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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. MTJ-14-1842. February 24, 2014]
(Formerly OCA IPI No. 12-2491-MTJ)

REX M. TUPAL, *complainant, vs.* **JUDGE REMEGIO V. ROJO, Branch 5, Municipal Trial Court in Cities (MTCC), Bacolod City, Negros Occidental,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; RESPONDENT JUDGE NOTARIZED AFFIDAVITS OF COHABITATION, WHICH WERE DOCUMENTS NOT CONNECTED TO WITH THE EXERCISE OF HIS OFFICIAL FUNCTIONS AND DUTIES AS SOLEMNIZING OFFICER; RESPONDENT ALSO NOTARIZED SAID AFFIDAVITS WITHOUT CERTIFYING THAT LAWYERS OR NOTARIES PUBLIC WERE LACKING IN HIS TERRITORIAL JURISDICTION IN VIOLATION OF CIRCULAR NO. 1-90 DATED FEBRUARY 26, 1990.— This court finds Judge Rojo guilty of violating the New Code of Judicial Conduct and of gross ignorance of the law. Judge Rojo violated Circular No. 1-90 and the 2004 Rules on Notarial Practice. Municipal trial court and municipal circuit trial court judges may act as notaries public. However, they may do so only in their *ex officio* capacities. They may notarize documents, contracts, and other conveyances only in the exercise of their official functions and duties. x x x They may also act as notaries public *ex officio*

only if lawyers or notaries public are lacking in their courts' territorial jurisdiction. They must certify as to the lack of lawyers or notaries public when notarizing documents *ex officio*. x x x Judge Rojo notarized affidavits of cohabitation, which were documents not connected with the exercise of his official functions and duties as solemnizing officer. He also notarized affidavits of cohabitation without certifying that lawyers or notaries public were lacking in his court's territorial jurisdiction. Thus, Judge Rojo violated Circular No. 1-90.

2. **ID.; ID.; ID.; JUDGES CANNOT NOTARIZE THE AFFIDAVITS OF COHABITATION OF THE PARTIES WHOSE MARRIAGE THEY WILL SOLEMNIZE.—** Based on law and the Guidelines on the Solemnization of Marriage by the Members of the Judiciary, the person who notarizes the contracting parties' affidavit of cohabitation cannot be the judge who will solemnize the parties' marriage. As a solemnizing officer, the judge's only duty involving the affidavit of cohabitation is to examine whether the parties have indeed lived together for at least five years without legal impediment to marry. The Guidelines does not state that the judge can notarize the parties' affidavit of cohabitation. Thus, affidavits of cohabitation are documents not connected with the judge's official function and duty to solemnize marriages. Notarizing affidavits of cohabitation is inconsistent with the duty to examine the parties' requirements for marriage. If the solemnizing officer notarized the affidavit of cohabitation, he cannot objectively examine and review the affidavit's statements before performing the marriage ceremony. Should there be any irregularity or false statements in the affidavit of cohabitation he notarized, he cannot be expected to admit that he solemnized the marriage despite the irregularity or false allegation. Thus, judges cannot notarize the affidavits of cohabitation of the parties whose marriage they will solemnize. Affidavits of cohabitation are documents not connected with their official function and duty to solemnize marriages.

3. **ID.; ID.; ID.; A JUDGE CANNOT OBJECTIVELY EXAMINE A DOCUMENT HE HIMSELF NOTARIZED; ARTICLE 34 OF THE FAMILY CODE AND THE GUIDELINES ON THE SOLEMNIZATION OF MARRIAGES BY THE MEMBERS OF THE JUDICIARY ASSUME THAT "THE PERSON AUTHORIZED BY LAW TO ADMINISTER OATHS" WHO NOTARIZES THE AFFIDAVIT OF COHABITATION AND THE**

"SOLEMNIZING OFFICER" WHO PERFORMS THE MARRIAGE CEREMONY ARE TWO DIFFERENT PERSONS.— Judge Rojo admitted that he notarized affidavits of cohabitation of parties "on the same day [he solemnized their marriages]." He notarized documents not connected with his official function and duty to solemnize marriages. Thus, Judge Rojo violated Circular No. 1-90. Judge Rojo argued that the Guidelines on the Solemnization of Marriage by the Members of the Judiciary does not expressly prohibit judges from notarizing affidavits of cohabitation. Thus, he cannot be prohibited from notarizing affidavits of cohabitation. To accept Judge Rojo's argument will render the solemnizing officer's duties to examine the affidavit of cohabitation and to issue a sworn statement that the requirements have been complied with redundant. As discussed, a judge cannot objectively examine a document he himself notarized. Article 34 of the Family Code and the Guidelines on the Solemnization of Marriage by the Members of the Judiciary assume that "the person authorized by law to administer oaths" who notarizes the affidavit of cohabitation and the "solemnizing officer" who performs the marriage ceremony are two different persons.

4. **ID.; ID.; ID.; AN AFFIDAVIT OF COHABITATION REMAINS A PRIVATE DOCUMENT UNTIL NOTARIZED.—** Judge Rojo argued that Circular No. 1-90 only prohibits municipal trial court judges from notarizing "private documents x x x [bearing] no direct relation to the performance of their functions as judges." Since a marriage license is a public document, its "counterpart," the affidavit of cohabitation, is also a public document. Thus, when he notarizes an affidavit of cohabitation, he notarizes a public document. He did not violate Circular No. 1-90. An affidavit of cohabitation remains a private document until notarized. Notarization converts a private document into a public document, "[rendering the document] admissible in court without further proof of its authenticity." The affidavit of cohabitation, even if it serves a "public purpose," remains a private document until notarized. Thus, when Judge Rojo notarized the affidavits of cohabitation, he notarized nine private documents. As discussed, affidavits of cohabitation are not connected with a judge's official duty to solemnize marriages. Judge Rojo violated Circular No. 1-90.

5. ID.; ID.; ID.; CIRCULAR NO. 1-90's PURPOSE IS NOT LIMITED TO DOCUMENTS USED TO TRANSACT "LEGAL CONVEYANCING BUSINESS"; SO LONG AS A JUDGE NOTARIZES A DOCUMENT NOT CONNECTED WITH HIS OFFICIAL FUNCTIONS AND DUTIES, HE VIOLATES CIRCULAR 1-90.— Judge Rojo argued that Circular No. 1-90's purpose is to "eliminate competition between judges and private lawyers in transacting legal conveyancing business." He cited *Borre v. Judge Moya* where this court found City Judge Arcilla guilty of violating Circular No. 1-90 for notarizing a deed of sale. Judge Rojo argued that when he notarized the affidavits of cohabitation, he did "not compete with private law practitioners or regular notaries in transacting legal conveyancing business." Thus, he did not violate Circular No. 1-90. In *Borre,* Judge Arcilla notarized a deed of sale. This is the context in which this court stated that "[judges] should not compete with private [lawyers] or regular notaries in transacting legal conveyancing business." At any rate, Circular No. 1-90's purpose is not limited to documents used to transact "legal conveyancing business." So long as a judge notarizes a document not connected with his official functions and duties, he violates Circular No. 1-90.

6. ID.; ID.; ID.; THAT OTHER JUDGES HAVE NOTARIZED AFFIDAVITS OF COHABITATION OF PARTIES WHOSE MARRIAGES THEY SOLEMNIZED DOES NOT MAKE THE PRACTICE LEGAL; VIOLATIONS OF LAW ARE NOT EXCUSED BY PRACTICE TO THE CONTRARY.— Since Judge Rojo notarized affidavits of cohabitation, which were not connected with his official function and duty to solemnize marriages, he violated Circular No. 1-90. Also, Judge Rojo notarized affidavits of cohabitation without certifying that lawyers or notaries public are lacking in Bacolod City. Failure to certify that lawyers or notaries public are lacking in the municipality or circuit of the judge's court constitutes violation of Circular No. 1-90. That other judges have notarized affidavits of cohabitation of parties whose marriages they solemnized does not make the practice legal. Violations of laws are not excused by practice to the contrary. All told, Judge Rojo violated Circular No. 1-90.

7. ID.; ID.; ID.; RESPONDENT JUDGE VIOLATED THE 2004 RULES ON NOTARIAL PRACTICE BY NOT STATING THAT THE PARTIES WERE PERSONALLY KNOWN TO HIM OR THAT THE PARTIES PRESENTED THEIR COMPETENT EVIDENCE OF IDENTITY.— Judge Rojo also violated the 2004 Rules on Notarial Practice. Rule IV, Section 2, paragraph (b) of the 2004 Rules on Notarial Practice prohibits a notary public from notarizing documents if the signatory is not personally known to him. Otherwise, the notary public must require the signatory to present a competent evidence of identity. x x x A competent evidence of identity guarantees that the person appearing before the notary public is the signatory to the instrument or document to be notarized. If the notary public does not personally know the signatory, he must require the signatory to present a competent evidence of identity. In all the nine affidavits of cohabitation Judge Rojo notarized, he only stated that the parties subscribed and swore to their affidavits before him. Judge Rojo did not state that the parties were personally known to him or that the parties presented their competent pieces of evidence of identity. Thus, Judge Rojo violated the 2004 Rules on Notarial Practice. Judge Rojo argued that he personally knew the parties to the affidavits of cohabitation. They personally appeared before him to subscribe to their affidavits of cohabitation. He also interviewed them on their qualifications to contract marriage. Thus, the parties to the affidavit of cohabitation need not present their competent pieces of evidence of identity. That the parties appeared before Judge Rojo and that he interviewed them do not make the parties personally known to him. The parties are supposed to appear in person to subscribe to their affidavits. To personally know the parties, the notary public must at least be acquainted with them. Interviewing the contracting parties does not make the parties personally known to the notary public.

8. ID.; ID.; ID.; VIOLATING BASIC LEGAL PRINCIPLES AND PROCEDURE IS GROSS IGNORANCE OF THE LAW.— For violating Circular No. 1-90 and the 2004 Rules on Notarial Practice nine times, Judge Rojo is guilty of gross ignorance of the law. Judge Rojo argued that he notarized the affidavits of cohabitation in good faith. He cited *Santos v. Judge How* where this court held that "[g]ood faith and absence of malice, corrupt motives or improper considerations x x x" were defenses against gross

ignorance of the law charges. His good faith in notarizing affidavits of cohabitation should not hold him administratively liable. However, this court also held in *Santos* that "good faith in situations of fallible discretion [inheres] only within the parameters of tolerable judgment x x x." Good faith "does not apply where the issues are so simple and the applicable legal principles evident and basic as to be beyond possible margins of error." Circular No. 1-90 requires judges to certify that lawyers or notaries public are lacking in their courts' territorial jurisdiction before notarizing documents. The 2004 Rules on Notarial Practice requires notaries public to personally know the signatory to the document they will notarize or require the signatory to present a competent evidence of identity. These are basic legal principles and procedure Judge Rojo violated. Failure to comply with these basic requirements nine times is not good faith. Under the New Code of Judicial Conduct on integrity, "[j]udges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer." If the law involved is basic, ignorance constitutes "lack of integrity." Violating basic legal principles and procedure nine times is gross ignorance of the law.

R E S O L U T I O N

LEONEN, *J.*:

Municipal trial court judges cannot notarize affidavits of cohabitation of parties whose marriage they will solemnize.

Rex M. Tupal filed with the Office of the Court Administrator a complaint against Judge Remegio V. Rojo for violating the Code of Judicial Conduct and for gross ignorance of the law.[1]

Judge Remegio V. Rojo presides Municipal Trial Court in Cities, Branch 5, Bacolod City, Negros Occidental. Judge Rojo allegedly solemnized marriages without the required marriage license. He instead notarized affidavits of cohabitation[2] and

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[1] *Rollo*, pp. 3-20, letter of complaint with complaint-affidavit notarized on May 24, 2012.

[2] FAMILY CODE, Art. 34 states:

Art. 34. No license shall be necessary for the marriage of a man and a

issued them to the contracting parties.[3] He notarized these affidavits on the day of the parties' marriage.[4] These "package marriages" are allegedly common in Bacolod City.[5]

Rex annexed to his complaint-affidavit nine affidavits of cohabitation all notarized by Judge Rojo. All affidavits were notarized on the day of the contracting parties' marriages.[6] The affidavits contained the following jurat:

> SUBSCRIBED AND SWORN to before me this [date] at Bacolod City, Philippines.
>
> (sgd.)
> HON. REMEGIO V. ROJO
> Judge[7]

For notarizing affidavits of cohabitation of parties whose marriage he solemnized, Judge Rojo allegedly violated Circular No. 1-90 dated February 26, 1990.[8] Circular No. 1-90 allows municipal trial court judges to act as notaries public *ex officio* and notarize documents only if connected with their official functions and duties. Rex argues that affidavits of cohabitation are not connected with a judge's official functions and duties as solemnizing officer.[9] Thus, Judge Rojo cannot notarize *ex*

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woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage.

[3] *Rollo*, p. 6.

[4] *Id.*

[5] *Id.* at 9.

[6] *Id.* at 21-40, complaint-affidavit, Annexes "A", "B", "C", "D", "E", "F", "G", "H", "I", and "J".

[7] *Id.*

[8] POWER OF THE MUNICIPAL TRIAL COURT JUDGES AND MUNICIPAL CIRCUIT TRIAL COURT JUDGES TO ACT AS NOTARIES PUBLIC *EX OFFICIO*

[9] *Rollo*, p. 6.

officio affidavits of cohabitation of parties whose marriage he solemnized.

Also, according to Rex, Judge Rojo allegedly violated the 2004 Rules on Notarial Practice. Judge Rojo notarized affidavits of cohabitation without affixing his judicial seal on the affidavits. He also did not require the parties to present their competent pieces of evidence of identity as required by law. These omissions allegedly constituted gross ignorance of the law as notarial rules "[are] x x x simple and elementary to ignore."[10]

Judge Rojo commented on the complaint.[11] He argued that Rex was only harassing him. Rex is the father of Frialyn Tupal. Frialyn has a pending perjury case in Branch 5 for allegedly making false statements in her affidavit of cohabitation. Rex only filed a complaint against Judge Rojo to delay Frialyn's case.[12]

Judge Rojo did not deny notarizing the affidavits of cohabitation. He argued that notarizing affidavits of cohabitation was connected with his official functions and duties as a judge.[13] The Guidelines on the Solemnization of Marriage by the Members of the Judiciary[14] does not prohibit judges from notarizing affidavits of cohabitation of parties whose marriage they will solemnize.[15] Thus, Judge Rojo did not violate Circular No. 1-90.

Judge Rojo also argued that he did not violate the 2004 Rules on Notarial Practice. He is a judge, not a notary public. Thus, he was not required to affix a notarial seal on the affidavits he notarized.[16]

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[10] *Id.* at 7.

[11] This comment was dated July 23, 2012.

[12] *Rollo*, p. 52.

[13] *Id.* at 79, 84, and 92-93.

[14] ADMINISTRATIVE ORDER NO. 125-2007.

[15] *Rollo*, pp. 92-93.

[16] *Id.* at 62.

Also, Judge Rojo argued that he need not notarize the affidavits with the parties presenting their competent pieces of evidence of identity. Since he interviewed the parties as to the contents of their affidavits, he personally knew them to be the same persons who executed the affidavit.[17] The parties' identities are "unquestionable."[18]

Judge Rojo alleged that other judges in Bacolod City and Talisay City also notarized affidavits of cohabitation of parties whose marriage they solemnized.[19] He pleaded "not to make him [complainant Tupal's] doormat, punching bag and chopping block"[20] since other judges also notarized affidavits of cohabitation.

In its report dated July 30, 2013, the Office of the Court Administrator found that Judge Rojo violated Circular No. 1-90. The Office of the Court Administrator recommended that Judge Rojo be fined ₱9,000.00 and sternly warned that repeating the same offense will be dealt with more severely.

The Office of the Court Administrator ruled that affidavits of cohabitation are documents not connected with municipal trial court judges' official functions and duties. Under the Guidelines on the Solemnization of Marriage by the Members of the Judiciary,[21] a judge's duty is to personally examine the allegations in the affidavit of cohabitation before performing the marriage ceremony.[22] Nothing in the Guidelines authorizes judges to notarize affidavits of cohabitation of parties whose marriage they will solemnize.

Since Judge Rojo notarized without authority nine affidavits of cohabitation, the Office of the Court Administrator

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

[18] *Id.* at 95.

[19] *Id.* at 87.

[20] *Id.* at 90.

[21] ADMINISTRATIVE ORDER NO. 125-2007.

[22] ADMINISTRATIVE ORDER NO. 125-2007, Sec. 5.

recommended a fine of ₱1,000.00 per affidavit of cohabitation notarized.[23]

The issue is whether Judge Rojo is guilty of violating the New Code of Judicial Conduct and of gross ignorance of the law.

