

The first issue is whether the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act was reopened even if this was not raised in the actual motion for partial reconsideration of the Office of the Solicitor General.

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in the *ponencia* of Justice Perlas-Bernabe. The concurring Justices included Chief Justice Sereno, as well as Justices Carpio, Peralta, Del Castillo, Villarama, Jr., Mendoza, and Reyes. Six (6) Justices dissented: These were Justices Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Abad, and Perez.

[23] Consti., Art. VIII, Sec. 4 (2):

All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc*, and all other cases which under the Rules of Court are required to be heard *en banc*, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

[24] *Rollo*, pp. 6-71 (G.R. No. 196231).

[25] *Id.* at 514-535.

[26] *Id.* at 515.

The second issue is whether Section 8, Paragraph (2) of the Ombudsman Act is constitutional.

The third issue is whether the actions of petitioner Emilio Gonzales III constitute betrayal of public trust and warrant his dismissal from his position, assuming that Section 8, Paragraph (2) of the Ombudsman Act is constitutional.

I

The motion for partial reconsideration reopens the entire case. These cases cannot be fully resolved unless the question of the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act is again decided by this court. The question whether petitioner Gonzales is guilty of betrayal of public trust also involves the matter as to whether that ground exists at all. This means that we are constrained to address the constitutional issue as to whether it is the Office of the President that can constitutionally exercise disciplinary powers over the Deputy Ombudsman.

This court is a court of general jurisdiction. It has the ability to determine the scope of the issues it can decide on in order to fulfill its constitutional duty to exercise its judicial power. This power must be fully exercised to achieve the ends of justice.

Judicial power includes determining the constitutionality of the actions of a branch of government. In *Luz Farms v. Secretary of the Department of Agrarian Reform*,[27] this court held:

> It has been established that this Court will assume jurisdiction over a constitutional question only if it is shown that the essential requisites of a judicial inquiry into such a question are first satisfied. Thus, there must be an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, the constitutional question must have been opportunely raised by the proper party, and the resolution of the question is unavoidably necessary to the decision of the case itself x x x.
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> However, despite the inhibitions pressing upon the Court when confronted with constitutional issues, it will not hesitate to declare

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[27] G.R. No. 86889, December 4, 1990, 192 SCRA 51.

a law or act invalid when it is convinced that this must be done. x x x Blandishment is as ineffectual as intimidation, for all the awesome power of the Congress and Executive, the Court will not hesitate "to make the hammer fall heavily," where the acts of these departments, or of any official, betray the people's will as expressed in the Constitution x x x.

Thus, where the legislature or the executive acts beyond the scope of its constitutional powers, it becomes the duty of the judiciary to declare what the other branches of the government had assumed to do, as void. This is the essence of judicial power conferred by the Constitution "(I)n one Supreme Court and in such lower courts as may be established by law" (Art. VIII, Section 1 of the 1935 Constitution; Article X, Section I of the 1973 Constitution and which was adopted as part of the Freedom Constitution, and Article VIII, Section 1 of the 1987 Constitution) and which power this Court has exercised in many instances. (Citations omitted)[28]

The constitutional challenge must be squarely addressed and threshed out in its entirety because the constitutionality of the law itself is the very *lis mota* of the case. In *People v. Vera*,[29] this court first presented the idea of *lis mota*:

It is a well-settled rule that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case; *i.e*., the issue of constitutionality must be the very *lis mota* presented. (McGirr *vs*. Hamilton and Abreu [1915], 30 Phil. 563, 568; 6 R. C. L., pp. 76, 77; 12 C. J., pp. 780-782, 783.)[30]

In line with the doctrine of *Vera*, this court's disposition of the case depends on a final determination of the constitutionality of Section 8, Paragraph (2) of Republic Act No. 6770 or the Ombudsman Act.

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[28] *Id.* at 58-59.

[29] 65 Phil. 56 (1937).

[30] *Id.* at 82.

While it appears that the constitutionality of the Ombudsman Act was not raised in the motion for partial reconsideration, no final determination can be made without addressing the constitutional point.

Any determination of petitioner Gonzales' liability by this court is contingent on the constitutionality of Section 8, Paragraph (2) of the Ombudsman Act. This is the basis of the putative disciplinary authority vested in the Office of the President over the Deputy Ombudsman and the Office of the Special Prosecutor. If this provision is unconstitutional, then no valid action on this case can emanate from the Office of the President.

We cannot be made to issue an incomplete ruling simply because the motion for reconsideration was partial. We are a full court with full powers with a whole duty to determine when the Constitution is violated.

In *Juco v. Heirs of Tomas Siy Chung Fu*,[31] this court elaborated on the effect of a motion for reconsideration:

> A motion for reconsideration has the effect of suspending the statutory period after which an order, decision, or judgment, in connection with which said motion was filed, becomes final. In effect, such motion for reconsideration has prevented the decision from attaining finality.[32]

This case can be adjudicated in its entirety because the September 4, 2012 decision of this court has not yet achieved finality.

II

When the Judiciary is asked to ascertain constitutional limitations or invalidate the acts of a co-equal body such as the Executive, what it puts forward is the supremacy of the Constitution. Since its inception, the Philippine Constitution has always provided for a structured and evolving system of

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[31] 491 Phil. 641 (2005).

[32] *Id.* at 651.

separation of powers and checks and balances. The landmark case of *Angara v. Electoral Commission*[33] served as the jurisprudential benchmark for this system:

> The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks and balances to secure coordination in the workings of the various departments of the government.[34]

The principle of checks and balances and the principle of the separation of powers are not limited to the interaction of the powers of the Executive, Legislative, and the Judiciary. The principle of checks and balances, as well as separation of powers, also applies to the interaction of the three branches of government with the other constitutional organs, particularly the Constitutional Commissions as well as the Office of the Ombudsman. *Angara* itself was an elaborate examination of the relationship of the three branches with the Electoral Commission, which this court in *Angara* ruled was, indeed, an independent constitutional organ.

The principle of checks and balances allows constitutionally enshrined bodies or organs and governmental departments to correct mistakes and prevent excesses done by other branches. It also ensures a degree of cooperation while being clear as to what acts may constitute undue encroachments upon another branch's or organ's constitutional duties.

Section 8, Paragraph (2) of Republic Act No. 6770 provides:

> Section 8. *Removal; Filling of Vacancy.* —
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> x x x x x x x x x

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[33] 63 Phil. 139 (1936) (Per *J.* Laurel, *En Banc*).

[34] *Id.* at 156.

(2) A Deputy, or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

In order to determine whether it can pass a constitutional challenge in view of the facts arising from these consolidated cases, we should start first with textual reference. That is, we should check all the relevant and applicable provisions of the Constitution.

Article XI, Section 5 of the 1987 Constitution reads:

There is hereby created the *independent* Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed. (Emphasis supplied)

In relation to this provision, the Ombudsman is among the officials enumerated in Article XI, Section 2 as those who can be removed from office only through impeachment.

The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office *as provided by law*, but not by impeachment. (Emphasis supplied)

The phrase "as provided by law" is the apparent basis for the enactment of Section 8, Paragraph (2) of Republic Act No. 6770 or the Ombudsman Act. In my view, this provision cannot be taken in isolation. Any interpretation of this phrase should not deny the "independent" nature of the Office of the Ombudsman as provided in Article XI, Section 5 of the Constitution. The Constitution should be read as a whole document in a manner that will give effect to all its parts.[35]

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[35] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 892 (2003) citing *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896,

I agree with the positions of Justice Brion and Justice Abad in their dissenting opinions on the September 4, 2012 decision that the independence of the Office of the Ombudsman is of such a fundamental and unequivocal nature. This independence is essential to carry out the functions and duties of the Office of the Ombudsman. I agree with their position that since those in the executive branch are also subject to the disciplinary authority of the Office of the Ombudsman, providing the Office of the President with the power to remove would be an impediment to the fundamental independence of the Ombudsman.

We cannot allow a circumvention of the separation of powers by construing Article XI, Section 2 of the Constitution as delegating plenary and unbounded power to Congress. The exclusive power of the Ombudsman to discipline her own ranks is fundamental to the independence of her office.

The Constitution's intention to make the independence of the Office of the Ombudsman greater than any other office can also be inferred from the authority and the process of appointment of the officers constituting that office. Hence, Article XI, Section 9 of the Constitution provides:

> Section 9. The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar Council, and from a list of three nominees for every vacancy threafter. Such appointments shall require no confirmation. All vacancies shall be filled within three months after they occur.[36]

The President is granted the power to appoint but only from a list of nominees vetted by the Judicial and Bar Council. Furthermore, the President needs to exercise that power to appoint within three months from the vacancy of either the Ombudsman or any of her Deputies.

February 22, 1991, 194 SCRA 317; *Peralta v. Commission on Elections*, 172 Phil. 31 (1978); *Ang-Angco v. Castillo*, 118 Phil. 1468 (1963).

[36] Consti., Art. XI, Sec. 9.

Furthermore, the Constitution provides in Section 6 of the same Article:

> Section 6. The officials and employees of the Office of the Ombudsman, other than the Deputies, shall be appointed by the Ombudsman, according to the Civil Service Law.[37]

This is similar to the provisions for Constitutional Commissions. Article IX, Section 4 of the Constitution provides:

> Section 4. The Constitutional Commissions shall appoint their officials and employees in accordance with law.[38]

It is clear that there is a different treatment of the Deputies of the Ombudsman from all the other staff of the Office of the Ombudsman.

The Ombudsman is assisted by the Deputy Ombudsman. There are several deputies for Luzon, Visayas, Mindanao, and the military. All these deputies take their direction from the Ombudsman. By constitutional fiat, they cannot take direction from any other constitutional officer. It is difficult to imagine how the independence of the Ombudsman can be preserved when the President has concurring powers to remove her deputies.

Furthermore, it is not difficult to imagine that the President and Congress can negate the elaborate process of appointing a Deputy Ombudsman simply by using their alleged power of removal. While this may not have been the situation in this case, the possibility exists especially when we consider that the Ombudsman does have jurisdiction also to investigate both the executive and legislative branches. The real fear of the deputies can hobble the Office of the Ombudsman.

During the deliberations of this case, a question was raised as to whether the President can have the authority to discipline non-impeachable officers and employees of Constitutional Commissions and the Office of the Ombudsman when the law

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[37] Consti., Art. XI, Sec. 6.

[38] Consti., Art. IX-A, Sec. 4.

so provides. This court's construction of constitutional provisions should be framed only by the actual controversies presented by the facts of the case at bar. The issue in this case is only about the power of the President to remove the Deputy Ombudsman and the Special Prosecutor for causes provided by law. It does not involve the power of the President to remove any other civil servant appointed by the Ombudsman.

In its September 4, 2012 decision, this court cited *Hon. Hagad v. Hon. Gozodadole*[39] and *Office of the Ombudsman v. Delijero, Jr.*[40] to show that the Office of the President has concurrent disciplinary jurisdiction with the Office of the Ombudsman. These cases, however, are not applicable. *Hon. Hagad* involved prosecution and discipline of the Mayor and Vice Mayor as well as a member of the Sangguniang Panlungsod of Mandaue City. The Constitution puts local governments within the general supervision of the President.[41] They are, therefore, also within the authority of the Office of the President to discipline.

In *Office of the Ombudsman v. Delijero, Jr.*, there was a law, namely, Republic Act No. 4670, which provided a separate set of procedural requirements for administrative proceedings involving public school teachers. Thus, this court held that it would have been more prudent for the Office of the Ombudsman to refer the case to the Department of Education. Public school teachers do not enjoy the constitutional independence similar to that of the Office of the Ombudsman.

In his concurring opinion on the September 4, 2012 decision, Justice Carpio presents the view that the independence of the Office of the Ombudsman does not mean that it is insulated from all governmental scrutiny. According to Justice Carpio, Congress has the power to legislate the officials that may be subject to dismissal and disciplinary action, if the Constitution allows. He cites the records of the Constitutional Commissions,

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[39] 321 Phil. 604 (1995).

[40] G.R. No. 172635, October 20, 2010, 634 SCRA 135.

[41] Consti., Art. X, Sec. 4.

particularly that of Commissioner Regalado, who sought the amendment to include the sentence, "ALL OTHER PUBLIC OFFICERS AND EMPLOYEES MAY BE REMOVED FROM OFFICE AS PROVIDED BY LAW BUT NOT BY IMPEACHMENT," under Article XI, Section 2. Thus, Congress has the plenary power to provide for the officials that may be removed and the manner by which they are to be removed as well.

I agree with Justice Carpio that the Office of the Ombudsman is also constitutionally accountable. I cannot agree, however, that this accountability can be extracted by allowing her deputies to be answerable to two principals: the Ombudsman and the President, even if this dual accountability is provided by law.

Reliance on the debates of the framers of the 1987 Constitution is not the only source for determining the meaning of the text of the Constitution.[42] Resorting to the debates and proceedings of the constitutional convention shows us the views and standpoints of individual members of the convention.[43] It does not show how the sovereign people read the Constitution at the time of ratification. The discussion of those that drafted the present Constitution is advisory.[44] The text of the Constitution should be read by one guided by, but not limited to, the debates that happened when it was drafted and ratified. It should also be read in the light of the needs of present times while being sensitive and addressing precedents existing in our jurisprudence.

The mention in the records of the Constitutional Commission of the phrase "*as provided by law*" cannot serve as the sole yardstick by which a definitive interpretation of the constitutional

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[42] Refer to my dissenting opinion in *Chavez v. Judicial and Bar Council*, G.R. No. 202242, April 16, 2013, 696 SCRA 469 citing *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991, 194 SCRA 317 and C. CURTIS, *LIONS UNDER THE THRONE 2* (1947).

[43] *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, February 22, 1991, 194 SCRA 317.

[44] C. CURTIS, *LIONS UNDER THE THRONE 2* (1947).

provision or its effects is to be determined. "*As provided by law*" with respect to the Deputy Ombudsman may, at best, only provide for the standards under which the Ombudsman may exercise her power of removal. Unless the Constitution does not intend true operational independence, the clause cannot be interpreted to mean that Congress has plenary authority to lodge disciplinary power on any other organ other than the Ombudsman.

I also agree with the concurring opinion of Justice Carpio on the September 4, 2012 decision of this court that there are different degrees of independence among the offices enumerated by the Constitution. Congress is empowered to determine through subsequent legislation the standards and legislative parameters of the independence of certain constitutional offices.

The 1987 Constitution provides two distinct types of independence as defined in its provisions. The first type of independence is constitutionally enshrined. This means that it can neither be subject to any interference by other branches of government nor can Congress pass laws that abridge or impair its fundamental independence. This independence is of such a degree and nature that the very essence of the constitutional body provides for a definitive barrier against legislative or executive intervention. This is the type of independence enjoyed by the Constitutional Commissions,[45] the Office of the Ombudsman,[46] and – to a certain extent – the Commission on Human Rights.[47]

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[45] Consti., Art. IX-A, Sec. 1: The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

[46] Consti., Art. XI, Sec.5: There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

[47] Consti., Art. XIII, Sec. 17: 1. There is hereby created an independent office called the Commission on Human Rights.

The second type of independence refers to the Constitution itself allowing Congress to define the functions that will ensure the independence of specific government offices or agencies. For instance, unlike the provisions with respect to the Ombudsman, the Constitution provides that the National Economic Development Authority[48] and the Central Bank[49] will be created and further defined by law.

III

The treatment of the Office of the Special Prosecutor is, however, different. In my view, the Office of the Special Prosecutor may by law be removed by the President. This is what Section 8, Paragraph (2) of the Ombudsman Act provides.

This conclusion can be seen simply by examining the provisions of Article XI of the Constitution. There are two constitutional organs created: the Office of the Ombudsman and the Tanodbayan, which is the current Office of the Special Prosecutor:

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[48] Consti., Art. XII, Sec. 9: The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development.

Until the Congress provides otherwise, the National Economic and Development Authority shall function as the independent planning agency of the government.

[49] Consti., Art. XII, Sec. 20: The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.

Until the Congress otherwise provides, the Central Bank of the Philippines operating under existing laws, shall function as the central monetary authority.

Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

Section 6. The officials and employees of the Office of the Ombudsman, other than the Deputies, shall be appointed by the Ombudsman, according to the Civil Service Law.

Section 7. ***The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.*** (Emphasis provided)

Section 5 of Article XI provides that the composition of the Office of the Ombudsman includes the Office of the Ombudsman, the overall Deputy Ombudsman for Luzon, Visayas, and Mindanao as well as a separate Deputy for the military establishment. Section 6 of Article XI states that the other officials and employees of the Office of the Ombudsman, outside of the Deputies, shall be appointed by the Ombudsman in accordance with the Civil Service Law. Section 7 of Article XI provides that what was then known as the Tanodbayan shall now be known as the Office of the Special Prosecutor. It is allowed to exercise its powers as provided by law except those explicitly provided for in the 1987 Constitution.

Section 7 even distinguishes between all the other officials and employees of the Ombudsman and that of the Office of the Special Prosecutor.

The Office of the Ombudsman's powers are more proactive than the prosecutorial powers of the Office of the Special Prosecutor. This can be seen in the enumeration of her powers in the Constitution. Thus, in Article XI, Section 13:

Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency,

when such act or omission appears to be illegal, unjust, improper, or inefficient.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts and transactions entered into by this office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules and procedure and exercise such other powers or perform such functions or duties as may be provided by law.

By clear constitutional design, the Tanodbayan or the Office of the Special Prosecutor is separate from the Office of the Ombudsman. Section 7 is explicit on this point, in that the Office of the Special Prosecutor is allowed to exercise its powers, *except for those conferred on the Office of the Ombudsman*. While the Office of the Special Prosecutor is not automatically a part of the Office of the Ombudsman, there is, however, no reason

that Congress and the President may, by law and in their political wisdom, attach the Office of the Special Prosecutor with the Office of the Ombudsman. There is also no constitutional prohibition for the Office of the Special Prosecutor to be functionally separate from the Office of the Ombudsman. This is a matter to be addressed by the political departments. This may also be viewed as a check of both Congress and the President on the powers of the Ombudsman.

By clear provision of the Constitution, it is only the Office of the Ombudsman, which includes her Deputies, that is endowed with constitutional independence. The inclusion of the Office of the Special Prosecutor with the Office of the Ombudsman in Section 3 of Republic Act No. 6770 does not *ipso facto* mean that the Office of the Special Prosecutor must be afforded the same levels of constitutional independence as that of the Ombudsman and the Deputy Ombudsman. The law simply defines how the Office of the Special Prosecutor is attached and, therefore, coordinated with the Office of the Ombudsman.

Thus, the provision of Section 8, Paragraph (2) of Republic Act No. 6770 which provides for the power of the President to remove the Special Prosecutor is valid and constitutional.

IV

This opinion should not be seen as a sweeping dismissal or acquittal of the liability of petitioner Gonzales due to the unconstitutionality of Section 8, Paragraph (2) of the Ombudsman Act as far as the Office of the Deputy Ombudsman is concerned. Petitioner Gonzales must still be held accountable for his actions. His actions as described in the report and in the decision of the Office of the President are troubling. There is need to continue the investigation so that the public may finally find closure concerning these incidents.

Understandably, the Office of the President wanted to act with due and deliberate dispatch on this case based on a provision of law which it interpreted to be valid and constitutional. It acted with the best of motives. But grand intentions cannot replace constitutional design. Even "*daang matuwid*" requires that the

right course of action must be effectively and efficiently done in the right way.

I vote to declare that Section 8, Paragraph (2) of the Ombudsman Act, insofar as the Deputy Ombudsman is subjected to the disciplinary power of the Office of the President, is unconstitutional. Petitioner Gonzales may, however, still be subject to investigation and discipline by the Ombudsman herself. I also vote that, given the facts, there was substantial evidence of betrayal of public trust on the part of petitioner Gonzales.

ACCORDINGLY, the motion for partial reconsideration should be denied.

SECOND DIVISION

[G.R. No. 178184. January 29, 2014]

GRAND ASIAN SHIPPING LINES, INC., EDUARDO P. FRANCISCO, and WILLIAM HOW, *petitioners, vs.* **WILFREDO GALVEZ, JOEL SALES, CRISTITO GRUTA, DANILO ARGUELLES, RENATO BATAYOLA, PATRICIO FRESMILLO,[*] JOVY NOBLE, EMILIO DOMINICO, BENNY NILMAO, and JOSE AUSTRAL,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION; APPEALS; TO PERFECT AN APPEAL FROM THE DECISION OF THE LABOR ARBITER GRANTING MONETARY AWARD, POSTING OF BOND IS

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[*] Sometimes referred to as Patricio Fresnillo in some parts of the records.

REQUIRED; RELAXATION OF THE RULE IS WARRANTED WHEN THERE HAS BEEN SUBSTANTIAL COMPLIANCE; APPLICATION IN CASE AT BAR.— In order to perfect an appeal from the Decision of the Labor Arbiter granting monetary award, the Labor Code requires the posting of a bond, either in cash or surety bond, in an amount equivalent to the monetary award. x x x Nonetheless, we have consistently held that rules should not be applied in a very rigid and strict sense. This is especially true in labor cases wherein the substantial merits of the case must accordingly be decided upon to serve the interest of justice. When there has been substantial compliance, relaxation of the Rules is warranted. x x x In the case at bench, petitioners appealed from the Decision of the Labor Arbiter awarding to crewmembers the amount of ₱7,104,483.84 by filing a Notice of Appeal with a Very Urgent Motion to Reduce Bond and posting a cash bond in the amount of ₱500,000.00 and a supersedeas bond in the amount of ₱1.5 million. We find this to be in substantial compliance with Article 223 of the Labor Code. It is true that the NLRC initially denied the request for reduction of the appeal bond. However, it eventually allowed its reduction and entertained petitioners' appeal. We disagree with the CA in holding that the NLRC acted with grave abuse of discretion as the granting of a motion to reduce appeal bond lies within the sound discretion of the NLRC upon showing of the reasonableness of the bond tendered and the merits of the grounds relied upon. Hence, the NLRC did not err or commit grave abuse of discretion in taking cognizance of petitioners' appeal before it.

2. ID.; ID.; TERMINATION OF EMPLOYMENT BY EMPLOYER; THE BURDEN OF PROVING THAT THE DISMISSAL IS FOR A JUST OR VALID CAUSE RESTS ON THE EMPLOYERS; SUBSTANTIAL EVIDENCE, REQUIRED; NOT ESTABLISHED IN CASE AT BAR.— We do not, however, agree with the findings of the NLRC that all respondents were dismissed for just causes. In termination disputes, the burden of proving that the dismissal is for a just or valid cause rests on the employers. Failure on their part to discharge such burden will render the dismissal illegal. x x x "[T]he quantum of proof which the employer must discharge is substantial evidence. x x x Substantial evidence

is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise." Here, the mere filing of a formal charge, to our mind, does not automatically make the dismissal valid. Evidence submitted to support the charge should be evaluated to see if the degree of proof is met to justify respondents' termination. The affidavit executed by Montegrico simply contained the accusations of Abis that respondents committed pilferage, which allegations remain uncorroborated. "Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees." The other bits of evidence were also inadequate to support the charge of pilferage. The findings made by GASLI's port captain and internal auditor and the resulting certification executed by De la Rama merely showed an overstatement of fuel consumption as revealed in the Engineer's Voyage Reports. The report of Jade Sea Land Inspection Services only declares the actual usage and amount of fuel consumed for a particular voyage. There are no other sufficient evidence to show that respondents participated in the commission of a serious misconduct or an offense against their employer.

3. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE AS A GROUND; PROOF REQUIRED FOR RANK AND FILE PERSONNEL AND MANAGERIAL EMPLOYEES, DISTINGUISHED; APPLICATION IN CASE AT BAR.— As for the second ground for respondents' termination, which is loss of trust and confidence, distinction should be made between managerial and rank and file employees. "[W]ith respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events x x x [while for] managerial employees, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal." In the case before us, Galvez, as the ship captain, is considered a managerial employee since his duties involve the governance, care and management of the vessel. Gruta, as chief engineer, is also a managerial employee for he is tasked to take complete charge of the technical operations of the vessel. As captain and as chief engineer, Galvez and Gruta perform functions vested with authority to execute management policies

and thereby hold positions of responsibility over the activities in the vessel. Indeed, their position requires the full trust and confidence of their employer for they are entrusted with the custody, handling and care of company property and exercise authority over it. Thus, we find that there is some basis for the loss of confidence reposed on Galvez and Gruta. x x x Their failure to account for this loss of company property betrays the trust reposed and expected of them. They had violated petitioners' trust and for which their dismissal is justified on the ground of breach of confidence.

4. ID.; ID.; ID.; THERE IS NO ILLEGAL DISMISSAL WHEN THE EMPLOYER DENIES HAVING DISMISSED THE EMPLOYEE; CASE AT BAR.— The rule that the employer bears the burden of proof in illegal dismissal cases finds no application when the employer denies having dismissed the employee. The employee must first establish by substantial evidence the fact of dismissal before shifting to the employer the burden of proving the validity of such dismissal. We give credence to petitioners' claim that Sales was not dismissed from employment. Unlike the other respondents, we find no evidence in the records to show that Sales was preventively suspended, that he was summoned and subjected to any administrative hearing and that he was given termination notice. x x x This only shows that he was never subjected to any accusation or investigation as a prelude to termination. Hence, it would be pointless to determine the legality or illegality of his dismissal because, in the first place, he was not dismissed from employment.

5. ID.; ID.; CONDITIONS OF EMPLOYMENT; EXCLUSION OF MANAGERIAL EMPLOYEES AND FIELD PERSONNEL FROM THE COVERAGE OF THE LAW, SUSTAINED; CASE AT BAR.— x x x Article 82 of the Labor Code specifically excludes managerial employees from the coverage of the law regarding conditions of employment which include hours of work, weekly rest periods, holidays, service incentive leaves and service charges. x x x Article 82 defines field personnel as referring to "non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty." They are those who perform functions

which "cannot be effectively monitored by the employer or his representative." Here, respondents, during the entire course of their voyage, remain on board the vessel. They are not field personnel inasmuch as they were constantly supervised and under the effective control of the petitioners through the vessel's ship captain. Nevertheless, we cannot grant them their claims for holiday pay, premium pay for holiday and restday, overtime pay and service incentive leave pay. Respondents do not dispute petitioners' assertion that in computing respondents' salaries, petitioners use 365 days as divisor. In fact, this was the same divisor respondents used in computing their money claims against petitioners. Hence, they are paid all the days of the month, which already include the benefits they claim. As for overtime pay and premium pay for holidays and restdays, no evidence was presented to prove that they rendered work in excess of the regular eight working hours a day or worked during holidays and restdays. In the absence of such proof, there could be no basis to award these benefits.

6. CIVIL LAW; DAMAGES; ACTUAL, MORAL AND EXEMPLARY DAMAGES; IT IS ERRONEOUS TO LUMP THE AWARD OF ACTUAL, MORAL AND EXEMPLARY DAMAGES; RATIONALE; CASE AT BAR.— x x x In order to recover actual or compensatory damages, it must be capable of proof and must be necessarily proved with a reasonable degree of certainty. While moral damages is given to a dismissed employee when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, is given if the dismissal is effected in a wanton, oppressive or malevolent manner. Here, the Labor Arbiter erred in awarding the damages by lumping actual, moral and exemplary damages. Said damages rest on different jural foundations and, hence, must be independently identified and justified. Also, there are no competent evidence of actual expenses incurred that would justify the award of actual damages. Lastly, respondents were terminated after being accused of the charge of pilferage of the vessel's fuel oil after examination of the report made by the vessel's chief engineer which showed a considerable amount of fuel lost. Although the dismissal of Arguelles, Batayola, Fresnillo, Noble, Dominico, Nilmao and Austral is illegal,

based on the circumstances surrounding their dismissal, petitioners could not have been motivated by bad faith in deciding to terminate their services.

7. ID.; OBLIGATIONS; JOINT AND SOLIDARY OBLIGATIONS; IN ORDER TO HOLD THE CORPORATE OFFICERS SOLIDARILY LIABLE WITH THE COMPANY FOR ILLEGAL DISMISSAL AND PAYMENT OF MONEY CLAIMS, IT MUST FIRST BE SHOWN BY COMPETENT PROOF THAT THEY ACTED WITH MALICE AND BAD FAITH IN DIRECTING THE CORPORATE AFFAIRS; NOT ESTABLISHED IN CASE AT BAR.— x x x This Court exculpates petitioners Francisco and How from being jointly and severally liable with GASLI for the illegal dismissal and payment of money claims of herein respondents. In order to hold them liable, it must first be shown by competent proof that they have acted with malice and bad faith in directing the corporate affairs. For want of such proof, Francisco and How should not be held liable for the corporate obligations of GASLI.

APPEARANCES OF COUNSEL

Andres Marcelo Padernal Guerrero & Paras for petitioners.
Francisco S. Laurente for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The employer has broader discretion in dismissing managerial employees on the ground of loss of trust and confidence than those occupying ordinary ranks. While plain accusations are not sufficient to justify the dismissal of rank and file employees, the mere existence of a basis for believing that managerial employees have breached the trust reposed on them by their employer would suffice to justify their dismissal.[1]

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[1] *Lima Land, Inc. v. Cuevas*, G.R. No. 169523, June 16, 2010, 621 SCRA 36, 46.

Before us is a Petition for Review on *Certiorari*[2] assailing the September 12, 2006 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP No. 82379, which annulled the September 10, 2003 Decision[4] and January 14, 2004 Resolution[5] of the National Labor Relations Commission (NLRC), thereby reinstating the August 30, 2001 Decision[6] of the Labor Arbiter for having attained finality as a result of petitioners' failure to post the correct amount of bond in their appeal before the NLRC. Likewise assailed is the May 23, 2007 Resolution[7] of the CA which denied petitioners' Motion for Reconsideration.[8]

Factual Antecedents

Petitioner Grand Asian Shipping Lines, Inc. (GASLI) is a domestic corporation engaged in transporting liquified petroleum gas (LPG) from Petron Corporation's refinery in Limay, Bataan to Petron's Plant in Ugong, Pasig and Petron's Depot in Rosario, Cavite. Petitioners William How and Eduardo Francisco are its President and General Manager, respectively. Respondents, on the other hand, are crewmembers of one of GASLI's vessels, M/T Dorothy Uno, with the following designations: Wilfredo Galvez (Galvez) as Captain; Joel Sales (Sales) as Chief Mate; Cristito Gruta (Gruta) as Chief Engineer; Danilo Arguelles (Arguelles) as Radio Operator; Renato Batayola (Batayola), Patricio Fresmillo (Fresmillo) and Jovy Noble (Noble) as Able

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[2] *Rollo*, pp. 11-59.

[3] CA *rollo*, pp. 583-600; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Magdangal M. De Leon and Ramon R. Garcia.

[4] *Id.* at 32-50; penned by Commissioner Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[5] *Id.* at 58-64.

[6] *Id.* at 137-154; penned by Labor Arbiter Ramon Valentin C. Reyes.

[7] *Id.* at 640.

[8] *Id.* at 601-632.

Seamen; Emilio Dominico (Dominico) and Benny Nilmao (Nilmao) as Oilers; and Jose Austral (Austral) as 2nd Engineer.

Sometime in January 2000, one of the vessel's Oilers, Richard Abis (Abis), reported to GASLI's Office and Crewing Manager, Elsa Montegrico (Montegrico), an alleged illegal activity being committed by respondents aboard the vessel. Abis revealed that after about four to five voyages a week, a substantial volume of fuel oil is unconsumed and stored in the vessel's fuel tanks. However, Gruta would misdeclare it as consumed fuel in the Engineer's Voyage Reports. Then, the saved fuel oil is siphoned and sold to other vessels out at sea usually at nighttime. Respondents would then divide among themselves the proceeds of the sale. Abis added that he was hesitant at first to report respondents' illegal activities for fear for his life.