This court finds Judge Rojo guilty of violating the New Code of Judicial Conduct and of gross ignorance of the law. Judge Rojo violated Circular No. 1-90 and the 2004 Rules on Notarial Practice.

Municipal trial court and municipal circuit trial court judges may act as notaries public. However, they may do so only in their *ex officio* capacities. They may notarize documents, contracts, and other conveyances only in the exercise of their official functions and duties. Circular No. 1-90 dated February 26, 1990 provides:

> Municipal trial court (MTC) and municipal circuit trial court (MCTC) judges are empowered to perform the function of notaries public *ex officio* under Section 76 of Republic Act No. 296, as amended (otherwise known as the Judiciary Act of 1948) and Section 242 of the Revised Administrative Code. But the Court hereby lays down the following qualifications on the scope of this power:
>
> MTC and MCTC judges may act as notaries public *ex officio* in the notarization of documents connected only with the exercise of their official functions and duties x x x. They may not, as notaries public *ex officio*, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law (Canon 5 and Rule 5.07).

They may also act as notaries public *ex officio* only if lawyers or notaries public are lacking in their courts' territorial jurisdiction. They must certify as to the lack of lawyers or notaries public when notarizing documents *ex officio*:

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[23] *Rollo*, p. 456, Office of the Court Administrator's report, citing *Simon v. Judge Aragon,* 491 Phil. 9, 14-15 (2005) [Per *J.* Ynares-Santiago, First Division].

However, the Court, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public *ex officio*, perform any act within the competency of a regular notary public, provided that: (1) all notarial fees charged be for the account of the Government and turned over to the municipal treasurer (*Lapena, Jr. vs. Marcos*, Adm. Matter No. 1969-MJ, June 29, 1982, 114 SCRA 572); and, (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.[24]

Judge Rojo notarized affidavits of cohabitation, which were documents not connected with the exercise of his official functions and duties as solemnizing officer. He also notarized affidavits of cohabitation without certifying that lawyers or notaries public were lacking in his court's territorial jurisdiction. Thus, Judge Rojo violated Circular No. 1-90.

Before performing the marriage ceremony, the judge must personally interview the contracting parties and examine the requirements they submitted.[25] The parties must have complied with all the essential and formal requisites of marriage. Among these formal requisites is a marriage license.[26]

A marriage license is issued by the local civil registrar to parties who have all the qualifications and none of the legal disqualifications to contract marriage.[27] Before performing the marriage ceremony, the judge must personally examine the marriage license presented.[28]

If the contracting parties have cohabited as husband and wife for at least five years and have no legal impediment to marry, they are exempt from the marriage license requirement.[29]

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[24] Circular No. 1-90 dated February 26, 1990.

[25] ADMINISTRATIVE ORDER NO. 125-2007, Sec. 4.

[26] ADMINISTRATIVE ORDER NO. 125-2007, Sec. 4.

[27] FAMILY CODE, Art. 9.

[28] ADMINISTRATIVE ORDER NO. 125-2007, Sec. 4.

[29] FAMILY CODE, Art. 34.

Instead, the parties must present an affidavit of cohabitation sworn to before any person authorized by law to administer oaths.[30] The judge, as solemnizing officer, must personally examine the affidavit of cohabitation as to the parties having lived together as husband and wife for at least five years and the absence of any legal impediment to marry each other.[31] The judge must also execute a sworn statement that he personally ascertained the parties' qualifications to marry and found no legal impediment to the marriage.[32] Article 34 of the Family Code of the Philippines provides:

> Art. 34. No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage.

Section 5 of the Guidelines on the Solemnization of Marriage by the Members of the Judiciary also provides:

> Sec. 5. Other duties of solemnizing officer before the solemnization of the marriage in legal ratification of cohabitation. — In the case of a marriage effecting legal ratification of cohabitation, the solemnizing officer shall (a) personally interview the contracting parties to determine their qualifications to marry; (b) personally examine the affidavit of the contracting parties as to the fact of having lived together as husband and wife for at least five [5] years and the absence of any legal impediments to marry each other; and (c) execute a sworn statement showing compliance with (a) and (b) and that the solemnizing officer found no legal impediment to the marriage.

Based on law and the Guidelines on the Solemnization of Marriage by the Members of the Judiciary, the person who

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[30] FAMILY CODE, Art. 34.

[31] FAMILY CODE, Art. 34; ADMINISTRATIVE ORDER NO. 125-2007, Sec. 5.

[32] FAMILY CODE, Art. 34; ADMINISTRATIVE ORDER NO. 125-2007, Sec. 5.

notarizes the contracting parties' affidavit of cohabitation cannot be the judge who will solemnize the parties' marriage.

As a solemnizing officer, the judge's only duty involving the affidavit of cohabitation is to examine whether the parties have indeed lived together for at least five years without legal impediment to marry. The Guidelines does not state that the judge can notarize the parties' affidavit of cohabitation.

Thus, affidavits of cohabitation are documents not connected with the judge's official function and duty to solemnize marriages. Notarizing affidavits of cohabitation is inconsistent with the duty to examine the parties' requirements for marriage. If the solemnizing officer notarized the affidavit of cohabitation, he cannot objectively examine and review the affidavit's statements before performing the marriage ceremony. Should there be any irregularity or false statements in the affidavit of cohabitation he notarized, he cannot be expected to admit that he solemnized the marriage despite the irregularity or false allegation.

Thus, judges cannot notarize the affidavits of cohabitation of the parties whose marriage they will solemnize. Affidavits of cohabitation are documents not connected with their official function and duty to solemnize marriages.

Judge Rojo admitted that he notarized affidavits of cohabitation of parties "on the same day [he solemnized their marriages]."[33] He notarized documents not connected with his official function and duty to solemnize marriages. Thus, Judge Rojo violated Circular No. 1-90.

Judge Rojo argued that the Guidelines on the Solemnization of Marriage by the Members of the Judiciary does not expressly prohibit judges from notarizing affidavits of cohabitation. Thus, he cannot be prohibited from notarizing affidavits of cohabitation.

To accept Judge Rojo's argument will render the solemnizing officer's duties to examine the affidavit of cohabitation and to issue a sworn statement that the requirements have been complied with redundant. As discussed, a judge cannot objectively examine

[33] *Rollo,* p. 94.

a document he himself notarized. Article 34 of the Family Code and the Guidelines on the Solemnization of Marriage by the Members of the Judiciary assume that "the person authorized by law to administer oaths" who notarizes the affidavit of cohabitation and the "solemnizing officer" who performs the marriage ceremony are two different persons.

Judge Rojo argued that Circular No. 1-90 only prohibits municipal trial court judges from notarizing "private documents x x x [bearing] no direct relation to the performance of their functions as judges."[34] Since a marriage license is a public document, its "counterpart," the affidavit of cohabitation, is also a public document. Thus, when he notarizes an affidavit of cohabitation, he notarizes a public document. He did not violate Circular No. 1-90.

An affidavit of cohabitation remains a private document until notarized. Notarization converts a private document into a public document, "[rendering the document] admissible in court without further proof of its authenticity."[35] The affidavit of cohabitation, even if it serves a "public purpose," remains a private document until notarized.

Thus, when Judge Rojo notarized the affidavits of cohabitation, he notarized nine private documents. As discussed, affidavits of cohabitation are not connected with a judge's official duty to solemnize marriages. Judge Rojo violated Circular No. 1-90.

Judge Rojo argued that Circular No. 1-90's purpose is to "eliminate competition between judges and private lawyers in transacting legal conveyancing business."[36] He cited *Borre v. Judge Moya*[37] where this court found City Judge Arcilla guilty

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[34] Circular No. 1-90 dated February 26, 1990.

[35] *Tigno v. Sps. Aquino*, 486 Phil. 254, 267 (2004) [Per *J.* Tinga, Second Division]; *Mayor Quiñones v. Judge Lopez, Jr.*, 449 Phil. 1, 6 (2003) [Per *J.* Vitug, First Division], citing *Coronado v. Atty. Felongo*, 398 Phil. 496, 502 (2000) [Per *J.* Puno, First Division].

[36] *Rollo*, p. 92.

[37] 188 Phil. 362 (1980) [Per *J.* Aquino, Second Division].

of violating Circular No. 1-90 for notarizing a deed of sale. Judge Rojo argued that when he notarized the affidavits of cohabitation, he did "not compete with private law practitioners or regular notaries in transacting legal conveyancing business."[38] Thus, he did not violate Circular No. 1-90.

In *Borre*, Judge Arcilla notarized a deed of sale. This is the context in which this court stated that "[judges] should not compete with private [lawyers] or regular notaries in transacting legal conveyancing business."[39]

At any rate, Circular No. 1-90's purpose is not limited to documents used to transact "legal conveyancing business." So long as a judge notarizes a document not connected with his official functions and duties, he violates Circular No. 1-90.

Thus, in *Mayor Quiñones v. Judge Lopez, Jr.*,[40] this court fined Judge Lopez for notarizing a certificate of candidacy. In *Ellert v. Judge Galapon, Jr.*,[41] this court fined Judge Galapon for notarizing the verification page of an answer filed with the Department of Agrarian Reform Adjudication Board. The documents involved in these cases were not used to transact "legal conveyancing business." Nevertheless, this court found Judge Lopez and Judge Galapon guilty of violating Circular No. 1-90.

Since Judge Rojo notarized affidavits of cohabitation, which were not connected with his official function and duty to solemnize marriages, he violated Circular No. 1-90.

Also, Judge Rojo notarized affidavits of cohabitation without certifying that lawyers or notaries public are lacking in Bacolod City. Failure to certify that lawyers or notaries public are lacking in the municipality or circuit of the judge's court constitutes violation of Circular No. 1-90.[42]

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[38] *Id.* at 369.

[39] *Id.*

[40] 449 Phil. 1 (2003) [Per *J.* Vitug, First Division].

[41] 391 Phil. 456 (2000) [Per *J.* Buena, Second Division].

[42] *Fuentes v. Judge Buno*, 582 Phil. 20, 27-28 (2008) [Per *J.* Leonardo-

That other judges have notarized affidavits of cohabitation of parties whose marriages they solemnized does not make the practice legal. Violations of laws are not excused by practice to the contrary.[43]

All told, Judge Rojo violated Circular No. 1-90.

Judge Rojo also violated the 2004 Rules on Notarial Practice. Rule IV, Section 2, paragraph (b) of the 2004 Rules on Notarial Practice prohibits a notary public from notarizing documents if the signatory is not personally known to him. Otherwise, the notary public must require the signatory to present a competent evidence of identity:

> SEC. 2. Prohibitions. – x x x
>
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

A competent evidence of identity guarantees that the person appearing before the notary public is the signatory to the instrument or document to be notarized. If the notary public does not personally know the signatory, he must require the signatory to present a competent evidence of identity.

In all the nine affidavits of cohabitation Judge Rojo notarized, he only stated that the parties subscribed and swore to their

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de Castro, First Division]; *Simon v. Judge Aragon*, 491 Phil. 9, 13-14 (2005) [Per *J.* Ynares-Santiago, First Division]; *Mayor Quiñones v. Judge Lopez, Jr.*, 449 Phil. 1, 5 (2003) [Per *J.* Vitug, First Division]; *Gravela v. Judge Villanueva*, 444 Phil. 109, 115 (2003) [Per *J.* Quisumbing, Second Division]; *Barbarona v. Judge Canda*, 409 Phil. 1, 12-13 (2001) [Per *J.* Mendoza, Second Division]; *Ellert v. Judge Galapon, Jr.*, 391 Phil. 456, 464 (2000) [Per *J.* Buena, Second Division]; *Doughlas v. Judge Lopez, Jr.*, 382 Phil. 8, 14 (2000) [Per *J.* Kapunan, First Division]; *Guillen v. Judge Nicolas*, 360 Phil. 1, 13 (1998) [Per *C.J.* Davide, Jr., First Division].

[43] CIVIL CODE, Art. 7.

affidavits before him. Judge Rojo did not state that the parties were personally known to him or that the parties presented their competent pieces of evidence of identity. Thus, Judge Rojo violated the 2004 Rules on Notarial Practice.

Judge Rojo argued that he personally knew the parties to the affidavits of cohabitation. They personally appeared before him to subscribe to their affidavits of cohabitation. He also interviewed them on their qualifications to contract marriage. Thus, the parties to the affidavit of cohabitation need not present their competent pieces of evidence of identity.[44]

That the parties appeared before Judge Rojo and that he interviewed them do not make the parties personally known to him. The parties are supposed to appear in person to subscribe to their affidavits. To personally know the parties, the notary public must at least be acquainted with them.[45] Interviewing the contracting parties does not make the parties personally known to the notary public.

For violating Circular No. 1-90 and the 2004 Rules on Notarial Practice nine times, Judge Rojo is guilty of gross ignorance of the law.

Judge Rojo argued that he notarized the affidavits of cohabitation in good faith. He cited *Santos v. Judge How*[46] where this court held that "[g]ood faith and absence of malice, corrupt motives or improper considerations x x x"[47] were defenses against gross ignorance of the law charges. His good faith in notarizing affidavits of cohabitation should not hold him administratively liable.

However, this court also held in *Santos* that "good faith in situations of fallible discretion [inheres] only within the parameters

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

[45] *Lustestica v. Atty. Bernabe*, A.C. No. 6258, August 24, 2010, 628 SCRA 613, 623-624 [*Per Curiam, En Banc]*.

[46] 542 Phil. 22 (2007) [Per *J.* Austria-Martinez, Third Division].

[47] *Id.* at 36.

of tolerable judgment x x x."[48] Good faith "does not apply where the issues are so simple and the applicable legal principles evident and basic as to be beyond possible margins of error."[49]

Circular No. 1-90 requires judges to certify that lawyers or notaries public are lacking in their courts' territorial jurisdiction before notarizing documents. The 2004 Rules on Notarial Practice requires notaries public to personally know the signatory to the document they will notarize or require the signatory to present a competent evidence of identity. These are basic legal principles and procedure Judge Rojo violated. Failure to comply with these basic requirements nine times is not good faith.

Under the New Code of Judicial Conduct on integrity,[50] "[j]udges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer."[51] If the law involved is basic, ignorance constitutes "lack of integrity."[52] Violating basic legal principles and procedure nine times is gross ignorance of the law.

This court may impose the following sanctions for gross ignorance of the law or procedure, it being a serious charge:[53]

a. dismissal from the service with forfeiture of benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations;[54]

b. suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months;[55] or

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[48] *Id.*

[49] *Id.*

[50] A.M. No. 03-05-01-SC, Canon 2.

[51] A.M. No. 03-05-01-SC, Canon 2, Sec. 1.

[52] *Office of the Court Administrator v. Judge Necessario*, A.M. No. MTJ-07-1691, April 2, 2013, 694 SCRA 348, 378 [*Per Curiam, En Banc*].

[53] RULES OF COURT, Rule 140, Sec. 8 (9).

[54] RULES OF COURT, Rule 140, Sec. 11 (A) (1).

[55] RULES OF COURT, Rule 140, Sec. 11 (A) (2).

c. A fine of more than ₱20,000.00 but not exceeding 40,000.00.[56]

This court does not condone violations of law. Judges have been dismissed from the service for gross ignorance of the law. However, Judge Rojo may have been misled by other judges' practice of notarizing affidavits of cohabitation in Bacolod City and Talisay City. Thus, this court finds suspension from office without salary and other benefits for six (6) months sufficient sanction.

Trial court judges are advised to strictly comply with the requirements of the law. They should act with caution with respect to affidavits of cohabitation. Similar breach of the ethical requirements as in this case will be dealt with strictly.

WHEREFORE, Judge Remegio V. Rojo, Presiding Judge of the Municipal Trial Court in Cities, Branch 5, Bacolod City, Negros Occidental is **SUSPENDED FROM OFFICE** without salary and other benefits for **SIX (6) MONTHS.** His suspension is effective upon service on him of a copy of this resolution.

SERVE copies of this resolution to all municipal trial courts in Bacolod City and Talisay City.

SO ORDERED.

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

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[56] RULES OF COURT, Rule 140, Sec. 11 (A) (3).