An investigation on the alleged pilferage was conducted. After audit and examination of the Engineer's Voyage Reports, GASLI's Internal Auditor, Roger de la Rama (De la Rama), issued a Certification of Overstatement of Fuel Oil Consumption[9] for M/T Dorothy Uno stating that for the period June 30, 1999 to February 15, 2000 fuel oil consumption was overstated by 6,954.3 liters amounting to ₱74,737.86.[10]

On February 11, 2000, a formal complaint[11] for qualified theft was filed with the Criminal Investigation and Detection Group (CIDG) at Camp Crame against respondents, with Montegrico's Complaint-Affidavit[12] attached. On February 14, 2000, Abis submitted his *Sinumpaang Salaysay*,[13] attesting to the facts surrounding respondents' pilferage of fuel oil while on board the vessel, which he alleged started in August of 1999. On March 22, 2000, GASLI's Port Captain, Genaro Bernabe

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[9] *Id.* at 372.

[10] Based on the then prevailing price of ₱10.747 per liter.

[11] CA *rollo*, p. 364.

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

[13] *Id.* at 367-369.

(Bernabe), and De la Rama submitted a Complaint-Joint Affidavit,[14] stating that in Gruta's Engineer's Voyage Reports, particularly for the period June 30, 1999 to February 15, 2000, he overstated the number of hours the vessel's main and auxiliary engines, as well as its generators, were used resulting in the exaggerated fuel consumption. They also stated that according to independent surveyor Jade Sea-Land Inspection Services, the normal diesel fuel consumption of M/T Dorothy Uno for Petron Ugong–Bataan Refinery–Petron Ugong route averaged 1,021 liters only. Thus, comparing this with the declared amount of fuel consumed by the vessel when manned by the respondents, Bernabe and De la Rama concluded that the pilferage was considerable.[15] In her Supplementary Complaint Affidavit,[16] Montegrico implicated respondents except Sales, in the illegal activity. Bernabe, in his Reply-Affidavit,[17] further detailed their analysis of the voyage reports *vis-a-vis* the report of Jade Sea-Land Inspection Services to strengthen the accusations.

In their Joint Counter-Affidavit[18] and Joint Rejoinder-Affidavit,[19] respondents denied the charge. They alleged that the complaint was based on conflicting and erroneous computation/estimates of fuel consumption; that the complaint was fabricated as borne out by its failure to specify the exact time the alleged pilferage took place; that the allegations that the pilferage has been going on since August 1999 and that Austral and Sales acted as lookouts are not true because both embarked on the vessel only on December 28, 1999 and January of 2000, respectively; that four other officers who were on board

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[14] *Id.* at 370-371.

[15] See Dorothy Uno Fuel Consumption Analysis Report for Voyages Nos. 1005-1081 for the period July-December 1999 and January-February 2000, *id.* at 373-375.

[16] *Id.* at 376-377.

[17] *Id.* at 381-385.

[18] *Id.* at 99-100.

[19] *Id.* at 101-103.

the vessel much longer than Austral and Sales were not included in the charge; and, that the complaint was intended as a mere leverage.

In a letter[20] dated April 14, 2000, the CIDG referred the case to the Office of the City Prosecutor of Manila, which, after finding a *prima facie* case, filed the corresponding Information for Qualified Theft[21] dated August 18, 2000 with the Regional Trial Court (RTC) of Manila.

Meanwhile, GASLI placed respondents under preventive suspension. After conducting administrative hearings, petitioners decided to terminate respondents from employment. Respondents (except Sales) were thus served with notices[22] informing them of their termination for serious misconduct, willful breach of trust, and commission of a crime or offense against their employer.

It appears that several other employees and crewmembers of GASLI's two other vessels were likewise suspended and terminated from employment. Nine seafarers of M/T Deborah Uno were charged and terminated for insubordination, defying orders and refusal to take responsibility of cargo products/fuel.[23] For vessel M/T Coral Song, two crewmembers were dismissed for serious act of sabotage and grave insubordination.[24]

Proceedings before the Labor Arbiter

Respondents and the other dismissed crewmembers of M/T Deborah Uno and M/T Coral Song (complainants) filed with the NLRC separate complaints[25] for illegal suspension and

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[20] *Id.* at 378-380.

[21] *Id.* at 388-389.

[22] *Id.* at 460-468.

[23] See Notices of Termination For Just Cause dated May 2, 2000, *id.* at 469-477.

[24] See Notice of Termination For Just Cause dated April 17, 2000, *id.* at 478.

[25] *Id.* at 178-183.

dismissal, underpayment/non-payment of salaries/wages, overtime pay, premium pay for holiday and rest day, holiday pay, service incentive leave pay, hazard pay, tax refunds and indemnities for damages and attorney's fees against petitioners. The complaints, docketed as NLRC NCR Case Nos. 00-04-02026-00, 00-04-02062-00, 00-05-02620-00 and 00-07-03769-00, were consolidated.

On August 30, 2001, the Labor Arbiter rendered a Decision[26] finding the dismissal of all 21 complainants illegal. As regards the dismissal of herein respondents, the Labor Arbiter ruled that the filing of a criminal case for qualified theft against them did not justify their termination from employment. The Labor Arbiter found it abstruse that the specific date and time the alleged pilferage took place were not specified and that some crewmembers who boarded the vessel during the same period the alleged pilferage transpired were not included in the charge. With regard to the other complainants, petitioners likewise failed to prove the legality of their dismissal.

The Labor Arbiter ordered petitioners to reinstate complainants with full backwages and to pay their money claims for unpaid salary, overtime pay, premium pay for holidays and rest days, holiday and service incentive leave pay, as indicated in the Computation of Money Claims. Complainants were likewise awarded damages due to the attending bad faith in effecting their termination, double indemnity prescribed by Republic Act (RA) No. 8188[27] in view of violation of the Minimum Wage Law, as well as 10% attorney's fee. With respect to the claim for tax refund, the same was referred to the Bureau of Internal Revenue, while the claim for hazard pay was dismissed for lack

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[26] *Id.* at 137-154.

[27] AN ACT INCREASING THE PENALTY AND INCREASING DOUBLE INDEMNITY FOR VIOLATION OF THE PRESCRIBED INCREASES OR ADJUSTMENT IN THE WAGE RATES, AMENDING FOR THE PURPOSE SECTION TWELVE OF REPUBLIC ACT NUMBERED SIXTY-SEVEN HUNDRED TWENTY-SEVEN, OTHERWISE KNOWN AS THE WAGE RATIONALIZATION ACT.

of basis. The Labor Arbiter modified and recomputed the money claims of respondents, as follows:

1. WILFREDO GALVEZ – (Dismissed in Mar. 2000)

Backwages from Mar. 2000 to May 2001 (₱8,658.74 x 14 mos.) - - - - - - -	₱ 121,225.16
13th Month Pay for the period - - - - - - - -	8,658.94
Unpaid Salary from Feb 16 to 29, 2000 - - - - - - - -	3,985.38
Non-payment of Premium Pay for Holiday; Restday and Non-payment of Holiday Pay; (limited to 3 years' only = ₱7,372.90 x 3 yrs.) - - - -	22,188.70
Non-payment of (5 days) Service Incentive Leave Pay (for every year of service, but Limited to 3 years only): = ₱1,423.35 x 3 yrs.) - -	₱ 4,270.05
Actual Moral Exemplary & Compensatory Damages - - - - - -	₱100,000.00 (₱260,258.23)
Ten (10%) Percent Attorney's Fees	₱ 26,025.82
TOTAL	₱ 286,284.05)

2. JOEL SALES – (Dismissed in Mar. 2000)

Backwages from Mar. 2000 to May 2001 (₱8,274.14 x 14 mos.) - - - - - -	₱ 115,840.76
13th Month Pay for the period - - - - - -	8,274.34
Actual, Moral, Exemplary & Compensatory Damages - - - - - -	₱ 100,000.00 (₱224,115.10)
Ten (10%) Percent Attorney's Fees	₱ 22,411.51
TOTAL	₱ 246,526.61

3. CRISTITO G. GRUTA – (Dismissed in Mar. 2000)

Backwages from Mar. 200[0] to May 2001 (₱8,274.14 x 14 mos.) - - - - - -	₱ 115,840.76

13th Month Pay for the period - - - - - - 8,274.34
Non-payment of Premium Pay for Holiday; Restday and
Non-payment of Holiday Pay: (₱7,045.57 x 2 yrs.) 14,091.51
Non-payment of (5 days) Service Incentive Leave Pay
(for every year of service = ₱1,360.15 x 2 yrs.) - - 2,720.30

Actual, Moral, Exemplary &
Compensatory Damages - - - - - - ₱ 100,000.00
(₱240,926.91)

Ten (10%) Percent Attorney's Fees - - - - - - - ₱ 24,092.69
TOTAL ₱ 265,019.60

4. DANILO ARGUELLES – (Dismissed in Feb. 2000)
Backwages from Mar. 2000 to May 2001
(₱7,340.62 x 15 mos.) - - - - - - [₱]110,109.30

13th Month Pay for the period - - - - - - 7,340.62

Unpaid Salary from Feb. 16 to 29, 2000
(₱225.00 x 14 days) - - - - - - 3,150.00

Underpayment/Non-payment of Salary/Wages:
A. From April 98 to Nov. 98 (7 mos.)
Minimum Wage – ₱198 x 391.5 [/] 12 = ₱ 6,459.75
Actual Basic Wage for the period ₱ 4,320.00
Difference ₱ 2,139.75
x 7 mos.
₱ 14,978.25

Double Indemnity prescribed by Rep. Act 8188, Sec. 4 ₱ 29,956.50

B. From Dec. 98 to Mar. 2000 (16 mos.)
Minimum Wage – ₱225 391.5 [/] 12 = ₱ 7,340.62
Actual Basic Wage for the period 6,240.00
Difference ₱ 1,100.62
x 16 mos.
₱ 17,609.92

Double Indemnity prescribed by Rep. Act 8188, Sec. 4 ₱ 35,219.84

Underpayment/Non-payment of Overtime Pay:
A. From Apr. 98 to Nov. 98 (7 mos.)
30% of Minimum Wage –
(₱6,459.75 x 30%) ₱ 1,937.92

30% of Salary Actually Paid –
(₱4,320.00 x 30%) ₱ 1,872.00
Difference ₱ 641.92
x 7 mos.
₱ 4,493.44 ₱ 4,493.44

B. From Dec. 98 to Mar. 2000 (16 mos.)
30% of Minimum Wage – 2,202.18
(₱7,340.62 x 30%)
30% of Salary Actually Paid – 1,872.00
(₱6,240.00 x 30%) ₱ 330.18
Difference x 16 mos.
₱ 5,282.88 ₱ 5,282.88

Non-payment of Premium Pay for Holiday; Restday and ₱11,655.00
Non-payment of Holiday Pay (₱5,872.50 x 2 yrs.)
Non-payment of (5 days) Service Incentive Leave Pay
(for every year of service/but limited to 2 yrs. only): 2,250.00
= ₱ 1,125.00 x 2 yrs.
Actual, Moral, Exemplary & ₱ 100,000.00
Compensatory Damages
(₱309,457.58)
Ten (10%) Percent Attorney's Fees ₱ 30,945.75
TOTAL ₱ 340,403.33

5. RENATO BATAYOLA
6. PATRICIO FRESNILLO
7. JOVY NOBLE
8. EMILIO DOMINICO
9. BENNY NILMAO – (All dismissed in Feb. 2001)

Backwages from Mar. 2000 to May 2001
(₱7,340.62 x 15 mos.) ₱ 110,109.30
13th Month Pay for the period - - - - - - 7,340.62
Unpaid Salary from Feb. 16 to 29, 2000
(₱225.00 x 14 days) ₱ 3,150.00
Underpayment/Non-payment of Salary/Wages:
A. From Apr. 97 to Jan. 98 ([9] mos.) ₱ 6,035.62
Minimum Wage – ₱185 x 391.5 [/] 12 =
Actual Basic Wage for the period 4,098.24
Difference ₱ 1,932.58
x 9 mos.
₱ 17,436.42

Double Indemnity prescribed by Rep. Act 8188, Sec. 4 ₱ 34,872.84

B. From Feb. 98 to Nov. 98 (10 mos.)
Minimum Wage – ₱198 x 391.5 [/] 12 = ₱ 6,459.75
Actual Basic Wage for the period ₱ 4,098.24
Difference ₱ 2,361.51
x 10 mos.
₱ 23,615.10

Double Indemnity prescribed by Rep. Act 8188, Sec. 4 ₱ 47,230.20

C. From Dec. 98 to Mar. 2000 (16 mos.)
Minimum Wage – ₱225 x 391.5 [/] 12 = 7,340.62
Actual Basic Wage for the period 6,022.00
Difference ₱ 1,318.62
x 16 mos.
₱ 21,098.00

Double Indemnity prescribed by Rep. Act 8188, Sec. 4 ₱ 42,196.00

Underpayment/Non-payment of Overtime Pay:

A. From Apr. 97 to Jan. 98 (9 mos.)
30% Minimum Wage –
(₱6,035.62 x 30%) ₱ 1,810.68
30% of Salary Actually Paid –
(₱4,098.24 x 30%) ₱ 1,226.77
Difference ₱ 583.91
x 9 mos.
₱ 5,255.19 - ₱ 5,255.19

B. From Feb. 98 to Nov. 98 (10 mos.)
30% Minimum Wage –
(₱6,459.75 x 30%) ₱ 1,937.92
30% of Salary Actually Paid –
(₱4,098.24 x 30%) 1,226.72
Difference ₱ 711.15
x 10 mos.
₱ 7,111.70 - ₱ 7,111.70

C. From Dec. 98 to Mar. 2000 (16 mos.)
30% Minimum Wage – ₱ 2,202.18
(₱7,340.62 x 30%)
30% of Salary Actually Paid – ₱ 1,806.75
(₱6,022.50 x 30%) 395.43
Difference x 16 mos.
₱ 6,326.97 - ₱ 6,326.97

Non-Payment of Premium Pay for Holiday & Restday; and Non-Payment of Holiday Pay: (₱5,827.50 x 3 yrs.)		₱ 17,482.50
Non-Payment of (5 days) Service Incentive Leave Pay (for every year of service/but limited to 3 years only) = ₱1,125.00 x 3 yrs.)		3,375.00
Actual, Moral, Exemplary & Compensatory Damages	- - - - - - - - - (₱384,450.12)	100,000.00
Ten (10%) Percent Attorney's Fees		₱ 38, 445.01
TOTAL (each)		₱ 422,895.13
(Total for 5 above-named Complainants		₱2,114,475.00)

10. JOSE AUSTRAL – (Dismissed in Feb. 2000) Backwages from Mar. 2000 to May 2001	(₱8,900.00 x 15 mos.)	₱ 133.500.00
13th Month Pay for the period		8,900.00
Unpaid Salary from Feb. 16 to 29, 2000 (₱8,900.00 x 12 mos. / 365 days = (₱292.60 x 14 days)		4,096.40
Actual, [M]oral, Exemplary & Compensatory Damages	- - - - - - - - - (₱246,496.40)	₱ 100,000.00
Ten (10%) Percent Attorney's Fees		₱ 24,679.64
TOTAL		₱ 271, 146.04[28]

The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises all considered, judgment is hereby rendered finding the dismissal of all 21 complainants herein as illegal and ordering respondents Grand Asian Shipping Lines, Inc., Eduardo P. Franscisco and William How to pay, jointly and severally, each complainant the amounts, as follows, to wit:

A)	1. Wilfredo Galvez	₱ 286,284.05
	2. Joel Sales	246,526.61
	3. Cristito G. Gruta	265,019.60
	4. Danilo Arguelles	340,403.33
	5. Renato Batayola	422,895.13

[28] *Id.* at 142-146.

6. Patricio Fresnillo	422,895.13
7. Jovy Noble	422,895.13
8. Emilio Dominico	422,895.13
9. Benny Nilmao	422,895.13
10. Jose Austral	271,146.04
11. Nobelito Rivas	281,900.13
12. Elias Facto	259,471.41
13. Jeremias Bonlagua	316,683.53
14. Rannie Canon	391,816.70
15. Fernando Malia	411,355.45
16. Calixto Flores	411,355.45
17. Necito Llanzana	411,355.45
18. Ramie Barrido	411,355.45
19. Albert Faulan	265,982.28
20. Magno Tosalem	419,352.79
21. Rolando Dela Guardia	419,352.79
(Grand Total)	₱ 7,104,483.84

B) The awards of ₱100,000.00 each, as indemnity for damages and ten percent (10%) of the total amount, as attorney's fees, are included in the above-individual amount so awarded.

C) Respondents should immediately reinstate all the complainants to their former position without loss of seniority [sic] and other benefits; and to pay them full backwages up to the time of their actual reinstatement.

All other claims of complainants, not included in the above awards, are hereby ordered dismissed for lack of merit.

SO ORDERED.[29]

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

Proceedings before the National Labor Relations Commission

Petitioners filed a Notice of Appeal With A Very Urgent Motion to Reduce Bond[30] before the NLRC and posted a cash bond in the amount of ₱500,000.00. In a Supplemental Motion to Reduce Bond,[31] petitioners cited economic depression, legality of the employees' termination, compliance with labor standards, and wage increases as grounds for the reduction of appeal bond.

The NLRC issued an Order[32] dated February 20, 2002 denying petitioners' motion to reduce bond and directing them to post an additional bond in the amount of ₱4,084,736.70 in cash or surety within an unextendible period of 10 days; otherwise, their appeal would be dismissed. Petitioners failed to comply with the Order. Thus, on February 3, 2003, complainants moved for the dismissal of the appeal since petitioners had thus far posted only ₱1.5 million supersedeas bond and ₱500,000.00 cash bond, short of the amount required by the NLRC.[33]

In a Decision[34] dated September 10, 2003, the NLRC, despite its earlier Order denying petitioners' motion for the reduction of bond, reduced the amount of appeal bond to ₱1.5 million and gave due course to petitioners' appeal. It also found the appeal meritorious and ruled that petitioners presented sufficient evidence to show just causes for terminating complainants' employment and compliance with due process. Accordingly, complainants' dismissal was valid, with the exception of Sales. The NLRC adjudged petitioners to have illegally dismissed Sales as there was absence of any record that the latter received any notice of suspension, administrative hearing, or termination.

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[30] *Id.* at 193-194.

[31] *Id.* at 507-511.

[32] *Id.* at 156-158.

[33] See Complainants' Motion to Dismiss Respondents' Appeal and to Remand Case to the Labor Arbiter for Execution, *id.* at 159-160.

[34] *Id.* at 32-50.

The NLRC struck down the monetary awards given by the Labor Arbiter, which, it ruled, were based merely on the computations unilaterally prepared by the complainants. It also ruled that Galvez, a ship captain, is considered a managerial employee not entitled to premium pay for holiday and rest day, holiday pay and service incentive leave pay. As for the other complainants, the award for premium pay, holiday pay, rest day pay and overtime pay had no factual basis because no proof was adduced to show that work was performed on a given holiday or rest day or beyond the eight hours normal work time. Even then, the NLRC opined that these claims had already been given since complainants' salaries were paid on a 365-day basis. Likewise, service incentive leave pay, awards for damages and double indemnity were deleted. Further, the NLRC sustained respondents' contention that it is the Secretary of Labor or the Regional Director who has jurisdiction to impose the penalty of double indemnity for violations of the Minimum Wage Laws and not the Labor Arbiter. The NLRC disposed of the case as follows:

> WHEREFORE, premises considered, the assailed Decision is hereby reversed as to all complainants but modified with respect to Joel Sales. Respondents are adjudged not guilty of illegal dismissal with respect to all complainants except complainant Joel Sales. With the exception of Joel Sales, all the monetary awards to all complainants are deleted from the decision.
>
> Respondents are ordered to pay, jointly and severally complainant Joel Sales his backwages in the amount of ₱124,115.10 as computed in the assailed decision plus ten (10%) thereof as attorney's fees.
>
> We also sustain the order to reinstate him to his former position without loss of seniority rights and other benefits and to pay him backwages up to the time of his actual reinstatement.
>
> SO ORDERED.[35]

Complainants filed Motions for Reconsideration while petitioners filed a Motion for Partial Reconsideration. In a

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[35] *Id.* at 49-50.

Resolution[36] dated January 14, 2004, the NLRC reconsidered its ruling with respect to Sales, absolving petitioners from the charge of illegally dismissing him as Sales was neither placed under preventive suspension nor terminated from the service. The NLRC upheld petitioners' claim that it was Sales who abandoned his work by failing to report back for re-assignment. The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, the Motions for Reconsideration filed by complainants are denied for lack of merit. The Motion for Partial Reconsideration filed by respondents is granted. The assailed decision is reconsidered in that Respondents are likewise adjudged not guilty of illegal dismissal with respect to complainant Joel Sales. The monetary awards in favor of complainant Joel Sales as well as the reinstatement order are hereby deleted from the Decision.
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> SO ORDERED.[37]

Proceedings before the Court of Appeals

Respondents, excluding the other complainants, filed a Petition for *Certiorari*[38] with the CA, attributing grave abuse of discretion on the part of the NLRC in entertaining the appeal despite the insufficiency of petitioners' appeal bond. Respondents also assailed the NLRC's ruling upholding the validity of their dismissal. They posited that the charge of pilferage is not supported by clear, convincing and concrete evidence. In fact, the RTC, Branch 15 of Manila already rendered a Decision[39] on December 19, 2003 acquitting them of the crime of qualified theft lodged by the petitioners. Respondents further prayed for the reinstatement of the Labor Arbiter's monetary awards in their favor.

In a Decision[40] dated September 12, 2006, the CA set aside the NLRC's Decision and Resolution. It held that the NLRC's

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[36] *Id.* at 58-64.

[37] *Id.* at 63.

[38] *Id.* at 13-30.

[39] *Id.* at 161-166.

[40] *Id.* at 583-600.

act of entertaining the appeal is a jurisdictional error since petitioners' failure to post additional bond rendered the Labor Arbiter's Decision final, executory and immutable. The CA, nonetheless, proceeded to discuss the merits of the case insofar as the illegal dismissal charge is concerned. The CA conformed with the Labor Arbiter's ruling that petitioners' evidence was inadequate to support the charge of pilferage and justify respondents' termination. The CA ruled that Sales was also illegally dismissed, stating that Sales' active participation in the labor case against petitioners belies the theory that he was not terminated from employment. The dispositive portion of the CA Decision reads:

> WHEREFORE, the petition is GRANTED and the assailed September 10, 2003 Decision and January 14, 2003 Resolution are, accordingly, ANNULLED and SET ASIDE. In lieu thereof, the Labor Arbiter's August 30, 2001 Decision is ordered REINSTATED.
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> SO ORDERED.[41]

Petitioners filed a Motion for Reconsideration,[42] questioning the CA in finding that respondents were illegally dismissed, in reinstating the monetary awards granted by the Labor Arbiter without passing upon the merits of these money claims and in ascribing grave abuse of discretion on the part of the NLRC in taking cognizance of the appeal before it.

On May 23, 2007, the CA issued a Resolution[43] denying petitioners' Motion for Reconsideration. Hence, the instant Petition.

Issues

Petitioners assign the following errors:

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[41] *Id.* at 599.

[42] *Id.* at 601-632.

[43] *Id.* at 640.

I.

THE HONORABLE COURT OF APPEALS RULED CONTRARY TO APPLICABLE JURISPRUDENCE WHEN IT CONCLUDED THAT RESPONDENTS WERE ILLEGALLY DISMISSED.

A. THIS HONORABLE COURT OF APPEAL[S] OF APPEALS [sic] DISREGARDED THE FACT THAT THE OFFICE OF THE CITY PROSECUTOR OF MANILA DETERMINED THAT THERE WAS A *PRIMA FACIE* CASE FOR QUALIFIED THEFT AGAINST PETITIONERS, CONTRARY TO DECISIONS THIS MOST HONORABLE COURT OF APPEAL[S] HAS HELD WHERE SIMILAR FINDINGS OF THE INVESTIGATING PUBLIC PROSECUTOR HAD BEEN CONSIDERED SUBSTANTIAL EVIDENCE TO JUSTIFY TERMINATION OF EMPLOYMENT BASED ON LOSS OF TRUST AND CONFIDENCE.

B. THIS HONORABLE COURT OF APPEAL[S] GRIEVOUSLY ERRED IN DISCREDITING PRIVATE RESPONDENTS' EVIDENCE ONE BY ONE WHEN, TAKEN TOGETHER, SUCH EVIDENCE PROVIDED ADEQUATE BASIS FOR THE DISMISSAL OF PETITIONERS IN ACCORDANCE WITH RELEVANT SUPREME COURT OF APPEAL [sic] DECISIONS.

C. IN SUM, PETITIONERS WERE NOT ILLEGALLY DISMISSED SINCE THE SUBSTANTIVE AND PROCEDURAL REQUIREMENTS FOR THE TERMINATION OF THEIR EMPLOYMENT WERE SATISFIED IN THIS CASE.

D. THIS HONORABLE COURT OF APPEAL[S] GRIEVOUSLY ERRED IN RULING THAT PETITIONER JOEL SALES WAS ILLEGALLY DISMISSED.

II.

THE HONORABLE COURT OF APPEALS RULED CONTRARY TO APPLICABLE JURISPRUDENCE WHEN IT CONCLUDED THAT PETITIONERS WERE NOT ABLE TO VALIDLY PERFECT [THEIR] APPEAL OF THE LABOR ARBITER'S DECISION.[44]

Petitioners claim that the NLRC properly took cognizance of their appeal and properly granted their motion for reduction

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[44] *Rollo*, pp. 29-30.

of the appeal bond, explaining that strict implementation of the rules may be relaxed in certain cases so as to avoid a miscarriage of justice. Petitioners also claim that there was adequate basis to render respondents' dismissal from service valid, as correctly ruled by the NLRC.

Our Ruling

The assailed CA Decision must be vacated and set aside.

There was substantial compliance with the rules on appeal bonds.

In order to perfect an appeal from the Decision of the Labor Arbiter granting monetary award, the Labor Code requires the posting of a bond, either in cash or surety bond, in an amount equivalent to the monetary award. Article 223 of the Labor Code provides:

> ART. 223. Appeal. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x
>
> 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 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.

Nonetheless, we have consistently held that rules should not be applied in a very rigid and strict sense.[45] This is especially true in labor cases wherein the substantial merits of the case must accordingly be decided upon to serve the interest of justice.[46]

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[45] *Millenium Erectors Corporation v. Magallanes*, G. R. No. 184362, November 15, 2010, 634 SCRA 708, 713.

[46] *Anib v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 190216, August 16, 2010, 628 SCRA 371, 377.

When there has been substantial compliance, relaxation of the Rules is warranted.[47]

In *Mendoza v. HMS Credit Corporation*,[48] we held that the posting of an appeal bond in the amount of ₱650,000.00 instead of ₱1,025,081.82 award stated in the Decision of the Labor Arbiter is substantial compliance with the requirement under Article 223. Likewise, in *Pasig Cylinder Mfg. Corp. v. Rollo*,[49] we ruled that the filing of a reduced appeal bond of ₱100,000.00 is not fatal in an appeal from the labor arbiter's ruling awarding ₱3,132,335.57 to the dismissed employees. In *Rosewood Processing, Inc. v. National Labor Relations Commission*,[50] we allowed the filing of a reduced bond of ₱50,000.00, accompanied with a motion, in an appeal from the Labor Arbiter's award of ₱789,154.39.

In the case at bench, petitioners appealed from the Decision of the Labor Arbiter awarding to crewmembers the amount of ₱7,104,483.84 by filing a Notice of Appeal with a Very Urgent Motion to Reduce Bond and posting a cash bond in the amount of ₱500,000.00 and a supersedeas bond in the amount of ₱1.5 million. We find this to be in substantial compliance with Article 223 of the Labor Code. It is true that the NLRC initially denied the request for reduction of the appeal bond. However, it eventually allowed its reduction and entertained petitioners' appeal. We disagree with the CA in holding that the NLRC acted with grave abuse of discretion as the granting of a motion to reduce appeal bond lies within the sound discretion of the NLRC upon showing of the reasonableness of the bond tendered and the merits of the grounds relied upon.[51] Hence, the NLRC did not err or commit grave abuse of discretion in taking cognizance of petitioners' appeal before it.

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[47] *Ong v. Court of Appeals*, 482 Phil. 170, 181 (2004).

[48] G.R. No. 187232, April 17, 2013.

[49] G.R. No. 173631, September 8, 2010, 630 SCRA 320, 329-330.

[50] 352 Phil. 1013 (1998).

[51] *Nicol v. Footjoy Industrial Corporation*, 555 Phil. 275, 287 (2007).

Galvez and Gruta were validly dismissed on the ground of loss of trust and confidence; there were no valid grounds for the dismissal of Arguelles, Batayola, Fresnillo, Noble, Dominico, Nilmao and Austral.

We do not, however, agree with the findings of the NLRC that all respondents were dismissed for just causes. In termination disputes, the burden of proving that the dismissal is for a just or valid cause rests on the employers. Failure on their part to discharge such burden will render the dismissal illegal.[52]

As specified in the termination notice, respondents were dismissed on the grounds of (i) serious misconduct, particularly in engaging in pilferage while navigating at sea, (ii) willful breach of the trust reposed by the company, and (iii) commission of a crime or offense against their employer. Petitioners claim that based on the sworn statement of Abis, joint affidavit of Bernabe and De la Rama, letter of petitioner Francisco requesting assistance from the CIDG, formal complaint sheet, complaint and supplementary complaint affidavit of Montegrico, CIDG's letter referring respondents' case to the Office of the City Prosecutor of Manila, resolution of the City Prosecutor finding a *prima facie* case of qualified theft, and the Information for qualified theft, there is a reasonable ground to believe that respondents were responsible for the pilferage of diesel fuel oil at M/T Dorothy Uno, which renders them unworthy of the trust and confidence reposed on them.

After examination of the evidence presented, however, we find that petitioners failed to substantiate adequately the charges of pilferage against respondents. "[T]he quantum of proof which the employer must discharge is substantial evidence. x x x Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine

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[52] *Gurango v. Best Chemicals and Plastics Inc.*, G.R. No. 174593, August 25, 2010, 629 SCRA 311, 322.

otherwise."[53] Here, the mere filing of a formal charge, to our mind, does not automatically make the dismissal valid. Evidence submitted to support the charge should be evaluated to see if the degree of proof is met to justify respondents' termination. The affidavit executed by Montegrico simply contained the accusations of Abis that respondents committed pilferage, which allegations remain uncorroborated. "Unsubstantiated suspicions, accusations, and conclusions of employers do not provide for legal justification for dismissing employees."[54] The other bits of evidence were also inadequate to support the charge of pilferage. The findings made by GASLI's port captain and internal auditor and the resulting certification executed by De la Rama merely showed an overstatement of fuel consumption as revealed in the Engineer's Voyage Reports. The report of Jade Sea Land Inspection Services only declares the actual usage and amount of fuel consumed for a particular voyage. There are no other sufficient evidence to show that respondents participated in the commission of a serious misconduct or an offense against their employer.

As for the second ground for respondents' termination, which is loss of trust and confidence, distinction should be made between managerial and rank and file employees. "[W]ith respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events x x x [while for] managerial employees, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal."[55]

In the case before us, Galvez, as the ship captain, is considered a managerial employee since his duties involve the governance, care and management of the vessel.[56] Gruta, as chief engineer,

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[53] *AMA Computer College-East Rizal v. Ignacio*, G. R. No. 178520, June 23, 2009, 590 SCRA 633, 652.

[54] *Century Canning Corporation v. Ramil*, G.R. No. 171630, August 9, 2010, 627 SCRA 192, 202.

[55] *Velez v. Shangri-la's Edsa Plaza Hotel*, 535 Phil. 12, 27 (2006).

[56] *Inter-Orient Maritime Enterprises, Inc. v. National Labor Relations Commission*, G.R. No. 115286, August 11, 1994, 235 SCRA 268, 276.

is also a managerial employee for he is tasked to take complete charge of the technical operations of the vessel.[57] As captain and as chief engineer, Galvez and Gruta perform functions vested with authority to execute management policies and thereby hold positions of responsibility over the activities in the vessel. Indeed, their position requires the full trust and confidence of their employer for they are entrusted with the custody, handling and care of company property and exercise authority over it.

Thus, we find that there is some basis for the loss of confidence reposed on Galvez and Gruta. The certification issued by De la Rama stated that there is an overstatement of fuel consumption. Notably, while respondents made self-serving allegations that the computation made therein is erroneous, they never questioned the competence of De la Rama to make such certification. Neither did they question the authenticity and validity of the certification. Thus, the fact that there was an overstatement of fuel consumption and that there was loss of a considerable amount of diesel fuel oil remained unrefuted. Their failure to account for this loss of company property betrays the trust reposed and expected of them. They had violated petitioners' trust and for which their dismissal is justified on the ground of breach of confidence.