[*] Associate Justice Lucas P. Bersamin was designated as Acting Member of the Third Division, vice Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

FIRST DIVISION

[G.R. No. 174433. February 24, 2014]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **SPOUSES ENRIQUE MANALO & ROSALINDA JACINTO, ARNOLD J. MANALO, ARNEL J. MANALO, and ARMA J. MANALO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS NOT RAISED DURING TRIAL MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL; THE ISSUE OF VALIDITY OF THE INTEREST RATES AND OF THE INCREASES AND THE LACK OF MUTUALITY BETWEEN THE PARTIES WERE IMPLIEDLY RAISED DURING THE TRIAL AND PNB DID NOT OBJECT THERETO; CASE AT BAR.—** Contrary to PNB's argument, the validity of the interest rates and of the increases, and on the lack of mutuality between the parties were not raised by the Spouses Manalo's for the first time on appeal. Rather, the issues were impliedly raised during the trial itself, and PNB's lack of vigilance in voicing out a timely objection made that possible. It appears that Enrique Manalo's Judicial Affidavit introduced the issues of the validity of the interest rates and the increases, and the lack of mutuality between the parties. x x x PNB cross-examined Enrique Manalo upon his Judicial Affidavit. There is no showing that PNB raised any objection in the course of the cross examination. Consequently, the RTC rightly passed upon such issues in deciding the case, and its having done so was in total accord with Section 5, Rule 10 of the *Rules of Court*.

2. **ID.; ID.; ID.; ID.; ID.; SECTION 5, RULE 10 OF THE RULES OF COURT ON AMENDMENT TO CONFORM TO OR AUTHORIZE PRESENTATION OF EVIDENCE IS NOT APPLICABLE IN CASE AT BAR.—** Section 5, Rule 10 of the *Rules of Court* is applicable in two situations. The first is when evidence is introduced on an issue not alleged in the pleadings and no objection is interposed by the adverse party. The second is when evidence is offered on an issue not alleged in the

pleadings but an objection is raised against the offer. This case comes under the first situation. Enrique Manalo's Judicial Affidavit would introduce the very issues that PNB is now assailing. The question of whether the evidence on such issues was admissible to prove the nullity of the interest rates is an entirely different matter. The RTC accorded credence to PNB's evidence showing that the Spouses Manalo had been paying the interest imposed upon them without protest. On the other hand, the CA's nullification of the interest rates was based on the credit agreements that the Spouses Manalo and PNB had themselves submitted. Based on the foregoing, the validity of the interest rates and their increases, and the lack of mutuality between the parties were issues validly raised in the RTC, giving the Spouses Manalo every right to raise them in their appeal to the CA. PNB's contention was based on its wrong appreciation of what transpired during the trial. It is also interesting to note that PNB did not itself assail the RTC's ruling on the issues obviously because the RTC had decided in its favor. In fact, PNB did not even submit its appellee's brief despite notice from the CA.

3. CIVIL LAW; CONTRACTS; PRINCIPLE OF MUTUALITY OF CONTRACTS; PETITIONER BANK'S UNILATERAL DETERMINATION OF THE INTEREST RATES CONTRAVENED THE PRINCIPLE OF MUTUALITY OF CONTRACTS EMBODIED IN ARTICLE 1308 OF THE CIVIL CODE.— The credit agreement executed succinctly stipulated that the loan would be subjected to interest at a rate "determined by the Bank to be its prime rate plus applicable spread, prevailing at the current month." This stipulation was carried over to or adopted by the subsequent renewals of the credit agreement. PNB thereby arrogated unto itself the sole prerogative to determine and increase the interest rates imposed on the Spouses Manalo. Such a unilateral determination of the interest rates contravened the principle of mutuality of contracts embodied in Article 1308 of the *Civil Code*. The Court has declared that a contract where there is no mutuality between the parties partakes of the nature of a contract of adhesion, and any obscurity will be construed against the party who prepared the contract, the latter being presumed the stronger party to the agreement, and who caused the obscurity. PNB should then suffer the consequences of its failure to specifically indicate

the rates of interest in the credit agreement. We spoke clearly on this in *Philippine Savings Bank v. Castillo*, to wit: The unilateral determination and imposition of the increased rates is violative of the principle of mutuality of contracts under Article 1308 of the Civil Code, which provides that '[t]he contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.' A perusal of the Promissory Note will readily show that the increase or decrease of interest rates hinges solely on the discretion of petitioner. It does not require the conformity of the maker before a new interest rate could be enforced. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result, thus partaking of the nature of a contract of adhesion, is void. **Any stipulation regarding the validity or compliance of the contract left solely to the will of one of the parties is likewise invalid.**

4. **ID.; ID.; ID.; A BORROWER IS NOT ESTOPPED FROM ASSAILING A UNILATERAL INCREASE IN THE INTEREST MADE BY THE LENDER SINCE NO ONE WHO RECEIVES A PROPOSAL TO CHANGE A CONTRACT, TO WHICH HE IS A PARTY, IS OBLIGED TO ANSWER THE SAME AND SAID PARTY'S SILENCE CANNOT BE CONSTRUED AS AN ACCEPTANCE THEREOF.—** PNB could not also justify the increases it had effected on the interest rates by citing the fact that the Spouses Manalo had paid the interests without protest, and had renewed the loan several times. We rule that the CA, citing *Philippine National Bank v. Court of Appeals*, rightly concluded that "a borrower is not estopped from assailing the unilateral increase in the interest made by the lender since no one who receives a proposal to change a contract, to which he is a party, is obliged to answer the same and said party's silence cannot be construed as an acceptance thereof."

5. **ID.; ID.; ID.; IN FAILING TO NOTIFY RESPONDENTS BEFORE IMPOSING THE INCREASED INTEREST RATES, PETITIONER BANK VIOLATED THE STIPULATIONS OF THE VERY CONTRACT THAT IT HAD PREPARED.—** The CA observed, and properly so, that the credit agreements had explicitly provided that prior notice would be necessary before PNB could increase the interest rates. In failing to notify the Spouses Manalo before imposing the increased rates of interest,

therefore, PNB violated the stipulations of the very contract that it had prepared. Hence, the varying interest rates imposed by PNB have to be vacated and declared null and void, and in their place an interest rate of 12% *per annum* computed from their default is fixed pursuant to the ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*.

6. ID.; ID.; ID.; PURSUANT TO *EASTERN SHIPPING LINES, INC. V. COURT OF APPEALS*, THE AMOUNT TO BE REFUNDED AND THE INTEREST THEREON SHOULD EARN INTEREST TO BE COMPUTED FROM THE FINALITY OF THE JUDGMENT UNTIL THE FULL REFUND HAS BEEN MADE.— The CA's directive to PNB (*a*) to recompute the Spouses Manalo's indebtedness under the oversight of the RTC; and (*b*) to refund to them any excess of the winning bid submitted during the foreclosure sale over their recomputed indebtedness was warranted and equitable. Equally warranted and equitable was to make the amount to be refunded, if any, bear legal interest, to be reckoned from the promulgation of the CA's decision on March 28, 2006. Indeed, the Court said in *Eastern Shipping Lines, Inc. v. Court of Appeals* that interest should be computed from the time of the judicial or extrajudicial demand. However, this case presents a peculiar situation, the peculiarity being that the Spouses Manalo did not demand interest either judicially or extrajudicially. In the RTC, they specifically sought as the main reliefs the nullification of the foreclosure proceedings brought by PNB, accounting of the payments they had made to PNB, and the conversion of their loan into a long term one. In its judgment, the RTC even upheld the validity of the interest rates imposed by PNB. In their appellant's brief, the Spouses Manalo again sought the nullification of the foreclosure proceedings as the main relief. It is evident, therefore, that the Spouses Manalo made no judicial or extrajudicial demand from which to reckon the interest on any amount to be refunded to them. Such demand could only be reckoned from the promulgation of the CA's decision because it was there that the right to the refund was first judicially recognized. Nevertheless, pursuant to *Eastern Shipping Lines, Inc. v. Court of Appeals*, the amount to be refunded and the interest thereon should earn interest to be computed from the finality of the judgment until the full refund has been made.

7. ID.; ID.; ID.; THE PROPER INTEREST RATES TO BE APPLIED ON THE AMOUNT TO BE REFUNDED BY PETITIONER BANK SHOULD CONFORM WITH THE COURT'S PRONOUNCEMENTS IN *NACAR V. GALLERY FRAME* AND *S.C. MEGAWORLD CONSTRUCTION V. PARADA*.— Anent the correct rates of interest to be applied on the amount to be refunded by PNB, the Court, in *Nacar v. Gallery Frames* and *S.C. Megaworld Construction v. Parada*, already applied Monetary Board Circular No. 799 by reducing the interest rates allowed in judgments from 12% *per annum* to 6% *per annum*. According to *Nacar v. Gallery Frames*, MB Circular No. 799 is applied prospectively, and judgments that became final and executory prior to its effectivity on July 1, 2013 are not to be disturbed but continue to be implemented applying the old legal rate of 12% *per annum*. Hence, the old legal rate of 12% *per annum* applied to judgments becoming final and executory prior to July 1, 2013, but the new rate of 6% *per annum* applies to judgments becoming final and executory after said date. Conformably with *Nacar v. Gallery Frames* and *S.C. Megaworld Construction v. Parada*, therefore, the proper interest rates to be imposed in the present case are as follows: 1. Any amount to be refunded to the Spouses Manalo shall bear interest of 12% *per annum* computed from March 28, 2006, the date of the promulgation of the CA decision, until June 30, 2013; and 6% *per annum* computed from July 1, 2013 until finality of this decision; and 2. The amount to be refunded and its accrued interest shall earn interest of 6% *per annum* until full refund.

APPEARANCES OF COUNSEL

PNB Chief Legal Counsel for petitioner.
Bede S. Tabalingcos for respondents.

D E C I S I O N

BERSAMIN, *J.*:

Although banks are free to determine the rate of interest they could impose on their borrowers, they can do so only reasonably, not arbitrarily. They may not take advantage of the ordinary borrowers' lack of familiarity with banking

procedures and jargon. Hence, any stipulation on interest unilaterally imposed and increased by them shall be struck down as violative of the principle of mutuality of contracts.

Antecedents

Respondent Spouses Enrique Manalo and Rosalinda Jacinto (Spouses Manalo) applied for an All-Purpose Credit Facility in the amount of ₱1,000,000.00 with Philippine National Bank (PNB) to finance the construction of their house. After PNB granted their application, they executed a *Real Estate Mortgage* on November 3, 1993 in favor of PNB over their property covered by Transfer Certificate of Title No. S- 23191 as security for the loan.[1] The credit facility was renewed and increased several times over the years. On September 20, 1996, the credit facility was again renewed for ₱7,000,000.00. As a consequence, the parties executed a *Supplement to and Amendment of Existing Real Estate Mortgage* whereby the property covered by TCT No. 171859 was added as security for the loan. The additional security was registered in the names of respondents Arnold, Arnel, Anthony, and Arma, all surnamed Manalo, who were their children.[2]

It was agreed upon that the Spouses Manalo would make monthly payments on the interest. However, PNB claimed that their last recorded payment was made on December, 1997. Thus, PNB sent a demand letter to them on their overdue account and required them to settle the account. PNB sent another demand letter because they failed to heed the first demand.[3]

After the Spouses Manalo still failed to settle their unpaid account despite the two demand letters, PNB foreclose the mortgage. During the foreclosure sale, PNB was the highest bidder for ₱15,127,000.00 of the mortgaged properties of the Spouses Manalo. The sheriff issued to PNB the Certificate of Sale dated November 13, 2000.[4]

[1] *Rollo*, p. 59.

[2] *Id.* at 60.

[3] *Id.*

[4] *Id.* at 61.

After more than a year after the Certificate of Sale had been issued to PNB, the Spouses Manalo instituted this action for the nullification of the foreclosure proceedings and damages. They alleged that they had obtained a loan for ₱1,000,000.00 from a certain Benito Tan upon arrangements made by Antoninus Yuvienco, then the General Manager of PNB's Bangkal Branch where they had transacted; that they had been made to understand and had been assured that the ₱1,000,000.00 would be used to update their account, and that their loan would be restructured and converted into a long-term loan;[5] that they had been surprised to learn, therefore, that they had been declared in default of their obligations, and that the mortgage on their property had been foreclosed and their property had been sold; and that PNB did not comply with Section 3 of Act No. 3135, as amended.[6]

PNB and Antoninus Yuvienco countered that the ₱1,000,000.00 loan obtained by the Spouses Manalo from Benito Tan had been credited to their account; that they did not make any assurances on the restructuring and conversion of the Spouses Manalo's loan into a long-term one;[7] that PNB's right to foreclose the mortgage had been clear especially because the Spouses Manalo had not assailed the validity of the loans and of the mortgage; and that the Spouses Manalo did not allege having fully paid their indebtedness.[8]

Ruling of the RTC

After trial, the RTC rendered its decision in favor of PNB, holding thusly:

> In resolving this present case, one of the most significant matters the court has noted is that while during the pre-trial held on 8 September 2003, plaintiff-spouses Manalo with the assistance counsel had agreed to stipulate that defendants had the right to foreclose

[5] *Id.*

[6] *Id.* at 62.

[7] *Id.*

[8] *Id.* at 62-63.

upon the subject properties and that the plaintiffs[‘] main thrust was to prove that the foreclosure proceedings were invalid, in the course of the presentation of their evidence, they modified their position and claimed [that] the loan document executed were contracts of adhesion which were null and void because they were prepared entirely under the defendant bank’s supervision. They also questioned the interest rates and penalty charges imposed arguing that these were iniquitous, unconscionable and therefore likewise void.

Not having raised the foregoing matters as issues during the pre-trial, plaintiff-spouses are presumably estopped from allowing these matters to serve as part of their evidence, more so because at the pre-trial they expressly recognized the defendant bank’s right to foreclose upon the subject property (See Order, pp. 193-195).

However, considering that the defendant bank did not interpose any objection to these matters being made part of plaintiff’s evidence so much so that their memorandum contained discussions rebutting plaintiff spouses arguments on these issues, the court must necessarily include these matters in the resolution of the present case.[9]

The RTC held, however, that the Spouses Manalo’s “contract of adhesion” argument was unfounded because they had still accepted the terms and conditions of their credit agreement with PNB and had exerted efforts to pay their obligation;[10] that the Spouses Manalo were now estopped from questioning the interest rates unilaterally imposed by PNB because they had paid at those rates for three years without protest;[11] and that their allegation about PNB violating the notice and publication requirements during the foreclosure proceedings was untenable because personal notice to the mortgagee was not required under Act No. 3135.[12]

The Spouses Manalo appealed to the CA by assigning a singular error, as follows:

[9] *Id.* at 95.

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

[11] *Id.* at 97.

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

THE COURT *A QUO* SERIOUSLY ERRED IN DISMISSING PLAINTIFF-APPELLANTS' COMPLAINT FOR BEING (sic) LACK OF MERIT NOTWITHSTANDING THE FACT THAT IT WAS CLEARLY SHOWN THAT THE FORECLOSURE PROCEEDINGS WAS INVALID AND ILLEGAL.[13]

The Spouses Manalo reiterated their arguments, insisting that: (1) the credit agreements they entered into with PNB were contracts of adhesion;[14] (2) no interest was due from them because their credit agreements with PNB did not specify the interest rate, and PNB could not unilaterally increase the interest rate without first informing them;[15] and (3) PNB did not comply with the notice and publication requirements under Section 3 of Act 3135.[16] On the other hand, PNB and Yuvienco did not file their briefs despite notice.[17]

Ruling of the CA

In its decision promulgated on March 28, 2006,[18] the CA affirmed the decision of the RTC insofar as it upheld the validity of the foreclosure proceedings initiated by PNB, but modified the Spouses Manalo's liability for interest. It directed the RTC to see to the recomputation of their indebtedness, and ordered that should the recomputed amount be less than the winning bid in the foreclosure sale, the difference should be immediately returned to the Spouses Manalo.

The CA found it necessary to pass upon the issues of PNB's failure to specify the applicable interest and the lack of mutuality in the execution of the credit agreements considering the earlier

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[13] *Id.* at 108.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 108-128.

[17] CA *rollo*, p. 87.

[18] *Rollo*, pp. 10-25; penned by Associate Justice Magdangal M. De Leon, and concurred in by Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice, but now retired) and Associate Justice Mariano C. Del Castillo (now a Member of the Court).

cited observation made by the trial court in its decision. Applying Article 1956 of the *Civil Code*, the CA held that PNB's failure to indicate the rate of interest in the credit agreements would not excuse the Spouses Manalo from their contractual obligation to pay interest to PNB because of the express agreement to pay interest in the credit agreements. Nevertheless, the CA ruled that PNB's inadvertence to specify the interest rate should be construed against it because the credit agreements were clearly contracts of adhesion due to their having been prepared solely by PNB.

The CA further held that PNB could not unilaterally increase the rate of interest considering that the credit agreements specifically provided that prior notice was required before an increase in interest rate could be effected. It found that PNB did not adduce proof showing that the Spouses Manalo had been notified before the increased interest rates were imposed; and that PNB's unilateral imposition of the increased interest rate was null and void for being violative of the principle of mutuality of contracts enshrined in Article 1308 of the *Civil Code*. Reinforcing its "contract of adhesion" conclusion, it added that the Spouses Manalo's being in dire need of money rendered them to be not on an equal footing with PNB. Consequently, the CA, relying on *Eastern Shipping Lines, Inc. v. Court of Appeals*,[19] fixed the interest rate to be paid by the Spouses Manalo at 12% *per annum*, computed from their default.

The CA deemed to be untenable the Spouses Manalo's allegation that PNB had failed to comply with the requirements for notice and posting under Section 3 of Act 3135. The CA stated that Sheriff Norberto Magsajo's testimony was sufficient proof of his posting of the required Notice of Sheriff's Sale in three public places; that the notarized Affidavit of Publication presented by Sheriff Magsajo was *prima facie* proof of the publication of the notice; and that the Affidavit of Publication enjoyed the presumption of regularity, such that the Spouses Manalo's bare allegation of non-publication without other proof did not overcome the presumption.

[19] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95.

On August 29, 2006, the CA denied the Spouses Manalo's Motion for Reconsideration and PNB's Partial Motion for Reconsideration.[20]

Issues

In its Memorandum,[21] PNB raises the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS WAS CORRECT IN NULLIFYING THE INTEREST RATES IMPOSED ON RESPONDENT SPOUSES' LOAN AND IN FIXING THE SAME AT TWELVE PERCENT (12%) FROM DEFAULT, DESPITE THE FACT THAT (i) THE SAME WAS RAISED BY THE RESPONDENTS ONLY FOR THE FIRST TIME ON APPEAL (ii) IT WAS NEVER PART OF THEIR COMPLAINT (iii) WAS EXLUDED AS AN ISSUE DURING PRE-TRIAL, AND WORSE, (iv) THERE WAS NO FORMALLY OFFERED PERTAINING TO THE SAME DURING TRIAL.

II

WHETHER OR NOT THE COURT OF APPEALS CORRECTLY RULED THAT THERE WAS NO MUTUALITY OF CONSENT IN THE IMPOSITION OF INTEREST RATES ON THE RESPONDENT SPOUSES' LOAN DESPITE THE EXISTENCE OF FACTS AND CIRCUMSTANCES CLEARLY SHOWING RESPONDENTS' ASSENT TO THE RATES OF INTEREST SO IMPOSED BY PNB ON THE LOAN.

Anent the first issue, PNB argues that by passing upon the issue of the validity of the interest rates, and in nullifying the rates imposed on the Spouses Manalo, the CA decided the case in a manner not in accord with Section 15, Rule 44 of the *Rules of Court*, which states that only questions of law or fact raised in the trial court could be assigned as errors on appeal; that to allow the Spouses Manalo to raise an issue for the first time on appeal would "offend the basic rules of fair play, justice and due process;"[22] that the resolution of the CA was limited

[20] *Id.* at 145-147.

[21] *Rollo*, pp. 212-234.

[22] *Id.* at 220-222.

to the issues agreed upon by the parties during pre-trial;[23] that the CA erred in passing upon the validity of the interest rates inasmuch as the Spouses Manalo did not present evidence thereon; and that the Judicial Affidavit of Enrique Manalo, on which the CA relied for its finding, was not offered to prove the invalidity of the interest rates and was, therefore, inadmissible for that purpose.[24]

As to the substantive issues, PNB claims that the Spouses Manalo's continuous payment of interest without protest indicated their assent to the interest rates imposed, as well as to the subsequent increases of the rates; and that the CA erred in declaring that the interest rates and subsequent increases were invalid for lack of mutuality between the contracting parties.

Ruling

The appeal lacks merit.

1.
Procedural Issue

Contrary to PNB's argument, the validity of the interest rates and of the increases, and on the lack of mutuality between the parties were not raised by the Spouses Manalos for the first time on appeal. Rather, the issues were impliedly raised during the trial itself, and PNB's lack of vigilance in voicing out a timely objection made that possible.

It appears that Enrique Manalo's Judicial Affidavit introduced the issues of the validity of the interest rates and the increases, and the lack of mutuality between the parties in the following manner, to wit:

> 5. True to his words, defendant Yuvienco, after several days, sent us a document through a personnel of defendant PNB, Bangkal, Makati City Branch, who required me and my wife to affix our signature on the said document;

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[23] *Id.* at 222-225.

[24] *Id.* at 225-228.

6. When the document was handed over me, I was able to know that it was a Promissory Note which was in ready made form and prepared solely by the defendant PNB;

x x x x x x x x x

21. As above-noted, the rates of interest imposed by the defendant bank were never the subject of any stipulation between us mortgagors and the defendant PNB as mortgagee;

22. The truth of the matter is that defendant bank imposed rate of interest which ranges from 19% to as high as 28% and which changes from time to time;

23. The irregularity, much less the invalidity of the imposition of iniquitous rates of interest was aggravated by the fact that we were not informed, notified, nor the same had our prior consent and acquiescence therefor. x x x[25]

PNB cross-examined Enrique Manalo upon his Judicial Affidavit. There is no showing that PNB raised any objection in the course of the cross examination.[26] Consequently, the RTC rightly passed upon such issues in deciding the case, and its having done so was in total accord with Section 5, Rule 10 of the *Rules of Court*, which states:

Section 5. *Amendment to conform to or authorize presentation of evidence*. – When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

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[25] Records, pp. 204, 207.

[26] See TSN, November 25, 2003, pp. 8-30.

In *Bernardo Sr. v. Court of Appeals*,[27] we held that:

> It is settled that even if the complaint be defective, but the parties go to trial thereon, and the plaintiff, without objection, introduces sufficient evidence to constitute the particular cause of action which it intended to allege in the original complaint, and the defendant voluntarily produces witnesses to meet the cause of action thus established, an issue is joined as fully and as effectively as if it had been previously joined by the most perfect pleadings. Likewise, when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

The RTC did not need to direct the amendment of the complaint by the Spouses Manalo. Section 5, Rule 10 of the *Rules of Court* specifically declares that the "failure to amend does not affect the result of the trial of these issues." According to *Talisay-Silay Milling Co., Inc. v. Asociacion de Agricultores de Talisay-Silay, Inc.*:[28]

> The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude an adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings, or serve as a basis for a higher award of damages. Although the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the basis of issues discussed and the assertions of fact proved in the course of trial. The court may treat the pleading *as if* it had been amended to conform to the evidence, although it had not been actually so amended. Former Chief Justice Moran put the matter in this way:
>
> > When evidence is presented by one party, with the expressed or implied consent of the adverse party, as to *issues not alleged in the pleadings, judgment may be rendered validly as regards those issues,* which shall be considered *as if they have been raised in the pleadings.* There is implied, consent to the evidence thus presented when the adverse party fails to object thereto." (Emphasis supplied)

[27] G.R. No. 120730, October 28, 1996, 263 SCRA 660, 673-674.

[28] G.R. No. 91852, August 15, 1995, 247 SCRA 361, 377-378.

Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, so long as the basic requirements of fair play had been met, as where litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.

There is also no merit in PNB's contention that the CA should not have considered and ruled on the issue of the validity of the interest rates because the Judicial Affidavit of Enrique Manalo had not been offered to prove the same but only "for the purpose of identifying his affidavit."[29] As such, the affidavit was inadmissible to prove the nullity of the interest rates.

We do not agree.

Section 5, Rule 10 of the *Rules of Court* is applicable in two situations. The first is when evidence is introduced on an issue not alleged in the pleadings and no objection is interposed by the adverse party. The second is when evidence is offered on an issue not alleged in the pleadings but an objection is raised against the offer.[30] This case comes under the first situation. Enrique Manalo's Judicial Affidavit would introduce the very issues that PNB is now assailing. The question of whether the evidence on such issues was admissible to prove the nullity of the interest rates is an entirely different matter. The RTC accorded credence to PNB's evidence showing that the Spouses Manalo had been paying the interest imposed upon them without protest. On the other hand, the CA's nullification of the interest rates was based on the credit agreements that the Spouses Manalo and PNB had themselves submitted.

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[29] *Rollo*, p. 226.

[30] *Mercader v. Development Bank of the Philippines (Cebu Branch)*, G.R. No. 130699, May 12, 2000, 332 SCRA 82, 97.

Based on the foregoing, the validity of the interest rates and their increases, and the lack of mutuality between the parties were issues validly raised in the RTC, giving the Spouses Manalo every right to raise them in their appeal to the CA. PNB's contention was based on its wrong appreciation of what transpired during the trial. It is also interesting to note that PNB did not itself assail the RTC's ruling on the issues obviously because the RTC had decided in its favor. In fact, PNB did not even submit its appellee's brief despite notice from the CA.

2.
Substantive Issue

The credit agreement executed succinctly stipulated that the loan would be subjected to interest at a rate "determined by the Bank to be its prime rate plus applicable spread, prevailing at the current month."[31] This stipulation was carried over to or adopted by the subsequent renewals of the credit agreement. PNB thereby arrogated unto itself the sole prerogative to determine and increase the interest rates imposed on the Spouses Manalo. Such a unilateral determination of the interest rates contravened the principle of mutuality of contracts embodied in Article 1308 of the *Civil Code*.[32]

The Court has declared that a contract where there is no mutuality between the parties partakes of the nature of a contract of adhesion,[33] and any obscurity will be construed against the party who prepared the contract, the latter being presumed the stronger party to the agreement, and who caused the obscurity.[34] PNB should then suffer the consequences of its failure to

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[31] Exhibits, pp. 14, 18.

[32] Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. (1256a)

[33] *Floirendo, Jr. v. Metropolitan Bank and Trust Company*, G.R. No. 148325, September 3, 2007, 532 SCRA 43, 51, citing *Philippine National Bank v. Court of Appeals*, G.R. No. 88880, April 30, 1991, 196 SCRA 536, 545.

[34] *Pilipino Telephone Corporation v. Tecson*, G.R. No. 156966, May 7, 2004, 428 SCRA 378, 380.

specifically indicate the rates of interest in the credit agreement. We spoke clearly on this in *Philippine Savings Bank v. Castillo*,[35] to wit:

> The unilateral determination and imposition of the increased rates is violative of the principle of mutuality of contracts under Article 1308 of the Civil Code, which provides that '[t]he contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.' A perusal of the Promissory Note will readily show that the increase or decrease of interest rates hinges solely on the discretion of petitioner. It does not require the conformity of the maker before a new interest rate could be enforced. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result, thus partaking of the nature of a contract of adhesion, is void. **Any stipulation regarding the validity or compliance of the contract left solely to the will of one of the parties is likewise invalid.** (Emphasis supplied)

PNB could not also justify the increases it had effected on the interest rates by citing the fact that the Spouses Manalo had paid the interests without protest, and had renewed the loan several times. We rule that the CA, citing *Philippine National Bank v. Court of Appeals*,[36] rightly concluded that "a borrower is not estopped from assailing the unilateral increase in the interest made by the lender since no one who receives a proposal to change a contract, to which he is a party, is obliged to answer the same and said party's silence cannot be construed as an acceptance thereof."[37]

Lastly, the CA observed, and properly so, that the credit agreements had explicitly provided that prior notice would be necessary before PNB could increase the interest rates. In failing to notify the Spouses Manalo before imposing the increased rates of interest, therefore, PNB violated the stipulations of the very contract that it had prepared. Hence, the varying interest rates imposed by PNB have to be vacated and declared null

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[35] G.R. No. 193178, May 30, 2011, 649 SCRA 527, 533.

[36] G.R. No. 107569, November 8, 1994, 238 SCRA 20, 26.

[37] *Rollo*, p. 69.

and void, and in their place an interest rate of 12% *per annum* computed from their default is fixed pursuant to the ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*.[38]

The CA's directive to PNB (*a*) to recompute the Spouses Manalo's indebtedness under the oversight of the RTC; and (*b*) to refund to them any excess of the winning bid submitted during the foreclosure sale over their recomputed indebtedness was warranted and equitable. Equally warranted and equitable was to make the amount to be refunded, if any, bear legal interest, to be reckoned from the promulgation of the CA's decision on March 28, 2006.[39] Indeed, the Court said in *Eastern Shipping Lines, Inc. v. Court of Appeals*[40] that interest should be computed from the time of the judicial or extrajudicial demand. However, this case presents a peculiar situation, the peculiarity being that the Spouses Manalo did not demand interest either judicially or extrajudicially. In the RTC, they specifically sought as the main reliefs the nullification of the foreclosure proceedings brought by PNB, accounting of the payments they had made to PNB, and the conversion of their loan into a long term one.[41] In its judgment, the RTC even upheld the validity of the interest rates imposed by PNB.[42] In their appellant's brief, the Spouses Manalo again sought the nullification of the foreclosure proceedings as the main relief.[43] It is evident, therefore, that the Spouses Manalo made no judicial or extrajudicial demand from which to reckon the interest on any amount to be refunded to them. Such demand could only be reckoned from the promulgation of the CA's decision because it was there that the right to the refund was first judicially recognized. Nevertheless, pursuant to *Eastern Shipping Lines, Inc. v. Court of Appeals*,[44] the amount to be refunded and the interest

[38] *Supra* note 19.

[39] *Supra* note 18.

[40] *Supra* note 19.

[41] *Rollo*, pp. 81-82.

[42] *Id.* at 96.

[43] *Id.* at 128.

[44] *Supra* note 19.

thereon should earn interest to be computed from the finality of the judgment until the full refund has been made.

Anent the correct rates of interest to be applied on the amount to be refunded by PNB, the Court, in *Nacar v. Gallery Frames*[45] and *S.C. Megaworld Construction v. Parada*,[46] already applied Monetary Board Circular No. 799 by reducing the interest rates allowed in judgments from 12% *per annum* to 6% *per annum*.[47] According to *Nacar v. Gallery Frames*, MB Circular No. 799 is applied prospectively, and judgments that became final and executory prior to its effectivity on July 1, 2013 are not to be disturbed but continue to be implemented applying the old legal rate of 12% *per annum*. Hence, the old legal rate of 12% *per annum* applied to judgments becoming final and executory prior to July 1, 2013, but the new rate of 6% *per annum* applies to judgments becoming final and executory after said dater.

Conformably with *Nacar v. Gallery Frames* and *S.C. Megaworld Construction v. Parada*, therefore, the proper interest rates to be imposed in the present case are as follows:

1. Any amount to be refunded to the Spouses Manalo shall bear interest of 12% *per annum* computed from March 28, 2006, the date of the promulgation of the CA decision, until June 30, 2013; and 6% *per annum* computed from July 1, 2013 until finality of this decision; and

2. The amount to be refunded and its accrued interest shall earn interest of 6% *per annum* until full refund.

WHEREFORE, the Court **AFFIRMS** the decision promulgated by the Court of Appeals on March 28, 2006 in CA-G.R. CV No. 84396, subject to the **MODIFICATION** that any amount to be refunded to the respondents shall bear

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

[46] G.R. No. 183804, September 11, 2013.

[47] Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) *per annum*.

interest of 12% *per annum* computed from March 28, 2006 until June 30, 2013, and 6% *per annum* computed from July 1, 2013 until finality hereof; that the amount to be refunded and its accrued interest shall earn interest at 6% *per annum* until full refund; and **DIRECTS** 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. 179031. February 24, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN SORIA *y* GOMEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXTINCTION OF CRIMINAL LIABILITY; DEATH OF THE CONVICT PENDING APPEAL OF HIS CONVICTION EXTINGUISHES CRIMINAL AND CIVIL LIABILITY *EX DELICTO*.— Accused-appellant's demise on August 16, 2012 transpired before the promulgation of this Court's Decision on November 14, 2012 or before its finality on December 20, 2012. Therefore, when accused-appellant died, his appeal before this Court was still pending resolution. Article 89 of the Revised Penal Code pertinently provides: ART. 89. *How criminal liability is totally extinguished.* – Criminal liability is totally extinguished: 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;

x x x In *People v. Amistoso,* this Court encountered a similar situation wherein the accused-appellant died before his appeal could be resolved. The Court explained the implications of the accused-appellant's demise as follows: Given the foregoing, it is clear that the death of the accused pending appeal of his conviction extinguishes his criminal liability, as well as his civil liability *ex delicto.* Since the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused, the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case.