As for Arguelles, Batayola, Fresnillo, Noble, Dominico, Nilmao and Austral, proof of involvement in the loss of the vessel's fuel as well as their participation in the alleged theft is required for they are ordinary rank and file employees. And as discussed above, no substantial evidence exists in the records that would establish their participation in the offense charged. This renders their dismissal illegal, thus, entitling them to reinstatement plus full backwages, inclusive of allowances and other benefits, computed from the time of their dismissal up to the time of actual reinstatement.

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[57] *Association of Marine Officers and Seamen of Reyes and Lim Co. v. Laguesma*, G.R. No. 107761, December 27, 1994, 239 SCRA 460, 467.

No evidence of Sales' dismissal from employment.

The rule that the employer bears the burden of proof in illegal dismissal cases finds no application when the employer denies having dismissed the employee.[58] The employee must first establish by substantial evidence the fact of dismissal[59] before shifting to the employer the burden of proving the validity of such dismissal.

We give credence to petitioners' claim that Sales was not dismissed from employment. Unlike the other respondents, we find no evidence in the records to show that Sales was preventively suspended, that he was summoned and subjected to any administrative hearing and that he was given termination notice. From the records, it appears Sales was not among those preventively suspended on February 26, 2000. To bolster this fact, petitioners presented the Payroll Journal Register for the period March 1-15, 2000[60] showing that Sales was still included in the payroll and was not among those who were charged with an offense to warrant suspension. In fact, Sales' signature in the Semi-Monthly Attendance Report for February 26, 2000 to March 10, 2000[61] proves that he continued to work as Chief Mate for the vessel M/T Dorothy Uno along with a new set of crewmembers. It is likewise worth noting that in the Supplemental Complaint Affidavit of Montegrico, Sales was not included in the list of those employees who were accused of having knowledge of the alleged pilferage. This only shows that he was never subjected to any accusation or investigation as a prelude to termination. Hence, it would be pointless to determine the legality or illegality of his dismissal because, in the first place, he was not dismissed from employment.

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[58] *Machica v. Roosevelt Services Center, Inc. and/or Dizon*, 523 Phil. 199, 210 (2006).

[59] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, August 29, 2012, 679 SCRA 545, 558.

[60] CA *rollo*, p. 528.

[61] *Id.* at 529.

Respondents are not entitled to their money claims except 13th month pay for the period of their illegal dismissal, unpaid salaries, salary differentials, double indemnity for violation of the Minimum Wage Law and attorney's fees.

As for the money claims of respondents, we note that petitioners did not bring this issue before us or assign it as error in this Petition. It was raised by the petitioners only in their Memorandum of Appeal filed with the NLRC and in their Motion for Reconsideration of the CA's Decision reinstating the Labor Arbiter's award. Nonetheless, in order to arrive at a complete adjudication of the case and avoid piecemeal dispensation of justice, we deem it necessary to resolve the validity of respondents' money claims and to discuss the propriety of the Labor Arbiter's award.

Galvez and Gruta, as managerial employees, are not entitled to their claims for holiday pay, service incentive leave pay and premium pay for holiday and restday. Article 82 of the Labor Code specifically excludes managerial employees from the coverage of the law regarding conditions of employment which include hours of work, weekly rest periods, holidays, service incentive leaves and service charges.[62]

As for Arguelles, Batayola, Fresnillo, Noble, Dominico, Nilmao and Austral, we cannot sustain the argument that they are classified as field personnel under Article 82 of the Labor Code who are likewise excluded. Article 82 defines field personnel as referring to "non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty." They are those who perform functions which "cannot be effectively monitored by the employer or his representative."[63] Here,

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[62] *Dela Cruz v. National Labor Relations Commission*, 359 Phil. 316, 330 (1998).

[63] *Duterte v. Kingswood Trading Co., Inc.*, G.R. No. 160325, October 4, 2007, 534 SCRA 607, 617.

respondents, during the entire course of their voyage, remain on board the vessel. They are not field personnel inasmuch as they were constantly supervised and under the effective control of the petitioners through the vessel's ship captain.

Nevertheless, we cannot grant them their claims for holiday pay, premium pay for holiday and restday, overtime pay and service incentive leave pay. Respondents do not dispute petitioners' assertion that in computing respondents' salaries, petitioners use 365 days as divisor. In fact, this was the same divisor respondents used in computing their money claims against petitioners. Hence, they are paid all the days of the month, which already include the benefits they claim.[64] As for overtime pay and premium pay for holidays and restdays, no evidence was presented to prove that they rendered work in excess of the regular eight working hours a day or worked during holidays and restdays. In the absence of such proof, there could be no basis to award these benefits.[65]

For the claim of service incentive leave pay, respondents did not specify what year they were not paid such benefit. In addition, records show that they were paid their vacation leave benefits.[66] Thus, in accordance with Article 95 of the Labor Code,[67] respondents can no longer claim service incentive leave pay.

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[64] *The Chartered Bank Employees Association v. Hon. Ople*, 222 Phil. 570, 577 (1985); *Leyte IV Electric Cooperative, Inc. v. LEYECO IV Employees Union-ALU*, 562 Phil. 743, 757 (2007).

[65] *Serrano v. Gallant Maritime Services, Inc.*, G.R. No. 167614, March 24, 2009, 582 SCRA 254, 303-304; *PCL Shipping Phils., Inc. v. National Labor Relations Commission*, 540 Phil. 65, 83-84 (2006).

[66] See GASLI Transmittal Slip for M/T Dorothy Uno for the year 1998, showing that respondents were paid vacation and sick leave benefit for the particular period. CA *rollo*, p. 502.

[67] Art. 95. *Right to service incentive leave.* – (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least

On the other hand, for failure to effectively refute the awards for 13th month pay for the period that respondents were illegally dismissed, unpaid salaries and salary differentials,[68] we affirm the grant thereof as computed by the Labor Arbiter. Petitioners' evidence which consist of a mere tabulation[69] of the amount of actual benefits paid and given to respondents is self-serving as it does not bear the signatures of the employees to prove that they had actually received the amounts stated therein.

Next, we come to the legitimacy of the Labor Arbiter's authority to impose the penalty of double indemnity for violations of the Minimum Wage Law. Petitioners argue that the authority to issue compliance orders in relation to underpayment of wages is vested exclusively on the Secretary of Labor or the Regional Director and that the Labor Arbiter has no jurisdiction thereover. They cite Section 12 of RA 6727,[70] as amended by RA 8188, which provides:

> Sec. 12. Any person, corporation, trust, firm, partnership, association or entity which refuses or fails to pay any of the prescribed increases or adjustments in the wage rates made in accordance with this Act shall be punished by a fine [of] not less than Twenty-five thousand pesos (₱25,000) nor more than One hundred thousand pesos (₱100,000) or imprisonment of not less than two (2) years nor more than four (4) years or both such fine and imprisonment at the discretion of the court: Provided, That any person convicted

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five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor after considering the viability or financial condition of such establishment.

(c) The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court of administrative action.

[68] In the computation of the individual money claims of respondents, the Labor Arbiter, in his Decision, used the term "Underpayment/Non-payment of Salary/Wages" in referring to the award of salary differentials to respondents.

[69] CA *rollo*, pp. 512-514.

[70] Wage Rationalization Act.

under this Act shall not be entitled to the benefits provided for under the Probation Law.

The employer concerned shall be ordered to pay an amount equivalent to double the unpaid benefits owing to the employees: Provided, That payment of indemnity shall not absolve the employer from the criminal liability under this Act.

If the violation is committed by a corporation, trust or firm, partnership, association or any other entity, the penalty of imprisonment shall be imposed upon the entity's responsible officers including but not limited to, the president, vice president, chief executive officer, general manager, managing director or partner.

Petitioners' contention is untenable. First, there is no provision in RA 6727 or RA 8188 which precludes the Labor Arbiter from imposing the penalty of double indemnity against employers. Second, Article 217 of the Labor Code gives the Labor Arbiter jurisdiction over cases of termination disputes and those cases accompanied with a claim for reinstatement. Thus, in *Bay Haven, Inc. v. Abuan*[71] the Court held that an allegation of illegal dismissal deprives the Secretary of Labor of jurisdiction over claims to enforce compliance with labor standards law. This was also pronounced in *People's Broadcasting Service (Bombo Radyo Phils., Inc.) v. Secretary of the Department of Labor and Employment*,[72] wherein we stated that the Secretary of Labor has no jurisdiction in cases where employer-employee relationship has been terminated. We thus sustain the Labor Arbiter's award of double indemnity.

We also sustain the award of attorney's fees since respondents were compelled to file a complaint for the recovery of wages and were forced to litigate and incur expenses.[73]

The Labor Arbiter's grant of actual/compensatory, moral and exemplary damages in the amount of ₱100,000.00 is, however,

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[71] G.R. No. 160859, July 30, 2008, 560 SCRA 457, 469.

[72] G.R. No. 179652, March 6, 2012, 667 SCRA 538, 547.

[73] *PCL Shipping Phils., Inc. v. National Labor Relations Commission*, *supra* note 65 at 84-85.

incorrect. In order to recover actual or compensatory damages, it must be capable of proof and must be necessarily proved with a reasonable degree of certainty.[74] While moral damages is given to a dismissed employee when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, is given if the dismissal is effected in a wanton, oppressive or malevolent manner.[75] Here, the Labor Arbiter erred in awarding the damages by lumping actual, moral and exemplary damages. Said damages rest on different jural foundations and, hence, must be independently identified and justified.[76] Also, there are no competent evidence of actual expenses incurred that would justify the award of actual damages. Lastly, respondents were terminated after being accused of the charge of pilferage of the vessel's fuel oil after examination of the report made by the vessel's chief engineer which showed a considerable amount of fuel lost. Although the dismissal of Arguelles, Batayola, Fresnillo, Noble, Dominico, Nilmao and Austral is illegal, based on the circumstances surrounding their dismissal, petitioners could not have been motivated by bad faith in deciding to terminate their services.

Lastly, this Court exculpates petitioners Francisco and How from being jointly and severally liable with GASLI for the illegal dismissal and payment of money claims of herein respondents. In order to hold them liable, it must first be shown by competent proof that they have acted with malice and bad faith in directing the corporate affairs.[77] For want of such proof, Francisco and How should not be held liable for the corporate obligations of GASLI.

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[74] *Wuerth Philippines, Inc. v. Ynson*, G.R. No. 175932, February 15, 2012, 666 SCRA 151, 169-170.

[75] *Quadra v. Court of Appeals*, 529 Phil. 218, 223-224 (2006).

[76] *Herbosa v. Court of Appeals*, 425 Phil. 431, 449 (2002).

[77] *Lynvil Fishing Enterprises, Inc. v. Ariola*, G.R. No. 181974, February 1, 2012, 664 SCRA 679, 698.

WHEREFORE, the Court of Appeals' Decision dated September 12, 2006 and the Resolution dated May 23, 2007 in CA-G.R. SP No. 82379 are **ANNULLED** and **SET ASIDE**. Respondents Wilfredo Galvez and Cristito Gruta are hereby **DECLARED** dismissed from employment for just cause while respondent Joel Sales was not dismissed from employment. Respondents Danilo Arguelles, Renato Batayola, Patricio Fresmillo, Jovy Noble, Emilio Dominico, Benny Nilmao, and Jose Austral are **DECLARED** to have been illegally dismissed; hence, petitioners are ordered to reinstate them to their former position or its equivalent without loss of seniority rights and to pay them full backwages, inclusive of allowances and other benefits, computed from the time of dismissal up to the time of actual reinstatement, as well as 13th month pay for the period of their illegal dismissal.

Petitioner Grand Asian Shipping Lines, Inc. is also ordered to pay respondents Wilfredo Galvez, Danilo Arguelles, Renato Batayola, Patricio Fresnillo, Jovy Noble, Emilio Dominico, Benny Nilmao and Jose Austral unpaid salaries from February 16 to 29, 2000, as computed by the Labor Arbiter; and to pay respondents Danilo Arguelles, Renato Batayola, Patricio Fresmillo, Jovy Noble, Emilio Dominico and Benny Nilmao salary differentials plus double indemnity, as computed by the Labor Arbiter. Ten percent (10%) of the monetary award should be added as and by way of attorney's fees. Interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Decision until full payment pursuant to *Nacar v. Gallery Frames*.[78]

Petitioners Eduardo P. Francisco and William How are absolved from the liability adjudged against petitioner Grand Asian Shipping Lines, Inc.

SO ORDERED.

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

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

SECOND DIVISION

[G.R. No. 179367. January 29, 2014]

UNILEVER PHILIPPINES, INC., *petitioner, vs.* **MICHAEL TAN *A.K.A.* PAUL D. TAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE; THE FINDINGS OF THE EXISTENCE OR NON-EXISTENCE OF PROBABLE CAUSE ARE GENERALLY NOT SUBJECT TO REVIEW BY THE COURT; THE EXCEPTION TO THE NON-INTERFERENCE POLICY IS WHEN THE EXECUTIVE DISCRETION HAS BEEN GRAVELY ABUSED.— The determination of probable cause for purposes of filing of information in court is essentially an executive function that is lodged, at the first instance, with the public prosecutor and, ultimately, to the Secretary of Justice. The prosecutor and the Secretary of Justice have wide latitude of discretion in the conduct of preliminary investigation; and their findings with respect to the existence or non-existence of probable cause are generally not subject to review by the Court. Consistent with this rule, the settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to leave to the prosecutor and to the DOJ the determination of what constitutes sufficient evidence to establish probable cause. Courts can neither override their determination nor substitute their own judgment for that of the latter. They cannot likewise order the prosecution of the accused when the prosecutor has not found a *prima facie* case. Nevertheless, this policy of non-interference is not without exception. The Constitution itself allows (and even directs) court action where executive discretion has been gravely abused. In other words, the court may intervene in the executive determination of probable cause, review the findings and conclusions, and ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.

2. ID.; ID.; ID.; ID.; TO JUSTIFY JUDICIAL INTERVENTION, THERE MUST BE GRAVE ABUSE OF DISCRETION; EXPLAINED.— The term "grave abuse of discretion" means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

3. ID.; ID.; ID.; ID.; THE DETERMINATION OF PROBABLE CAUSE NEEDS ONLY TO REST ON EVIDENCE SHOWING THAT A CRIME HAS BEEN COMMITTED AND THERE IS ENOUGH REASON TO BELIEVE THAT IT WAS COMMITTED BY THE ACCUSED; CLARIFIED.— The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. What is merely required is "probability of guilt." Its determination, too, does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits. Thus, in concluding that there is probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged. It is also important to stress that the determination of probable cause does not depend on the validity or merits of a party's accusation or defense, or on the admissibility or veracity of testimonies presented. As previously discussed, these matters are better ventilated during the trial proper of the case.

APPEARANCES OF COUNSEL

Law Firm of RV Domingo & Associates for petitioner.
Tabaquero Albano Lopez & Associates for respondent.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] filed by Unilever Philippines, Inc. (*petitioner*), assailing the decision[2] dated June 18, 2007 and the resolution[3] dated August 16, 2007 of the Court of Appeals (*CA*) in CA G.R. SP No. 87000. These CA rulings dismissed the petitioner's petition for *certiorari* and *mandamus* for lack of merit.

The Factual Antecedents

The records show that on January 17, 2002, agents of the National Bureau of Investigation (*NBI*) applied for the issuance of search warrants for the search of a warehouse located on Camia Street, Marikina City, and of an office located on the 3rd floor of Probest International Trading Building, Katipunan Street, Concepcion, Marikina City, allegedly owned by Michael Tan *a.k.a*. Paul D. Tan (*respondent*). The application alleged that the respondent had in his possession counterfeit shampoo products which were being sold, retailed, distributed, dealt with or intended to be disposed of, in violation of Section 168, in relation with Section 170, of Republic Act (*R.A.*) No. 8293, otherwise known as the Intellectual Property Code of the Philippines.

On the same date, Judge Antonio M. Eugenio, Jr. of the Regional Trial Court of Manila, Branch 1, granted the application and issued Search Warrant Nos. 02-2606 and 02-2607. Armed with the search warrants, the NBI searched the premises and, in the course of the search, seized the following items:

(A) From [the respondent's] office:

(a) 192 sachets of *Creamsilk* Hair Conditioner (White);

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 3-44.

[2] *Id.* at 49-58; penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justices Renato C. Dacudao and Noel G. Tijam.

[3] *Id.* at 59.

(b) 156 sachets of *Creamsilk* Hair Conditioner (Blue);

(c) 158 sachets of *Creamsilk* Hair Conditioner (Green);

(d) 204 sachets of *Creamsilk* Hair Conditioner (Black);

(e) 192 sachets of *Vaseline* Amino Collagen Shampoo;

(f) 192 sachets of *Sunsilk* Nutrient Shampoo (Pink);

(g) 144 sachets of *Sunsilk* Nutrient Shampoo (Blue);

(h) 136 sachets of *Sunsilk* Nutrient Shampoo (Orange);

(i) 144 sachets of *Sunsilk* Nutrient Shampoo (Green); and

(j) 1 box of assorted commercial documents.

(B) From [the respondent's] warehouse[:]

(a) 372 boxes each containing six (6) cases of Sunsilk Nutrient Shampoo; and

(b) 481 boxes each containing six (6) cases Creamsilk Hair Conditioner.[4]

The NBI thereafter filed with the Department of Justice (*DOJ*) a complaint against the respondent for violation of R.A. No. 8293, specifically Section 168 (unfair competition), in relation with Section 170, docketed as I.S. No. 2002-667.

In his counter-affidavit, the respondent claimed that he is "Paul D. Tan," and not "Michael Tan" as alluded in the complaint; he is engaged in the business of selling leather goods and raw materials for making leather products, and he conducts his business under the name "Probest International Trading," registered with the Department of Trade and Industry; he is not engaged in the sale of counterfeit Unilever shampoo products; the sachets of Unilever shampoos seized from his office in Probest International Trading Building are genuine shampoo products which they use for personal consumption; he does not own and does not operate the warehouse located on Camia Street, Marikina

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

City, where a substantial number of alleged counterfeit Unilever shampoo products were found; and he did not violate R.A. No. 8293 because there is no *prima facie* evidence that he committed the offense charged.

Rulings of the DOJ

On December 18, 2002, State Prosecutor Melvin J. Abad issued a resolution[5] dismissing the criminal complaint on the ground of insufficiency of evidence. To quote:

> After a thorough evaluation of the evidence, we find no sufficient evidence so as to warrant a finding of probable cause to indict respondent Paul D. Tan (not Michael Tan) for violation of Section 168 (unfair competition) in relation to Section 170 of R.A. No. 8293.
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> x x x x x x x x x
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> WHEREFORE, it is respectfully recommended that the instant complaint for Violation of Section 168 (unfair competition) in relation to Section 170 of R.A. No. 8293 be DISMISSED for insufficiency of evidence.[6]

The State Prosecutor found that the petitioner failed to show the respondent's actual and direct participation in the offense charged. While the Certificate of Registration of Probest International Trading shows that a certain "Paul D. Tan" is the registered owner and proprietor of the office, there is no showing that he is also the registered owner of the warehouse where the alleged counterfeit Unilever shampoo products were found. There is also no evidence to support the claim that the respondent was engaged in the sale of counterfeit products other than the self-serving claim of the petitioner's representatives. Lastly, the State Prosecutor found that the pieces of evidence adduced against the respondent, *e.g.* alleged counterfeit Unilever shampoo products, by themselves, are not sufficient to support a finding of probable cause that he is engaged in unfair competition.

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[5] *Id.* at 174-179.

[6] *Id.* at 176-178.

The motion for reconsideration that followed was denied in a resolution[7] dated June 5, 2003.

On September 9, 2003, the petitioner filed a petition for review with the DOJ,[8] which the Acting Secretary of Justice, Merceditas N. Gutierrez, dismissed in her March 16, 2004 resolution. In the resolution, the Acting Secretary of Justice affirmed the State Prosecutor's finding of lack of probable cause.

The petitioner thereafter sought, but failed, to secure a reconsideration.

On October 19, 2004, the petitioner filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court, imputing grave abuse of discretion on the Acting Secretary of Justice, *et al*., in deciding the case in the respondent's favor.

The Rulings of the CA

The CA, in a decision dated June 18, 2007, dismissed the petition on the ground that the petitioner failed to establish facts and circumstances that would constitute acts of unfair competition under R.A. No. 8293. The CA took into account the insufficiency of evidence that would link the respondent to the offense charged. It also ruled that the Acting Secretary of Justice did not gravely abuse her discretion when she affirmed the State Prosecutor's resolution dismissing the petitioner's complaint for insufficiency of evidence to establish probable cause.

The petitioner sought reconsideration of the aforementioned decision rendered by the CA but its motion was denied in a resolution dated August 16, 2007.

The present Rule 45 petition questions the CA's June 18, 2007 decision and August 16, 2007 resolution.

The Petition

The petitioner contends that the CA erred in dismissing its petition for *certiorari* and in affirming the DOJ's rulings. It

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[7] *Id.* at 180-181.

[8] *Id.* at 140-173.

argues that while it may be possible that the respondent is not the owner of the warehouse, the overwhelming pieces of evidence nonetheless prove that he is the owner of the counterfeit shampoo products found therein. The petitioner also maintains that the voluminous counterfeit shampoo products seized from the respondent are more than sufficient evidence to indict him for unfair competition.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in upholding the Acting Secretary of Justice's decision dismissing the information against the respondent. The resolution of this issue requires a determination of the existence of probable cause in order to indict the respondent of unfair competition.

The Court's Ruling

We find merit in the petition.

Determination of Probable Cause Lies Within the Competence of the Public Prosecutor

The determination of probable cause for purposes of filing of information in court is essentially an executive function that is lodged, at the first instance, with the public prosecutor and, ultimately, to the Secretary of Justice.[9] The prosecutor and the Secretary of Justice have wide latitude of discretion in the conduct of preliminary investigation;[10] and their findings with respect to the existence or non-existence of probable cause are generally not subject to review by the Court.

Consistent with this rule, the settled policy of non-interference in the prosecutor's exercise of discretion requires the courts to

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[9] *Baron A. Villanueva, et al. v. Edna R. Caparas*, G.R. No. 190969, January 30, 2013, 689 SCRA 679, 685.

[10] *Callo-Claridad v. Esteban*, G.R. No. 191567, March 20, 2013, 694 SCRA 185, 199.

leave to the prosecutor and to the DOJ the determination of what constitutes sufficient evidence to establish probable cause.[11] Courts can neither override their determination nor substitute their own judgment for that of the latter. They cannot likewise order the prosecution of the accused when the prosecutor has not found a *prima facie* case.[12]

Nevertheless, this policy of non-interference is not without exception. The Constitution itself allows (and even directs) court action where executive discretion has been gravely abused.[13] In other words, the court may intervene in the executive determination of probable cause, review the findings and conclusions, and ultimately resolve the existence or non-existence of probable cause by examining the records of the preliminary investigation when necessary for the orderly administration of justice.[14]

Courts Cannot Reverse the Secretary of Justice's Findings Except in Clear Cases of Grave Abuse of Discretion

The term "grave abuse of discretion" means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify judicial intervention, the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the

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[11] *Ibid.*

[12] *Elma v. Jacobi*, G.R. No. 155996, June 27, 2012, 675 SCRA 20, 56-57.

[13] Section 1, Article VIII of the Constitution states:

"Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

[14] *Callo-Claridad v. Esteban, supra* note 10, at 200.

power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[15] In *Elma v. Jacobi*,[16] we said that:

> This **error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached.** This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained. [emphasis supplied]

An examination of the decisions of the State Prosecutor and of the DOJ shows that the complaint's dismissal was anchored on the *insufficiency of evidence* to establish the respondent's direct, personal or actual participation in the offense charged. As the State Prosecutor found (and affirmed by the DOJ), the petitioner failed to prove the ownership of the warehouse where counterfeit shampoo products were found. This finding led to the conclusion that there was insufficient basis for an indictment for unfair competition as the petitioner failed to sufficiently prove that the respondent was the owner or manufacturer of the counterfeit shampoo products found in the warehouse.

A careful analysis of the lower courts' rulings and the records, however, reveals that substantial facts and circumstances that could affect the result of the case have been overlooked. While the ownership of the warehouse on Camia Street, Marikina City, was not proven, sufficient evidence to prove the existence of probable cause nevertheless exists. These pieces of evidence consist of: (1) the result of the NBI agents' search of the office

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[15] *First Women's Credit Corp. v. Hon. Perez,* 524 Phil. 305, 309 (2006).

[16] *Supra* note 12, at 57.

and of the warehouse; (2) Elmer Cadano's complaint-affidavit; (3) Rene Baltazar's affidavit; (4) Unilever's representatives' claim that all the laborers present at the warehouse confirmed that it was operated by Probest International Trading; (5) other object evidence found and seized at the respondent's office and warehouse; (6) the NBI operatives' Joint Affidavit; (7) the subsequent seizure of counterfeit Unilever products from the respondent's warehouse in Antipolo City; and (8) other photographs and documents relative to the counterfeit products.

These pieces of evidence, to our mind, are sufficient to form a reasonable ground to believe that the crime of unfair competition was committed and that the respondent was its author.

First, a total of 1,238 assorted counterfeit Unilever products were found at, and seized from, the respondent's office located on the 3rd floor of Probest International Trading Building, Katipunan Street, Concepcion, Marikina City. The huge volume and the location where these shampoos were found (inside a box under a pile of other boxes located inside the respondent's office) belie the respondent's claim of personal consumption. Human experience and common sense dictate that shampoo products (intended for personal consumption) will ordinarily and logically be found inside the house, specifically, inside the bathroom or in a private room, not in the consumer's office.

Second, the failure to prove that the respondent is the owner of the warehouse located on Camia St., Marikina City, does not automatically free him from liability. Proof of the warehouse's ownership is not crucial to the finding of probable cause. In fact, ownership of the establishment where the counterfeit products were found is not even an element of unfair competition. While the respondent may not be its owner, this does not foreclose the possibility that he was the manufacturer or distributor of the counterfeit shampoo products. **Needless to say, what is material to a finding of probable cause is the commission of acts constituting unfair competition, the presence of all its elements and the reasonable belief, based on evidence, that the respondent had committed it**.

Third, the result of the NBI's search conducted on January 17, 2002 (yielding to several boxes of counterfeit shampoo sachets) and the NBI's Joint Affidavits in support of the application for search warrants serve as corroborating evidence. The striking similarities[17] between the genuine Unilever shampoo sachets and the counterfeit sachets seized by the NBI support the belief that the respondent had been engaged in dealing, manufacturing, selling and distributing *counterfeit* Unilever shampoo products.

Fourth, there were also allegations that the respondent's laborers and warehousemen who were present during the search had confirmed that the warehouse was being maintained and operated by Probest International Trading. The NBI investigators who served the search warrant also claimed that several persons, introducing themselves as the respondent's relatives and friends, had requested them to seize only a portion of the counterfeit shampoo products. Whether these claims are admissible in evidence or whether they should be excluded as hearsay are matters that should be determined not in a preliminary investigation, but in a full-blown trial.

In *Lee v. KBC Bank N.V.*,[18] citing *Andres v. Justice Secretary Cuevas*,[19] we held that:

> [A preliminary investigation] is not the occasion for the full and exhaustive display of [the prosecution's] evidence. **The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits**.

We also emphasized in that case that:

> In fine, the validity and merits of a party's defense or accusation, as well as **the admissibility** of testimonies and **evidence, are better**

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[17] *Rollo*, pp. 76-78.

[18] G.R. No. 164673, January 15, 2010, 610 SCRA 117, 129; emphasis supplied.

[19] 499 Phil. 36 (2005).

ventilated during trial proper than at the preliminary investigation level.[20]

Finally, the subsequent events that occurred – *after the filing of the petitioner's complaint and the institution of its appeal to the CA* – are too significant to be ignored.

In its motion to reconsider the CA's decision,[21] the petitioner pointed to the reports it received sometime in October 2005 that the respondent had resumed its operations involving counterfeit Unilever products. Notably, these significant reports, albeit supported by the subsequent seizure of large quantity of counterfeit Unilever shampoos[22] in the respondent's warehouse[23] (located at No. 13 First Street Corner Sevilla Avenue, Virginia Summerville Subdivision, Barangay Mambugan, Antipolo City), were ignored by the CA. We, however, find that this development is significant, although they were not part of the mass of evidence considered below. Even without them and based solely on the evidentiary materials available below, we conclude that sufficient grounds exist to indict the respondent for unfair competition.

Determination of Probable Cause Merely Requires Probability of Guilt or Reasonable Ground for Belief

The determination of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and there is enough reason to believe that it was committed by the accused.[24] It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt.[25] What is merely required is

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[20] *Ibid.*; emphasis ours.

[21] CA *rollo*, pp. 439-458.

[22] *Id.* at 466-467.

[23] *Rollo*, p. 280.

[24] *Galario v. Office of the Ombudsman (Mindanao)*, 554 Phil. 86, 101 (2007).

[25] *Casing v. Ombudsman*, G.R. No. 192334, June 13, 2012, 672 SCRA 500, 509.

"probability of guilt." Its determination, too, does not call for the application of rules or standards of proof that a judgment of conviction requires after trial on the merits.[26] Thus, in concluding that there is probable cause, it suffices that it is believed that the act or omission complained of constitutes the very offense charged.

It is also important to stress that the determination of probable cause does not depend on the validity or merits of a party's accusation or defense, or on the admissibility or veracity of testimonies presented. As previously discussed, these matters are better ventilated during the trial proper of the case.[27] As held in *Metropolitan Bank & Trust Company v. Gonzales*:[28]

> Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. xxx The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. **Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.**

Guided by this ruling, we find that the CA gravely erred in sustaining the Acting Secretary of Justice's finding that there was no probable cause to indict the respondent for unfair competition. The dismissal of the complaint, despite ample evidence to support a finding of probable cause, clearly constitutes grave error that warrants judicial intervention and correction.

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[26] *Ricaforte v. Jurado,* 559 Phil. 97, 109 (2007).

[27] *Lee v. KBC Bank N.V., supra* note 18, at 129.

[28] G.R. No. 180165, April 7, 2009, 584 SCRA 631, 640-641; emphasis ours.

WHEREFORE, in view of the foregoing, judgment is hereby rendered **GRANTING** the petition filed by Unilever Philippines, Inc. The appealed decision dated June 18, 2007 and the resolution dated August 16, 2007 of the Court of Appeals are **ANNULLED AND SET ASIDE**.

The State Prosecutor is hereby **ORDERED** to file the appropriate Information against Michael Tan *a.k.a*. Paul D. Tan.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188653. January 29, 2014]

LITO LOPEZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 6425 (THE DANGEROUS DRUGS ACT OF 1972); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; TO SUCCESSFULLY PROSECUTE A CASE INVOLVING ILLEGAL DRUGS, THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI* MUST DEFINITELY BE SHOWN TO HAVE BEEN PRESERVED; RATIONALE.— In the prosecution of drug cases, it is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt. To successfully prosecute a case involving illegal drugs, 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-petitioner.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE CHAIN OF CUSTODY RULE COMES INTO PLAY AS A MODE OF AUTHENTICATING THE SEIZED ILLEGAL DRUG AS EVIDENCE; ELUCIDATED.— In both cases of illegal sale and illegal possession of dangerous drugs, the prosecution must show the chain of custody over the dangerous drug in order to establish the *corpus delicti*, which is the dangerous drug itself. The chain of custody rule comes into play as a mode of authenticating the seized illegal drug as evidence. It includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Indeed, it is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused. 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 and on allegations of robbery or theft. The rule requires that the marking of the seized items should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence. Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimens will

use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.

3. ID.; ID.; ID.; ID.; FAILURE TO MARK THE DRUGS IMMEDIATELY AFTER THEY WERE SEIZED FROM THE ACCUSED CASTS DOUBT ON THE PROSECUTION EVIDENCE, WARRANTING ACQUITTAL ON REASONABLE DOUBT; APPLICATION IN CASE AT BAR.— There are occasions when the chain of custody rule is relaxed such as when the marking of the seized items immediately after seizure and confiscation is allowed to be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of an accused in illegal drugs cases. However, even a less-than-stringent application of the requirement would not suffice to sustain the conviction in this case. There was no categorical statement from any of the prosecution witnesses that markings were made, much less immediately upon confiscation of the seized items. There was also no showing that markings were made in the presence of the accused in this case. Evidently, there is an irregularity in the first link of the chain of custody. We have consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties. Failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt. x x x The conflicting testimonies of the police officers and lack of evidence lead to a reasonable conclusion that no markings were actually made on the seized items. It is also worth mentioning that the photographs which the prosecution witnesses claim to have been taken after the seizure do not appear on the records nor were they presented or offered as evidence. A substantial gap in the chain of custody renders the identity and integrity of the *corpus delicti* dubious. x x x There were indeed substantial gaps in the chain of custody from the initial stage with the apparent lack of markings. Upon confiscation of the *shabu*, the prosecution witnesses never recounted which police officer had initial control and custody

upon their confiscation and while in transit. At the police station, nobody witnessed if and how the seized items were marked. x x x Their records were likewise bereft of any detail as to who exercised custody and possession of the seized items after their chemical examination and before they were offered as evidence in court. All these weak links in the chain of custody significantly affected the integrity of the items seized, which in turn, created a reasonable doubt on the guilt of the accused. In this light, we are constrained to acquit petitioner on reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Assailed in this petition is the Decision[1] of the Court of Appeals affirming the conviction of petitioner Lito Lopez by the Regional Trial Court (RTC)[2] in Criminal Case No. T-3476, which found him guilty beyond reasonable doubt of illegal possession of dangerous drugs.

Petitioner was charged with violation of Section 16, Article III of Republic Act No. 6425, in an Information which reads:

That on or about the 31st day of July, 2000, at 7:30 o'clock in the evening, more or less, at Purok 1, Brgy. Baranghawon, Municipality of Tabaco, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess and violate the law, did then and there willfully, unlawfully and criminally have in his possession and control 0.0849

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[1] Penned by Associate Justice Jose Catral Mendoza (now a member of this Court) with Associate Justices Portia Aliño-Hormachuelos and Ramon M. Bato, Jr., concurring. *Rollo*, pp. 88-101.

[2] Presided by Judge Arnulfo B. Cabredo. *Id.* at 27-42.

gram of Methamphetamine Hydrochloride, commonly known as "*shabu*", a regulated drug contained in four (4) small transparent packets; four (4) pieces of aluminum foil and one (1) transparent plastic packet, both containing "*shabu*" residue, without authority, license or permit from the government or its duly authorized representatives.[3]

Upon arraignment, petitioner pleaded not guilty to the crime charged.

The witnesses for the prosecution testified on the following facts:

Senior Police Officer 4 Benito Bognalos (SPO4 Bognalos) was the team leader of the group of police officers assigned to implement the search warrant issued by Judge Arsenio Base of the Municipal Trial Court of Tabaco, Albay, on the house of petitioner located at *Purok* 1, *Barangay* Baranghawon, Tabaco, Albay. The search group was composed of SPO3 Domingo Borigas (SPO3 Borigas), PO3 Carlos Desuasido (PO3 Desuasido), and PO3 Ferdinand Telado (PO3 Telado) while another group, consisting of SPO1 Venancio Rolda, PO3 Cesar Templonuevo and SPO2 Melchor Codornes, were tasked to secure the perimeter area. SPO4 Bognalos contacted the *barangay* officials to ask for assistance in the conduct of the search.

At around 7:30 p.m. of 31 July 2000, the search team, together with three (3) *barangay* officials, went to the house of petitioner and presented the search warrant to him. He eventually relented to the conduct of search. PO3 Desuasido seized a piece of folded paper containing four (4) ¼ x ½ inch transparent plastic packets of white powder, two (2) 2x1-½ inch plastic sachets containing white powder, and a crystal-like stone measuring 2 inches in contoured diameter concealed in the kitchen.[4] SPO3 Borigas found two (2) 2x1-½ inch plastic sachets containing white powder in the bathroom. PO3 Telado seized one (1) ¼ x ½ inch plastic packet containing suspected residue of *shabu* inside

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[3] Records, p. 36.

[4] TSN, 20 August 2003, pp. 8-10.

the master's bedroom. PO3 Telado also recovered one (1) 1x1-½ inch plastic sachet containing suspected residue of *shabu*, four aluminum rolls, and a piece of paper partly burned at one end.[5] *Barangay* Captain Angeles Brutas witnessed the conduct by the policemen of the search in petitioner's kitchen and saw how the plastic sachets containing the suspected *shabu* were recovered.[6] *Barangay Kagawad* Leticia Bongon also saw how the policemen found outside the house a white, round, hard and "*tawas*-like" object in the kitchen and aluminum foils, which were allegedly used as *shabu* paraphernalia.[7] After the search, the seized items were photographed and a seizure receipt, properly acknowledged by petitioner, was issued. Petitioner was then brought to the police station while the seized plastic sachets were brought by the Chief of Police to the Legazpi City Crime Laboratory for examination.[8]

Forensic Chemist Police Superintendent Lorlie Arroyo in her Chemistry Report No. D-111-2000,[9] found that the seized plastic sachets are positive for *methamphetamine hydrochloride* or *shabu*. She likewise testified on her findings.

Testifying on his own behalf, petitioner narrated that at exactly 7:30 p.m. on 31 July 2000, more than ten (10) policemen barged into his house. Petitioner initially asked them for their purpose and he was told that they had a search warrant. Petitioner was not able to take a good look at the search warrant because one Butch Gonzales pushed him aside while the others entered his house. The policemen searched different parts of his house while he was made to sit in the living room by PO3 Desuasido. From where he was seated, he could not see what was happening inside the kitchen or in the bedroom, where policemen allegedly recovered plastic sachets containing *shabu*. He was asked to

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[5] TSN, 2 October 2003, pp. 10-12.

[6] TSN, 29 June 2005, pp. 4-5.

[7] TSN, 29 September 2005, pp. 6-8.

[8] TSN, 18 April 2002, pp. 4-8.

[9] Records, p. 7.

sign a seizure receipt but refused to do so. After the search, he was taken into custody and brought to the police station.[10] Salvacion Posadas, petitioner's former common-law partner, was also inside petitioner's house at the time of the search. She corroborated petitioner's testimony that they were not able to witness the search because they were made to sit in the living room. She also claimed that the *barangay* officials did not accompany the policemen in the search inside the kitchen and bedroom.[11]

On 23 May 2007, the RTC convicted petitioner of the charge of illegal possession of *shabu* in violation of Section 16, Article III of Republic Act No. 6425.

The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered, finding accused Lito Lopez GUILTY beyond reasonable doubt of Violation of Section 16, Article III, Republic Act 6425 and considering the quantity of the methamphetamine hydrochloride seized from the accused, which is 0.0849 gram, and applying the Indeterminate Sentence Law, this Court hereby sentences him to suffer an indeterminate penalty of from four (4) months and one (1) day of *arresto mayor* in its medium period as minimum, to three (3) years of *prision correccional* in its medium period as maximum.
>
> The *Methamphetamine Hydrochloride*, subject matter of this case is forfeited in favor of the government, and the Branch Clerk of Court is directed to turn over the same to the Dangerous Drugs Board for proper disposition, upon finality of this decision.[12]

In convicting petitioner of illegal possession of *shabu*, the trial court lent more credence to the evidence of the prosecution. The trial court held that the prosecution was able to prove all elements of the crime charged, more particularly, that petitioner was in possession of the *shabu*. The trial court dismissed petitioner's claim that the seized *shabu* was planted by the

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[10] TSN, 8 June 2006, pp. 4-11.

[11] TSN, 1 March 2006, pp. 4-10.

[12] *Rollo*, pp. 41-42.

policemen by explaining that these police officers have no ill-motive to falsely testify against petitioner.

In his Brief filed before the Court of Appeals, petitioner contended that there was an irregularity in the conduct of the search when it was witnessed only by *barangay* officials while petitioner's view from the living room was blocked by a concrete wall partition. Petitioner thus advanced the possibility of indiscriminate search and planting of evidence. Petitioner also questioned the time when the search was conducted. Petitioner pointed out that one Butch Gonzales, who is not a part of the search team, participated in the search and was able to seize a plastic sachet allegedly containing *shabu*. Petitioner averred that the seized items were not delivered to the court which issued the warrant. In addition, petitioner claimed that the police officers did not properly observe the chain of custody rule, such that the pieces of evidence were not properly marked in the house of petitioner but were marked at the police station.

On 31 March 2009, the Court of Appeals affirmed the RTC's Decision convicting petitioner of illegal possession of *shabu*. The appellate court upheld the valid implementation of the search warrant by police officers. According to the appellate court, petitioner was present during the search and his movement was not restricted as he was free to follow the policemen conducting the search. The appellate court considered the time of the search as reasonable. With respect to the argument that the seized items were not delivered to the court, the appellate court observed that said issue was not raised during trial, hence, the objection is deemed waived.

Petitioner filed the instant petition for review on *certiorari* zeroing in on the argument that the identity and integrity of the seized items were not proven beyond reasonable doubt. Petitioner insists that the records were bereft of evidence showing every link in the chain of custody of the seized *shabu*. Petitioner points out that the person in the crime laboratory who allegedly handled the seized items was not presented during the trial and there was no testimony made on the disposition of the alleged *shabu* after its examination by the forensic chemist and prior to its

presentation in court. Petitioner also notes that the alleged seized drugs were not immediately marked at the time of the alleged seizure.

In the prosecution of drug cases, it is of paramount importance that the existence of the drug, the *corpus delicti* of the crime, be established beyond doubt. To successfully prosecute a case involving illegal drugs, 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-petitioner.[13]

In both cases of illegal sale and illegal possession of dangerous drugs, the prosecution must show the chain of custody over the dangerous drug in order to establish the *corpus delicti*, which is the dangerous drug itself.[14] The chain of custody rule comes into play as a mode of authenticating the seized illegal drug as evidence. It includes testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Indeed, it is from the testimony of every witness

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[13] *People v. Denoman*, G.R. No. 171732, 14 August 2009, 596 SCRA 257, 267 citing *People v. Robles*, G.R. No. 177220, 24 April 2009, 586 SCRA 647, 654.

[14] *People v. Somoza*, G.R. No. 197250, 17 July 2013 citing *People v. Remigio*, G.R. No. 189277, 5 December 2012, 687 SCRA 336, 347.

who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.[15] 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 and on allegations of robbery or theft.[16]

The rule requires that the marking of the seized items should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.[17]

Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.[18]

According to PO3 Telado, all the seized items were marked only at the police station. But when asked who put the markings, PO3 Telado surmised that it was PO3 Desuasido.[19] Aside from PO3 Telado, no other witnesses testified on the supposed

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[15] *Lopez v. People*, G.R. No. 184037, 29 September 2009, 601 SCRA 316, 326-327 citing *Catuiran v. People*, G.R. No. 175647, 8 May 2009, 587 SCRA 567, 576-577.

[16] *People v. Sanchez*, G.R. No. 175832, 15 October 2008, 569 SCRA 194, 218-219.

[17] *Id.*

[18] *People v. Guzon*, G.R. No. 199901, 9 October 2013; *People v. Salonga*, G.R. No. 194948, 2 September 2013 citing *People v. Coreche*, G.R. No. 182528, 14 August 2009, 596 SCRA 350, 357.

[19] TSN, 2 October 2003, pp. 27-28.

markings. PO3 Desuasido was **not** asked on the witness stand about the markings. When cross-examined how the seized items were handled, SP04 Bognalos testified:

Q: After you have searched and found these sachets containing "*Shabu*" what did you and your party do?

A: It was photographed, given seizure receipt properly acknowledged by the respondent. And later on for proper disposition and then Lito Lopez was brought to the police station for proper booking and further investigation.

Q: You said these recovered sachets found in the house of the accused were photographed. Do you have copies of these photographs?

A: No, sir.

Q: Why?

A: Because it was submitted to the Municipal Trial Court, Tabaco together with the filing of the case.

Q: What did you do with these seized sachets containing "*Shabu*" after the same was brought to the police station?

A: It was sent to the Legazpi City Crime Laboratory for proper examination.[20]

There are occasions when the chain of custody rule is relaxed such as when the marking of the seized items immediately after seizure and confiscation is allowed to be undertaken at the police station rather than at the place of arrest for as long as it is done in the presence of an accused in illegal drugs cases.[21] However, even a less-than-stringent application of the requirement would not suffice to sustain the conviction in this case. There was no categorical statement from any of the prosecution witnesses that markings were made, much less immediately upon confiscation of the seized items. There was also no showing that markings were made in the presence of the accused in this case.

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[20] TSN, 18 April 2002, p. 8.

[21] *People v. Resurreccion*, G.R. No. 186380, 12 October 2009, 603 SCRA 510, 520.

Evidently, there is an irregularity in the first link of the chain of custody.

We have consistently held that failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties. Failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence, warranting acquittal on reasonable doubt.[22]

Furthermore, the Chemistry Report, containing a description of the items seized, does not show or make any mention of any markings made on all the items seized. As a matter of fact, during the trial, PO3 Desuasido seemingly could not readily identify the plastic sachets he allegedly seized inside petitioner's house, thus:

Q: If I show to you the four (4) plastic sachets containing "*shabu*" will you be able to recognize it?

ATTY. BROTAMONTE:
Same objection. No basis.

COURT:
Let the witness answer.

PROSECUTOR PIFANO:
Q: Showing to you [these] plastic sachets. Kindly examine the same and tell the court if these were the ones that were found in the house of the accused?

WITNESS:

A: If it were the ones that came from the crime laboratory then it is, sir.[23]

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[22] *People v. Umipang*, G.R. No. 190321, 25 April 2012, 671 SCRA 324, 339; *San Juan v. People*, G.R. No. 177191, 30 May 2011, 649 SCRA 300, 316-317; *People v. Coreche*, *supra* note 18 at 357-358.

[23] TSN, 20 August 2003, pp. 11-12.

On the other hand, PO3 Telado identified the plastic sachets he seized based only on their sizes, to wit:

Q: Now, you identified the supposed sachets that you had found in the house of the accused. What made you identify them today as the ones that you had found?

A: Because I can distinctly remember those aluminum foils.

Q: Okay. No, I'm referring to the sachets?

A: I can remember it because of the size.

Q: Of course, you will agree with me that you did not first measure the size of those two (2) sachets at that time before you actually identified them today?

A: Yes, sir.

Q: How were you able to identify today that the aluminum foils shown to you by the Fiscal were the ones used as supposedly found in the house of the accused?

A: Because it's cr[u]mpled and folded.

ATTY. BROTAMONTE:
Q: Was that your only basis as you have identified it today?

WITNESS:

A: Yes, sir.[24]

Even the evidence presented in court were not identified with certainty as the ones which were seized by the police officers.

As already stated, it is the unique characteristic of dangerous and illegal drugs which renders imperative strict compliance with the prescribed measures to be observed during and after the seizure of dangerous drugs and related paraphernalia, during the custody and transfer thereof for examination, and at all times up to their presentation in court.[25]

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[24] TSN, 2 October 2003, pp. 28-29.

[25] *People v. Nacua,* G.R. No. 200165, 30 January 2013, 689 SCRA 819, 832 citing *People v. Magpayo,* G.R. No. 187069, 20 October 2010, 634 SCRA 441, 449.

The conflicting testimonies of the police officers and lack of evidence lead to a reasonable conclusion that no markings were actually made on the seized items. It is also worth mentioning that the photographs which the prosecution witnesses claim to have been taken after the seizure do not appear on the records nor were they presented or offered as evidence.

A substantial gap in the chain of custody renders the identity and integrity of the *corpus delicti* dubious.

We ruled in *People v. Kamad*[26] that the links that must be established in the chain of custody in a buy-bust situation are: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[27]

There were indeed substantial gaps in the chain of custody from the initial stage with the apparent lack of markings. Upon confiscation of the *shabu*, the prosecution witnesses never recounted which police officer had initial control and custody upon their confiscation and while in transit. At the police station, nobody witnessed if and how the seized items were marked. SPO4 Bognalos alleged that it was the Chief of Police who forwarded the seized sachets to the crime laboratory,[28] while PO3 Telado intimated that it was the investigator who turned them over to the crime laboratory. Their records were likewise bereft of any detail as to who exercised custody and possession of the seized items after their chemical examination and before they were offered as evidence in court. All these weak links in the chain of custody significantly affected the integrity of the

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[26] G.R. No. 174198, 19 January 2010, 610 SCRA 295.

[27] *Id.* at 307-308.

[28] TSN, 18 April 2002, p. 8.

items seized, which in turn, created a reasonable doubt on the guilt of the accused.

In this light, we are constrained to acquit petitioner on reasonable doubt.

WHEREFORE, premises considered, the 31 March 2009 Decision of the Court of Appeals in CA-G.R. CR No. 30939 affirming the conviction by the Regional Trial Court, Branch 17, Tabaco City, in Criminal Case No. T-3476 for illegal possession of *shabu* under Section 16, Article III of Republic Act No. 6425, is hereby **REVERSED** and **SET ASIDE**. Petitioner **LITO LOPEZ** is **ACQUITTED** and ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

The Jail Warden, Bureau of Jail Management and Penology, Tabaco District Jail, San Lorenzo, Tabaco City is **DIRECTED** to **IMPLEMENT** this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188747. January 29, 2014]

MANILA WATER COMPANY, *petitioner, vs.* **CARLITO DEL ROSARIO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY

EMPLOYER; AN EMPLOYEE WHO HAS BEEN DISMISSED FOR ANY OF THE CAUSES ENUMERATED UNDER THE LABOR CODE IS NOT ENTITLED TO SEPARATION PAY; EXCEPTION; REQUIREMENTS.— As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to a separation pay. x x x In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds." In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee. x x x The commitment of the court to the cause of the labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of liberality of the law. Guided by the foregoing rules, we have carefully treaded the path of compassionate justice in the subsequent cases so as not to slip and favor labor at the expense of management.

2. **ID.; ID.; ID.; THE GRANT OF SEPARATION PAY TO A DISMISSED EMPLOYEE IS DETERMINED BY THE CAUSE OF THE DISMISSAL.—** The appellate court erred in awarding separation pay to Del Rosario without taking into consideration that the transgression he committed constitutes a serious offense. The grant of separation pay to a dismissed employee is determined by the cause of the dismissal. The years of service may determine how much separation pay may be awarded. It is, however, not the reason why such pay should be granted at all. In sum, we hold that the award of separation pay or any other kind of financial assistance to Del Rosario, under the nomenclature of compassionate justice, is not warranted in the instant case. A contrary rule would have the effect of rewarding rather than punishing an erring employee, disturbing the noble concept of social justice.

3. **ID.; ID.; ID.; DUE PROCESS PREVENTS THE GRANT OF ADDITIONAL AWARDS TO PARTIES WHO DID NOT APPEAL.—** It is settled in our jurisprudence that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision. Due process prevents the grant of additional awards

to parties who did not appeal. Having said that, this Court will no longer dwell on the issue of whether or not Del Rosario was illegally dismissed from employment.

4. ID.; ID.; ID.; IF THE INVESTIGATION IS MERELY ADMINISTRATIVE CONDUCTED BY THE EMPLOYER, THE ADMISSION MADE DURING SUCH INVESTIGATION MAY BE USED IN EVIDENCE TO JUSTIFY DISMISSAL.— Included in the closed aspect of the case is respondent's argument that the absence of his counsel when he admitted the charge against him diminished the evidentiary value of such admission. Nonetheless, it may be mentioned that the constitutional right to counsel is available only during custodial investigation. If the investigation is merely administrative conducted by the employer and not a criminal investigation, the admission made during such investigation may be used as evidence to justify dismissal.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Reynoso Lumbatan Castillon Law Offices Extension for respondent.

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 31 March 2009 Decision[2] rendered by the Fifth Division of the Court of Appeals in CA-G.R. SP No. 92583. In its assailed decision, the appellate court: (1) reversed as grave abuse of discretion the Resolution of the National Labor Relations Commission (NLRC) which dismissed the petition of Manila Water Company

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

[2] Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Remedios A. Salazar-Fernando and Apolinario D. Brusuelas, Jr., concurring. *Id.* at 25-36.

(Manila Water) on technical grounds; and (2) proceeded to affirm with modification the ruling of the Labor Arbiter. Manila Water was ordered to pay respondent Carlito Del Rosario (Del Rosario) separation pay to be computed from 1 August 1997 up to June 2000.

In a Resolution[3] dated 7 July 2009, the appellate court refused to reconsider its earlier decision.

The Facts

On 22 October 1979, Del Rosario was employed as Instrument Technician by Metropolitan Waterworks and Sewerage System (MWSS). Sometime in 1996, MWSS was reorganized pursuant to Republic Act No. 8041 or the National Water Crisis Act of 1995, and its implementing guidelines — Executive Order No. 286. Because of the reorganization, Manila Water absorbed some employees of MWSS including Del Rosario. On 1 August 1997, Del Rosario officially became an employee of Manila Water.

Sometime in May 2000, Manila Water discovered that 24 water meters were missing in its stockroom. Upon initial investigation, it appeared that Del Rosario and his co-employee, a certain Danilo Manguera, were involved in the pilferage and the sale of water meters to the company's contractor. Consequently, Manila Water issued a Memorandum dated 23 June 2000, directing Del Rosario to explain in writing within 72 hours why he should not be dealt with administratively for the loss of the said water meters.[4] In his letter-explanation,[5] Del Rosario confessed his involvement in the act charged and pleaded for forgiveness, promising not to commit similar acts in the future.

On 29 June 2000, Manila Water conducted a hearing to afford Del Rosario the opportunity to personally defend himself and

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[3] *Id.* at 38.

[4] *Id.* at 39.

[5] *Id.* at 40.

to explain and clarify his defenses to the charge against him. During the formal investigation Del Rosario was found responsible for the loss of the water meters and therefore liable for violating Section 11.1 of the Company's Code of Conduct.[6] Manila Water proceeded to dismiss Del Rosario from employment on 3 July 2000.[7]

This prompted Del Rosario to file an action for illegal dismissal claiming that his severance from employment is without just cause. In his Position Paper submitted before the labor officer, Del Rosario averred that his admission to the misconduct charged was not voluntary but was coerced by the company. Such admission therefore, made without the assistance of a counsel, could not be made basis in terminating his employment.

Refuting the allegations of Del Rosario, Manila Water pointed out that he was indeed involved in the taking of the water meters from the company's stock room and of selling these to a private contractor for personal gain. Invoking Section 11.1 of the Company's Code of Conduct, Manila Water averred that such act of stealing the company's property is punishable by dismissal. The company invited the attention of this Court to the fact that Del Rosario himself confessed his involvement to the loss of the water meters not only in his letter-explanation, but also during the formal investigation, and in both instances, pleaded for his employer's forgiveness.[8]

After weighing the positions taken by the opposing parties, including the evidence adduced in support of their respective cases, the Labor Arbiter issued a Decision[9] dated 30 May 2002 dismissing for lack of merit the complaint filed by Del Rosario who was, however, awarded separation pay. According to the Labor Arbiter, Del Rosario's length of service for 21 years,

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[6] *Id.* at 42.

[7] *Id.* at 43.

[8] *Id.* at 44-48.

[9] *Id.* at 77-81.

without previous derogatory record, warrants the award of separation pay. The decretal portion of the decision reads:

> WHEREFORE, viewed from the foregoing, judgment is hereby rendered DISMISSING the complaint for illegal dismissal for lack of merit.
>
> [Manila Water] is hereby ordered to pay complainant separation pay equivalent to one-half (1/2) month's salary for every year of service based on his basic salary (Php 11,244.00) at the time of his dismissal. This shall be computed from [1 August 1997] up to June 2000, the total amount of which is ONE HUNDRED EIGHTEEN THOUSAND SIXTY-TWO (Php 118,062.00) PESOS.[10]

In a Resolution[11] dated 30 September 2003, the NLRC dismissed the appeal interposed by Manila Water for its failure to append a certification against forum shopping in its Memorandum of Appeal.

Similarly ill-fated was Manila Water's Motion for Reconsideration which was denied by the NLRC in a Resolution[12] dated 28 April 2005.

On *Certiorari*, the Court of Appeals in its Decision dated 31 March 2009, reversed the NLRC Resolution and held that it committed a grave abuse of discretion when it dismissed Manila Water's appeal on mere technicality. The appellate court, however, proceeded to affirm the decision of the Labor Arbiter awarding separation pay to Del Rosario. Considering that Del Rosario rendered 21 years of service to the company without previous derogatory record, the appellate court considered the granting of separation pay by the labor officer justified. The *fallo* of the assailed Court of Appeals Decision reads:

> WHEREFORE, the petition is partly granted. The assailed Resolutions dated September 30, 2003 and [April 28, 2005] of public respondent NLRC are set aside. The Decision dated May 30, 2002

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[10] *Id.* at 81.

[11] *Id.* at 108-109.

[12] *Id.* at 115-121.

of the [L]abor [A]rbiter is reinstated, subject to the modification that the computation of the award of separation pay [to] private respondent shall be counted from August 1, 1997 x x x up to June 2000.[13]

In a Resolution[14] dated 7 July 2009, the Court of Appeals refused to reconsider its earlier decision.

Unrelenting, Manila Water filed the instant Petition for Review on *Certiorari* assailing the foregoing Court of Appeals Decision and Resolution on the sole ground that:

THE [COURT OF APPEALS] SERIOUSLY ERRED IN ISSUING THE QUESTIONED DECISION AND RESOLUTION WHICH DIRECTLY CONTRAVENE BOOK VI, RULE 1, AND SECTION 7 OF THE OMNIBUS RULES IMPLEMENTING THE LABOR CODE AND PREVAILING JURISPRUDENCE WHICH CATEGORICALLY PROVIDE THAT AN EMPLOYEE SEPARATED FROM SERIOUS MISCONDUCT IS NOT ENTITLED TO TERMINATION (SEPARATION) PAY.[15]

The Court's Ruling

In the instant petition, Manila Water essentially questions the award of separation pay to respondent who was dismissed for stealing the company's property which amounted to gross misconduct. It argues that separation pay or financial assistance is not awarded to employees guilty of gross misconduct or for cause reflecting on his moral character.[16]

Del Rosario for his part maintains that there is no legal ground to justify his termination from employment. He insists that his admission pertaining to his involvement in the loss of the water meters was merely coerced by the company. Since his dismissal was without valid or just cause, Del Rosario avers that Manila

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[13] *Id.* at 35-36.

[14] *Id.* at 38.

[15] *Id.* at 11.

[16] *Id.* at 3-19.

Water is guilty of illegal dismissal rendering it liable for the payment of backwages and separation pay.[17]

It must be stressed at the outset that the correctness of the Labor Arbiter's pronouncement on the legality of Del Rosario's dismissal is no longer an issue and is beyond modification. While Manila Water timely appealed the ruling of the Labor Arbiter awarding separation pay to Del Rosario, the latter did not question the dismissal of his illegal termination case.[18] It is settled in our jurisprudence that a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision.[19] Due process prevents the grant of additional awards to parties who did not appeal.[20] Having said that, this Court will no longer dwell on the issue of whether or not Del Rosario was illegally dismissed from employment. Included in the closed aspect of the case is respondent's argument that the absence of his counsel when he admitted the charge against him diminished the evidentiary value of such admission. Nonetheless, it may be mentioned that the constitutional right to counsel is available only during custodial investigation. If the investigation is merely administrative conducted by the employer and not a criminal investigation, the admission made during such investigation may be used as evidence to justify dismissal.[21]

Our focus will be on the propriety of the award for separation pay.

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

[18] *Id.* at 108-109.

[19] *Unilever Philippines, Inc. v. Rivera*, G.R. No. 201701, 3 June 3013.

As an exception, he may assign an error where the purpose is to maintain the judgment on other grounds, but he cannot seek modification or reversal of the judgment or affirmative relief unless he has also appealed or filed a separate action. See *Aklan College, Inc. v. Enero*, G.R. No. 178309, 27 January 2009, 577 SCRA 64, 80.

[20] *Daabay v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 199890, 19 August 2013.

[21] *Manuel v. N.C. Construction Supply*, 346 Phil. 1014, 1024 (1997).

As a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282[22] of the Labor Code is not entitled to a separation pay.[23] Section 7, Rule I, Book VI of the Omnibus Rules implementing the Labor Code provides:

> Sec. 7. *Termination of employment by employer.* — The just causes for terminating the services of an employee shall be those provided in Article 282 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

In exceptional cases, however, the Court has granted separation pay to a legally dismissed employee as an act of "social justice" or on "equitable grounds."[24] In both instances, it is required that the dismissal (1) was not for serious misconduct; and (2) did not reflect on the moral character of the employee.[25]

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[22] ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

a. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

b. Gross and habitual neglect by the employee of his duties;

c. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

d. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

e. Other causes analogous to the foregoing.

[23] *Central Pangasinan Electric Cooperative, Inc. v. National Labor Relations Commission*, 555 Phil. 134, 138-139 (2007).

[24] *Unilever Philippines v. Rivera*, *supra* note 19.

[25] *Id.*

In the leading case of *Philippine Long Distance Telephone Company v. NLRC,*[26] we laid down the rule that separation pay shall be allowed as a measure of social justice only in the instances where the employee is validly dismissed for causes other than serious misconduct reflecting his moral character. We clarified that:

> We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.
>
> A contrary rule would, as the petitioner correctly argues, have the effect, of rewarding rather than punishing the erring employee for his offense. And we do not agree that the punishment is his dismissal only and that the separation pay has nothing to do with the wrong he has committed. Of course it has. Indeed, if the employee who steals from the company is granted separation pay even as he is validly dismissed, it is not unlikely that he will commit a similar offense in his next employment because he thinks he can expect a like leniency if he is again found out. This kind of misplaced compassion is not going to do labor in general any good as it will encourage the infiltration of its ranks by those who do not deserve the protection and concern of the Constitution.
>
> The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged. At best[,] it may mitigate the penalty but it certainly will not condone the offense. Compassion for the poor is an imperative of every humane society but only when the recipient is not a rascal claiming an undeserved privilege. Social justice cannot be permitted to be refuge of scoundrels any more than can equity be an impediment to the punishment of the guilty. Those who invoke social justice may do so only if their hands are clean and their motives blameless and not simply because they happen to be poor. This great policy of our

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[26] 247 Phil. 641 (1988).

Constitution is not meant for the protection of those who have proved they are not worthy of it, like the workers who have tainted the cause of labor with the blemishes of their own character.[27]

In the subsequent case of *Toyota Motor Phils. Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*,[28] we expanded the exclusions and elucidated that separation pay shall be allowed as a measure of social justice only in instances where the employee is validly dismissed for causes other than serious misconduct, willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime against the employer or his family, or those reflecting on his moral character. In the same case, we instructed the labor officials that they must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers.[29] The commitment of the court to the cause of the labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of liberality of the law.[30]

Guided by the foregoing rules, we have carefully treaded the path of compassionate justice in the subsequent cases so as not to slip and favor labor at the expense of management.

In *Tirazona v. Phillippine EDS Techno-Service, Inc. (PET, Inc.)*,[31] we denied the award of separation pay to an employee who was dismissed from employment due to loss of trust and confidence.

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[27] *Id.* at 649-650.

[28] 562 Phil. 759 (2007).

[29] *Id.* at 810-811.

[30] *Id.*

[31] G.R. No. 169712, 20 January 2009, 576 SCRA 625.

While [this] Court commiserates with the plight of Tirazona, who has recently manifested that she has since been suffering from her poor health condition, the Court cannot grant her plea for the award of financial benefits based solely on this unfortunate circumstance. For all its conceded merit, equity is available only in the absence of law and not as its replacement. **Equity as an exceptional extenuating circumstance does not favor, nor may it be used to reward, the indolent or the wrongdoer for that matter. This Court will not allow a party, in guise of equity, to benefit from its own fault**.[32] (Emphasis supplied).

The attendant circumstances in the present case considered, we are constrained to deny Del Rosario separation pay since the admitted cause of his dismissal amounts to serious misconduct. He is not only responsible for the loss of the water meters in flagrant violation of the company's policy but his act is in utter disregard of his partnership with his employer in the pursuit of mutual benefits.