2. ID.; ID.; ID.; ID.; CASE AT BAR.— Undeniably, Amistoso's death on December 11, 2012 preceded the promulgation by the Court of its Decision on January 9, 2013. When Amistoso died, his appeal before the Court was still pending and unresolved. The Court ruled upon Amistoso's appeal only because it was not immediately informed of his death. Amistoso's death on December 11, 2012 renders the Court's Decision dated January 9, 2013, even though affirming Amistoso's conviction, irrelevant and ineffectual. Moreover, said Decision has not yet become final, and the Court still has the jurisdiction to set it aside. The Court had no course of action but to set aside its Decision and dismiss the criminal case against Amistoso by reason of his death. Likewise, the November 14, 2012 Decision of this Court finding accused-appellant guilty beyond reasonable doubt of the crime of rape had become irrelevant and ineffectual by reason of his death on August 16, 2012. Consequently, the same must be set aside and the case against accused appellant must consequently be dismissed.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

DEL CASTILLO, *J.*:

On November 14, 2012, this Court rendered its Decision[1] in this case finding accused-appellant Benjamin Soria *y* Gomez guilty beyond reasonable doubt of rape. The dispositive portion of the Decision reads:

> WHEREFORE, the December 29, 2006 Decision of the Court of Appeals in CA-GR. CR-H.C. No. 01442 is AFFIRMED; with MODIFICATIONS. Accused-ap llant Benjamin Soria *y* Gomez is found guilty beyond reasonable doubt of the crime of rape by sexual assault and is sentenced to suffer the penalty of twelve (12) years of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum. He is also ordered to pay "AAA" the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages. "AAA" is entitled to an interest on all damages awarded at the legal rate of 6% *per annum* from the date of finality of this judgment until fully paid.
>
> SO ORDERED.[2]

The said Decision supposedly became final and executory on December 20, 2012.[3] Subsequently, however, the Court received a letter from the Bureau of Corrections informing us of the death of accused-appellant on August 16, 2012. In compliance with our directive, the Director of the Bureau of Corrections submitted on November 11, 2013, a certified true copy of the death certificate[4] of accused- appellant.

Clearly, accused-appellant's demise on August 16, 2012 transpired before the promulgation of this Court's Decision on November 14, 2012 or before its finality on December 20, 2012. Therefore, when accused-appellant died, his appeal before this Court was still pending resolution.

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[1] With Dissenting Opinion of Associate Justice Arturo D. Brion.

[2] *Rollo*, p. 50.

[3] *Id.* at 62.

[4] *Id.* at 74.

Article 89 of the Revised Penal Code pertinently provides:

ART. 89. *How criminal liability is totally extinguished*. - Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;

xxx x x x xxx

In *People v. Amistoso*,[5] this Court encountered a similar situation wherein the accused-appellant died before his appeal could be resolved. The Court explained the implications of the accused-appellant's demise as follows:

Given the foregoing, it is clear that the death of the accused pending appeal of his conviction extinguishes his criminal liability, as well as his civil liability *ex delicto*. Since the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused, the civil action instituted therein for recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal case.

Undeniably, Amistoso's death on December 11, 2012 preceded the promulgation by the Court of its Decision on January 9, 2013. When Amistoso died, his appeal before the Court was still pending and unresolved. The Court ruled upon Amistoso's appeal only because it was not immediately informed of his death.

Amistoso's death on December 11, 2012 renders the Court's Decision dated January 9, 2013, even though affirming Amistoso's conviction, irrelevant and ineffectual. Moreover, said Decision has not yet become final, and the Court still has the jurisdiction to set it aside.

The Court had no course of action but to set aside its Decision and dismiss the criminal case against Amistoso by reason of his death.

Likewise, the November 14, 2012 Decision of this Court

[5] G.R. No. 201447, August 28, 2013.

the crime of rape had become irrelevant and ineffectual by reason of his death on August 16, 2012. Consequently, the same must be set aside and the case against accused-appellant must consequently be dismissed.

ACCORDINGLY, the November 14, 2012 Decision of this Court is **SET ASIDE** and Criminal Case No. Q-01-98692 before the Regional Trial Court of Quezon City, Branch 94, is **DISMISSED** on account of accused-appellant's demise.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179625. February 24, 2014]

NICANORA G. BUCTON (deceased), substituted by REQUILDA B. YRAY, *petitioner, vs.* **RURAL BANK OF EL SALVADOR, INC., MISAMIS ORIENTAL, and REYNALDO CUYONG,** *respondents, vs.* **ERLINDA CONCEPCION AND HER HUSBAND AND AGNES BUCTON LUGOD,** *third party defendants.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; AGENCY; THE REAL ESTATE MORTGAGE ENTERED INTO BY THE ALLEGED AGENT IN HER OWN PERSONAL CAPACITY IS NOT BINDING ON THE PETITIONER; CASE AT BAR.— In this case, the authorized agent failed to indicate in the mortgage that she was acting for and on behalf of her principal. The Real Estate Mortgage, explicitly shows on its face, that it was signed by Concepcion in her own name and in her own personal capacity. In fact,

there is nothing in the document to show that she was acting or signing as an agent of petitioner. Thus, consistent with the law on agency and established jurisprudence, petitioner cannot be bound by the acts of Concepcion. In light of the foregoing, there is no need to delve on the issues of forgery of the SPA and the nullity of the foreclosure sale. For even if the SPA was valid, the Real Estate Mortgage would still not bind petitioner as it was signed by Concepcion in her personal capacity and not as an agent of petitioner. Simply put, the Real Estate Mortgage is void and unenforceable against petitioner.

2. ID.; ID.; ID.; RESPONDENT BANK WAS NEGLIGENT.— At this point, we find it significant to mention that respondent bank has no one to blame but itself. Not only did it act with undue haste when it granted and released the loan in less than three days, it also acted negligently in preparing the Real Estate Mortgage as it failed to indicate that Concepcion was signing it for and on behalf of petitioner. We need not belabor that the words "as attorney-in-fact of," "as agent of," or "for and on behalf of," are vital in order for the principal to be bound by the acts of his agent. Without these words, any mortgage, although signed by the agent, cannot bind the principal as it is considered to have been signed by the agent in his personal capacity.

3. ID.; DAMAGES; RESPONDENT BANK IS LIABLE TO PAY PETITIONER ATTORNEY'S FEES AND THE COSTS OF THE SUIT.— Considering that petitioner was compelled to litigate or to incur expenses to protect her interest, the RTC was right when it ruled that respondent bank is liable to pay petitioner attorney's fees in the amount of ₱20,000.00. However, we are not convinced that petitioner is entitled to an award of moral damages as it was not satisfactorily shown that respondent bank acted in bad faith or with malice. Neither was it proven that respondent bank's acts were the proximate cause of petitioner's wounded feelings. On the contrary, we note that petitioner is not entirely free of blame considering her negligence in entrusting her title to Concepcion. In any case, the RTC did not fully explain why petitioner is entitled to such award.

4. ID.; ID.; ID.; THE ALLEGED AGENT IS LIABLE TO PAY RESPONDENT BANK HER UNPAID OBLIGATION AND

REIMBURSE IT FOR ALL DAMAGES, ATTORNEY'S FEES AND THE COSTS OF THE SUIT.— Concepcion, on the other hand, is liable to pay respondent bank her unpaid obligation under the Promissory Note dated June 11, 1982, with interest. As we have said, Concepcion signed the Promissory Note in her own personal capacity; thus, she cannot escape liability. She is also liable to reimburse respondent bank for all damages, attorneys' fees, and costs the latter is adjudged to pay petitioner in this case.

APPEARANCES OF COUNSEL

Erlington E. Pimentel for petitioner.
Isidro Q. Lico for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

A mortgage executed by an authorized agent who signed in his own name without indicating that he acted for and on behalf of his principal binds only the agent and not the principal.

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the August 17, 2005 Decision[2] and the June 7, 2007 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 60841.

Factual Antecedents

On April 29, 1988, petitioner Nicanora G. Bucton filed with the Regional Trial Court (RTC) of Cagayan de Oro a case[4] for

[1] *Rollo,* pp. 9-28.

[2] CA *rollo*, pp. 116-133; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Arturo G. Tayag and Rodrigo F. Lim, Jr.

[3] *Id.* at 186-187; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Jane Aurora C. Lantion.

[4] The complaint, docketed as Civil Case No. 88-113 and raffled to Branch 19, was amended twice by petitioner.

Annulment of Mortgage, Foreclosure, and Special Power of Attorney (SPA) against Erlinda Concepcion (Concepcion) and respondents Rural Bank of El Salvador, Misamis Oriental, and Sheriff Reynaldo Cuyong.[5]

Petitioner alleged that she is the owner of a parcel of land, covered by Transfer Certificate of Title (TCT) No. T-3838, located in Cagayan de Oro City;[6] that on June 6, 1982, Concepcion borrowed the title on the pretext that she was going to show it to an interested buyer;[7] that Concepcion obtained a loan in the amount of ₱30,000.00 from respondent bank;[8] that as security for the loan, Concepcion mortgaged petitioner's house and lot to respondent bank using a SPA[9] allegedly executed by petitioner in favor of Concepcion;[10] that Concepcion failed to pay the loan;[11] that petitioner's house and lot were foreclosed by respondent sheriff without a Notice of Extra-Judicial Foreclosure or Notice of Auction Sale;[12] and that petitioner's house and lot were sold in an auction sale in favor of respondent bank.[13]

Respondent bank filed an Answer[14] interposing lack of cause of action as a defense.[15] It denied the allegation of petitioner that the SPA was forged[16] and averred that on June 22, 1987,

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[5] Records, Vol. I, pp. 1-5, 7-12 (Amended Complaint), and 87-91 (Second Amended Complaint).

[6] *Id.* at 87-88.

[7] *Id.* at 88.

[8] *Id.*

[9] *Rollo*, p. 90.

[10] Records, Vol. I, p. 88.

[11] *Id.*

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

[13] *Id.* at 88.

[14] *Id.* at 23-25 and 99-103 (Answer to Second Amended Complaint).

[15] *Id.* at 100.

[16] *Id.*

petitioner went to the bank and promised to settle the loan of Concepcion before September 30, 1987.[17] As to the alleged irregularities in the foreclosure proceedings, respondent bank asserted that it complied with the requirements of the law in foreclosing the house and lot.[18] By way of cross-claim, respondent bank prayed that in the event of an adverse judgment against it, Concepcion, its co-defendant, be ordered to indemnify it for all damages.[19]

However, since summons could not be served upon Concepcion, petitioner moved to drop her as a defendant,[20] which the RTC granted in its Order dated October 19, 1990.[21]

This prompted respondent bank to file a Third-Party Complaint[22] against spouses Concepcion and Agnes Bucton Lugod (Lugod), the daughter of petitioner. Respondent bank claimed that it would not have granted the loan and accepted the mortgage were it not for the assurance of Concepcion and Lugod that the SPA was valid.[23] Thus, respondent bank prayed that in case it be adjudged liable, it should be reimbursed by third-party defendants.[24]

On January 30, 1992, spouses Concepcion were declared in default for failing to file a responsive pleading.[25]

During the trial, petitioner testified that a representative of respondent bank went to her house to inform her that the loan secured by her house and lot was long overdue.[26] Since she

[17] *Id.*

[18] *Id.* at 99-100.

[19] *Id.* at 101.

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

[21] *Id.* at 171.

[22] *Id.* at 184-189.

[23] *Id.* at 185.

[24] *Id.* at 187-188.

[25] *Id.* at 262.

[26] *Id.*, Vol. 2, p. 576.

did not mortgage any of her properties nor did she obtain a loan from respondent bank, she decided to go to respondent bank on June 22, 1987 to inquire about the matter.[27] It was only then that she discovered that her house and lot was mortgaged by virtue of a forged SPA.[28] She insisted that her signature and her husband's signature on the SPA were forged[29] and that ever since she got married, she no longer used her maiden name, Nicanora Gabar, in signing documents.[30] Petitioner also denied appearing before the notary public, who notarized the SPA.[31] She also testified that the property referred to in the SPA, TCT No. 3838, is a vacant lot and that the house, which was mortgaged and foreclosed, is covered by a different title, TCT No. 3839.[32]

To support her claim of forgery, petitioner presented Emma Nagac who testified that when she was at Concepcion's boutique, she was asked by the latter to sign as a witness to the SPA;[33] that when she signed the SPA, the signatures of petitioner and her husband had already been affixed;[34] and that Lugod instructed her not to tell petitioner about the SPA.[35]

Respondent bank, on the other hand, presented the testimonies of its employees[36] and respondent sheriff. Based on their testimonies, it appears that on June 8, 1982, Concepcion applied for a loan for her coconut production business[37] in the amount

[27] *Id.*

[28] *Id.*

[29] *Id.* at 576-577.

[30] *Id.* at 577.

[31] *Id.*

[32] *Id.* at 578.

[33] *Id.* at 577.

[34] *Id.*

[35] *Id.* at 577-578.

[36] Edwin Igloria (Bank Appraiser), Marina Salvan (Bank President), and Fautino U. Batutay (Bank Manager).

[37] *Rollo*, p. 92.

of ₱40,000.00 but only the amount of ₱30,000.00 was approved;[38] that she offered as collateral petitioner's house and lot using the SPA;[39] and that the proceeds of the loan were released to Concepcion and Lugod on June 11, 1982.[40]

Edwin Igloria, the bank appraiser, further testified that Concepcion executed a Real Estate Mortgage[41] over two properties, one registered in the name of petitioner and the other under the name of a certain Milagros Flores.[42] He said that he inspected petitioner's property;[43] that there were several houses in the compound;[44] and although he was certain that the house offered as collateral was located on the property covered by TCT No. 3838, he could not explain why the house that was foreclosed is located on a lot covered by another title, not included in the Real Estate Mortgage.[45]

Ruling of the Regional Trial Court

On February 23, 1998, the RTC issued a Decision[46] sustaining the claim of petitioner that the SPA was forged as the signatures appearing on the SPA are different from the genuine signatures presented by petitioner.[47] The RTC opined that the respondent bank should have conducted a thorough inquiry on the authenticity of the SPA considering that petitioner's residence certificate was not indicated in the acknowledgement of the SPA.[48] Thus, the RTC decreed:

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[38] Records, Vol. 2, p. 578.

[39] *Id.*

[40] *Id.* at 579.

[41] *Rollo*, p. 96.

[42] TSN, January 30, 1992, p. 37.

[43] Records, Vol. II, p. 578.

[44] *Id.*

[45] TSN, January 30, 1992, pp. 26-28.

[46] Records, Vol. 2, pp. 573-583; penned by Judge Anthony E. Santos.

[47] *Id.* at 579-581.

[48] *Id.* at 582.

WHEREFORE, the court hereby declares null and void or annuls the following:

1. The special power of attorney which was purportedly executed by [petitioner] x x x;
2. The real estate mortgage x x x
3. The sheriff's sale of Lot No. 2078-B-1-E, and the certificate of title issued in favor of the Rural Bank of El Salavador [by] virtue thereof, as well as the sheriff's sale of the two[-]story house described in the real estate mortgage.
4. The certificate of title in the name of the Rural Bank of El Salvador if any, issued [by] virtue of the sheriff's sale.

The court hereby also orders [respondent] bank to pay [petitioner] attorney's fees of ₱20,000 and moral damages of ₱20,000 as well as the costs of the case.

SO ORDERED.[49]

On reconsideration,[50] the RTC in its May 8, 1998 Resolution[51] rendered judgment on the Third-Party Complaint filed by respondent bank, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered under the third-party complaint and against third-party defendants Erlinda Concepcion and her husband:

To indemnify or reimburse [respondent bank] all sums of money plus interests thereon or damages that [respondent bank] has in this case been forced to pay, disburse or deliver to [petitioner] including the costs.

SO ORDERED.[52]

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[49] *Id.* at 582-583.

[50] *Id.* at 584-596.

[51] *Id.* at 681-682.

[52] *Id.* at 682.

Ruling of the Court of Appeals

Dissatisfied, respondent bank elevated the case to the CA arguing that the SPA was not forged[53] and that being a notarized document, it enjoys the presumption of regularity.[54] Petitioner, on the other hand, maintained that the signatures were forged[55] and that she cannot be made liable as both the Promissory Note[56] and the Real Estate Mortgage, which were dated June 11, 1982, were signed by Concepcion in her own personal capacity.[57]

On August 17, 2005, the CA reversed the findings of the RTC. The CA found no cogent reason to invalidate the SPA, the Real Estate Mortgage, and Foreclosure Sale as it was not convinced that the SPA was forged. The CA declared that although the Promissory Note and the Real Estate Mortgage did not indicate that Concepcion was signing for and on behalf of her principal, petitioner is estopped from denying liability since it was her negligence in handing over her title to Concepcion that caused the loss.[58] The CA emphasized that under the Principle of Equitable Estoppel, where one or two innocent persons must suffer a loss, he who by his conduct made the loss possible must bear it.[59] Thus:

WHEREFORE, the above premises considered, the Decision and the Resolution of the Regional Trial Court (RTC), 10th Judicial Region, Br. 19 of Cagayan de Oro City in Civil Case No. 88-113 is hereby REVERSED and SET ASIDE. The Second Amended Complaint of Nicanora Bucton is DISMISSED. Accordingly, the following are declared VALID:

1. The Special Power of Attorney of Nicanora Gabar in favor of Erlinda Concepcion, dated June 7, 1982;

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[53] CA *rollo*, pp. 59-65.

[54] *Id.*

[55] *Id.* at 104-108.

[56] *Rollo*, p. 98.

[57] CA *rollo*, pp. 108-111.

[58] *Id.* at 128-130.

[59] *Id.* at 130.

2. The Real Estate Mortgage, the foreclosure of the same, and the foreclosure sale to the Rural Bank of El Salvador, Misamis Oriental; and

3. The certificate of title issued to the Rural Bank of El Salavador, Misamis Oriental as a consequence of the foreclosure sale.

Costs against [petitioner].

SO ORDERED.[60]

Petitioner moved for reconsideration[61] but the same was denied by the CA in its June 7, 2007 Resolution.[62]

Issues

Hence, this recourse by petitioner raising the following issues:

FIRST

X X X WHETHER X X X THE [CA] WAS RIGHT IN DECLARING THE PETITIONER LIABLE ON THE LITIGATED LOAN/MORTGAGE WHEN (i) SHE DID NOT EXECUTE EITHER IN PERSON OR BY ATTORNEY-IN-FACT SUBJECT MORTGAGE; (ii) IT WAS EXECUTED BY CONCEPCION IN HER PERSONAL CAPACITY AS MORTGAGOR, AND (iii) THE LOAN SECURED BY THE MORTGAGE WAS CONCEPCION'S EXCLUSIVE LOAN FOR HER OWN COCONUT PRODUCTION

SECOND

X X X WHETHER X X X UNDER ARTICLE 1878 (NEW CIVIL CODE) THE [CA] WAS RIGHT IN MAKING PETITIONER A SURETY PRIMARILY ANSWERABLE FOR CONCEPCION'S PERSONAL LOAN, IN THE ABSENCE OF THE REQUIRED [SPA]

THIRD

WHETHER X X X THE [CA] WAS RIGHT WHEN IT RULED THAT PETITIONER'S DECLARATIONS ARE SELF-SERVING TO JUSTIFY ITS REVERSAL OF THE TRIAL COURT'S JUDGMENT, IN THE FACE

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[60] *Id.* at 131-132.

[61] *Id.* at 137-154.

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

OF THE RESPONDENTS' DOCUMENTARY EVIDENCES X X X, WHICH INCONTROVERTIBLY PROVED THAT PETITIONER HAS ABSOLUTELY NO PARTICIPATION OR LIABILITY ON THE LITIGATED LOAN/MORTGAGE

FOURTH

WHETHER X X X THE [CA] WAS RIGHT WHEN IT FOUND THAT IT WAS PETITIONER'S NEGLIGENCE WHICH MADE THE LOSS POSSIBLE, DESPITE [THE FACT] THAT SHE HAS NO PART IN [THE] SUBJECT LOAN/MORTGAGE, THE BANK'S [FAILURE] TO CONDUCT CAREFUL EXAMINATION OF APPLICANT'S TITLE AS WELL AS PHYSICAL INVESTIGATION OF THE LAND OFFERED AS SECURITY, AND TO INQUIRE AND DISCOVER UPON ITS OWN PERIL THE AGENT'S AUTHORITY, ALSO ITS INORDINATE HASTE IN THE PROCESSING, EVALUATION AND APPROVAL OF THE LOAN.

FIFTH

WHETHER X X X THE [CA] WAS RIGHT WHEN IT DISREGARDED THE FALSE TESTIMONY OF THE [RESPONDENT] BANK'S EMPLOYEE, [WHEN HE DECLARED] THAT HE CONDUCTED ACTUAL INSPECTION OF THE MORTGAGED PROPERTY AND INVESTIGATION WHERE HE ALLEGEDLY VERIFIED THE QUESTIONED SPA.

SIXTH

WHETHER THE [CA] WAS RIGHT WHEN IT DISREGARDED ESTABLISHED FACTS AND CIRCUMSTANCES PROVING THAT THE [SPA] IS A FORGED DOCUMENT AND/OR INFECTED BY INFIRMITIES DIVESTING IT OF THE PRESUMPTION OF REGULARITY CONFERRED BY LAW ON NOTARIZED DEEDS, AND EVEN IF VALID, THE POWER WAS NOT EXERCISED BY CONCEPCION.[63]

Petitioner's Arguments

Petitioner maintains that the signatures in the SPA were forged[64] and that she could not be held liable for the loan as it was obtained by Concepcion in her own personal capacity,

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[63] *Rollo*, pp. 190-191.

[64] *Id.* at 203-207.

not as an attorney-in-fact of petitioner.[65] She likewise denies that she was negligent and that her negligence caused the damage.[66] Instead, she puts the blame on respondent bank as it failed to carefully examine the title and thoroughly inspect the property.[67] Had it done so, it would have discovered that the house and lot mortgaged by Concepcion are covered by two separate titles.[68] Petitioner further claims that respondent sheriff failed to show that he complied with the requirements of notice and publication in foreclosing her house and lot.[69]

Respondent bank's Arguments

Respondent bank, on the other hand, relies on the presumption of regularity of the notarized SPA.[70] It insists that it was not negligent as it inspected the property before it approved the loan,[71] unlike petitioner who was negligent in entrusting her title to Concepcion.[72] As to the foreclosure proceedings, respondent bank contends that under the Rural Bank Act, all loans whose principal is below ₱100,000.00 are exempt from publication.[73] Hence, the posting of the Notice of Foreclosure in the places defined by the rules was sufficient.[74] Besides, respondent sheriff is presumed to have regularly performed his work.[75]

Our Ruling

The Petition is meritorious.

[65] *Id.* at 192-198.

[66] *Id.* at 197.

[67] *Id.* at 198-203.

[68] *Id.*

[69] *Id.* at 207.

[70] *Id.* at 216-222.

[71] *Id.* at 218-219.

[72] *Id.* at 223.

[73] *Id.* at 223.

[74] *Id.*

[75] *Id.*

The Real Estate Mortgage was entered into by Concepcion in her own personal capacity.

As early as the case of *Philippine Sugar Estates Development Co. v. Poizat*,[76] we already ruled that "in order to bind the principal by a deed executed by an agent, the deed must upon its face purport to be made, signed and sealed in the name of the principal."[77] In other words, the mere fact that the agent was authorized to mortgage the property is not sufficient to bind the principal, unless the deed was executed and signed by the agent for and on behalf of his principal. This ruling was adhered to and reiterated with consistency in the cases of *Rural Bank of Bombon (Camarines Sur), Inc. v. Court of Appeals*,[78] *Gozun v. Mercado*,[79] and *Far East Bank and Trust Company (Now Bank of the Philippine Islands) v. Cayetano*.[80]

In *Philippine Sugar Estates Development Co.*, the wife authorized her husband to obtain a loan and to secure it with mortgage on her property. Unfortunately, although the real estate mortgage stated that it was executed by the husband in his capacity as attorney-in-fact of his wife, the husband signed the contract in his own name without indicating that he also signed it as the attorney-in-fact of his wife.

In *Rural Bank of Bombon*, the agent contracted a loan from the bank and executed a real estate mortgage. However, he did not indicate that he was acting on behalf of his principal.

In *Gozun*, the agent obtained a cash advance but signed the receipt in her name alone, without any indication that she was acting for and on behalf of her principal.

In *Far East Bank and Trust Company*, the mother executed an SPA authorizing her daughter to contract a loan from the

[76] 48 Phil. 536 (1925).

[77] *Id.* at 549.

[78] G.R. No. 95703, August 3, 1992, 212 SCRA 25.

[79] 540 Phil. 323 (2006).

[80] G.R. No. 179909, January 25, 2010, 611 SCRA 96.

bank and to mortgage her properties. The mortgage, however, was signed by the daughter and her husband as mortgagors in their individual capacities, without stating that the daughter was executing the mortgage for and on behalf of her mother.

Similarly, in this case, the authorized agent failed to indicate in the mortgage that she was acting for and on behalf of her principal. The Real Estate Mortgage, explicitly shows on its face, that it was signed by Concepcion in her own name and in her own personal capacity. In fact, there is nothing in the document to show that she was acting or signing as an agent of petitioner. Thus, consistent with the law on agency and established jurisprudence, petitioner cannot be bound by the acts of Concepcion.

In light of the foregoing, there is no need to delve on the issues of forgery of the SPA and the nullity of the foreclosure sale. For even if the SPA was valid, the Real Estate Mortgage would still not bind petitioner as it was signed by Concepcion in her personal capacity and not as an agent of petitioner. Simply put, the Real Estate Mortgage is void and unenforceable against petitioner.

Respondent bank was negligent.

At this point, we find it significant to mention that respondent bank has no one to blame but itself. Not only did it act with undue haste when it granted and released the loan in less than three days, it also acted negligently in preparing the Real Estate Mortgage as it failed to indicate that Concepcion was signing it for and on behalf of petitioner. We need not belabor that the words "as attorney-in-fact of," "as agent of," or "for and on behalf of," are vital in order for the principal to be bound by the acts of his agent. Without these words, any mortgage, although signed by the agent, cannot bind the principal as it is considered to have been signed by the agent in his personal capacity.

Respondent bank is liable to pay petitioner attorney's fees, and the costs of the suit.

Considering that petitioner was compelled to litigate or to incur expenses to protect her interest,[81] the RTC was right when it ruled that respondent bank is liable to pay petitioner attorney's fees in the amount of ₱20,000.00. However, we are not convinced that petitioner is entitled to an award of moral damages as it was not satisfactorily shown that respondent bank acted in bad faith or with malice. Neither was it proven that respondent bank's acts were the proximate cause of petitioner's wounded feelings. On the contrary, we note that petitioner is not entirely free of blame considering her negligence in entrusting her title to Concepcion. In any case, the RTC did not fully explain why petitioner is entitled to such award.

Concepcion is liable to pay respondent bank her unpaid obligation and reimburse it for all damages, attorney's fees and costs of suit.

Concepcion, on the other hand, is liable to pay respondent bank her unpaid obligation under the Promissory Note dated June 11, 1982, with interest. As we have said, Concepcion signed the Promissory Note in her own personal capacity; thus, she cannot escape liability. She is also liable to reimburse respondent bank for all damages, attorneys' fees, and costs the latter is adjudged to pay petitioner in this case.

WHEREFORE, the Petition is hereby **GRANTED**. The assailed August 17, 2005 Decision and the June 7, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 60841 are hereby **REVERSED** and **SET ASIDE**.

The February 23, 1998 Decision of the Regional Trial Court of Cagayan de Oro, Branch 19, in Civil Case No. 88-113 is hereby **REINSTATED**, insofar as it (a) annuls the Real Estate

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[81] CIVIL CODE, Art. 2208 provides:

In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.

Mortgage dated June 11, 1982, the Sheriff's Sale of petitioner Nicanora Bucton's house and lot and the Transfer Certificate of Title issued in the name of respondent Rural Bank of El Salvador, Misamis Oriental; and (b) orders respondent bank to pay petitioner attorney's fees in the amount of ₱20,000.00 and costs of suit with **MODIFICATION** that the award of moral damages in the amount of ₱20,000.00 is deleted for lack of basis.

Likewise, the May 8, 1998 Resolution of the Regional Trial Court of Cagayan de Oro, Branch 19, in Civil Case No. 88-113 ordering the Third-Party Defendants, Erlinda Concepcion and her husband, to indemnify or reimburse respondent bank damages, attorney's fees, and costs the latter is adjudged to pay petitioner, is hereby **REINSTATED**.

Finally, Third-Party Defendants, Erlinda Concepcion and her husband, are hereby ordered to pay respondent bank the unpaid obligation under the Promissory Note dated June 11, 1982 with interest.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 182738. February 24, 2014]

CAPITOL HILLS GOLF & COUNTRY CLUB, INC. and PABLO B. ROMAN, JR., *petitioners, vs.* **MANUEL O. SANCHEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; A PERSON GUILTY OF DISOBEDIENCE OR

RESISTANCE TO A LAWFUL ORDER OF A COURT OR COMMITS ANY IMPROPER CONDUCT TENDING, DIRECTLY OR INDIRECTLY, TO IMPEDE, OBSTRUCT, OR DEGRADE THE ADMINISTRATION OF JUSTICE MAY BE PUNISHED FOR INDIRECT CONTEMPT.— A person guilty of disobedience of or resistance to a lawful order of a court or commits any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice may be punished for indirect contempt. In particular, Section 4, Rule 3 of the Interim Rules states that, in addition to a possible treatment of a party as non-suited or as in default, the sanctions prescribed in the Rules for failure to avail of, or refusal to comply with, the modes of discovery shall apply. Under Section 3, Rule 29 of the Rules, if a party or an officer or managing agent of a party refuses to obey an order to produce any document or other things for inspection, copying, or photographing or to permit it to be done, the court may make such orders as are just. The enumeration of options given to the court under Section 3, Rule 29 of the Rules is not exclusive, as shown by the phrase *"among others."* Thus, in *Republic v. Sandiganbayan*, We said: To ensure that availment of the modes of discovery is otherwise untrammeled and efficacious, the law imposes serious sanctions on the party who refuses to make discovery, such as dismissing the action or proceeding or part thereof, or rendering judgment by default against the disobedient party; contempt of court, or arrest of the party or agent of the party; payment of the amount of reasonable expenses incurred in obtaining a court order to compel discovery; taking the matters inquired into as established in accordance with the claim of the party seeking discovery; refusal to allow the disobedient party support or oppose designated claims or defenses; striking out pleadings or parts thereof; staying further proceedings. If adjudged guilty of indirect contempt, the respondent who committed it against a Regional Trial Court or a court of equivalent or higher rank may be punished with a fine not exceeding thirty thousand pesos, or imprisonment not exceeding six (6) months, or both. In this case, the threatened sanction of possibly ordering petitioners to solidarily pay a fine of ₱10,000.00 for every day of delay in complying with the September 10, 2002 Order is well within the allowable range of penalty.

2. ID.; ID.; ID.; THE PROCEEDINGS FOR INDIRECT CONTEMPT HAVE NOT BEEN PROPERLY INITIATED IN CASE AT BAR; THE SEPTEMBER 10, 2002 ORDER IS NOT YET A "JUDGMENT OR FINAL ORDER OF A COURT IN A CASE FOR INDIRECT CONTEMPT".— In this case, the proceedings for indirect contempt have not been initiated. To the Court's mind, the September 3, 2007 Resolution could be treated as a mere reiteration of the September 10, 2002 Order. It is not yet a "judgment or final order of a court in a case of indirect contempt" as contemplated under the Rules. The penalty mentioned therein only serves as a reminder to caution petitioners of the consequence of possible non-observance of the long-overdue order to produce and make available for inspection and photocopying of the requested records/ documents. In case of another failure or refusal to comply with the directive, the court or respondent could formally initiate the indirect contempt proceedings pursuant to the mandatory requirements of the Rules and existing jurisprudence.

3. ID.; ID.; ID.; EVEN IF THE COURT WILL TREAT THE RESOLUTION AS A "JUDGMENT OR FINAL ORDER OF A COURT IN A CASE OF INDIRECT CONTEMPT," THE SAME WOULD STILL NOT WORK TO PETITIONER'S ADVANTAGE SINCE THEY FAILED TO COMPLY WITH REQUIREMENTS OF SECTION 11, RULE 71 OF THE RULES OF COURT REGARDING THE FILING OF APPEAL AND POSTING OF BOND FOR SUSPENSION *PENDENTE LITE* IN INDIRECT CONTEMPT PROCEEDINGS THEREBY MAKING SEPTEMBER 3, 2007 RESOLUTION FINAL AND EXECUTORY.— Even if We are to treat the September 3, 2007 Resolution as a "judgment or final order of a court in a case of indirect contempt," this would still not work to petitioners' advantage. Section 11, Rule 71 of the Rules of Court lays down the proper remedy from a judgment in indirect contempt proceedings. It states: Sec. 11. *Review of judgment or final order; bond for stay*.—The judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases. But execution of the judgment or final order shall not be suspended until a bond is filed by the person adjudged in contempt, in an amount fixed by the court from which the appeal is taken, conditioned that if the appeal be decided against him he will abide by and perform the judgment

> or final order. The recourse provided for in the above-mentioned provision is clear enough: the person adjudged in indirect contempt must file an appeal under Rule 41 (Appeal from the Regional Trial Courts) and post a bond for its suspension *pendente lite*. Obviously, these were not done in this case. Instead, petitioners filed a petition for *certiorari* under Rule 65 of the Rules and did not post the required bond, effectively making the September 3, 2007 Resolution final and executory.

APPEARANCES OF COUNSEL

Defensor Lantion Villamor & Tolentino Law Office for petitioners.