In the recent case of *Daabay v. Coca-Cola Bottlers,*[33] this Court reiterated our ruling in *Toyota* and disallowed the payment of separation pay to an employee who was found guilty of stealing the company's property. We repeated that an award of separation pay in such an instance is misplaced compassion for the undeserving who may find their way back and weaken the fiber of labor.

That Del Rosario rendered 21 years of service to the company will not save the day for him. To this case, *Central Pangasinan Electric Cooperative, Inc. v. National Labor Relations Commission* is on all fours, thus:

Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity under the Labor Code nor under our prior decisions. The fact that private respondent served petitioner for

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[32] *Id.* at 633.

[33] *Supra* note 20.

more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. **If an employee's length of service is to be regarded as a justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to cleanse its ranks of undesirables**.[34] **(**Emphasis supplied).

Indubitably, the appellate court erred in awarding separation pay to Del Rosario without taking into consideration that the transgression he committed constitutes a serious offense. The grant of separation pay to a dismissed employee is determined by the cause of the dismissal. The years of service may determine how much separation pay may be awarded. It is, however, not the reason why such pay should be granted at all.

In sum, we hold that the award of separation pay or any other kind of financial assistance to Del Rosario, under the nomenclature of compassionate justice, is not warranted in the instant case. A contrary rule would have the effect of rewarding rather than punishing an erring employee, disturbing the noble concept of social justice.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Decision and Resolution of the Court of Appeals are hereby **REVERSED and SET ASIDE**.

SO ORDERED.

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

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[34] *Supra* note 23 at 139-140.

SECOND DIVISION

[G.R. No. 191189. January 29, 2014]

MANLAR RICE MILL, INC., *petitioner, vs.* **LOURDES L. DEYTO, doing business under the trade name "J.D. Grains Center" and JENNELITA DEYTO ANG, *A.K.A.* "JANET ANG,"** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; SUFFICIENCY OF EVIDENCE; IN CIVIL CASES, THE QUANTUM OF EVIDENCE REQUIRED IS PREPONDERANCE OF EVIDENCE.— It is a basic rule in evidence that he who alleges must prove his case or claim by the degree of evidence required. x x x In civil cases, the quantum of proof required is preponderance of evidence, which connotes "that evidence that is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other."

2. CIVIL LAW; OBLIGATIONS; THERE IS SOLIDARY LIABILITY ONLY WHEN THE OBLIGATION EXPRESSLY SO STATES, WHEN THE LAW PROVIDES OR WHEN THE NATURE OF THE OBLIGATION SO REQUIRES; NOT PRESENT IN CASE AT BAR.— x x x "Well-entrenched is the rule that solidary obligation cannot lightly be inferred. There is a solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires." What this Court sees is an attempt to implicate Deyto in a transaction between Manlar and Ang so that the former may recover its losses, since it could no longer recover them from Ang as a result of her absconding; this conclusion is indeed consistent with what the totality of the evidence on record appears to show. This, however, may not be allowed. As a general rule, a contract affects only the parties to it, and cannot be enforced by or against a person who is not a party thereto. "It is a basic principle in law that contracts can bind only the parties who

had entered into it; it cannot favor or prejudice a third person." Under Article 1311 of the Civil Code, contracts take effect only between the parties, their assigns and heirs. Thus, Manlar may sue Ang, but not Deyto, who the Court finds to be not a party to the rice supply contract.

APPEARANCES OF COUNSEL

Federico N. Alday, Jr. for petitioner.
Celestino S. Caingat, Jr. for Lourdes L. Deyto.

D E C I S I O N

DEL CASTILLO, *J.*:

As a general rule, a contract affects only the parties to it, and cannot be enforced by or against a person who is not a party thereto.

This Petition for Review on *Certiorari*[1] seeks to set aside the October 30, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 91239, entitled "*Manlar Rice Mill, Inc., Plaintiff-Appellee, versus Lourdes L. Deyto, doing business under the trade name JD Grains Center, Defendant-Appellant*," as well as its February 9, 2010 Resolution[3] denying reconsideration of the assailed judgment.

Factual Antecedents

Petitioner Manlar Rice Mill, Inc. (Manlar), organized and existing under Philippine laws, is engaged in the business of rice milling and selling of grains. Respondent Lourdes L. Deyto (Deyto) does business under the trade name "JD Grains Center" and is likewise engaged in the business of milling and selling

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[1] *Rollo*, pp. 8-66.

[2] *Id.* at 69-78; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

[3] *Id.* at 80-81.

of grains. Respondent Jennelita Deyto Ang or Janet Ang (Ang) is Deyto's daughter and, prior to her alleged absconding, operated her own rice trading business through her own store, "Janet Commercial Store."[4]

It appears that in October 2000, Ang entered into a rice supply contract with Manlar, with the former purchasing rice from the latter amounting to ₱3,843,220.00. The transaction was covered by nine postdated checks issued by Ang from her personal bank/checking account with Chinabank,[5] to wit:

Check Number	Date	Amount (PhP)
146514	October 19, 2000	₱ 204,660.00
146552	October 20, 2000	472,200.00
146739	October 27, 2000	327,600.00
146626	October 26, 2000	212,460.00
146627[6]	October 27, 2000	565,600.00
146740	October 30, 2000	515,000.00
146628	October 31, 2000	358,500.00
146630	November 4, 2000	593,600.00
146555	November 6, 2000	593,600.00
	TOTAL	₱ 3,843,220.00

Upon presentment, the first two checks were dishonored for having been drawn against insufficient funds; the remaining seven checks were dishonored for being drawn against a closed account. Manlar made oral and written demands upon both Deyto and Ang, which went unheeded.[7] It appears that during the time demand was being made upon Deyto, she informed Manlar,

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[4] *Id.* at 71; or "Jane Commercial Store," at p. 87.

[5] *Id.* at 302-310, 325; Chinabank del Monte Avenue Branch, Account No. 0179791-6. However, the checks themselves indicate that the account number is 0179716, and not 017979**1**6.

[6] *Id.* at 307. The Court of Appeals wrongly referred to it as Check No. 146**5**27.

[7] *Id.* at 311-312.

through its Sales Manager Pablo Pua (Pua), that Ang could not be located.[8]

On November 24, 2000,[9] Manlar filed a Complaint[10] for sum of money against Deyto and Ang before the Regional Trial Court (RTC) of Quezon City. The case was docketed as Civil Case No. Q-00-42527 and assigned to Branch 215. The Complaint essentially sought to hold Deyto and Ang solidarily liable on the rice supply contract. Manlar prayed for actual damages in the total amount of ₱3,843,220.00, with interest; ₱300,000.00 attorney's fees, with charges for appearance fees; and attachment bond and attachment expenses.

Deyto filed her Answer with Compulsory Counterclaim,[11] claiming that she did not contract with Manlar or any of its representatives regarding the purchase and delivery of rice; that JD Grains Center was solely owned by her, and Ang had no participation therein, whether as employee, consultant, agent or other capacity; that JD Grains Center was engaged in rice milling and not in the buying and selling of rice; and that one of her customers was her daughter Ang, who was engaged in the buying and selling of rice under the trade name "Janet Commercial Store." Deyto prayed among others that the Complaint be dismissed.

For her part, Ang failed to file an Answer despite summons by publication; for this reason, she was declared in default.

On June 7, 2001, Manlar submitted to the trial court a notarized minutes of a special meeting of its board of directors[12] dated November 8, 2000, indicating that Pua was authorized to file and prosecute the Complaint in Civil Case No. Q-00-42527.

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[8] *Id.* at 71.

[9] *Id.* at 84. The Court of Appeals mistakenly stated in its assailed Decision that the Complaint was filed on December 24, 2000, which date however fell on a Sunday.

[10] Records, Vol. I, pp. 1-10.

[11] *Id.* at 87-102.

[12] *Rollo*, p. 92.

In a July 31, 2001 Resolution,[13] the trial court resolved to deny Deyto's special/affirmative defenses contained in her Answer. Regarding her objection to Pua's authority to prosecute the case for lack of the proper board resolution to such effect, the trial court held that the issue had been rendered moot by Manlar's submission on June 7, 2001 of the notarized board resolution.

During trial, Manlar presented its lone witness, Pua, who testified that he knew Deyto and Ang since 1995; that Ang was the Operations Manager of JD Grains Center; that they (Deyto and Ang) bought rice from Manlar on "cash on delivery" basis from 1995 up to 2000; that since 2000, they increased the volume of their purchases and requested that they pay Manlar by postdated checks on a weekly basis, to which Manlar acceded; that Manlar agreed to this arrangement because Deyto induced Pua to deliver rice on the assurance that Deyto had extensive assets, financial capacity and a thriving business, and Deyto provided Pua with copies of JD Grains Center's certificate of registration, business permit, business card, and certificates of title covering property belonging to Deyto; that when rice deliveries were made by Manlar, Deyto was not around; that it was solely Ang who issued the subject checks and delivered them to Pua or Manlar; that initially, they (Deyto and Ang) faithfully complied with the arrangement; that later on, they defaulted in their payments thus resulting in the dishonor of the subject nine checks previously issued to Manlar; that by then, Manlar had delivered rice to them totaling ₱3,843,220.00; that he went to the residence of Deyto at No. 93 Bulusan Street, La Loma, Quezon City on five occasions to demand payment from Deyto; and that he likewise went to Ang's residence at No. 4 Sabucoy[14] Street, San Francisco del Monte, Quezon City to demand payment.[15]

On cross-examination, Pua testified that no rice deliveries were in fact made by Manlar at Deyto's Bulusan Street residence;

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[13] *Id.* at 93-95.

[14] Or "Sapucoy," or "Sapocoy," or "Sipucoy," per records.

[15] TSN, Pablo Pua, April 1, 2004; June 3, 2004; August 4, 2004.

that Deyto guaranteed Ang's checks, although the guarantee was made verbally; that although he ordered Manlar's drivers to deliver rice at Deyto's residence at Bulusan Street, the deliveries would actually end up at Ang's Sabucoy residence.[16]

On the other hand, the defense presented three witnesses: Deyto, her son Jose D. Ang, and Homer Petallano (Petallano), Chinabank del Monte branch Operations Head. Deyto testified that she did not know Pua; that Pua was a liar and that she did not enter into a contract with him for the purchase and delivery of rice; that she did not receive at any time any rice delivery from Manlar; that while she had a house at No. 93 Bulusan Street, La Loma, Quezon City, she actually resided in Santiago City, Isabela; that she met Pua for the first time when the latter went to her La Loma residence sometime in November or December 2000 looking for Ang, and claiming that Ang was indebted to Manlar; that she had nothing to do with the obligations of Ang incurred for rice deliveries made to her or JD Grains Center, as Ang was not connected with JD Grains Center, and it was her son, Jose D. Ang, who managed and ran the business; that all the checks issued to Manlar were drawn by Ang from her own bank account, as a businessperson in her own right and with her own business and receipts; that as of 2000, Ang was the proprietress of Jane Commercial with address at No. 49 Corumi Street, Masambong, San Francisco del Monte, Quezon City, and not at No. 93 Bulusan Street, La Loma, Quezon City; that the last time she saw Ang was in June 2000, during the blessing of Ang's Sabucoy residence; that she was not on talking terms with her daughter as early as June 2000 on account of Ang's activities and involvements; that one of Ang's children was living with her after the child was recovered from a kidnapping perpetrated by Ang's best friend; that Ang's other child lived with the child's father; and that Ang's whereabouts could not be ascertained.[17]

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[16] TSN, Pablo Pua, August 4, 2004, pp. 29-30; September 22, 2004, pp. 7, 11-13.

[17] TSN, Lourdes Deyto, January 20, 2005.

Jose D. Ang, on the other hand, testified that he is Deyto's son; that from the start, JD Grains Center has been under his supervision and control as Manager and Deyto had no participation in the actual operation thereof; that JD Grains Center was registered in the name of Deyto for convenience, to avoid jealousy or intrigue among his siblings, and because they used Deyto's properties as collateral to borrow money for the business; that Ang was originally an agent of JD Grains Center, but was removed in 1997 for failure to remit her collections.[18]

Finally, Petallano testified that he was the Operations Head of Chinabank del Monte branch and that Ang is the sole owner and depositor of the account from which the subject checks were drawn.[19]

Ruling of the Trial Court

On November 22, 2007, a Decision[20] was rendered by the trial court in Civil Case No. Q-00-42527, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, judgment is hereby rendered finding the defendants liable to the plaintiff jointly and severally and ordering them as follows:
>
> 1. To pay plaintiff actual damages in the sum of ₱3,843,200.00[21] plus interest [thereon] at 6% per annum reckoned from the time of demand up to the time of payment thereof;
>
> 2. To pay plaintiff attorney's fees in the sum of ₱200,000.00 plus ₱2,500.00 as per appearance fee; and
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> 3. To pay the costs of this suit.
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> SO ORDERED.[22]

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[18] TSN, Jose Ang, October 6, 2005, pp. 4-6.

[19] TSN, Homer Petallano, August 4, 2005, pp. 2-3.

[20] *Rollo*, pp. 84-91; penned by Judge Ma. Luisa C. Quijano-Padilla.

[21] Should be ₱3,843,220.00.

[22] *Rollo*, pp. 90-91.

Essentially, the trial court believed Pua's declarations that both Deyto and Ang personally transacted with him in purchasing rice from Manlar for JD Grains Center – with Ang paying for the deliveries with her personal checks and his testimony that both Deyto and Ang received Manlar's rice deliveries. For these reasons, the trial court ruled that both defendants should be held solidarily liable for the unpaid and outstanding Manlar account.

Ruling of the Court of Appeals

Deyto went up to the CA on appeal, assailing the Decision of the trial court and claiming that there was no evidence to show her participation in the transactions between Manlar and Ang, or that rice deliveries were even made to her; that she had no legal obligation to pay Manlar what Ang owed the latter in her personal capacity; that the evidence proved that Ang had overpaid Manlar; that the Complaint in Civil Case No. Q-00-42527 was defective for lack of the required board resolution authorizing Pua to sign the Complaint, verification, and certification against forum shopping on behalf of Manlar; and that the trial court erred in not awarding damages in her favor.

On October 30, 2009, the CA issued the assailed Decision, which held thus:

> WHEREFORE, premises considered, the assailed Decision dated November 22, 2007 in Civil Case No. Q-00-42527 of the Regional Trial Court, Branch 215, Quezon City is REVERSED and SET ASIDE, and a new one entered, DISMISSING the complaint for lack of merit.
>
> SO ORDERED.[23]

The CA held that in the absence of a board resolution from Manlar authorizing Pua to sign the verification and certification against forum shopping, the Complaint in Civil Case No. Q-00-42527 should have been dismissed; the subsequent submission on June 7, 2001 – or six months after the filing of the case – of the notarized minutes of a special meeting of Manlar's board

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[23] *Id.* at 77.

of directors cannot have the effect of curing or amending the defective Complaint, as Revised Supreme Court Circular No. 28-91[24] enjoins strict compliance. Substantial compliance does not suffice.

The CA added that the trial court's Decision overlooked, misapprehended, and failed to appreciate important facts and circumstances of the case. Specifically, it held that Manlar failed to present documentary evidence to prove deliveries of rice to Deyto, yet the trial court sweepingly concluded that she took actual delivery of Manlar's rice. Likewise, Pua's declaration that Manlar delivered rice to Deyto at her La Loma residence was not based on personal knowledge or experience, but on Manlar's drivers' supposed accounts of events. Because these drivers were not called to testify on such fact or claim, the CA held that Pua's testimony regarding Deyto's alleged acceptance of rice deliveries from Manlar was hearsay.

The appellate court conceded that if Ang indeed contracted with Manlar, she did so on her own; the evidence failed to indicate that Deyto had any participation in the supposed transactions between her daughter and Manlar. The record reveals that Deyto and Ang owned separate milling and grains businesses: JD Grains Center and Janet Commercial Store. If Ang did business with Manlar, it is likely that she did so on her own or in her personal capacity, and not for and in behalf of Deyto's JD Grains Center. Besides, the subject checks were drawn against Ang's personal bank account, therefore Ang, not Deyto is bound to make good on the dishonored checks.

Thus, the CA concluded that there is no legal basis to hold Deyto solidarily liable with Ang for what the latter may owe Manlar.

Manlar moved for reconsideration, but in its February 9, 2010 Resolution, the CA stood its ground. Hence, Manlar took the present recourse.

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[24] Additional Requisites For Petitions Filed With The Supreme Court And The Court Of Appeals To Prevent Forum Shopping Or Appeals To Prevent Forum Shopping Or Multiple Filing Of Petitions And Complaints.

Issues

Manlar raises the following issues in its Petition:

1. THE COURT OF APPEALS COMMITTED CLEAR REVERSIBLE ERROR WHEN IT SET ASIDE THE JUDGMENT OF THE TRIAL COURT BY SWEEPINGLY AND BASELESSLY CONCLUDING THAT THE VERIFICATION AND CERTIFICATE AGAINST FORUM SHOPPING IN THE COMPLAINT WERE ALLEGEDLY "DEFECTIVE" IN THAT PABLO PUA, THE SALES MANAGER, WAS SUPPOSEDLY "NOT AUTHORIZED" TO SIGN THE VERIFICATION AND CERTIFICATE OF NON-FORUM SHOPPING FOR MANLAR RICE MILL, INC.

2. THE CONCLUSION OF THE COURT OF APPEALS THAT THE ALL-ENCOMPASSING PHRASE IN THE BOARD RESOLUTION THAT "MR. PABLO PUA IS AUTHORIZED TO SIGN ANY DOCUMENT, PAPERS, FOR AND IN BEHALF OF THE COMPANY, AND TO REPRESENT THE COMPANY IN ANY SUCH CASE OR CASES" IS ALLEGEDLY "NOT SUFFICIENT" AUTHORITY FOR PABLO PUA TO SIGN THE VERIFICATION AND CERTIFICATE AGAINST FORUM SHOPPING IS GROSSLY ERRONEOUS AND MANIFESTLY MISTAKEN BECAUSE IT IS DIRECTLY NEGATED AND DISPROVED BY THE EXPRESS TERMS OF HIS AUTHORITY.

3. FURTHER, THE SERIOUS AND GLARING ERROR OF THE COURT OF APPEALS IN CONCLUDING THAT PABLO PUA WAS ALLEGEDLY NOT AUTHORIZED TO SIGN THE VERIFICATION AND CERTIFICATE OF NON-FORUM SHOPPING HAD BEEN PREVIOUSLY RAISED AND SQUARELY RESOLVED BY THE TRIAL COURT AND ITS RESOLUTION ON THIS ISSUE HAD LONG BECOME FINAL AND EXECUTORY WITHOUT LOURDES L. DEYTO TAKING ANY APPELLATE REMEDY.

4. THE COURT OF APPEALS ALSO COMMITTED REVERSIBLE ERROR IN SAYING THAT "THERE WAS NO DOCUMENTARY EVIDENCE TO PROVE ACTUAL DELIVERIES OF RICE" AS BASIS FOR THE DISMISSAL OF THE CASE BECAUSE THIS IS MANIFESTLY MISTAKEN AND NEGATED BY THE RECORDS SINCE RESPONDENTS (MOTHER AND DAUGHTER) ISSUED NINE (9) POSTDATED

CHECKS TO PETITIONER THRU PABLO PUA IN THE TOTAL AMOUNT OF ₱3,843,2[2]0.00 IN PAYMENT OF THE RICE DELIVERED TO THEM.

5. THE CONTRACTS OF SALE OF RICE WERE PERFECTED BY THE DELIVERY OF RICE TO RESPONDENTS MOTHER AND DAUGHTER AND THEIR ISSUANCE OF NINE (9) POSTDATED CHECKS (₱3,843,220.00) AS PAYMENT THEREOF BY RESPONDENTS, BUT THAT THE NINE (9) POSTDATED CHECKS OF RESPONDENTS WERE LATER DISHONORED.

6. THE SWEEPING STATEMENT OF THE COURT OF APPEALS THAT ALLEGEDLY "THE PARTICIPATION OF APPELLANT (LOURDES L. DEYTO) TO WHATEVER BUSINESS TRANSACTIONS HER DAUGHTER (CO-RESPONDENT JENNELITA DEYTO ANG) HAD WITH MANLAR RICE MILL INC. WAS NOT DULY PROVEN" IS NOT ONLY A PURE SPECULATION BUT IS SQUARELY NEGATED AND DISPROVED BY THE OVERWHELMING EVIDENCE OF THE CONSPIRACY AND COLLABORATIVE EFFORTS OF BOTH MOTHER AND DAUGHTER IN KNOWINGLY DEFRAUDING PETITIONER.[25]

Petitioner's Arguments

In its Petition and Reply,[26] Manlar insists that the CA's findings and conclusions are not supported by the evidence on record. On the procedural issue, it reiterates the trial court's pronouncement that its subsequent submission – on June 7, 2001, or six months after the filing of Civil Case No. Q-00-42527 – of the notarized minutes of a special meeting of its board of directors authorizing Pua to file and prosecute Civil Case No. Q-00-42527, effectively cured the defective Complaint, or rendered the issue of lack of proper authority moot and academic, and should not result in the dismissal of the case. Because Deyto did not question this ruling through the proper petition or appeal, it should stand; besides, the trial court's disposition on the matter is sound and just.

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[25] *Rollo*, pp. 27-29.

[26] *Id.* at 131-162.

Next, Manlar disputes the CA ruling that Manlar failed to present documentary evidence to prove deliveries of rice to Deyto, apart from that delivered to Ang in her personal capacity. It points to "compelling and convincing evidence" that both Deyto and Ang induced it to deliver rice to them, and that both of them issued the subject postdated checks. It claims that it was Deyto who delivered the checks to Pua at his office in Manila; that Deyto induced Pua to deliver rice to respondents on the assurance that Deyto had extensive assets, financial capacity and a thriving business; and that Deyto provided Pua with copies of JD Grains Center's certificate of registration, business permit, business card, and certificates of title covering property belonging to Deyto.

Manlar adds that Deyto disposed of some of her personal properties – specifically delivery/cargo trucks – in fraud of her creditors, including Manlar. It is also argued that the fact that Deyto was in possession of Ang's negotiated checks proved that both of them connived to defraud Manlar by using the said checks to convince and induce Pua to contract with them.

Manlar goes on to argue that Ang and another of Deyto's children, Judith Ang Yu (Judith), were charged and the latter convicted of estafa for defrauding another rice trader, a certain Sergio Casaclang, of ₱3,800,000.00 – attaching a certified true copy of the Decision of Branch 215 of the RTC of Quezon City in Criminal Case No. Q-01-105698, indicating that Judith was sentenced to three months of *arresto mayor* and to pay a fine and indemnity.

Next, Manlar argues that it is not necessary to further show proof of deliveries of rice to Deyto and Ang in order to prove the existence of their obligation; the issuance of the subject postdated checks as payment established the obligation.

Manlar thus prays that the Court annul and set aside the assailed CA dispositions and thus reinstate the trial court's November 22, 2007 Decision finding Deyto liable under the rice supply contract.

Respondent's Arguments

Praying that the Petition be denied, respondent Deyto in her Comment[27] essentially argues that petitioner Manlar's claims are "products of pure imagination," having no factual and legal basis, and that Manlar's impleading her is simply a desperate strategy or attempt to recover its losses from her, considering that Ang can no longer be located. Furthermore, Deyto claims that Manlar's alleged rice deliveries are not covered by sufficient documentary evidence, and while it may appear that Ang had transacted with Manlar, she did so in her sole capacity; thus, Deyto may not be held liable under a transaction in which she took no part.

Deyto adds that Pua's basis for claiming that deliveries were made at her Bulusan Street residence is unfounded, considering that it springs from hearsay, or on the mere affirmation of Manlar's drivers – who were not presented in court to testify on such fact. Pua himself had no personal knowledge of such fact, and thus could not be believed in testifying that rice was indeed delivered to Deyto at her Bulusan Street residence. She argues further that overall, Pua – Manlar's lone witness – proved to be an unreliable witness, constantly changing his testimony when the inconsistencies of his previous declarations were called out.

Finally, Deyto reiterates the CA ruling that Manlar's Complaint in Civil Case No. Q-00-42527 was defective for lack of the required board resolution authorizing Pua to sign the verification and certification against forum shopping, characterizing the belated submission of the required resolution six months later as a mere afterthought.

Our Ruling

The Court denies the Petition.

It is a basic rule in evidence that he who alleges must prove his case or claim by the degree of evidence required.

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[27] *Id.* at 103-112.

x x x *Ei incumbit probatio qui dicit, non qui negat*. This Court has consistently applied the ancient rule that "if the plaintiff, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the defendant is under no obligation to prove his exception or defense."[28]

In civil cases, the quantum of proof required is preponderance of evidence, which connotes "that evidence that is of greater weight or is more convincing than that which is in opposition to it. It does not mean absolute truth; rather, it means that the testimony of one side is more believable than that of the other side, and that the probability of truth is on one side than on the other."[29]

The CA is correct in concluding that there is no legal basis to hold Deyto solidarily liable with Ang for what the latter may owe Manlar. The evidence does not support Manlar's view that *both* Deyto and Ang contracted with Manlar for the delivery of rice on credit; quite the contrary, the preponderance of evidence indicates that it was Ang *alone* who entered into the rice supply agreement with Manlar. Pua's own direct testimony indicated that whenever rice deliveries were made by Manlar, Deyto was not around; that it was solely Ang who issued the subject checks and delivered them to Pua or Manlar. On cross-examination, he testified that no rice deliveries were in fact made by Manlar at Deyto's Bulusan Street residence; that although Deyto guaranteed Ang's checks, this guarantee was made verbally; and that while he ordered Manlar's drivers to deliver rice at Deyto's residence at Bulusan Street, the deliveries would actually end up at Ang's Sabucoy residence.

The documentary evidence, on the other hand, shows that the subject checks were issued from a bank account in Chinabank del Monte branch belonging to Ang alone. They did not emanate from an account that belonged to both Ang and Deyto. This is

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[28] *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591, 596, citing *Belen v. Belen*, 13 Phil. 202, 206 (1909).

[29] *Reyes v. Century Canning Corporation*, G.R. No. 165377, February 16, 2010, 612 SCRA 562, 570.

supported by no less than the testimony of Chinabank del Monte branch Operations Head Petallano.

The evidence on record further indicates that Deyto was an old lady who owned vast tracts of land in Isabela province, and other properties in Metro Manila; that she is a reputable businessperson in Isabela; that Ang originally worked for JD Grains Center, but was removed in 1997 for failure to remit collections; that as early as June 2000, or prior to the alleged transaction with Manlar, Ang and Deyto were no longer on good terms as a result of Ang's activities; that Deyto took custody of one of Ang's children, who was previously recovered from a kidnapping perpetrated by no less than Ang's best friend; and that Ang appears to have abandoned her own family and could no longer be located. This shows not only what kind of person Ang is; it likewise indicates the improbability of Deyto's involvement in Ang's activities, noting her age, condition, reputation, and the extent of her business activities and holdings.

This Court cannot believe Manlar's claims that Deyto induced Pua to transact with her and Ang by providing him with copies of JD Grains Center's certificate of registration, business permit, business card, and certificates of title covering property belonging to Deyto to show her creditworthiness, extensive assets, financial capacity and a thriving business. The documents presented by Manlar during trial – copies of JD Grains Center's certificate of registration, business permit, and certificates of title covering Deyto's landholdings – are public documents which Manlar could readily obtain from appropriate government agencies; it is improbable that Deyto provided Manlar with copies of these documents in order to induce the latter to contract with her. Considering that both Manlar and Deyto were in the *same line of business* in the *same province*, it may be said that Manlar knew Deyto all along without the latter having to supply it with actual proof of her creditworthiness.

The allegations that Deyto guaranteed Ang's checks and that she consented to be held solidarily liable with Ang under the latter's rice supply contract with Manlar are hardly credible. Pua in fact admitted that this was not in writing, just a verbal

assurance. But this will not suffice. "Well-entrenched is the rule that solidary obligation cannot lightly be inferred. There is a solidary liability only when the obligation expressly so states, when the law so provides or when the nature of the obligation so requires."[30]

What this Court sees is an attempt to implicate Deyto in a transaction between Manlar and Ang so that the former may recover its losses, since it could no longer recover them from Ang as a result of her absconding; this conclusion is indeed consistent with what the totality of the evidence on record appears to show. This, however, may not be allowed. As a general rule, a contract affects only the parties to it, and cannot be enforced by or against a person who is not a party thereto. "It is a basic principle in law that contracts can bind only the parties who had entered into it; it cannot favor or prejudice a third person."[31] Under Article 1311 of the Civil Code, contracts take effect only between the parties, their assigns and heirs. Thus, Manlar may sue Ang, but not Deyto, who the Court finds to be not a party to the rice supply contract.

Having decided the case in the foregoing manner, the Court finds no need to resolve the other issues raised by the parties.

WHEREFORE, the Petition is **DENIED**. The assailed dispositions of the Court of Appeals are **AFFIRMED**.

SO ORDERED.

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

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[30] *Industrial Management International Development Corporation (INIMACO) v. National Labor Relations Commission*, 387 Phil. 659, 666 (2000), citing *Inciong, Jr. v. Court of Appeals*, 327 Phil. 364, 373 (1996) and *Sesbreño v. Court of Appeals*, G.R. No. 89252, May 24, 1993, 222 SCRA 466, 481; *Grandteq Industrial Steel Products, Inc. v. Estrella*, G.R. No. 192416, March 23, 2011, 646 SCRA 391, 404; *Alba v. Yupangco*, G.R. No. 188233, June 29, 2010, 622 SCRA 503, 507.

[31] *Visayan Surety and Insurance Corporation v. Court of Appeals*, 417 Phil. 110, 116 (2001).

SECOND DIVISION

[G.R. No. 196435. January 29, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL CRISOSTOMO *Y* MALLIAR,**[1] *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; WHEN THE OFFENDED PARTY IS UNDER 12 YEARS OF AGE, THE CRIME COMMITTED IS TERMED STATUTORY RAPE; RATIONALE.—** When the offended party is under 12 years of age, the crime committed is "termed statutory rape as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below 12 years of age. Thus, 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."

2. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF A RAPE VICTIM; INCONSISTENCIES IN A RAPE VICTIM'S TESTIMONY DO NOT IMPAIR HER CREDIBILITY; PRESENT IN CASE AT BAR.—** We agree with the CA that "AAA's" "uncertainty" on whether it was a match, rod or a cigarette stick that was inserted into her private parts, did not lessen her credibility. Such "uncertainty" is so inconsequential and does not diminish the fact that an instrument or object was inserted into her private parts. This is the essence of rape by sexual assault. "[T]he gravamen of the crime of rape by sexual assault x x x is the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice." In any event, "inconsistencies in a rape victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape."

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[1] Also spelled as "Mallar" or "Maliar" in some parts of the records.

3. ID.; ID.; ID.; THERE IS NO STANDARD BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A STARTLING EXPERIENCE ; APPLICATION IN CASE AT BAR.— x x x [I]t is settled that people react differently when confronted with a startling experience. There is no standard behavioral response when one is confronted with a traumatic experience. Some may show signs of stress; but others may act nonchalantly. Nevertheless, "AAA's" reaction does not in any way prove the innocence of appellant. As correctly pointed out by the OSG, regardless of "AAA's" reactions, it did not diminish the fact that she was raped by appellant or that a crime was committed.

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; IMPOSABLE PENALTY.— Pursuant to Article 266-B of the RPC, the penalty for statutory rape (Criminal Case No. 99-16237) is death when the victim is a child below seven years old. There is no dispute that at the time the rape was committed on April 8, 1999, "AAA" was only six years old, having been born on April 4, 1993. However, pursuant to Republic Act No. 9346, the penalty of *reclusion perpetua* shall be imposed on the appellant but without eligibility for parole. The CA thus correctly imposed the said penalty on appellant. On the other hand, rape by sexual assault committed against a child below seven years old is punishable by *reclusion temporal*. Applying the Indeterminate Sentence Law, and there being no other aggravating or mitigating circumstance, the proper imposable penalty shall be *prision mayor* as minimum, to *reclusion temporal*, as maximum. The CA thus correctly imposed the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, for each count of sexual assault.