RRV Legal Consultancy Firm for respondent.

D E C I S I O N

PERALTA, *J.*:

Before Us is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the March 13, 2008 Decision[1] and April 28, 2008 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 100911, which affirmed the September 3, 2007 Resolution[3] of the Quezon City Regional Trial Court (*RTC*), Branch 226.

The relevant facts are as follows:

On July 1, 2002, respondent Manuel O. Sanchez (*respondent*), a stockholder of petitioner Capitol Hills Golf & Country Club, Inc. (*Corporation*) filed a petition for the nullification of the annual meeting of stockholders of May 21, 2002 and the special meeting of stockholders of April 23, 2002.[4] Petitioners, along

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring; *rollo*, pp. 28-41.

[2] *Rollo*, p. 42.

[3] *Id.* at 120-143.

[4] *Id.* at 44-56.

with their co-defendants, filed an Answer with Counterclaims[5] and, thereafter, a Motion for Preliminary Hearing of Defendants' Affirmative Defenses,[6] which was denied on August 9, 2002[7] by Hon. Apolinario D. Bruselas, Jr., then Presiding Judge of the RTC of Quezon City, Branch 93, now a member of the Court of Appeals.

On August 12, 2002, respondent filed a Motion for Production and Inspection of Documents, which the court granted in an Order dated September 10, 2002 directing, thus:

> On motion of the plaintiff, without objection from the defendants, and pursuant to Rule 3 of the Interim Rules of Procedure Governing Intra-Corporate Controversies, in relation to Rule 27 of the 1997 Rules of Civil Procedure, the defendants are ordered to produce and make available for inspection and photocopying by the plaintiff the following documents:
>
> 1. The list of stockholders of record as of March 2002;
>
> 2. All proxies, whether validated or not, which have been received by the defendants;
>
> 3. The specimen signatures of all stockholders as contained in the Stock and Transfer Book or on the stub of the stock certificate; and
>
> 4. The tape recording of the stockholders' meeting on April 23, 2002 and May 21, 2002.
>
> The production, inspection and photocopying must be undertaken in the office premises of defendant corporation within reasonable business hours of a business day before the pre-trial with costs to be shouldered by the plaintiff.
>
> SO ORDERED.[8]

Petitioners filed a motion for reconsideration[9] (*MR*) of the August 9, 2002 Order, which denied their motion for preliminary

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[5] *Id.* at 69-77.

[6] *Id.* at 78-79.

[7] *Id.* at 80-81.

[8] *Id.* at 82.

[9] *Id.* at 83-85.

hearing. Subsequently, they filed a Supplement to Defendants' Motion for Reconsideration,[10] attaching therewith an alleged certification issued by the National Printing Office to support their contention of lack of cause of action on the grounds, among others, that the Securities and Exchange Commission (*SEC*) Memorandum Circular No. 5, Series of 1996, as amended, has not been duly published in accordance with law and jurisprudence. Pending resolution of the MR, petitioners filed on January 21, 2003 a Motion for Deferment of Implementation of the September 10, 2002 Order.[11]

For his part, respondent, on October 7, 2002, filed an Omnibus Motion to immediately allow him to inspect and photocopy the documents and to compel petitioners to deposit with the court the documents subject of the September 10, 2002 Order.

On December 9, 2002, then Presiding Judge Bruselas issued an Order[12] denying petitioners' MR of the Order dated August 9, 2002 and considered respondent's omnibus motion as a reiteration of his earlier motion for inspection and production of documents; thus, the immediate implementation of the September 10, 2002 Order was simultaneously ordered.

Petitioners elevated the case to the CA via a petition for *certiorari* assailing the Orders dated August 9, 2002 and December 9, 2002. However, the CA denied the same in its Decision dated June 29, 2004. Petitioners' MR was likewise denied on November 3, 2004. A petition for review was filed before this Court, but We denied it per Resolution dated January 10, 2005.

In the meantime, respondent sought to enforce the September 10, 2002 Order. The supposed inspection on September 30, 2002 was not held per the trial court's Order dated September 27, 2002.[13] The January 22, 2003 inspection also did not push

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[10] *Id.* at 90-94.

[11] *Id.* at 86-87.

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

[13] *Id.* at 96-97, 129.

through after petitioners and their co-defendants again moved for its deferment.[14] When the court eventually denied their motion on June 16, 2003, respondent set the inspection to August 1, 2003.[15] On said date, however, Atty. Matias V. Defensor, then Corporate Secretary of the Corporation, was alleged to be out of town and petitioner Pablo B. Roman, Jr. (*Roman*) purported to have shown no willingness to comply with the directive.[16] The matter was reported to the trial court, which merely noted respondent's Report and Manifestation.[17] On November 3, 2003, respondent moved for the issuance of an order for immediate implementation of the September 10, 2002 Order, as reiterated in the Order dated June 16, 2003, but the court denied the same in its May 24, 2004 Order.[18] Respondent's motion for issuance of writ of execution suffered the same fate when the trial court denied it on February 10, 2005.[19]

When this Court settled petitioners' challenge to the Orders dated August 9, 2002 and December 9, 2002, respondent filed a Manifestation with Omnibus Motion for Clarification and to Resolve Plaintiff's Pending Motion for the Issuance of a Writ of Execution and to Set the Case for Pre-Trial Conference.[20] Acting thereon, Judge Ramon Paul L. Hernando, likewise now a member of the Court of Appeals, who took over Branch 93 after the appointment of Judge Bruselas to the CA, issued the July 10, 2006 Order,[21] which directed the immediate execution of the September 10, 2002 Order, and set the case for pre-trial.

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[14] *Id.* at 97, 131.

[15] *Id.*

[16] *Id.* at 97-98, 131.

[17] *Id.* at 98, 131.

[18] *Id.* at 98, 132.

[19] *Id.* at 99, 133.

[20] *Id.* at 95-106.

[21] *Id.* at 112, 117.

On February 9, 2007, Judge Hernando issued an Order[22] inhibiting himself from handling the case in view of his "close friendship relation" with petitioners' counsel and ordering the transmittal of the records of the case to the Office of the Clerk of Court for re-raffle to another *sala*. The case was subsequently re-raffled to RTC Branch 90 presided by Judge Reynaldo B. Daway, who likewise voluntarily recused himself from the case per Order[23] dated July 13, 2007. Finally, on July 30, 2007, the case was re-raffled to RTC Branch 226 presided by Judge Leah S. Domingo Regala.[24]

On November 28, 2006, the parties agreed to defer the pre-trial conference until the actual conduct of the inspection of records/documents on December 12, 2006.[25] Before said date, however, petitioners and their co-defendants moved to hold the inspection to January 11, 2007, which the court granted.[26]

During the January 11, 2007 inspection, the only document produced by the Acting Corporate Secretary, Atty. Antonio V. Meriz, and one of the staff, Malou Santos, was the Stock and Transfer Book of the Corporation. They alleged that they could not find from the corporate records the copies of the proxies submitted by the stockholders, including the tape recordings taken during the stockholders' meetings, and that they needed more time to locate and find the list of stockholders as of March 2002, which was in the *bodega* of the Corporation.[27] This prompted respondent to file a Manifestation with Omnibus Motion praying that an order be issued in accordance with Section 3, Paragraphs (a) to (d) of Rule 29 of the Rules of Court (*Rules*), in relation to Section 4, Rule 3 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act

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[22] *Id.* at 113, 118.

[23] *Id.* at 114, 119.

[24] *Id.* at 139.

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

[26] *Id.* at 134.

[27] *Id.* at 121.

No. 8799 (*Interim Rules*).

On September 3, 2007, the trial court issued a Resolution, the concluding portion of which ordered:

> In order to give both the plaintiff and defendants one last chance to comply with the order dated September 10, 2002, this Court reiterates the said order:
>
> "On motion of the plaintiff, without objection from the defendants, and pursuant to Rule 3 of the Interim Rules of Procedure Governing Intra-Corporate Controversies[,] in relation to Rule 27 of the 1997 Rule[s] of Civil Procedure, the defendants are ordered to produce and make available for inspection and photocopying by the plaintiff the following documents:
>
> 1. The list of stockholders of record as of March 2002;
>
> 2. All proxies, whether validated or not, which have been received by the defendants;
>
> 3. The specimen signatures of all stockholders as contained in the Stock and Transfer Book or on the stub of the stock certificate; and
>
> 4. The tape recording of the stockholders' meeting on April 23, 2002 and May 21, 2002.
>
> The production, inspection and photocopying must be undertaken in the office premises of defendant corporation within reasonable business hours of a business day before the pre-trial with costs to be shouldered by the plaintiff.
>
> SO ORDERED."
>
> This Court orders the defendants to strictly comply with this order. Failure of the defendants to comply with all the requirements of the order dated September 10, 2002 will result in this court citing all the defendants in contempt of court. This Court shall order defendants solidarily to pay a fine of ₱10,000.00 for every day of delay to comply with the order of September 10, 2002 until the defendants shall have fully and completely complied with the said order.
>
> Further sanctions shall be meted upon defendants should the Court find that defendants have been in bad faith in complying with the order of September 10, 2002 despite the order of this Court.

Both plaintiff and counsel, as well as defendants and counsel, are therefore ordered to meet on November 13, 2007 at the corporate offices of defendant firm between 9:00 a.m. to 4:00 p.m. so that faithful compliance with the order of September 10, 2002 may be done, otherwise, this Court shall allow the plaintiff to present evidence to prove their prayer in their Manifestation with Omnibus Motion filed on January 31, 2007 and issue a resolution based on the same accordingly.

SO ORDERED.[28]

Petitioners questioned the aforesaid Resolution via Petition for *Certiorari* (With Application for Temporary Restraining Order and/or Writ of Preliminary Injunction).[29] In resolving the petition, the CA ruled that there is no indication that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction. According to the appellate court, the September 3, 2007 Resolution was issued pursuant to Section 3,[30] Rule 3 of the Interim Rules, with the suppletory application of Section 1,[31] Rule 27 of the Rules. It noted that, except for the sanctions contained therein, the assailed Resolution merely reiterated the September 10, 2002 Order of Judge Bruselas, which petitioners did not dispute in accordance with

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

[29] *Id.* at 144-165.

[30] SEC. 3. *Compliance*. – Compliance with any mode of discovery shall be made within ten (10) days from receipt of the discovery device, or if there are objections, from receipt of the ruling of the court.

[31] SEC. 1. *Motion for production or inspection*; *order*. – Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just.

Section 2,[32] Rule 3 of the Interim Rules or via petition for *certiorari*. The CA further held that petitioners were not denied due process as they were able to move for a reconsideration of the September 10, 2002 Order, but not opted to file the same with respect to the September 3, 2007 Resolution.

Anent the argument against the threatened imposition of sanction for contempt of court and the possible payment of a hefty fine, the CA opined that the case of *Dee v. Securities and Exchange Commission*[33] cited by petitioners is inapplicable, since the September 3, 2007 Resolution merely warned petitioners that they would be cited for contempt and be fined if they fail to comply with the court's directive. Moreover, it said that the penalty contained in the September 3, 2007 Resolution is in accord with Section 4,[34] Rule 3 of the Interim Rules, in relation to Section 3,[35] Rule 29 of the Rules.

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[32] SEC. 2. *Objections.* – Any mode of discovery such as interrogatories, request for admission, production or inspection of documents or things, may be objected to within ten (10) days from receipt of the discovery device and only on the ground that the matter requested is patently incompetent, immaterial, irrelevant or privileged in nature.

The court shall rule on the objections not later than fifteen (15) days from the filing thereof.

[33] 276 Phil. 258 (1991).

[34] SEC. 4. *Sanctions.* – The sanctions prescribed in the Rules of Court for failure to avail of, or refusal to comply with, the modes of discovery shall apply. In addition, the court may, upon motion, declare a party non-suited or as in default, as the case may be, if the refusal to comply with a mode of discovery is patently unjustified.

[35] SEC. 3. *Other consequences*. — If any party or an officer or managing agent of a party refuses to obey an order made under Section 1 of this Rule requiring him to answer designated questions, or an order under Rule 27 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property or an order made under Rule 28 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(a) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated

Petitioners moved to reconsider the CA Decision, but it was denied.[36]

Before Us, petitioners contend that the "threatened imminent action" by the RTC to penalize them *sua sponte* or without regard to the guideline laid down by the Court in *Engr. Torcende v. Judge Sardido*[37] is not proper and calls for the exercise of Our power of supervision over the lower courts. Likewise, citing *Panaligan v. Judge Ibay*,[38] among others, they claim that the threatened citation for contempt is not in line with the policy that there should be wilfullness or that the contumacious act be done deliberately in disregard of the authority of the court.

We deny.

A person guilty of disobedience of or resistance to a lawful order of a court[39] or commits any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice[40] may be punished for indirect contempt. In particular, Section 4, Rule 3 of the Interim Rules states that, in addition to a possible treatment of a party as non-suited or

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facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; and

(d) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

[36] *Rollo*, pp. 166-174, 42.

[37] 444 Phil. 12 (2003).

[38] 525 Phil. 22 (2006).

[39] Rules of Court, Rule 71, Sec. 3 (b).

[40] Rules of Court, Rule 71, Sec. 3 (d).

as in default, the sanctions prescribed in the Rules for failure to avail of, or refusal to comply with, the modes of discovery shall apply. Under Section 3, Rule 29 of the Rules, if a party or an officer or managing agent of a party refuses to obey an order to produce any document or other things for inspection, copying, or photographing or to permit it to be done, the court may make such orders as are just. The enumeration of options given to the court under Section 3, Rule 29 of the Rules is not exclusive, as shown by the phrase *"among others."* Thus, in *Republic v. Sandiganbayan*,[41] We said:

> To ensure that availment of the modes of discovery is otherwise untrammeled and efficacious, the law imposes serious sanctions on the party who refuses to make discovery, such as dismissing the action or proceeding or part thereof, or rendering judgment by default against the disobedient party; contempt of court, or arrest of the party or agent of the party; payment of the amount of reasonable expenses incurred in obtaining a court order to compel discovery; taking the matters inquired into as established in accordance with the claim of the party seeking discovery; refusal to allow the disobedient party support or oppose designated claims or defenses; striking out pleadings or parts thereof; staying further proceedings.[42]

If adjudged guilty of indirect contempt, the respondent who committed it against a Regional Trial Court or a court of equivalent or higher rank may be punished with a fine not exceeding thirty thousand pesos, or imprisonment not exceeding six (6) months, or both.[43] In this case, the threatened sanction of possibly ordering petitioners to solidarily pay a fine of ₱10,000.00 for every day of delay in complying with the September 10, 2002 Order is well within the allowable range of penalty.

As far as the proceedings for indirect contempt is concerned, the case of *Baculi v. Judge Belen*[44] is instructive:

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[41] G.R. No. 90478, November 21, 1991, 204 SCRA 212.

[42] *Republic v. Sandiganbayan, supra,* at 225.

[43] Rules of Court, Rule 71, Sec. 7.

[44] A.M. No. RTJ-09-2179 (Formerly A.M. OCA I.P.I. No. 08-2873-RTJ) and A.M. No. RTJ-10-2234 (Formerly A.M. OCA I.P.I. No. 08-2879-RTJ), September 24, 2012, 681 SCRA 489.

x x x Under the Rules of Court, there are two ways of initiating indirect contempt proceedings: (1) *motu proprio* by the court; or (2) by a verified petition.

In the Matter of the Contempt Orders against Lt. Gen. Jose M. Calimlim and Atty. Domingo A. Doctor, Jr. (Calimlim) clarified the procedure prescribed for indirect contempt proceedings. We held in that case:

> In contempt proceedings, the prescribed procedure must be followed. Sections 3 and 4, Rule 71 of the Rules of Court provide the procedure to be followed in case of indirect contempt. *First*, there must be an order requiring the respondent to show cause why he should not be cited for contempt. *Second*, the respondent must be given the opportunity to comment on the charge against him. *Third*, there must be a hearing and the court must investigate the charge and consider respondent's answer. *Finally*, only if found guilty will respondent be punished accordingly. (Citations omitted.)

As to the second mode of initiating indirect contempt proceedings, that is, through a verified petition, the rule is already settled in *Regalado v. Go:*

> In cases where the court did not initiate the contempt charge, the Rules prescribe that a verified petition which has complied with the requirements of initiatory pleadings as outlined in the heretofore quoted provision of second paragraph, Section 4, Rule 71 of the Rules of Court, must be filed.

The Rules itself is explicit on this point:

> In **all other cases**, charges for indirect contempt shall be commenced by **a verified petition** with supporting particulars and certified true copies of documents or papers involved therein, and upon **full compliance with the requirements for filing initiatory pleadings** for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said **petition shall be docketed, heard and decided separately**, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision. (Emphasis added.)