5. ID.; ID.; ID.; CIVIL LIABILITY; PROPER AWARD OF DAMAGES, EXPLAINED.— As regards damages, the CA correctly awarded the amounts of ₱75,000.00 as civil indemnity and ₱30,000.00 as exemplary damages in Criminal Case No. 99-16237 (statutory rape). However, the award of moral damages must be increased to ₱75,000.00 in line with prevailing jurisprudence. As regards Criminal Case No. 99-16235 and Criminal Case No. 99-16236 (rape by sexual assault), the CA likewise properly awarded the amounts of ₱30,000.00 as civil

indemnity and ₱30,000.00 as moral damages, for each count. However, the award of exemplary damages for each count of rape by sexual assault must be increased to ₱30,000.00 in line with prevailing jurisprudence. In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

"[T]he trial court's evaluation of the credibility of the witnesses is entitled to the highest respect absent a showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would affect the result of the case."[2]

On appeal is the October 22, 2010 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03832 which affirmed with modification the July 3, 2008 Decision[4] of the Regional Trial Court (RTC) of Antipolo City, Branch 73 finding appellant Joel Crisostomo *y* Malliar guilty beyond reasonable doubt of two counts of rape by sexual assault and one count of statutory rape.

In three separate Informations,[5] appellant was charged with rape committed as follows:

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[2] *People v. Cruz*, G.R. No. 201728, July 17, 2013.

[3] CA *rollo*, pp. 92-106; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Francisco P. Acosta and Samuel H. Gaerlan.

[4] Records, pp. 338-341; penned by Judge Ronaldo B. Martin.

[5] *Id.* at 1, 33 and 65.

Criminal Case No. 99-16235 (Rape by Sexual Assault)

That, on or about the 8th day of April, 1999, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there commit an act of sexual assault by using a lighted cigarette as an instrument or object and [inserting] the same into the genital orifice of "AAA,"[6] a minor who is six (6) years of age, thereby causing the labia majora of the vagina of said minor to suffer a third degree burn, against her will and consent.

Contrary to law.

Criminal Case No. 99-16236 (Rape by Sexual Assault)

That, on or about the 8th day of April, 1999, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there commit an act of sexual assault by using a lighted cigarette as an instrument or object and [inserting] the same into the anal orifice of "AAA", a minor who is six (6) years of age, thereby causing the perianal region of the said anal orifice of said minor to suffer a third degree burn, against her will and consent.

Contrary to law.

Criminal Case No. 99-16237 (Statutory Rape)

That, on or about the 8th day of April, 1999, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge [of] "AAA", a minor who is six (6) years of age; that on the same occasion that the Accused raped said minor, the accused did, then and there burn her buttocks by the use of a lighted cigarette, against her will and consent.

Contrary to law.

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[6] "The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004.)" *People v. Teodoro*, G.R. No. 175876, February 20, 2013, 691 SCRA 324, 326.

When arraigned on January 9, 2001, appellant pleaded not guilty.[7] Pre-trial conference was terminated upon agreement of the parties. Trial on the merits ensued.

Factual Antecedents

The facts as summarized by the RTC, are as follows:

> The victim in these cases[,] "AAA[,]" testified that at noon time of April 8, 1999, she was x x x playing x x x with her playmates whereupon she wandered by the house of accused which x x x was just below their house. "AAA" clarified during her cross-examination that there was a vulcanizing shop owned by her father located in their house x x x and where accused was employed. While "AAA" was at the house of accused, she claimed that her genitals and buttocks were burned with a lighted cigarette by the said accused. "AAA" testified further that her clothes were taken off by the same accused who also took his clothes off after which he allegedly placed himself on top of her, inserted his penis and proceeded to have illicit carnal knowledge [of] the then six (6) year old girl. (TSN May 29, 2001, pp. 5-9; TSN Aug. 7, 2001, pp. 10-12.)
>
> "BBB," father of "AAA," presented in court his daughter's birth certificate (Exhibit "B") which stated that she was born on April 4, 1993 (TSN Sept. 25, 2001, p. 4). On the other hand, Dr. Emmanuel Reyes the Medico-Legal Officer who examined "AAA" identified his Medico-Legal Report (Exhibit "M") and testified that the victim indeed had two (2) third degree burns in the perianal region. Dr. Reyes testified that it was possible that the said burns were caused by a lighted cigarette stick being forced on the victim's skin. Moreover, Dr. Reyes confirmed that there was a loss of virginity on the part of the victim and that the same could have been done 24 hours from the time of his examination which was also on April 8, 1999. (TSN Nov. 7, 2001, pp. 11-17)
>
> "CCC" [aunt of "AAA"] testified that x x x she x x x assisted the mother of "AAA" in bringing the victim to the Pasig General Hospital and thereafter to Camp Crame where a doctor also examined "AAA" and confirmed that the latter was indeed a victim of rape. "CCC" testified that they then proceeded to the Women's [D]esk to file the instant complaint against the accused. (TSN August 5, 2003, pp. 4-8)

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[7] Records, p. 179.

On the other hand, [a]ccused denied the allegation of rape against him. Accused presented his brother-in-law Rogelio Oletin who testified that he was tending the store located at the house of accused when the latter supposedly arrived from work at 10:00 [a.m.] of April 8, 1999 and slept until 5:00 [p.m.] of the same day. According to Rogelio that is the usual routine of accused as the latter worked in the night shift schedule as vulcanizer in the vulcanizing shop owned by the victim's father. (TSN February 3, 2006, pp. 6-8)

When accused testified on November 17, 2006, he essentially confirmed the testimony of his brother-in-law that it was impossible for him to have raped "AAA" on the date and time stated in the information as his night shift work schedule just would not permit such an incident to occur. Accused added that he knew of no reason why the family of the private complainant would pin the crime against him. (TSN Nov. 17, 2006, pp. 9-11 & 14)

In an effort to explain the burn marks on the delicate parts of "AAA's" body, the defense presented a supposed playmate of "AAA" in the person of Mary Pabuayan. According to Mary, she was then 7 years old when she and two other playmates together with "AAA" and Joel ["]Liit["] the son of accused were burning worms near a santol tree in their neighborhood on a Good Friday in the year 1999. This Joel ["]*Liit*["] supposedly lighted a straw which inadvertently burned the anal portion of "AAA's" body. Mary's exact words were to the effect that "*napatakan ang puwit ni* "AAA"."[8]

Ruling of the Regional Trial Court

On July 3, 2008, the RTC rendered its Decision finding appellant guilty of three counts of rape, *viz:*

WHEREFORE, premises considered, accused Joel Crisostomo *y* Malliar is found GUILTY of all offenses stated in the three (3) Criminal Informations and is hereby sentenced to the following:

a) In Criminal Information # 99-16235 and Criminal Information # 99-16236, accused is to suffer the Indeterminate Penalty of imprisonment of ten (10) years and one (1) day of *Prision Mayor* as minimum to seventeen (17) years, four (4) months and one (1) day of *Reclusion Temporal* as maximum and is ordered to pay the victim "AAA" civil indemnity of ₱30,000.00, moral damages of

[8] *Id.* at 339-340.

₱30,000.00 and exemplary damages of ₱15,000.00 for each of the two Criminal Informations.

b) In Criminal Information # 99-16237, accused is to suffer the penalty of *Reclusion Perpetua* and is ordered to pay the victim civil indemnity of ₱75,000.00, moral damages of ₱50,000.00 and exemplary damages of ₱30,000.00 with cost [of] suit for all Criminal Informations.

SO ORDERED.[9]

Aggrieved, appellant filed a Notice of Appeal[10] which was given due course by the trial court in its Order[11] dated February 2, 2009.

Ruling of the Court of Appeals

In his Brief filed before the CA, appellant raised the following assignment of error:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY FOR THE CRIME OF RAPE (ARTICLE 266-A PAR. 1 AND ART. 267-B, PAR. 7 IN RELATION TO R.A. NO. 7610) DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[12]

Appellant claimed that the trial court gravely erred when it lent full credence to the testimonies of the prosecution witnesses. In particular, appellant insisted that the trial court erred in finding "AAA's" testimony credible considering that she was unsure whether a match, rod or a cigarette stick, was used in burning her private parts.[13] Appellant argued that "AAA" never showed signs of shock, distress, or anxiety despite her alleged traumatic experience.[14] Appellant also alleged that "CCC's" testimony

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[9] *Id.* at 341.

[10] *Id.* at 344.

[11] *Id.* at 345.

[12] CA *rollo*, p. 39.

[13] *Id.* at 45.

[14] *Id.* at 46.

should be disregarded as she was not even present when the rape incidents happened.[15] He opined that "CCC" influenced her niece, "AAA," to file the suit against him which bespoke of ill-motive on her part. Appellant concluded that these "inconsistencies and contradictions" are enough to set aside the verdict of conviction imposed upon by the RTC.[16]

However, the CA gave short shrift to appellant's arguments. The CA rendered its Decision disposing as follows:

> ACCORDINGLY, the instant appeal is DISMISSED. The assailed July 3, 2008 Decision is hereby AFFIRMED with MODIFICATION as to the penalties imposed, and to be read thus:
>
> "1. For Criminal Case Nos. 99-16235 and 99-16236, Joel Crisostomo is hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from ten[17] (8) years and one (1) day of *Prision Mayor*, as minimum, to seventeen (17) years and four (4) months of *Reclusion Temporal*, as maximum, and ordered to pay AAA Thirty Thousand pesos (₱30,000.00) as civil indemnity, Thirty Thousand pesos (₱30,000.00) as moral damages, and Fifteen Thousand pesos (₱15,000.00) as exemplary damages, all for each count of rape by sexual assault; and
>
> (2) For Criminal Case No. 99-16237, Joel Crisostomo is hereby sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility of parole, and ordered to pay AAA Seventy-Five Thousand pesos (₱75,000.00) as civil indemnity, Fifty Thousand pesos (₱50,000.00) as moral damages, and Thirty Thousand pesos (₱30,000.00) as exemplary damages, and all the costs of suit."
>
> SO ORDERED.[18]

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[15] *Id.*

[16] *Id.* at 47.

[17] Should read as "eight" considering the intent of the CA to modify the penalty imposed by the RTC.

[18] CA *rollo*, pp. 105-106.

Hence, this appeal[19] which the CA gave due course in its Resolution[20] of January 6, 2011. In a Resolution[21] dated June 15, 2011, this Court required the parties to file their respective supplemental briefs. In its Manifestation and Motion,[22] the Office of the Solicitor General (OSG) informed this Court that it will no longer file a Supplemental Brief because it had already exhaustively discussed and refuted all the arguments of the appellant in its brief filed before the CA. Appellant likewise filed a Manifestation In Lieu of Supplemental Brief[23] praying that the case be deemed submitted for decision based on the pleadings submitted.

Our Ruling

The appeal lacks merit.

The RTC, as affirmed by the CA, correctly found appellant guilty of two counts of rape by sexual assault and one count of rape by sexual intercourse. Article 266-A of the Revised Penal Code (RPC) provides:

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

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

a. Through force, threat or intimidation;

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

c. By means of fraudulent machinations or grave abuse of authority;

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[19] *Id.* at 109.

[20] *Id.* at 117.

[21] *Rollo,* p. 22.

[22] *Id.* at 24-27.

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

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

When the offended party is under 12 years of age, the crime committed is "termed statutory rape as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below 12 years of age. Thus, 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."[24] In this case, the prosecution satisfactorily established all the elements of statutory rape. "AAA" testified that on April 8, 1999, appellant took off her clothes and made her lie down. Appellant also removed his clothes, placed himself on top of "AAA," inserted his penis into her vagina, and proceeded to have carnal knowledge of her. At the time of the rape, "AAA" was only six years of age. Her birth certificate showed that she was born on April 4, 1993. "AAA's" testimony was corroborated by Dr. Emmanuel Reyes who found "AAA" to have fresh and bleeding hymenal lacerations.

Likewise, the prosecution proved beyond reasonable doubt appellant's guilt for two counts of rape by sexual assault. Records show that appellant inserted a lit cigarette stick into "AAA's" genital orifice causing her *labia majora* to suffer a 3rd degree burn. Appellant likewise inserted a lit cigarette stick into "AAA's" anal orifice causing 3rd degree burns in her perianal region.

We agree with the CA that "AAA's" "uncertainty" on whether it was a match, rod or a cigarette stick that was inserted into her private parts, did not lessen her credibility. Such "uncertainty"

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[24] *People v. Dollano, Jr.*, G.R. No. 188851, October 19, 2011, 659 SCRA 740, 753.

is so inconsequential and does not diminish the fact that an instrument or object was inserted into her private parts. This is the essence of rape by sexual assault. "[T]he gravamen of the crime of rape by sexual assault x x x is the insertion of the penis into another person's mouth or anal orifice, or any instrument or object, into another person's genital or anal orifice."[25] In any event, "inconsistencies in a rape victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape."[26] We also held in *People v. Piosang*[27] that –

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

Moreover, appellant's argument that "AAA" did not manifest any stress or anxiety considering her traumatic experience is purely speculative and bereft of any legal basis. Besides, it is settled that people react differently when confronted with a startling experience. There is no standard behavioral response when one is confronted with a traumatic experience. Some may show signs of stress; but others may act nonchalantly. Nevertheless, "AAA's" reaction does not in any way prove the innocence of appellant. As correctly pointed out by the OSG, regardless of "AAA's" reactions, it did not diminish the fact that she was raped by appellant or that a crime was committed.[28]

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[25] *Pielago v. People*, G.R. No. 202020, March 13, 2013.

[26] *People v. Zafra*, G.R. No. 197363, June 26, 2013.

[27] G.R. No. 200329, June 5, 2013.

[28] CA *rollo*, pp. 73-74.

We also agree with the CA that "CCC's" efforts to hale appellant to the court should not be equated with ill-motive on her part. On the contrary, we find "CCC's" efforts to seek justice for her niece who was raped more in accord with the norms of society. At any rate, even if we disregard "CCC's" testimony, appellant's conviction would still stand. We agree with the observation of the OSG that "CCC's" "testimony actually had no great impact on the case. In truth, her testimony [was] composed mainly of the fact that she was the one who accompanied the mother of "AAA" in bringing "AAA" to the Pasig General Hospital and thereafter to Camp Crame and later on to the Women's desk."[29]

On the other hand, appellant's alibi and denial are weak defenses especially when weighed against "AAA's" positive identification of him as the malefactor. Appellant did not even attempt to show that it was physically impossible for him to be at the crime scene at the time of its commission. In fact, he admitted that he lived just four houses away from the house of "AAA." His denial is also unsubstantiated hence the same is self-serving and deserves no consideration or weight. The RTC properly disregarded the testimony of Rogelio Oletin (Oletin), appellant's brother-in-law, who claimed that appellant was at his house at the time of the incident. As appellant already admitted, his house is near the house of "AAA" hence there was no physical impossibility for him to be present at the crime scene. Also, the RTC observed that Oletin's testimony did not "prove beneficial to the defense. Suffice it to state that the private prosecutor correctly noted that the said witness was always smiling and laughing when answering questions propounded to him as if making a mockery of the proceedings which his own brother-in-law was facing."[30]

Pursuant to Article 266-B of the RPC, the penalty for statutory rape (Criminal Case No. 99-16237) is death when the victim is a child below seven years old. There is no dispute that at the

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[29] *Id.* at 75-76.

[30] Records, p. 340.

time the rape was committed on April 8, 1999, "AAA" was only six years old, having been born on April 4, 1993. However, pursuant to Republic Act No. 9346,[31] the penalty of *reclusion perpetua* shall be imposed on the appellant but without eligibility for parole.[32] The CA thus correctly imposed the said penalty on appellant.

On the other hand, rape by sexual assault committed against a child below seven years old is punishable by *reclusion temporal*.[33] Applying the Indeterminate Sentence Law, and there being no other aggravating or mitigating circumstance, the proper imposable penalty shall be *prision mayor*[34] as minimum, to *reclusion temporal*,[35] as maximum. The CA thus correctly imposed the penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum, for each count of sexual assault.

As regards damages, the CA correctly awarded the amounts of ₱75,000.00 as civil indemnity and ₱30,000.00 as exemplary damages in Criminal Case No. 99-16237 (statutory rape). However, the award of moral damages must be increased to ₱75,000.00 in line with prevailing jurisprudence.[36] As regards

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[31] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY LAW IN THE PHILIPPINES. Approved June 24, 2006.

[32] REPUBLIC ACT NO. 9346, Sec. 3.

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

[34] *Prision Mayor* – 6 years and 1 day to 12 years
Minimum – 6 years and 1 day to 8 years
Medium – 8 years and 1 day to 10 years
Maximum – 10 years and 1 day to 12 years

[35] *Reclusion Temporal* – 12 years and 1 day to 20 years
Minimum – 12 years and 1 day to 14 years and 8 months
Medium – 14 years, 8 months and 1 day to 17 years and 4 months
Maximum – 17 years, 4 months and 1 day to 20 years

[36] *People v. Suansing*, G.R. No. 189822, September 2, 2013.

Criminal Case No. 99-16235 and Criminal Case No. 99-16236 (rape by sexual assault), the CA likewise properly awarded the amounts of ₱30,000.00 as civil indemnity and ₱30,000.00 as moral damages, for each count. However, the award of exemplary damages for each count of rape by sexual assault must be increased to ₱30,000.00 in line with prevailing jurisprudence.[37] In addition, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of judgment until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The October 22, 2010 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03832 which affirmed with modification the July 3, 2008 Decision of the Regional Trial Court of Antipolo City, Branch 73 finding appellant Joel Crisostomo *y* Malliar guilty beyond reasonable doubt of two counts of rape by sexual assault and one count of statutory rape is **AFFIRMED** with **MODIFICATIONS** that the award of moral damages in Criminal Case No. 99-16237 (statutory rape) is increased to ₱75,000.00 and the award of exemplary damages in Criminal Case No. 99-16235 and Criminal Case No. 99-16236 (rape by sexual assault) is increased to ₱30,000.00 for each count. In addition, interest is imposed on all damages awarded at the rate of 6% *per annum* from date of finality of judgment until fully paid.

SO ORDERED.

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

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[37] *People v. Lomaque*, G.R. No. 189297, June 5, 2013; *Pielago v. People*, *supra* note 25.

FIRST DIVISION

[G.R. No. 201156. January 29, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSELITO MORATE *Y* TARNATE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY REQUIREMENT; FAILURE TO RAISE THE ISSUE OF NON-OBSERVANCE OF THE CHAIN OF CUSTODY REQUIREMENT DURING TRIAL IS FATAL TO THE CASE OF THE ACCUSED-APPELLANT; APPLICATION IN CASE AT BAR.— It must be emphasized that accused-appellant's defense of alleged non-compliance with Section 21 of Republic Act No. 9165 was raised belatedly and for the first time on appeal. Failure to raise the issue of non-observance of the chain of custody requirement during trial is fatal to the case of the accused-appellant. In this case, the accused-appellant never questioned the chain of custody during trial. Specifically, the records show that the accused-appellant never assailed the propriety and regularity of the process of marking and inventory of the seized items during the prosecution's presentation of evidence on that matter during the testimony of PO1 Manamtam. Also, when the prosecution formally offered the Certification of Inventory as evidence for the purpose of proving "the immediate and accurate inventory, marking and packing of the purchased and the seized marijuana to maintain and preserve [their] identities and integrity" and the four sachets of marijuana as evidence for the purpose of proving "the identities and integrity of the purchased and the seized marijuana as those were immediately inventoried, marked and documented/recorded," the accused-appellant's comment was simply "Denied as to the purposes for which they are being offered for being self[-]serving pieces of evidence" and said nothing about non-compliance with the chain of custody requirement. More importantly, the accused-appellant's counsel himself has dropped the bomb that demolished the accused-appellant's

defense. He admitted the identity and integrity of the specimens. x x x These two circumstances — (1) the omission of the accused-appellant to raise the issue of non-compliance with the chain of custody requirement on time, and (2) the admission of the accused-appellant as to the identity and integrity of the seized items that the PNP Tabaco City submitted to the Crime Laboratory, subjected to examination by the forensic chemist and presented in court as evidence — are sufficient to defeat the claims of the accused-appellant.

2. **ID.; ID.; ID.; TWO-FOLD PURPOSE OF THE CHAIN OF CUSTODY REQUIREMENT; EXPLAINED.—** The chain of custody is basically the duly recorded authorized stages of transfer of custody of seized dangerous drugs, from their seizure or confiscation to receipt in the forensic laboratory for examination to safekeeping to presentation in court for destruction. The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. Thus, the chain of custody requirement has a two-fold purpose: (1) the preservation of the integrity and evidentiary value of the seized items, and (2) the removal of unnecessary doubts as to the identity of the evidence. The law recognizes that, while the presentation of a perfect unbroken chain is ideal, the realities and variables of actual police operation usually makes an unbroken chain impossible. With this implied judicial recognition of the difficulty of complete compliance with the chain of custody requirement, substantial compliance is sufficient as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers.

3. **ID.; ID.; ID.; THE MARKING AND INVENTORY OF THE SEIZED ITEMS AT THE POLICE STATION IMMEDIATELY AFTER THE ARRIVAL THEREAT OF THE POLICE OFFICERS WHO CONDUCTED THE BUY-BUST OPERATION IS IN ACCORDANCE WITH LAW, ITS IMPLEMENTING RULES AND REGULATIONS, AND RELEVANT JURISPRUDENCE; PRESENT IN CASE AT BAR.—** Contrary to the contention of the accused-appellant, the marking and inventory of the seized items at the police station did not contravene the procedure laid down in Section 21(1) of Republic Act No. 9165. x x x The seizure and

confiscation of the prohibited drugs from the accused-appellant was a warrantless seizure resulting from a buy-bust. The law, as carried out by its implementing rules and regulations expressly authorizes the taking of the inventory of the seized contraband "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable," in case of warrantless seizure. Thus, this Court has ruled that marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team. In this light, the marking and inventory of the seized items at the police station immediately after the arrival thereat of the police officers who conducted the buy-bust operation was in accordance with the law, its implementing rules and regulations, and relevant jurisprudence. x x x As to the failure to photograph the inventory of the seized items, such omission on the part of the police officers is not fatal to the case against the accused-appellant. This Court has ruled in various cases, such as *People v. Almodiel*, *People v. Rosialda*, *People v. Llamado*, and *People v. Rivera*, that the failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated is not fatal and does not automatically render the arrest of the accused illegal or the items seized from him inadmissible. As has been said earlier, the prosecution has sufficiently shown that the identity and evidentiary integrity of the seized items were properly preserved, and that is not materially affected by the prosecution's failure to take a photograph of the seized items.

4. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— A successful prosecution of illegal sale of dangerous drugs requires that the following elements be established: (1) the identity of the buyer and the seller, the object and the consideration of the sale; and (2) the delivery to the buyer of the thing sold and receipt by the seller of the payment therefor.

5. ID.; ID.; ILLEGAL POSSESSION OF ILLEGAL DRUGS; ELEMENTS.— There can be conviction for illegal possession of dangerous drugs only if the following elements are present: (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 drug.

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 Joselito Morate appeals from the Decision[1] dated October 18, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04197 denying his appeal from the Joint Decision[2] dated September 7, 2009 of the Regional Trial Court (RTC) of Tabaco City, Branch 17 in Criminal Case Nos. T-4466 and T-4467, which found him guilty of violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Informations filed against the accused-appellant in the trial court read:

I. Criminal Case No. T-4466 (For violation of Section 11, Article II, Republic Act No. 9165)

That on or about 12:05 o'clock in the afternoon of April 25, 2006 at P-5, Cormidal[,] Tabaco City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the law, did then and there willfully, unlawfully, knowingly and criminally possess and have in [his] control dried "MARIJUANA LEAVES" with fruiting tops, contained in One (1) heat-sealed transparent plastic sachet containing 0.3035 gram, without the necessary government authority, to the detriment of the public welfare.[3]

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[1] *Rollo*, pp. 2-11; penned by Associate Justice Samuel H. Gaerlan with Associate Justices Rosmari D. Carandang and Ramon R. Garcia, concurring.

[2] CA *rollo*, pp. 30-49.

[3] Records, Criminal Case No. T-4466, p. 14.

II. Criminal Case No. T-4467 (For violation of Section 5, Article II, Republic Act No. 9165)

That on or about 12:05 o'clock in the afternoon of April 25, 2006 at P-5, Cormidal, Tabaco City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to violate the law, did then and there willfully, unlawfully, knowingly and criminally sell, deliver and give away to a poseur-buyer three (3) heat-sealed transparent plastic sachets of MARIJUANA LEAVES with fruiting tops, with a total weight of 1.0291 grams, without the necessary government authority, to the detriment of public welfare.[4]

The accused-appellant pleaded not guilty to both charges when arraigned.[5] After pre-trial was conducted, trial ensued.

The prosecution established that, sometime in April 2006, the Philippine National Police (PNP) in Tabaco City received confidential information that a certain "Palito" of Purok 5, Cormidal, Tabaco City is engaged in the illegal sale of marijuana. Accordingly, Police Senior Inspector (PSInsp.) Fernando Bolanga, Chief of the Tabaco City Central Police Station's Investigation and Detective Management Division, instructed Police Officer (PO) 1 Macneil Manamtam to build up a case about the matter. Going undercover, PO1 Manamtam met with his asset, "Edwin," on April 17, 2006 and made inquiries. The latter informed PO1 Manamtam that "Palito" is accused-appellant Joselito Morate. "Edwin" confirmed that the accused-appellant is indeed involved in the sale of illegal drugs. PO1 Manamtam signified his intention to buy drugs from accused-appellant and asked "Edwin" to make the necessary arrangements. "Edwin" made an assurance that he can facilitate the transaction. He subsequently told PO1 Manamtam that they could buy drugs from the accused-appellant on April 25, 2006 at the canteen near the TMG outpost at the pier in Cormidal, Tabaco City.[6]

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[4] Records, Criminal Case No. T-4467, p. 14.

[5] Orders dated May 18, 2006; Records, Criminal Case Nos. T-4466 and T-4467, pp. 25 and 24, respectively.

[6] CA *rollo*, p. 43.

PO1 Manamtam reported to PSInsp. Bolanga and informed the latter that he would be having a transaction with the accused-appellant. In the morning of April 25, 2006, PSInsp. Bolanga called his men for a pre-operation briefing to plan how the buy-bust would be conducted.[7] PO1 Manamtam was designated as poseur-buyer. He was given two pieces of ₱50.00 bills as marked money. Senior Police Officer (SPO) 1 Remus Navarro, SPO3 Benigno Dilla, SPO4 Benito Bognalos, PO3 Pedro Antonio Eva III and PO1 Anacito Colarina were to serve as back-up.[8] With them was PO1 Alden Bayaban, an agent of the Philippine Drug Enforcement Agency (PDEA) detailed at the Tabaco City Police Station.[9] The team then proceeded to the venue of the transaction in Cormidal, Tabaco City.[10]

As agreed upon, PO1 Manamtam met "Edwin" in a canteen. The accused-appellant arrived later and "Edwin" introduced PO1 Manamtam as a prospective buyer of marijuana. When the accused-appellant asked how much PO1 Manamtam intended to buy, the latter answered that he would buy ₱100.00 worth of marijuana. When the accused-appellant demanded immediate payment, PO1 Manamtam initially hesitated but eventually obliged and handed the marked money to the accused-appellant. The accused-appellant left but returned shortly thereafter. He then asked PO1 Manamtam and "Edwin" to go with him to a nearby basketball area where the accused-appellant produced four transparent plastic sachets containing dried leaves and handed three sachets to PO1 Manamtam. The police officer asked the accused-appellant to place the sachets inside the former's backpack. The accused-appellant then showed PO1 Manamtam and "Edwin" another sachet for use by the three of them. The accused-appellant instructed "Edwin" to look for some aluminium coated paper. "Edwin" obliged and left. Meanwhile, PO1

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[7] *Id.*

[8] Records, Criminal Case No. T-4466, p. 4; Joint Affidavit of Arrest, Exhibit "B".

[9] *Id.* at 6; *id.* Detail, Exhibit "C".

[10] *Rollo*, p. 5.

Manamtam sent a text message to the other members of the buy-bust team informing them that the sale had been consummated.[11]

Upon receiving PO1 Manamtam's message, PO1 Bayaban and PO3 Eva rushed in to arrest the accused-appellant. The accused-appellant noticed the approaching police officers and dropped the sachet that he was holding. PO3 Eva saw what the accused-appellant did and picked up the sachet from the ground. Thereafter, he proceeded to bodily search the accused-appellant to look for the marked money but did not find it.[12]

The accused-appellant was arrested. The team also made it appear that PO1 Manamtam was arrested with the accused-appellant to protect PO1 Manamtam's identity. The accused-appellant and PO1 Manamtam were then brought to the police station.[13]

Upon arrival at the police station, the items confiscated during the buy-bust were counted, marked and inventoried. In particular, PO1 Manamtam marked the three sachets that the accused-appellant handed him as "MCM A," "MCM B," and "MCM C," respectively, while PO3 Eva marked the sachet that the accused-appellant dropped on the ground as "PAE III." The marking and inventory of the seized items were witnessed by *Barangay Kagawad* Julio Marbella of Cormidal, Tabaco City and Emmanuel Cea III, a local newsman, both of whom signed the Certification of Inventory. The seized items were all transferred to PO3 Eva as the evidence custodian.

PO3 Eva thereafter prepared a Receipt of Seized Evidence/ Property before handing the seized items to PO1 Reynaldo Borromeo who signed the receipt upon taking hold of the items. PO1 Borromeo proceeded to the PNP Crime Laboratory in Legazpi City bringing with him the seized items and a Request for Laboratory Examination.

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[11] *Id.*

[12] *Id.*

[13] CA *rollo*, p. 45.

The seized items were received by the PNP Crime Laboratory in Legazpi City where PSInsp. Josephine Macura Clemen, a forensic chemist, examined them. The results of her examination showed that the sachet which the accused-appellant dropped on the ground and picked up by PO3 Eva contained 0.3035 gram of marijuana fruiting tops,[14] while the three sachets which the accused-appellant sold to PO1 Manamtam contained marijuana with an aggregate weight of 1.0291 grams.[15]

PSInsp. Clemen subsequently presented the seized drugs to the trial court as the prosecution's evidence in the course of her testimony.[16]

For his part, accused-appellant's defense was denial. According to him, after finishing his work at around noon of April 25, 2006, he went out of the premises of the Tabaco Pier to go home. He was suddenly accosted by SPO3 Eva and Edwin Morate. He was familiar with SPO3 Eva as he frequently sees the latter around. SPO3 Eva asked him if he is Joselito Morate *alias* "Palito" and he answered affirmatively. At that moment, SPO3 Eva handcuffed the accused-appellant and brought the latter to the police station where he was detained for no apparent reason.[17]

In its Joint Decision dated September 7, 2009, the trial court found the accused-appellant guilty beyond reasonable doubt of the charges against him. The dispositive portion of the Joint Decision reads:

WHEREFORE, finding the accused JOSELITO MORATE *y* TARNATE @ "PALITO" guilty beyond reasonable doubt of Violation

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[14] Records, Criminal Case No. T-4466, p. 13; Chemistry Report No. D-83-06, Exhibit "K".

[15] Records, Criminal Case No. T-4467, p. 13. In particular, the marijuana contents of the sachets were as follows: MCM-A, 0.3351 gram; MCM-B, 0.3491 gram; and, MCM-C, 0.3449 gram. Chemistry Report No. D-82-06, Exhibit "I".

[16] *See* Testimony of PSInsp. Clemen, TSN, May 31, 2007, p. 7.

[17] CA *rollo*, pp. 67-68.

of Section 5 of Art. II of R.A. 9165, in Criminal Case No. T-4467[,] judgment is hereby rendered sentencing JOSELITO MORATE *y* TARNATE to suffer the penalty of life imprisonment and a fine of ₱500,000.00.

Further finding the accused JOSELITO MORATE *y* TARNATE @ "PALITO" [guilty beyond reasonable doubt] in Criminal Case No. T-4466 for Violation of Section 11[,] Art. II of R.A. 9165[,] judgment is hereby rendered sentencing JOSELITO MORATE *y* TARNATE to suffer the penalty of imprisonment of twelve (12) years and 1 day to twenty (20) years of *reclusion temporal* and a fine of ₱300,000.00.

The confiscated dried marijuana leaves are hereby ordered to be turned over to the Office of the City Prosecutor, Tabaco City, which, in turn, shall coordinate with the proper government agency for the proper disposition and destruction of the same.[18]

Accused-appellant appealed his case to the Court of Appeals. He questioned his conviction on the basis of what he claimed as non-compliance with the rule on chain of custody of seized illegal drugs. He further claimed that the trial court should not have given full weight and credence to the prosecution's evidence as there was failure to prove the integrity of the seized drug. Such failure on the part of the prosecution means failure to prove his guilt beyond reasonable doubt.[19]

In particular, the accused-appellant points to the following violations of the chain of custody requirement under Section 21(1) of Republic Act No. 9165 and its implementing rules and regulations: the seized items were marked and subjected to inventory not at the scene of the buy-bust but at the police station; the marking and inventory of the seized drugs were conducted in the presence of the buy-bust team, together with Marbella and Cea, but without the accused-appellant or his representative; and, no photographs were taken during the inventory.[20]

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[18] *Id.* at 49.

[19] *Id.* at 68-85; Brief for the Accused-Appellant.

[20] *Id.* at 75-78.

In its Decision dated October 18, 2011, the Court of Appeals rejected the contentions of the accused-appellant and denied his appeal. According to the Court of Appeals, there was substantial compliance with the requirements of Republic Act No. 9165. In particular, the Court of Appeals noted the following links in the chain of custody:

> (1) PO1 Manamtam who was tasked to act as the poseur-buyer testified that the three (3) sachets of marijuana which he bought from the accused-appellant were marked by him as [“]MCM A[”], [“]MCM B[”], and [“]MCM C[”]. While the subject sachet of marijuana which was confiscated by PO3 Eva III when the accused-appellant was frisked during the arrest was marked by the former with [“]PAE III[”].
>
> (2) The Receipt of Seized Evidence/Property clearly states that the subject sachets of marijuana were turned over by PO3 Eva III and were received by PO1 Borromeo, Jr. who testified and corroborated the said turn over. He further said in open court that aside from being the tasked driver at the buy-bust operation, he was also assigned by the Chief of Police Bataller to bring the items to the Crime Laboratory.
>
> (3) The plastic sachets were brought to the laboratory for examination per Requests for Laboratory Examination signed by PO1 Borromeo.
>
> (4) According to Chemistry Report No[s]. D-82-06 and [D-] 83-06, prepared by Sr. Insp. Josephine Macura Clemen, the four (4) plastic sachets positively contain Marijuana, a dangerous drug.[21] (Citations omitted.)

For the Court of Appeals, the circumstances above show that the chain of custody of the seized items was properly established: “the items seized from the accused-appellant at the scene of the crime were also the items marked by the arresting officers, turned over to the investigator, sent to the Crime Laboratory, and returned after yielding positive results for Marijuana.”[22] Thus, the Court

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[21] *Rollo*, pp. 9-10.

[22] *Id.* at 10.

of Appeals upheld the conviction of the accused-appellant for both crimes. The decretal portion of the Decision dated October 18, 2011 reads:

> **IN VIEW OF ALL THE FOREGOING**, the appeal is hereby **DISMISSED**. The Joint Decision dated 07 September 2009 of the Regional Trial Court of Tabaco City, Branch 17 in Criminal Cases Nos. T-4466 and T-4467 finding accused-appellant **JOSELITO MORATE *y* TARNATE** guilty of the violations charged is **AFFIRMED**.[23]

Accused-appellant is now before this Court insisting on the failure of the prosecution to prove his guilt beyond reasonable doubt on account of the prosecution's non-compliance with the chain of custody requirement under Section 21(1) of Republic Act No. 9165 and its implementing rules and regulations.

This Court denies the accused-appellant's appeal.

Initially, it must be emphasized that accused-appellant's defense of alleged non-compliance with Section 21 of Republic Act No. 9165 was raised belatedly and for the first time on appeal. Failure to raise the issue of non-observance of the chain of custody requirement during trial is fatal to the case of the accused-appellant.[24] As explained in *People v. Sta. Maria*:[25]

> The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value.

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[23] *Id.* at 11.

[24] *People v. De la Cruz*, G.R. No. 177324, March 30, 2011, 646 SCRA 707, 725.

[25] 545 Phil. 520, 534 (2007).

Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal. (Emphasis supplied, citation omitted.)

In this case, the accused-appellant never questioned the chain of custody during trial. Specifically, the records show that the accused-appellant never assailed the propriety and regularity of the process of marking and inventory of the seized items during the prosecution's presentation of evidence on that matter during the testimony of PO1 Manamtam.[26] Also, when the prosecution formally offered the Certification of Inventory as evidence for the purpose of proving "the immediate and accurate inventory, marking and packing of the purchased and the seized marijuana to maintain and preserve [their] identities and integrity" and the four sachets of marijuana as evidence for the purpose of proving "the identities and integrity of the purchased and the seized marijuana as those were immediately inventoried, marked and documented/recorded,"[27] the accused-appellant's comment was simply "Denied as to the purposes for which they are being offered for being self[-]serving pieces of evidence"[28] and said nothing about non-compliance with the chain of custody requirement.

More importantly, the accused-appellant's counsel himself has dropped the bomb that demolished the accused-appellant's defense. He admitted the identity and integrity of the specimens. As regards the illegal drugs subject of Criminal Case No. T-4466, the following is instructive:

Q Tell us, Madam, where are the items that are covered by the laboratory examination and the chemistry report?
A Here are the drug items that are the subject of my chemistry report.

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[26] *See* Testimony of PO1 Manamtam, TSN, November 13, 2008.

[27] Records, Criminal Case No. T-4466, pp. 156-157.

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

PROS. BROTAMONTE:

> So you are handing over to me the drug items encased in a large transparent plastic sachet which has marking D-82-06 and initial on a masking tape seal. May we request, Your Honor, without necessarily opening the packet that it be marked as Exhibit "I-1" to be placed on the masking tape and[,] again without necessarily opening the transparent plastic packet[,] the three (3) transparent plastic sachets inside it be assigned markings as Exhibit "I-1-A", Exhibit "I-1-B" and Exhibit "I-1-C" be placed on the masking tape on the outside [of] the large transparent packet.
>
> Now, stipulations. Would the defense admit that those items marked as Exhibit[s] "I-1-A" to "I-1-C" are those referred to in the request for laboratory examination x x x.
>
> x x x x x x x x x
>
> ATTY. NASAYAO:
>
> **We admit, Your Honor, that these plastic sachets contain items MC[M-A], MC[M-B] and MC[M-C]**.[29] (Emphasis supplied.)

As regards the illegal drugs subject of Criminal Case No. T-4467, the following is enlightening:

PROS. BROTAMONTE:

Q The items?

WITNESS:

A This is the actual drug item with the letter request.

Q May we ask the witness as preparation to the stipulation from whom is this large transparent pack where the smaller plastic sachet where the supposed marijuana is encased came from?

A The original.

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[29] Testimony of PSInsp. Clemen, TSN, May 31, 2007, pp. 7-8.

PROS. BROTAMONTE:

> May we know if the defense admit[s] that the supposed marijuana inside a small transparent sachet which is in turn encased in a large transparent pack with serial number D-83-06 and the signature along with the marking and written in blue pentel pen are the items examined x x x.

ATTY. BUAG:

> **Admitted**. But along this line[,] we would stipulate that PInsp. Clemen has no personal knowledge as to where this evidence was found and she had no personal knowledge and has no participation in the arrest of the accused.

PROS. BROTAMONTE:

> We stipulate as per record these containers and the items came from the Tabaco City PNP.

ATTY. BUAG:

> **Admitted**.[30] (Emphases supplied.)

Thus, through counsel, the accused-appellant admitted that the seized sachets subjected to laboratory examination and which were confirmed as containing marijuana were the same items referred to in the request for laboratory examination — the very same sachets which the accused-appellant sold to PO1 Manamtam and marked by the latter as "MCM-A," "MCM-B" and "MCM-C" during the inventory. The accused-appellant also admitted that the other seized sachet subjected to laboratory examination and which was confirmed as containing marijuana was the same item referred to in the request for laboratory examination — the very same sachet dropped by the accused-appellant when he was about to be arrested but picked up by PO3 Eva and marked by the latter as "PAE III" during the inventory. While the latter admission may be qualified by the statement that the forensic chemist who conducted the laboratory examination had neither personal knowledge of the source of the evidence nor participation in the arrest of the accused-appellant, such admission

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[30] *Id.*, TSN, November 15, 2007, pp. 4-5.

was coupled with the further admission that the item came from the Tabaco City PNP in connection with the case against the accused-appellant as reflected in the chemistry report.

These two circumstances — (1) the omission of the accused-appellant to raise the issue of non-compliance with the chain of custody requirement on time, and (2) the admission of the accused-appellant as to the identity and integrity of the seized items that the PNP Tabaco City submitted to the Crime Laboratory, subjected to examination by the forensic chemist and presented in court as evidence — are sufficient to defeat the claims of the accused-appellant. Nevertheless, even the consideration of the compliance with the chain of custody requirement calls for the denial of the accused-appellant's appeal.

The chain of custody is basically the duly recorded authorized stages of transfer of custody of seized dangerous drugs, from their seizure or confiscation to receipt in the forensic laboratory for examination to safekeeping to presentation in court for destruction.[31] The function of the chain of custody requirement is to ensure that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.[32] Thus, the chain of custody requirement has a two-fold purpose: (1) the preservation of the integrity and evidentiary value of the seized items, and

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[31] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 (which implements Republic Act No. 9165) specifically defines chain of custody as follows:

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and used in court as evidence, and the final disposition.

[32] *People v. Langcua*, G.R. No. 190343, February 6, 2013, 690 SCRA 123, 139.

(2) the removal of unnecessary doubts as to the identity of the evidence.

The law recognizes that, while the presentation of a perfect unbroken chain is ideal, the realities and variables of actual police operation usually makes an unbroken chain impossible.[33] With this implied judicial recognition of the difficulty of complete compliance with the chain of custody requirement,[34] substantial compliance is sufficient as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers.[35]

In this case, the Court of Appeals correctly ruled that the chain of custody requirement has been substantially complied with. The police officers duly recorded the various authorized stages of transfer of custody of the dangerous drugs confiscated from the accused-appellant. In particular, PO1 Manamtam had custody of the three sachets of marijuana which the accused-appellant sold him, from the scene of the buy-bust to the police station, while PO3 Eva had custody of the sachet of marijuana which the accused-appellant dropped, from the scene of the buy-bust to the police station. Upon arrival at the police station, PO1 Manamtam and PO3 Eva marked the items of contraband in their respective possession and conducted an inventory in the presence of the accused-appellant, *Barangay Kagawad*

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[33] See *People v. Aguilar*, G.R. No. 191396, April 17, 2013, 696 SCRA 838. There, the Court said: "While a testimony about a perfect and unbroken chain is ideal, such is not always the standard as it is almost always impossible to obtain an unbroken chain."

[34] See *People v. Rusiana*, G.R. No. 186139, October 5, 2009, 603 SCRA 57, 65. There, this Court stated: "[A]lthough ideally the prosecution should offer a perfect chain of custody in the handling of evidence, 'substantial compliance with the legal requirements on the handling of the seized item' is sufficient. Behind this is an acknowledgment that the chain of custody rule is difficult to comply with."

[35] See *People v. Langcua, supra* note 32 at 139, where the Court says: "As long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending police officers, substantial compliance with the procedure to establish a chain of custody is sanctioned."

Marbella and media representative Cea. The seized items subject of the inventory were then transferred to the custody of PO1 Borromeo who brought them to the PNP Crime Laboratory in Legazpi City where they were examined by PSInsp. Clemen, the forensic chemist. PSInsp. Clemen then brought the contraband to the court as the prosecution's evidence when she testified in court. The four sachets of marijuana taken from the accused-appellant were the same sachets of marijuana which the police officers marked and subjected to inventory, and they were the very same sachets of marijuana brought to the crime laboratory, examined by the forensic chemist and presented to court as evidence. Thus, the identity and evidentiary integrity of the seized items were properly preserved.

Contrary to the contention of the accused-appellant, the marking and inventory of the seized items at the police station did not contravene the procedure laid down in Section 21(1) of Republic Act No. 9165. The said provision provides:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs* x x x:
>
> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

On the other hand, the relevant portion of the implementing rules and regulations of the law states:

> SECTION 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs,* 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[.]

The seizure and confiscation of the prohibited drugs from the accused-appellant was a warrantless seizure resulting from a buy-bust. The law, as carried out by its implementing rules and regulations expressly authorizes the taking of the inventory of the seized contraband "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable," in case of warrantless seizure. Thus, this Court has ruled that marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team.[36] In this light, the marking and inventory of the seized items at the police station immediately after the arrival thereat of the police officers who conducted the buy-bust operation was in accordance with the law, its implementing rules and regulations, and relevant jurisprudence.

As regards the accused-appellant's claim that he was not present during the inventory, this is contradicted by Cea, the media representative who witnessed the marking and inventory of the articles seized from the accused-appellant. During cross-examination by the accused-appellant's counsel, Cea categorically declared that the accused-appellant witnessed the inventory:

[ATTY. BUAG:]

Q Was the accused present during the time of the inventory?

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[36] *People v. Resurreccion*, G.R. No. 186380, October 12, 2009, 603 SCRA 510, 520.

[WITNESS:]

A During that time he was there x x x.

Q Were you informed by the police that that person was the accused?

A Yes, I am sure that he was there as a suspect because we usually interview the suspect to confirm.

Q While the items were on the table was the accused already there?

A Yes, sir.[37]

The media representative, who witnessed the inventory and signed the Certification of Inventory of the confiscated drugs which have been duly marked by the police officers, firmly testified that the inventory was conducted in the presence of the accused-appellant. There is no reason, and the accused-appellant himself does not give any basis, to doubt Cea's testimony.

As to the failure to photograph the inventory of the seized items, such omission on the part of the police officers is not fatal to the case against the accused-appellant. This Court has ruled in various cases, such as *People v. Almodiel*,[38] *People v. Rosialda*,[39] *People v. Llamado*,[40] and *People v. Rivera*,[41] that the failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated is not fatal and does not automatically render the arrest of the accused illegal or the items seized from him inadmissible.[42] As has been said earlier, the prosecution has sufficiently shown that the identity and evidentiary integrity of the seized items were properly preserved, and that is not

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[37] Testimony of Emmanuel Cea III, TSN, March 6, 2008, pp. 12-13.

[38] G.R. No. 200951, September 5, 2012, 680 SCRA 306.

[39] G.R. No. 188330, August 25, 2010, 629 SCRA 507.

[40] G.R. No. 185278, March 13, 2009, 581 SCRA 544.

[41] G.R. No. 182347, October 17, 2008, 569 SCRA 879.

[42] *People v. Almodiel*, *supra* note 38, at 323.

materially affected by the prosecution's failure to take a photograph of the seized items.

As the contentions of the accused-appellant have been addressed, we now proceed to discuss his criminal liability.

A successful prosecution of illegal sale of dangerous drugs requires that the following elements be established:

(1) the identity of the buyer and the seller, the object and the consideration of the sale; and

(2) the delivery to the buyer of the thing sold and receipt by the seller of the payment therefor.[43]

On the other hand, there can be conviction for illegal possession of dangerous drugs only if the following elements are present:

(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 drug.[44]

Illegal sale of dangerous drugs is committed when the sale transaction is consummated,[45] that is, upon delivery of the illicit drug to the buyer and the receipt of the payment by the seller. In this case, the RTC and the Court of Appeals both found beyond reasonable doubt that the accused-appellant, as seller, sold 1.0291 grams of marijuana to the poseur-buyer, PO1 Manamtam, for ₱100.00. The former handed the latter three sachets of marijuana after the latter paid the ₱100.00 consideration for the sale. Under Section 5 of Republic Act No. 9165, such illegal sale of dangerous drugs, regardless of quantity, is punishable with the penalty of life imprisonment to death and

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[43] *People v. Remigio*, G.R. No. 189277, December 5, 2012, 687 SCRA 336, 347.

[44] *Id.*

[45] *People v. Encila*, G.R. No. 182419, February 10, 2009, 578 SCRA 341, 356.

a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). In light of the effectivity of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. Consequently, the penalty applicable to the accused-appellant shall only be life imprisonment, without eligibility for parole, and fine.[46] Thus, the accused-appellant was correctly meted the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00).

Both the RTC and the Court of Appeals likewise found beyond reasonable doubt that the accused-appellant had in his possession a sachet containing 0.3035 gram of marijuana fruiting tops, which he dropped when the police operatives closed in on him, and that he had no authority to possess the dangerous drug. Under Section 11(3) of Republic Act No. 9165, illegal possession of less than 300 grams of marijuana is punishable with the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00). Thus, in accordance with the Indeterminate Sentence Law, the accused-appellant was correctly meted the penalty of imprisonment for a minimum term of twelve (12) years and one (1) day to a maximum term of twenty (20) years, and a fine of Three Hundred Thousand Pesos (₱300,000.00).

In sum, the accused-appellant has been correctly found guilty beyond reasonable doubt of illegal possession of 0.3035 gram of marijuana in Criminal Case No. T-4466 and of illegal sale of 1.0291 grams of marijuana in Criminal Case No. T-4467. The respective penalties imposed on him are likewise proper and in accordance with law.

WHEREFORE, the Decision dated October 18, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 04197 affirming the Joint Decision dated September 7, 2009 of the Regional

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[46] *People v. De la Rosa*, G.R. No. 185166, January 26, 2011, 640 SCRA 635, 658.

Trial Court of Tabaco City, Branch 17 in Criminal Case Nos. T-4466 and T-4467 which found the accused-appellant **GUILTY** beyond reasonable doubt for violation of Sections 11 and 5, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 179597. February 3, 2014]

IGLESIA FILIPINA INDEPENDIENTE, *petitioner, vs.* **HEIRS of BERNARDINO TAEZA,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; WHERE THE SUPREME BISHOP OF THE PHILIPPINE INDEPENDENT CHURCH ACTED BEYOND HIS POWERS IN THE DISPOSITION OF THE CHURCH'S PROPERTY, IT IS CONSIDERED AN UNENFORCEABLE CONTRACT.— [P]etitioner provided in Article IV (a) of its Constitution and Canons of the Philippine Independent Church, that "[a]ll real properties of the Church located or situated in such parish can be disposed of only with the approval and conformity of the laymen's committee, the parish priest, the Diocesan Bishop, with sanction of the Supreme Council, and finally with the approval of the Supreme Bishop, as administrator of all the temporalities of the Church." Evidently, under petitioner's Canons, any sale of real property requires not just the consent of the Supreme Bishop but also the concurrence of the laymen's committee, the parish priest, and the Diocesan Bishop, as sanctioned by the Supreme Council. However, petitioner's Canons do not

specify in what form the conformity of the other church entities should be made known. Thus, as petitioner's witness stated, in practice, such consent or approval may be assumed as a matter of fact, unless some opposition is expressed. Here, the trial court found that the laymen's committee indeed made its objection to the sale known to the Supreme Bishop. The CA, on the other hand, glossed over the fact of such opposition from the laymen's committee, opining that the consent of the Supreme Bishop to the sale was sufficient, especially since the parish priest and the Diocesan Bishop voiced no objection to the sale. The Court finds it erroneous for the CA to ignore the fact that the laymen's committee objected to the sale of the lot in question. The Canons require that ALL the church entities listed in Article IV (a) thereof should give its approval to the transaction. Thus, when the Supreme Bishop executed the contract of sale of petitioner's lot despite the opposition made by the laymen's committee, he acted beyond his powers. This case clearly falls under the category of unenforceable contracts mentioned in Article 1403, paragraph (1) of the Civil Code[.]

2. ID.; TRUSTS; WHERE THE PROPERTY WAS ACQUIRED BY MISTAKE SUCH AS WHEN THE PERSON TRANSFERRING OWNERSHIP WAS NOT AUTHORIZED TO DO SO, THE PERSON WHO ACQUIRED THE PROPERTY IS CONSIDERED A TRUSTEE.— In the present case, however, respondents' predecessor-in-interest, Bernardino Taeza, had already obtained a transfer certificate of title in his name over the property in question. Since the person supposedly transferring ownership was not authorized to do so, the property had evidently been acquired by mistake. In *Vda. de Esconde v. Court of Appeals*, the Court affirmed the trial court's ruling that the applicable provision of law in such cases is Article 1456 of the Civil Code which states that "[i]f property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

3. ID.; ID.; ID.; WHEN A CONSTRUCTIVE IMPLIED TRUST HAD BEEN CONSTITUTED BETWEEN THE PARTIES, THE BENEFICIARY MUST BRING AN ACTION FOR RECONVEYANCE WITHIN TEN YEARS FROM

ISSUANCE OF THE TITLE OR DATE OF REGISTRATION OF THE DEED; APPLICATION.— A constructive trust having been constituted by law between respondents as trustees and petitioner as beneficiary of the subject property, may respondents acquire ownership over the said property? The Court held in the same case of *Aznar*, that unlike in express trusts and resulting implied trusts where a trustee cannot acquire by prescription any property entrusted to him unless he repudiates the trust, **in constructive implied trusts, the trustee may acquire the property through prescription even if he does not repudiate the relationship**. It is then incumbent upon the beneficiary to bring an action for reconveyance before prescription bars the same. In A*znar*, the Court explained [that] x x x **An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years** and not otherwise. x x x It has also been ruled that **the ten-year prescriptive period begins to run from the date of registration of the deed or the date of the issuance of the certificate of title over the property**, x x x. Here, the present action was filed on January 19, 1990, while the transfer certificates of title over the subject lots were issued to respondents' predecessor-in-interest, Bernardino Taeza, only on February 7, 1990. Clearly, therefore, petitioner's complaint was filed well within the prescriptive period stated above, and it is only just that the subject property be returned to its rightful owner.

APPEARANCES OF COUNSEL

Macpaul B. Soriano for petitioner.
Romeo I. Calubaquib for respondents.

D E C I S I O N

PERALTA, *J.*:

This deals with the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying that the Decision[1] of the

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Portia Aliño-Hormachuelos and Santiago Javier Ranada, concurring; *rollo*, pp. 36-52.

Court of Appeals (*CA*), promulgated on June 30, 2006, and the Resolution[2] dated August 23, 2007, denying petitioner's motion for reconsideration thereof, be reversed and set aside.

The CA's narration of facts is accurate, to wit:

> The plaintiff-appellee Iglesia Filipina Independiente (IFI, for brevity), a duly registered religious corporation, was the owner of a parcel of land described as Lot 3653, containing an area of 31,038 square meters, situated at Ruyu (now Leonarda), Tuguegarao, Cagayan, and covered by Original Certificate of Title No. P-8698. The said lot is subdivided as follows: Lot Nos. 3653-A, 3653-B, 3653-C, and 3653-D.
>
> Between 1973 and 1974, the plaintiff-appellee, through its then Supreme Bishop Rev. Macario Ga, sold Lot 3653-D, with an area of 15,000 square meters, to one Bienvenido de Guzman.
>
> On February 5, 1976, Lot Nos. 3653-A and 3653-B, with a total area of 10,000 square meters, were likewise sold by Rev. Macario Ga, in his capacity as the Supreme Bishop of the plaintiff-appellee, to the defendant Bernardino Taeza, for the amount of ₱100,000.00, through installment, with mortgage to secure the payment of the balance. Subsequently, the defendant allegedly completed the payments.
>
> In 1977, a complaint for the annulment of the February 5, 1976 Deed of Sale with Mortgage was filed by the Parish Council of Tuguegarao, Cagayan, represented by Froilan Calagui and Dante Santos, the President and the Secretary, respectively, of the Laymen's Committee, with the then Court of First Instance of Tuguegarao, Cagayan, against their Supreme Bishop Macario Ga and the defendant Bernardino Taeza.
>
> The said complaint was, however, subsequently dismissed on the ground that the plaintiffs therein lacked the personality to file the case.
>
> After the expiration of Rev. Macario Ga's term of office as Supreme Bishop of the IFI on May 8, 1981, Bishop Abdias dela Cruz was

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[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Portia Aliño- Hormachuelos and Arcangelita Romilla-Lontok, concurring; *id.* at 54-55.

elected as the Supreme Bishop. Thereafter, an action for the declaration of nullity of the elections was filed by Rev. Ga, with the Securities and Exchange Commission (SEC).

In 1987, while the case with the SEC is (sic) still pending, the plaintiff-appellee IFI, represented by Supreme Bishop Rev. Soliman F. Ganno, filed a complaint for annulment of the sale of the subject parcels of land against Rev. Ga and the defendant Bernardino Taeza, which was docketed as Civil Case No. 3747. The case was filed with the Regional Trial Court of Tuguegarao, Cagayan, Branch III, which in its order dated December 10, 1987, dismissed the said case without prejudice, for the reason that the issue as to whom of the Supreme Bishops could sue for the church had not yet been resolved by the SEC.

On February 11, 1988, the Securities and Exchange Commission issued an order resolving the leadership issue of the IFI against Rev. Macario Ga.

Meanwhile, the defendant Bernardino Taeza registered the subject parcels of land. Consequently, Transfer Certificate of Title Nos. T-77995 and T-77994 were issued in his name.

The defendant then occupied a portion of the land. The plaintiff-appellee allegedly demanded the defendant to vacate the said land which he failed to do.

In January 1990, a complaint for annulment of sale was again filed by the plaintiff-appellee IFI, this time through Supreme Bishop Most Rev. Tito Pasco, against the defendant-appellant, with the Regional Trial Court of Tuguegarao City, Branch 3.

On November 6, 2001, the court *a quo* rendered judgment in favor of the plaintiff-appellee. It held that the deed of sale executed by and between Rev. Ga and the defendant-appellant is null and void.[3]

The dispositive portion of the Decision of Regional Trial Court of Tuguegarao City (*RTC*) reads as follows:

> WHEREFORE, judgment is hereby rendered:
>
> 1) declaring plaintiff to be entitled to the claim in the Complaint;

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[3] *Rollo*, pp. 37-39.

2) declaring the Deed of Sale with Mortgage dated February 5, 1976 null and void;

3) declaring Transfer Certificates of Title Numbers T-77995 and T-77994 to be null and void *ab initio*;

4) declaring the possession of defendant on that portion of land under question and ownership thereof as unlawful;

5) ordering the defendant and his heirs and successors-in-interest to vacate the premises in question and surrender the same to plaintiff; [and]

6) condemning defendant and his heirs pay (sic) plaintiff the amount of ₱100,000.00 as actual/consequential damages and ₱20,000.00 as lawful attorney's fees and costs of the amount (sic).[4]

Petitioner appealed the foregoing Decision to the CA. On June 30, 2006, the CA rendered its Decision reversing and setting aside the RTC Decision, thereby dismissing the complaint.[5] The CA ruled that petitioner, being a corporation sole, validly transferred ownership over the land in question through its Supreme Bishop, who was at the time the administrator of all properties and the official representative of the church. It further held that "[t]he authority of the then Supreme Bishop Rev. Ga to enter into a contract and represent the plaintiff-appellee cannot be assailed, as there are no provisions in its constitution and canons giving the said authority to any other person or entity."[6]

Petitioner then elevated the matter to this Court *via* a petition for review on *certiorari*, wherein the following issues are presented for resolution:

A.) WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT FINDING THE FEBRUARY 5, 1976 DEED OF SALE WITH MORTGAGE AS NULL AND VOID;

B.) ASSUMING FOR THE SAKE OF ARGUMENT THAT IT IS NOT VOID, WHETHER OR NOT THE COURT OF

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[4] Records, p. 429.

[5] *Rollo*, p. 51.

[6] *Id.* at 44-45.

APPEALS ERRED IN NOT FINDING THE FEBRUARY 5, 1976 DEED OF SALE WITH MORTGAGE AS UNENFORCEABLE, [and]

C.) WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT FINDING RESPONDENT TAEZA HEREIN AS BUYER IN BAD FAITH.[7]

The first two issues boil down to the question of whether then Supreme Bishop Rev. Ga is authorized to enter into a contract of sale in behalf of petitioner.

Petitioner maintains that there was no consent to the contract of sale as Supreme Bishop Rev. Ga had no authority to give such consent. It emphasized that Article IV (a) of their Canons provides that "All real properties of the Church located or situated in such parish can be disposed of only with the approval and conformity of the laymen's committee, the parish priest, the Diocesan Bishop, with sanction of the Supreme Council, and finally with the approval of the Supreme Bishop, as administrator of all the temporalities of the Church." It is alleged that the sale of the property in question was done without the required approval and conformity of the entities mentioned in the Canons; hence, petitioner argues that the sale was null and void.

In the alternative, petitioner contends that if the contract is not declared null and void, it should nevertheless be found unenforceable, as the approval and conformity of the other entities in their church was not obtained, as required by their Canons.

Section 113 of the Corporation Code of the Philippines provides that:

Sec. 113. *Acquisition and alienation of property*. — Any corporation sole may purchase and hold real estate and personal property for its church, charitable, benevolent or educational purposes, and may receive bequests or gifts for such purposes. Such corporation may mortgage or sell real property held by it upon obtaining an order for that purpose from the Court of First Instance of the province where the property is situated; x x x ***Provided,*** **That in cases where**

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[7] *Rollo,* pp. 16-17.

the rules, regulations and discipline of the religious denomination, sect or church, religious society or order concerned represented by such corporation sole regulate the method of acquiring, holding, selling and mortgaging real estate and personal property, such rules, regulations and discipline shall control, and the intervention of the courts shall not be necessary.[8]

Pursuant to the foregoing, petitioner provided in Article IV (a) of its Constitution and Canons of the Philippine Independent Church,[9] that "[a]ll real properties of the Church located or situated in such parish can be disposed of only with the approval and conformity of the laymen's committee, the parish priest, the Diocesan Bishop, with sanction of the Supreme Council, and finally with the approval of the Supreme Bishop, as administrator of all the temporalities of the Church."

Evidently, under petitioner's Canons, any sale of real property requires not just the consent of the Supreme Bishop but also the concurrence of the laymen's committee, the parish priest, and the Diocesan Bishop, as sanctioned by the Supreme Council. However, petitioner's Canons do not specify in what form the conformity of the other church entities should be made known. Thus, as petitioner's witness stated, in practice, such consent or approval may be assumed as a matter of fact, unless some opposition is expressed.[10]

Here, the trial court found that the laymen's committee indeed made its objection to the sale known to the Supreme Bishop.[11] The CA, on the other hand, glossed over the fact of such opposition from the laymen's committee, opining that the consent of the

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[8] Emphasis supplied.

[9] Exhibit "F," records, pp. 154-157.

[10] TSN, July 7, 1994, p. 43.

[11] See Exhibit "H", records, pp. 176-177, "Resolution No. 6. A Resolution Requesting the Supreme Bishop and the Supreme Council of Bishop Not to Sell the Remaining Portion of Lot No. 8698 Located at Ruyu, Tuguegarao, Cagayan"; See also Exhibit "I", records p. 178. Telegram of Bishop Cuarteros sent to Most Rev. Macario Ga stating that, "Parishioners of Tuguegarao oppose the sale of the remaining portion of cemetery lot."

Supreme Bishop to the sale was sufficient, especially since the parish priest and the Diocesan Bishop voiced no objection to the sale.[12]

The Court finds it erroneous for the CA to ignore the fact that the laymen's committee objected to the sale of the lot in question. The Canons require that ALL the church entities listed in Article IV (a) thereof should give its approval to the transaction. Thus, when the Supreme Bishop executed the contract of sale of petitioner's lot despite the opposition made by the laymen's committee, he acted beyond his powers.

This case clearly falls under the category of unenforceable contracts mentioned in Article 1403, paragraph (1) of the Civil Code, which provides, thus:

See RTC Decision, records, p. 427, pertinent portion of which reads:

The other proof presented to prove that no consent was given by the laymen is the Resolution No. 6 marked as Exhibit "H" signed by the Secretary, Dante Santos, which shows among others that the officers and members of the Church are not in favor of the sale because the lot is essential to the interest of the congregation.

This Court gives credence to this resolution as genuine, authentic, and hence, credible.

See also excerpts from the TSN of the April 28, 1994 hearing, pp. 14-15, to wit:

Q: x x x
Do you know Bishop if this provision regarding the disposition of the property of the church was complied?
A: Not complied. In fact, we protested before the sale was made.
Q: Do you mean to say that before the sale it was already protested?
A: Yes, Sir.
Q: What prompted you to protest before the sale, that there was an impending sale that prompted you to make a protest?
A: Because we have learned already from rumors that Mr. Taeza has the plan to get that lot.
Q: In what manner or form did you protest?
A: Through resolution, written and verbal.

[12] CA Decision, *rollo*, pp. 43-44.

Art. 1403. The following contracts are unenforceable, unless they are ratified:

> (1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

In *Mercado v. Allied Banking Corporation*,[13] the Court explained that:

> x x x Unenforceable contracts are those which cannot be enforced by a proper action in court, unless they are ratified, because either they are entered into without or in excess of authority or they do not comply with the statute of frauds or both of the contracting parties do not possess the required legal capacity. x x x.[14]

Closely analogous cases of unenforceable contracts are those where a person signs a deed of extrajudicial partition in behalf of co-heirs without the latter's authority;[15] where a mother as judicial guardian of her minor children, executes a deed of extrajudicial partition wherein she favors one child by giving him more than his share of the estate to the prejudice of her other children;[16] and where a person, holding a special power of attorney, sells a property of his principal that is not included in said special power of attorney.[17]

In the present case, however, respondents' predecessor-in-interest, Bernardino Taeza, had already obtained a transfer certificate of title in his name over the property in question. Since the person supposedly transferring ownership was not authorized to do so, the property had evidently been acquired by mistake. In *Vda. de Esconde v. Court of Appeals*,[18] the

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[13] 555 Phil. 411 (2007).

[14] *Id.* at 429.

[15] *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta,* G.R. Nos. 165748 & 165930, September 14, 2011, 657 SCRA 555.

[16] *Vda. de Esconde v. Court of Appeals*, 323 Phil. 81 (1996).

[17] *Mercado v. Allied Banking Corporation*, *supra* note 13.

[18] *Supra* note 16.

Court affirmed the trial court's ruling that the applicable provision of law in such cases is Article 1456 of the Civil Code which states that "[i]f property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." Thus, in *Aznar Brothers Realty Company v. Aying*,[19] citing *Vda. de Esconde*,[20] the Court clarified the concept of trust involved in said provision, to wit:

> Construing this provision of the Civil Code, in *Philippine National Bank v. Court of Appeals*, the Court stated:
>
> > A deeper analysis of Article 1456 reveals that it is not a trust in the technical sense for in a typical trust, confidence is reposed in one person who is named a trustee for the benefit of another who is called the *cestui que* trust, respecting property which is held by the trustee for the benefit of the *cestui que* trust. A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, **in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary.**
>
> The concept of constructive trusts was further elucidated in the same case, as follows:
>
> > . . . implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties. In turn, implied trusts are either resulting or constructive trusts. These two are differentiated from each other as follows:
> >
> > > Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always

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[19] 497 Phil. 788, 799-800 (2005).

[20] *Supra* note 16.

> to have been contemplated by the parties. They arise from the nature of circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, ***constructive trusts are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.*** (Italics supplied)

A constructive trust having been constituted by law between respondents as trustees and petitioner as beneficiary of the subject property, may respondents acquire ownership over the said property? The Court held in the same case of *Aznar*,[21] that unlike in express trusts and resulting implied trusts where a trustee cannot acquire by prescription any property entrusted to him unless he repudiates the trust, **in constructive implied trusts, the trustee may acquire the property through prescription even if he does not repudiate the relationship**. It is then incumbent upon the beneficiary to bring an action for reconveyance before prescription bars the same.

In *Aznar*,[22] the Court explained the basis for the prescriptive period, to wit:

> x x x under the present Civil Code, we find that **just as an implied or constructive trust is an offspring of the law (Art. 1456, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner.** In this context, and *vis-á-vis* prescription, Article 1144 of the Civil Code is applicable.
>
> Article 1144. The following actions must be brought **within ten years from the time the right of action accrues**:
>
> (1) Upon a written contract;

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[21] *Supra* note 19.

[22] *Id*.

(2) **Upon an obligation created by law**;

(3) Upon a judgment.

x x x x x x x x x

An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years and not otherwise. A long line of decisions of this Court, and of very recent vintage at that, illustrates this rule. Undoubtedly, it is now well-settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property.

It has also been ruled that **the ten-year prescriptive period begins to run from the date of registration of the deed or the date of the issuance of the certificate of title over the property**, x x x.[23]

Here, the present action was filed on January 19, 1990,[24] while the transfer certificates of title over the subject lots were issued to respondents' predecessor-in-interest, Bernardino Taeza, only on February 7, 1990.[25] Clearly, therefore, petitioner's complaint was filed well within the prescriptive period stated above, and it is only just that the subject property be returned to its rightful owner.

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals, dated June 30, 2006, and its Resolution dated August 23, 2006, are **REVERSED** and **SET ASIDE**. A new judgment is hereby entered:

(1) **DECLARING** petitioner Iglesia Filipina Independiente as the **RIGHTFUL OWNER** of the lots covered by Transfer Certificates of Title Nos. T-77994 and T-77995;

(2) **ORDERING** respondents to execute a deed reconveying the aforementioned lots to petitioner;

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[23] *Id.* at 801. (Emphasis supplied)

[24] Records, p. 1.

[25] Exhibits "B" and "C", *id.* at 148-149.

(3) **ORDERING** respondents and successors-in-interest to vacate the subject premises and surrender the same to petitioner; and

(4) Respondents to **PAY** costs of suit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191215. February 3, 2014]

THENAMARIS PHILIPPINES, INC. (Formerly INTERMARE MARITIME AGENCIES, INC.)/ OCEANIC NAVIGATION LTD. and NICANOR B. ALTARES, *petitioners, vs.* **COURT OF APPEALS and AMANDA C. MENDIGORIN (In behalf of her deceased husband GUILLERMO MENDIGORIN),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MOTION FOR EXTENSION TO FILE THE PETITION MUST BE FILED BEFORE THE EXPIRATION OF THE PERIOD SOUGHT TO BE EXTENDED.— In this case, counting 60 days from her counsel's receipt of the June 29, 2009 NLRC Resolution on July 8, 2009, private respondent had until September 7, 2009 to file her petition or a motion for extension, as September 6, 2009, the last day for filing such pleading, fell on a Sunday. However, the motion was filed only on September 8, 2009. It is a fundamental rule of remedial law that a motion for extension of time must be filed before the expiration of the period sought to be extended;

otherwise, the same is of no effect since there would no longer be any period to extend, and the assailed judgment or order will have become final and executory.

2. ID.; ID.; ID.; ID.; COUNSEL'S HEAVY WORKLOAD IS NOT SUFFICIENT REASON TO AVAIL OF THE MOTION FOR EXTENSION.— [A]s cited earlier in *Labao*, there should be an effort on the part of the litigant invoking liberality to satisfactorily explain why he or she was unable to abide by the rules. Here, the reason offered for availing of the motion for extension is the heavy workload of private respondent's counsel, which is hardly a compelling or meritorious reason as enunciated in *Labao*. Time and again, we have held that the excuse of "[h]eavy workload is relative and often self-serving. Standing alone, it is not a sufficient reason to deviate from the 60-day rule." Thus, private respondent's motion for extension should have been denied outright.

3. ID.; ID.; ID.; ID.; EXTENDING UNDESERVED AND UNWARRANTED LIBERALITY IN RESOLVING MOTION FOR EXTENSION CONSTITUTES GRAVE ABUSE OF DISCRETION.— [T]he CA committed grave abuse of discretion when it extended underserved and unwarranted liberality to private respondent. "There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism x x x." Such is present here as shown by the CA's obstinate refusal to dismiss the case despite the late filing of the motion for extension and the flimsy excuse for the extension sought, the late filing of the petition and the numerous infirmities attending the same, and private respondent's continued defiance of its directive. These circumstances serve to highlight private respondent's propensity to disregard the very rules that the courts, the litigants and the lawyers are duty-bound to follow.

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioners.

Navales and Vejeno Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for *Certiorari* filed under Rule 65 of the Rules of Court assails the Resolution[1] dated November 20, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 110808 for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The CA, through the said Resolution, entertained private respondent's Petition for *Certiorari*[2] despite having been filed 15 days late and allowed her to correct the technical infirmities therein. Also assailed is the CA's February 10, 2010 Resolution[3] denying petitioners' Motion for Reconsideration with Prayer to Dismiss[4] and giving private respondent another chance to cure the remaining deficiencies of the petition.

Factual Antecedents

This case stemmed from a complaint for death benefits, unpaid salaries, sickness allowance, refund of medical expenses, damages and attorney's fees filed by Amanda C. Mendigorin (private respondent) against petitioner Thenamaris Philippines, Inc., formerly Intermare Maritime Agencies, Inc./Oceanic Navigation Ltd., (Thenamaris), represented by its general manager, Capt. Nicanor B. Altares (petitioner), filed with the Labor Arbiter (LA). Private respondent is the widow of seafarer Guillermo M. Mendigorin (Guillermo) who was employed by Thenamaris for 27 years as an oiler and eventually, as second engineer in the latter's vessels. Guillermo was diagnosed with and died of colon cancer during the term of the employment contract between him and Thenamaris.

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[1] CA *rollo*, pp. 98-100; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Sesinando E. Villon and Michael P. Elbinias.

[2] *Id.* at 9-27.

[3] *Id.* at 184.

[4] *Id.* at 106-114.

Ruling of the Labor Arbiter

Ultimately, the LA promulgated his Decision[5] dated January 29, 2008 in favor of private respondent. Thus:

> WHEREFORE, the foregoing considered, judgment is hereby rendered in favor of the complainant [herein private respondent] and finding respondents [herein petitioners] liable to pay jointly and severally: (a) death benefits amounting to US $50,000.00 at its peso equivalent at the time of actual payment; (b) reimbursement of medical expenses amounting to ₱102,759.74; [(c)] moral and exemplary damages amounting to ₱100,000.00 and ₱50,000.00 respectively; and (d) attorney's fees in the [amount of] ten percent (10%) of the total monetary award.
>
> All other claims are DENIED.[6]

Ruling of the National Labor Relations Commission (NLRC)

On appeal, the NLRC reversed[7] the LA's Decision.

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[5] *Id.* at 80-93; penned by Labor Arbiter Enrique L. Flores, Jr. The LA, however, disallowed private respondent's claim for unpaid salaries corresponding to the unexpired portion of Guillermo's employment contract for lack of basis as the same is only awarded in illegal dismissal cases.

[6] *Id.* at 93.

[7] See Decision dated March 31, 2009, *id.* at 28-36; penned by Commissioner Gregorio O. Bilog III and concurred in by Commissioner Pablo C. Espiritu, Jr. Presiding Commissioner Lourdes C. Javier took no part.

The NLRC disagreed with the LA's application of the provisions of the 1996 POEA SEC and, instead, held that it is the 2000 POEA SEC that is controlling in this case as the employment contract was executed between petitioners and Guillermo on September 20, 2004 and Guillermo's deployment was on October 22, 2004. While the 1996 POEA SEC covers all injuries or illnesses occurring during the term of the contract and there need not be a showing that the injury or illness is work-related, the 2000 POEA SEC requires that the death, injury or illness occurring during the term of the contract must be work-related.

Citing *Gau Sheng Phils., Inc. v. Joaquin* (481 Phil. 222, 234 [2004]), the NLRC ruled that for death compensation benefits to be awarded, there must be substantial evidence showing that:

Private respondent moved for reconsideration.[8] In a Resolution[9] dated June 29, 2009, however, her motion was denied for lack of merit.

Private respondent, through counsel, received the June 29, 2009 Resolution of the NLRC on July 8, 2009. Sixty-two days thereafter, or on September 8, 2009, she filed a Motion for Extension of Time to File Petition for *Certiorari*[10] before the CA. Private respondent alleged that she had until September 7, 2009 (as September 6, 2009, the actual last day for filing, fell on a Sunday) within which to file a petition for *certiorari*. However, as her counsel was then saddled and occupied with equally important cases, it would be impossible for him to file the petition on time, especially since the case involves voluminous documents necessary in the preparation thereof. Accordingly, private respondent asked for an extension of 15 days from

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a) The cause of death was reasonably connected with the work of the deceased; or

b) The sickness for which he died is an accepted occupational disease; or

c) His working conditions increased the risk of contracting the disease for which he died.

In this case, the CA found that colon cancer is not included in the list of occupational diseases under Sec. 32-A of the 2000 POEA SEC. Private respondent must, therefore, show a reasonable connection between the work of her deceased husband and the cause of his death or show that the risk of contracting colon cancer is increased by the seaman's working conditions. Private respondent was unable to prove any of these. Thus, as Guillermo's death was not work-related, the CA ruled that the hospital and medical expenses incurred by Guillermo after May 22, 2005 (the date when the company-designated physician proclaimed that Guillermo's illness is not work-related) could not be passed on to petitioners. Likewise, the award of moral and exemplary damages and attorney' fees was not proper.

[8] See Motion for Reconsideration, *id.* at 37-42.

[9] *Id.* at 43-44; penned by Commissioner Gregorio O. Bilog III and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr.

[10] *Id.* at 3-6.

September 7, 2009, or until September 22, 2009, within which to file the petition.

On September 22, 2009, private respondent filed her Petition for *Certiorari*[11] before the CA.

Action of the Court of Appeals

In a Resolution[12] dated November 20, 2009, the CA noted that private respondent's Petition for *Certiorari* was filed 15 days late and suffers from procedural infirmities. Nonetheless, in the interest of substantial justice, the CA entertained the petition and directed private respondent to cure the technical flaws in her petition. Thus:

> The Court, in the interest of justice, resolved to **NOTE** the petition for *certiorari* filed on September 22, 2009, albeit the same was filed fifteen (15) days late.
>
> A perusal of the instant petition reveals the following procedural infirmities, namely:
>
> (1) The attached *Verification/Certification of Non-Forum Shopping* does not conform with the requirements under Section 12, Rule II of the 2004 Rules of Notarial Practice, as a Community Tax Certificate is no longer considered competent evidence of an affiant's identity; and
>
> (2) Except for the copy of the *Motion for Reconsideration* filed with the National Labor Relations Commission, no other copies of pertinent and relevant pleadings/documents are attached therewith, such as petitioner's *Complaint*, respondent's *Memorandum of Appeal*, petitioner's *Opposition to Respondent's Appeal*, if any, all of which may aid this Court in judiciously resolving the issues raised in the petition.
>
> ACCORDINGLY, this Court, in line with the rule that cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses have been given, rather than on technicality or some procedural imperfections, resolved to

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[11] *Id.* at 9-27.

[12] *Id.* at 98-100.

DIRECT petitioner to submit anew a *Verification/Certification of Non-Forum Shopping* which complies with the requirements of the rules, and clear and legible copies of the aforementioned pleadings/documents, within ten (10) days from receipt of notice hereof.

SO ORDERED.[13] **(**Emphasis in the original)

Petitioners filed a Motion for Reconsideration with Prayer to Dismiss,[14] strongly opposing private respondent's Motion for Extension to File Petition for *Certiorari* for being an absolutely prohibited pleading. Citing *Laguna Metts Corporation v. Court of Appeals*,[15] petitioners argued that A.M. No. 07-7-12-SC[16] effectively rendered the 60-day period for filing a petition for *certiorari* non-extendible after it deleted portions of Rule 65 pertaining to extension of time to file petition. Thus, as the rule now stands, petitions for *certiorari* must be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration.[17]

Petitioners also contended that even assuming that an extension is still allowable, private respondent's motion for extension is nevertheless a useless piece of paper as it was filed beyond the 60-day period for filing a petition for *certiorari*.

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[13] *Id.*

[14] *Id.* at 106-114.

[15] G.R. No. 185220, July 27, 2009, 594 SCRA 139.

[16] AMENDMENTS TO RULES 41, 45, 58 AND 65 OF THE RULES OF COURT.

[17] In *Laguna Metts Corporation v. Court of Appeals*, *supra* at 146, we stated that:

In granting the private respondent's motion for extension of time to file petition for *certiorari*, the Court of Appeals disregarded A.M. No. 07-7-12-SC. The action amounted to a modification, if not outright reversal, by the Court of Appeals of A.M. No. 07-7-12-SC. In so doing, the Court of Appeals arrogated to itself a power it did not possess, a power that only this Court may exercise. For this reason, the challenged resolutions x x x were invalid as they were rendered by the Court of Appeals in excess of its jurisdiction.

Lastly, petitioners asserted that as private respondent's motion for extension is a prohibited pleading, as well as one filed outside of the reglementary period, then private respondent's Petition for *Certiorari* is a mere scrap of paper with no remedial value whatsoever. Consequently, the Decision of the NLRC has become final and executory and is beyond the ambit of judicial review.

In the meantime, private respondent submitted her Compliance[18] with the CA's Resolution of November 20, 2009. Nevertheless, she still failed to attach thereto copies of her Complaint filed before the LA and Memorandum filed with the NLRC.

In a Resolution[19] dated February 10, 2010, the CA denied petitioners' motion and, instead, gave private respondent one last opportunity to fully comply with its November 20, 2009 Resolution by submitting clear and legible copies of the still lacking pleadings within five days from notice thereof.

Thus, the present Petition for *Certiorari*.

Entry of Judgment[20] was already issued by the NLRC on August 13, 2009. Per NLRC Rules, the June 29, 2009 Resolution became final and executory on July 18, 2009 and was recorded in the Book of Entries of Judgment.

Issues

1. THE PUBLIC RESPONDENT CA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT NOTED THE PETITION FOR *CERTIORARI* FILED BY THE PRIVATE RESPONDENT INSTEAD OF DISMISSING IT OUTRIGHT FOR HAVING BEEN FILED BEYOND THE MANDATORY AND JURISDICTIONAL 60-DAY PERIOD REQUIRED BY SECTION 4, RULE 65 OF THE RULES OF COURT, AS AMENDED BY A.M. NO. 07-7-12-SC.

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[18] CA *rollo*, pp. 115-183.

[19] *Id.* at 184.

[20] *Rollo*, p. 99.

2. THE PUBLIC RESPONDENT CA COMMITTED GRAVE ABUSE OF DISCRETION WHEN, IN NOTING THE VERY LATE PETITION FILED BY THE PRIVATE RESPONDENT, IT GROSSLY IGNORED THIS HONORABLE COURT'S VERY RECENT RULING IN *LAGUNA METTS CORPORATION v. COURT OF APPEALS, ARIES C. CAALAM AND GERALDINE ESGUERRA* (G.R. NO. 185220, JULY 27, 2009), WHICH **DISALLOWED ANY MOTIONS FOR EXTENSION OF TIME TO FILE A PETITION FOR *CERTIORARI* UNDER RULE 65**.[21] (Underscoring and emphasis in the original)

Our Ruling

There is merit in the petition.

In *Republic v. St. Vincent de Paul Colleges, Inc.*[22] we had the occasion to settle the seeming conflict on various jurisprudence touching upon the issue of whether the period for filing a petition for *certiorari* may be extended. In said case we stated that the general rule, as laid down in *Laguna Metts Corporation v. Court of Appeals*,[23] is that a petition for *certiorari* must be filed strictly

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

[22] G.R. No. 192908, August 22, 2012, 678 SCRA 738, 747-750.

[23] *Supra* note 15 at 144-146.

In that case, we held that:

As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning. It is presumed that the deletion would not have been made if there had been no intention to effect a change in the meaning of the law or rule. The amended law or rule should accordingly be given a construction different from that previous to its amendment.

If the Court intended to retain the authority of the proper courts to grant extensions under Section 4 of Rule 65, the paragraph providing for such authority would have been preserved. The removal of the said paragraph under the amendment by A.M. No. 07-7-12-SC of Section 4, Rule 65 simply meant that there can no longer be any extension of the 60-day period within which to file a petition for *certiorari*.

x x x **As the Rule now stands, petitions for *certiorari* must be filed strictly within 60 days from notice of judgment or from the order denying a motion for reconsideration** (Emphasis supplied)

within 60 days from notice of judgment or from the order denying a motion for reconsideration. This is in accordance with the amendment introduced by A.M. No. 07-7-12-SC[24] where no provision for the filing of a motion for extension to file a petition for *certiorari* exists, unlike in the original Section 4 of Rule 65[25]

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[24] Section 4 of Rule 65, as amended by A.M. No. 07-7-12-SC, now reads:

Sec. 4. *When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from notice of the denial of the motion.

If the petition relates to an act or omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction.

[25] Section 4 of Rule 65 originally provides:

Sec. 4. *When and where petition filed.* – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the *Sandiganbayan* if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis supplied)

which allowed the filing of such a motion but only for compelling reason and in no case exceeding 15 days.[26] Under exceptional cases, however, and as held in *Domdom v. Third and Fifth Divisions of the Sandiganbayan*,[27] the 60-day period may be extended subject to the court's sound discretion. In *Domdom*, we stated that the deletion of the provisions in Rule 65 pertaining to extension of time did not make the filing of such pleading absolutely prohibited. "If such were the intention, the deleted portion could just have simply been reworded to state that 'no extension of time to file the petition shall be granted.' Absent such a prohibition, motions for extension are allowed, subject to the court's sound discretion."[28]

Then in *Labao v. Flores*,[29] we laid down some of the exceptions to the strict application of the 60-day period rule, thus:

> [T]here are recognized exceptions to their strict observance, such as: (1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial

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[26] In *Laguna Metts Corporation v. Court of Appeals*, *supra* note 15, we explained that the amendments were necessary to prevent the use (or abuse) of the petition for *certiorari* under Rule 65 to delay a case or even defeat the ends of justice. Besides, the 60-day period provided under the Rules for filing a petition is already sufficient time for a party to ponder over the case and to prepare a petition imputing grave abuse of discretion on the part of the lower court or tribunal.

[27] G.R. Nos. 182382-83, February 24, 2010, 613 SCRA 528.

[28] *Id.* at 535.

[29] G.R. No. 187984, November 15, 2010, 634 SCRA 723, 732.

justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances. Thus, there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.

In this case, counting 60 days from her counsel's receipt of the June 29, 2009 NLRC Resolution on July 8, 2009, private respondent had until September 7, 2009 to file her petition or a motion for extension, as September 6, 2009, the last day for filing such pleading, fell on a Sunday. However, the motion was filed only on September 8, 2009.[30] It is a fundamental rule of remedial law that a motion for extension of time must be filed before the expiration of the period sought to be extended; otherwise, the same is of no effect since there would no longer be any period to extend, and the assailed judgment or order will have become final and executory.[31]

Additionally, as cited earlier in *Labao*, there should be an effort on the part of the litigant invoking liberality to satisfactorily explain why he or she was unable to abide by the rules.[32] Here,

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[30] This fact was also reflected, and is readily evident, in private respondent's petition for *certiorari* filed with the CA where it was stated that:

On 29 June 2009, the Honorable National Labor Relations Commission (NLRC, for brevity) issued a **Resolution**, which **was received by petitioner through counsel on 08 July 2009**, x x x

x x x x x x x x x

On 08 September, 2009, and within the reglementary period, **petitioner, through counsel, filed a Motion for Extension of Time to File Petition for *Certiorari* before this Honorable Court** by registered mail and paid the corresponding legal fees as evinced by the herein attached original copy of the aforesaid Motion marked as Annexes "D" to "D-2"[,] the Registry Return Cards marked as Annexes "E" and "E-1"[,] and the Postal Money Order Remitter's Receipts marked as Annexes "F" to "F-3" bearing numbers J1350278464, J1350278465, A1320379229 and A1320379230 in the total amount of PhP4,530.00, Philippine currency. CA *rollo*, pp. 10-11. (Emphasis supplied)

[31] *Vda. de Victoria v. Court of Appeals*, 490 Phil. 210, 221-222.

[32] See also *Vda. de Victoria v. Court of Appeals*, *id.* at 224.

the reason offered for availing of the motion for extension is the heavy workload of private respondent's counsel, which is hardly a compelling or meritorious reason as enunciated in *Labao*. Time and again, we have held that the excuse of "[h]eavy workload is relative and often self-serving. Standing alone, it is not a sufficient reason to deviate from the 60-day rule."[33] Thus, private respondent's motion for extension should have been denied outright.

Notably, the CA's November 20, 2009 Resolution refrained from ruling on the timeliness of private respondent's motion for extension. Instead, it directly ruled on the Petition for *Certiorari* as seen by its statement "[t]he Court x x x resolved to NOTE the petition for certiorari x x x, albeit the same was filed fifteen (15) days late." To our mind, the foregoing pronouncement is an indirect acknowledgment on the part of the CA that the motion for extension was indeed filed late. Yet it opted to still entertain and "note" the Petition for *Certiorari*, justifying its action as being "in the interest of justice."

We do not approve of the CA's ruling on the matter because, as the motion for extension should have been denied outright, it necessarily follows that the Petition for *Certiorari* is, in the words of petitioners, a "mere scrap of paper with no remedial value whatsoever."

In *Negros Slashers, Inc. v. Teng*,[34] which likewise dealt with the late filing of a petition for *certiorari*, we recognized that although procedural rules ought to be strictly enforced by courts in order to impart stability in the legal system, we have, nonetheless, relaxed the rigid application of the rules of procedure in several cases to afford the parties the opportunity to fully ventilate their cases on the merits. This is because the ends of justice would be better served if the parties were given the chance to argue their causes and defenses. We are likewise constantly

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[33] *Laguna Metts Corporation v. Court of Appeals*, *supra* note 15 at 146.

[34] G.R. No. 187122, February 22, 2012, 666 SCRA 629, 639.

reminded that the general objective of procedure is to facilitate the application of justice to the opposing claims of the competing parties and always be guided by the principle that procedure must not hinder but, rather, promote the administration of justice. Concomitant thereto:

> Courts have the prerogative to relax procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to due process. In numerous cases, this Court has allowed liberal construction of the rules when to do so would serve the demands of substantial justice and equity. x x x[35]

Here, even assuming that the late filing of the petition would merit relaxation of the rules, the CA's resolution would have only been acceptable had private respondent shown respect for the rules by submitting a petition for *certiorari* which is sufficient in form. In contrast, what private respondent filed was a petition plagued by several infirmities. Worse, when the CA allowed petitioner to cure the deficiencies, she failed to fully comply such that she had to be given, albeit undeservingly, *one last chance* to submit the still lacking copies of the pertinent pleadings required of her by the CA.

More importantly, the CA should have dismissed the petition outright in view of the fact that the June 29, 2009 Resolution of the NLRC denying private respondent's Motion for Reconsideration had already become final and executory as of July 18, 2009.[36] Thus, it has no jurisdiction to entertain the petition, except to order its dismissal. In *Labao*, we held that:

> The NLRC's resolution became final ten (10) days after counsel's receipt, and the respondent's failure to file the petition within the required (60)-day period rendered it impervious to any attack through a Rule 65 petition for *certiorari*. Thus, no court can exercise jurisdiction to review the resolution.

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[35] *Id.*, citing *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corporation*, G.R. No. 168115, June 8, 2007, 524 SCRA 333, 343.

[36] *Rollo*, p. 99. Annex "I".

Needless to stress, a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. All the issues between the parties are deemed resolved and laid to rest once a judgment becomes final and executory; execution of the decision proceeds as a matter of right as vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case. After all, a denial of a petition for being time-barred is tantamount to a decision on the merits. Otherwise, there will be no end to litigation, and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[37]

In sum, the CA committed grave abuse of discretion when it extended underserved and unwarranted liberality to private respondent. "There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism x x x."[38] Such is present here as shown by the CA's obstinate refusal to dismiss the case despite the late filing of the motion for extension and the flimsy excuse for the extension sought, the late filing of the petition and the numerous infirmities attending the same, and private respondent's continued defiance of its directive. These circumstances serve to highlight private respondent's propensity to disregard the very rules that the courts, the litigants and the lawyers are duty-bound to follow.

WHEREFORE, the petition is hereby **GRANTED**. The assailed Court of Appeals Resolutions dated November 20, 2009 and February 10, 2010 are **REVERSED and SET ASIDE** for

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[37] *Supra* note 29 at 734-735.

[38] *Sugar Regulatory Administration v. Tormon*, G.R. No. 195640, December 4, 2012, 686 SCRA 854, 868.

having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The Petition for *Certiorari* filed by private respondent Amanda C. Mendigorim in CA-G.R. SP No. 110808 is **DISMISSED**.

SO ORDERED.

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

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process clause of the Constitution. (Tua *vs*. Judge Mangrobang, G.R. No. 170701, Jan. 22, 2014) p. 208

— It is within the court's discretion, based on the petition and the affidavit attached thereto, to determine that the violent acts against women and their children for the issuance of the order have been committed. *(Id.)*

— The act of Congress entrusting the court with the issuance of protection orders is in pursuance of its authority to settle justiciable controversies or disputes involving the rights that are enforceable and demandable before the courts of justice or the redress of wrongs for violations of such right. *(Id.)*

APPEALS

Factual findings of the Court of Tax Appeals — Unless there has been an abuse or improvident exercise of authority, the court will not set aside, the conclusions reached by the Court of Tax Appeals which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject. (Commissioner of Internal Revenue *vs*. Toledo Powers, Inc., G.R. No. 183880, Jan. 20, 2014) p. 66

Factual findings of trial courts — Binding on the court, especially when affirmed by the Court of Appeals; exceptions. (People *vs*. Manigo, G.R. No. 194612, Jan. 27, 2014) p. 324

Petition for review on certiorari under Rule 45 — Limited to the review of pure questions of law; except: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the CA is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of fact are conclusions without citation of specific evidence on which they are based; (8)

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — Defense of non-exhaustion of administrative remedies raised by a non-defaulting defendant inured to the benefit of the respondents who had been declared in default. (Ejera *vs*. Merto, G.R. No. 163109, Jan. 22, 2014) p. 180

— Non-observance of the doctrine resulted in the complaint having no cause of action. *(Id.)*

— Not an ironclad rule, but recognizes exceptions, specifically: (1) where there is estoppel on the part of the party invoking the doctrine; (2) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (3) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (4) where the amount involved is relatively so small as to make the rule impractical and oppressive; (5) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (6) where judicial intervention is urgent; (7) where the application of the doctrine may cause great and irreparable damage; (8) where the controversial acts violate due process; (9) where the issue of non-exhaustion of administrative remedies has been rendered moot; (1) where strong public interest is involved; and (12) in *quo warranto* proceedings. *(Id.)*

FRAUD

Extrinsic fraud — Action based on extrinsic fraud must filed within four years from the discovery of such fraud. (Pinausukan Seafood House, Roxas Blvd., Inc. *vs*. Far East Bank & Trust Co., G.R. No. 159926, Jan. 20, 2014) p. 19

— Present when the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise, of when the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an

PRELIMINARY INVESTIGATION

Probable cause — Findings of the existence or non-existence of probable cause are generally not subject to review by the court except, when the executive discretion has been gravely abused. (Unilever Phils., Inc. *vs.* Tan, G.R. No. 179367, Jan. 29, 2014) p. 486

— The determination of probable cause needs only to rest on evidence showing that a crime has been committed and there is enough reason to believe that it was committed by the accused. *(Id.)*

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Adverse claim — The cancellation of adverse claim is still necessary to render it ineffective, otherwise, the inscription will remain annotated and shall continue as a lien upon the property; for if the adverse claim already ceased to be effective upon the lapse of thirty (30) days, its cancellation is no longer necessary and the process of cancellation would be a useless ceremony. (Alfaro *vs*. Sps. Dumalagan, G.R. No. 186622, Jan. 22, 2014) p. 252

PUBLIC OFFICE

Power of control — The power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. (Gonzales III *vs*. Office of the President of the Phils., G.R. No. 196231, Jan. 28, 2014; *Perlas-Bernabe, J., concurring and dissenting opinion*) p. 380

Power of supervision — Means overseeing or the authority of an officer to see to it that the subordinate officers perform their duties. (Gonzales III *vs*. Office of the President of the Phils., G.R. No. 196231, Jan. 28, 2014; *Perlas-Bernabe, J., concurring and dissenting opinion*) p. 380

PUBLIC OFFICERS AND EMPLOYEES

Dishonesty — Defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of

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