Thus, where there is a verified petition to cite someone in contempt of court, courts have the duty to ensure that all the requirements for filing initiatory pleadings have been complied with. It behooves them too to docket the petition, and to hear and decide it separately from the main case, unless the presiding judge orders the consolidation of the contempt proceedings and the main action.

But in indirect contempt proceedings initiated *motu proprio* by the court, the above rules, as clarified in *Regalado*, do not necessarily apply. *First*, since the court itself *motu proprio* initiates the proceedings, there can be no verified petition to speak of. Instead, the court has the duty to inform the respondent in writing, in accordance with his or her right to due process. This formal charge is done by the court in the form of an Order requiring the respondent to explain why he or she should not be cited in contempt of court.

In *Calimlim*, the Judge issued an Order requiring the petitioners to explain their failure to bring the accused before the RTC for his scheduled arraignment. We held in that case that such Order was not yet sufficient to initiate the contempt proceedings because it did not yet amount to a show-cause order directing the petitioners to explain why they should not be cited in contempt. The formal charge has to be specific enough to inform the person, against whom contempt proceedings are being conducted, that he or she must explain to the court; otherwise, he or she will be cited in contempt. The Order must express this in clear and unambiguous language.

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Second, when the court issues *motu proprio* a show-cause order, the duty of the court (1) to docket and (2) to hear and decide the case separately from the main case does not arise, much less to exercise the discretion to order the consolidation of the cases. There is no petition from any party to be docketed, heard and decided separately from the main case precisely because it is the show-cause order that initiated the proceedings.

What remains in any case, whether the proceedings are initiated by a verified petition or by the court *motu proprio*, is the duty of the court to ensure that the proceedings are conducted respecting the right to due process of the party being cited in contempt. In both modes of initiating indirect contempt proceedings, if the court deems that the answer to the contempt charge is satisfactory, the proceedings end. The court must conduct a hearing, and the court

must consider the respondent's answer. Only if found guilty will the respondent be punished accordingly.

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In contempt proceedings, the respondent must be given the right to defend himself or herself and have a day in court – a basic requirement of due process. This is especially so in indirect contempt proceedings, as the court cannot decide them summarily pursuant to the Rules of Court. As We have stated in *Calimlim*, in indirect contempt proceedings, the respondent must be given the opportunity to comment on the charge against him or her, and there must be a hearing, and the court must investigate the charge and consider the respondent's answer.[45]

In this case, the proceedings for indirect contempt have not been initiated. To the Court's mind, the September 3, 2007 Resolution could be treated as a mere reiteration of the September 10, 2002 Order. It is not yet a "judgment or final order of a court in a case of indirect contempt" as contemplated under the Rules. The penalty mentioned therein only serves as a reminder to caution petitioners of the consequence of possible non-observance of the long-overdue order to produce and make available for inspection and photocopying of the requested records/documents. In case of another failure or refusal to comply with the directive, the court or respondent could formally initiate the indirect contempt proceedings pursuant to the mandatory requirements of the Rules and existing jurisprudence.

Even if We are to treat the September 3, 2007 Resolution as a "judgment or final order of a court in a case of indirect contempt," this would still not work to petitioners' advantage. Section 11, Rule 71 of the Rules of Court lays down the proper remedy from a judgment in indirect contempt proceedings. It states:

Sec. 11. *Review of judgment or final order; bond for stay.*—The judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases. But execution of the judgment or final order shall not be suspended until a bond

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[45] *Baculi v. Judge Belen, supra,* at 505-508. (Citations omitted)

is filed by the person adjudged in contempt, in an amount fixed by the court from which the appeal is taken, conditioned that if the appeal be decided against him he will abide by and perform the judgment or final order.

The recourse provided for in the above-mentioned provision is clear enough: the person adjudged in indirect contempt must file an appeal under Rule 41 (Appeal from the Regional Trial Courts) and post a bond for its suspension *pendente lite*.[46] Obviously, these were not done in this case. Instead, petitioners filed a petition for *certiorari* under Rule 65 of the Rules and did not post the required bond, effectively making the September 3, 2007 Resolution final and executory.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The March 13, 2008 Decision and April 28, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 100911, which affirmed the September 3, 2007 Resolution of the Quezon City Regional Trial Court, Branch 226, are **AFFIRMED**.

SO ORDERED.

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

EN BANC

[G.R. No. 206698. February 25, 2014]

LUIS R. VILLAFUERTE, *petitioner, vs.* **COMMISSION ON ELECTIONS and MIGUEL R. VILLAFUERTE,** *respondents.*

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[46] *Id.* at 502.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; CERTIFICATE OF CANDIDACY; PETITION TO DENY DUE COURSE OR TO CANCEL CERTIFICATE OF CANDIDACY; FALSE REPRESENTATION IN THE CONTENTS OF THE CERTIFICATE OF CANDIDACY (COC) REQUIRED UNDER SECTION 74 MUST REFER TO MATERIAL MATTERS IN ORDER TO JUSTIFY THE CANCELLATION OF THE COC.— Section 73 of the Omnibus Election Code states that no person shall be eligible for any elective public office unless he files a sworn COC within the period fixed herein. Section 74 thereof enumerates the contents of the COC. x x x And the proper procedure to be taken if a misrepresentation is committed by a candidate in his COC is to question the same by filing a verified petition pursuant to Section 78, thus: Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy*.— A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election. Clearly, Section 78 states that the false representation in the contents of the COC required under Section 74 must refer to material matters in order to justify the cancellation of the COC.

2. ID.; ID.; ID.; ID.; RESPONDENT'S NICKNAME WRITTEN IN THE COC CANNOT BE CONSIDERED A MATERIAL MISREPRESENTATION WHICH PERTAINS TO HIS ELIGIBILITY AND QUALIFICATION TO RUN FOR PUBLIC OFFICE.— Clearly, for the petition to deny due course or cancel the COC of one candidate to prosper, the candidate must have made a material misrepresentation involving his eligibility or qualification for the office to which he seeks election, such as the requisite residency, age, citizenship or any other legal qualification necessary to run for local elective office as provided in the Local Government Code. Hence, petitioner's allegation that respondent's nickname "LRAY JR. MIGZ" written in his COC is a material misrepresentation is devoid of merit.

Respondent's nickname written in the COC cannot be considered a material fact which pertains to his eligibility and thus qualification to run for public office.

3. ID.; ID.; ID.; ID.; THE USE OF A SURNAME, WHEN NOT INTENDED TO MISLEAD OR DECEIVE THE PUBLIC AS TO ONE'S IDENTITY, IS NOT WITHIN THE SCOPE OF SECTION 78 OF THE OMNIBUS ELECTION CODE.— Notably, respondent is known to the voters of the Province of Camarines Sur as the son of the then incumbent Governor of the province, popularly known as "LRay." Their relationship is shown by the posters, streamers and billboards displayed in the province with the faces of both the father and son on them. Thus, the voters of the Province of Camarines Sur know who respondent is. Moreover, it was established by the affidavits of respondent's witnesses that as the father and son have striking similarities, such as their looks and mannerisms, which remained unrebutted, the appellation of LRAY JR. has been used to refer to respondent. Hence, the appellation LRAY JR., accompanied by the name MIGZ written as respondent's nickname in his COC, is not at all misleading to the voters, as in fact, such name distinguishes respondent from his father, the then incumbent "Governor LRAY," who was running for a Congressional seat in the 2nd District of Camarines Sur. As we ruled in *Salcedo II v. COMELEC*, the use of a surname, when not intended to mislead or deceive the public as to one's identity, is not within the scope of Section 78 of the Omnibus Election Code. Thus, respondent's nickname written in his COC, without intending to mislead the voters as to his identity, cannot be canceled. We find no grave abuse of discretion committed by the COMELEC *En Banc* in finding that respondent did not commit material misrepresentation in his COC.

4. ID.; ID.; ID.; ID.; THE CASE OF *VILLAROSA v. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL* IS NOT ON ALL FOURS WITH THE PRESENT CASE.— *Villarosa* is not on all fours with this case. This case is a petition to deny due course and to cancel COC on the ground of a statement of a material representation that is false; to be material, such must refer to an eligibility or qualification for the elective office the candidate seeks to hold. x x x As we have discussed, the name which respondent wrote in his COC to appear in the ballot, is not considered a material misrepresentation under

Section 78 of the Omnibus Election Code, as it does not pertain to his qualification or eligibility to run for an elective public office. By invoking the case of *Villarosa* which is in the nature of an election protest relating to the proclamation of Villarosa, petitioner should have instead filed an election protest and prayed that the votes for respondent be declared as stray votes, and not a petition to deny due course or cancel the COC.

APPEARANCES OF COUNSEL

Olivas Law Office for petitioner.
The Solicitor General for public respondent.
Calleja Law Office for private respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed via petition for *certiorari* and prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order is the Resolution[1] dated April 1, 2013 issued by the Commission on Elections (*COMELEC*) *En Banc*, which affirmed the Resolution[2] dated January 15, 2013 of its First Division dismissing petitioner Luis R. Villafuerte's verified petition to deny due course to or cancel the certificate of candidacy of Miguel R. Villafuerte (*respondent*).

Petitioner and respondent were both candidates for the Gubernatorial position of the Province of Camarines Sur in the May 13, 2013 local and national elections. On October 25, 2012, petitioner filed with the COMELEC a Verified Petition[3] to deny due course to or cancel the certificate of candidacy (*COC*) of

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[1] *Rollo*, pp. 79-88; *Per Curiam*; Signed by Chairman Sixto S. Brillantes, Jr., Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim and Maria Gracia Cielo M. Padaca; Docketed as SPA Case No. 13-154 (DC)(F)

[2] *Id.* at 46-49; *Per Curiam*; Signed by Presiding Commissioner Rene V. Sarmiento, Armando C. Velasco and Christian Robert S. Lim.

[3] *Rollo,* pp. 89-112.

respondent, alleging that respondent intentionally and materially misrepresented a false and deceptive name/nickname that would mislead the voters when he declared under oath in his COC that "L-RAY JR.-MIGZ" was his nickname or stagename and that the name he intended to appear on the official ballot was VILLAFUERTE, L-RAY JR.-MIGZ NP; that respondent deliberately omitted his first name "MIGUEL" and inserted, instead "LRAY JR.," which is the nickname of his father, the incumbent Governor of Camarines Sur, "LRay Villafuerte, Jr."

In his Answer with Special and Affirmative Defenses,[4] respondent denied the commission of any material misrepresentation and asserted, among others, that he had been using the nickname "LRAY JR. MIGZ" and not only "MIGZ"; that the choice of name/word to appear on the ballot was solely his choice or preference; and that the presumption that the voters would be confused on the simple fact that his name would be placed first in the ballot was misplaced.

On January 15, 2013, the COMELEC's First Division denied the petition for lack of merit and disposed as follows:

> x x x no compelling reason why the COC of respondent should be denied due course to or cancelled on the sole basis of an alleged irregularity in his name/nickname. Laws and jurisprudence on the matter are clear that material misrepresentation in the COC pertains only to qualifications of a candidate, such as citizenship, residency, registration as a voter, age, etc. Nothing has been mentioned about a candidate's name/nickname as a ground to deny due course or cancel his/her COC. When the language of the law is clear and explicit, there is no room for interpretation, only application.[5]

Petitioner filed a motion for reconsideration with the COMELEC *En Banc*, which denied the same in a Resolution dated April 1, 2013.

The COMELEC found that its First Division did not err in denying the petition as existing law and jurisprudence are clear

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[4] *Id.* at 126-137.

[5] *Id.* at 48.

in providing that a misrepresentation in a certificate of candidacy is material when it refers to a qualification for elective office and affects the candidate's eligibility; and that a misrepresentation of a non-material fact is not a ground to deny due course to or cancel a certificate of candidacy under Section 78 of the Omnibus Election Code. It found that petitioner's allegations did not pertain to respondent's qualifications or eligibility for the office to which he sought to be elected. The candidate's use of a name or nickname is a not a ground to deny due course to or cancel a certificate of candidacy.

Dissatisfied, petitioner filed the instant petition for *certiorari* and prohibition alleging the following issues:

I

Respondent COMELEC palpably and seriously committed grave abuse of discretion amounting to lack and/or in excess of jurisdiction when it whimsically and capriciously limited the grounds provided in Section 78 in relation to Section 74 of the Omnibus Election Code to a candidate's qualifications only and excluding as a ground a candidate's material representation that is FALSE on his identity which renders him ineligible to be voted for as a candidate, because a FALSE representation of ones' true name/nickname as a candidate is a deliberate attempt to misinform, mislead, and deceive the electorate and notwithstanding that Section 78 of the Omnibus Election Code expressly states that "any" material misrepresentation in violation of Section 74 of the same Code is a ground for cancellation of a Certificate of Candidacy.

II

Respondent COMELEC committed serious errors and patent grave abuse of discretion amounting to lack and/or in excess of jurisdiction in failing or refusing to apply prevailing jurisprudence and law, wherein it was held: that cancellation of COC is not based on the lack of qualification although it may relate to qualification based on a "finding that a candidate made a material representation that is false"; thereby disregarding the well-entrenched rulings of this Honorable Court that material misrepresentation may also include ineligibilities to run for office or to assume office and is not limited to qualifications; utterly ignoring the ruling of this Honorable Court that votes cast in favor of a candidate using a nickname in violation of Section 74 are STRAY

votes, and in turning a blind eye to its constitutional and statutory duty and responsibility to protect the rights of the voters and the integrity of the electoral processes in our country, among others.

III

Respondent COMELEC whimsically, capriciously and despotically allowed herein respondent MIGUEL to use "LRAY JR.-MIGZ" and thereby illegally disregarded the effects of R.A. 8436 as amended by R.A. 9369 or the Automation Law and the requirement therein for the alphabetical arrangement of the names of the candidates and for allowing respondent Miguel to deliberately and misleadingly omit his baptismal first name MIGUEL which is mandatorily required by Section 74 to be included in his COC and for respondent Miguel to use more than one nickname for which he is not generally or popularly known in Camarines Sur.

IV

Material misrepresentation as contemplated by law is NOT to protect respondent as a candidate, but MORESO, to protect the right of other candidates under the Automation Law, and more importantly to protect the electorate from being misinformed, misled and deceived.[6]

The main issue for resolution is whether respondent committed a material misrepresentation under Section 78 of the Omnibus Election Code so as to justify the cancellation of his COC.

Petitioner filed the petition under Section 78 of the Omnibus Election Code claiming that respondent committed material misrepresentation when the latter declared in his COC that his name/nickname to be printed in the official ballot was VILLAFUERTE, LRAY JR.-MIGZ instead of his baptismal name, VILLAFUERTE, MIGUEL-MIGZ; that such declaration made under oath constitutes material misrepresentation even if the material misrepresentation did not refer to his qualifications but referred to his eligibility to be validly voted for as a candidate and, consequently, to his eligibility to assume office.

We find no merit in the argument.

Section 73 of the Omnibus Election Code states that no person

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[6] *Id.* at 15-17. (Underscoring omitted)

shall be eligible for any elective public office unless he files a sworn COC within the period fixed herein. Section 74 thereof enumerates the contents of the COC, to wit:

> Sec. 74. *Contents of certificate of candidacy.* – The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.
>
> Unless a candidate has officially changed his name through a court approved proceeding, a certificate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware or such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.
>
> The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

And the proper procedure to be taken if a misrepresentation is committed by a candidate in his COC is to question the same

by filing a verified petition pursuant to Section 78, thus:

> Sec. 78. *Petition to deny due course to or cancel a certificate of candidacy*.— A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

Clearly, Section 78 states that the false representation in the contents of the COC required under Section 74 must refer to material matters in order to justify the cancellation of the COC. What then constitutes a material misrepresentation?

In *Salcedo II v. Commission on Elections*,[7] petitioner Victorino Salcedo II filed with the COMELEC a petition seeking cancellation of respondent Ermelita Salcedo's (*Ermelita*) COC on the ground that she had made material misrepresentation by stating her surname as Salcedo. Petitioner claimed that Ermelita had no right to use the surname Salcedo, since her marriage to Neptali Salcedo was void. The COMELEC *En Banc* found that Ermelita did not commit any misrepresentation nor usurp another's name since she had the right to use her husband's surname for being married to him, and thus, validated her proclamation as Mayor of Sara, Iloilo. Salcedo appealed the COMELEC's resolution, and we held:

> In case there is a material misrepresentation in the certificate of candidacy, the Comelec is authorized to deny due course to or cancel such certificate upon the filing of a petition by any person pursuant to Section 78 x x x
>
> As stated in the law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that the false representation mentioned therein pertain[s] to a material matter for the sanction imposed by this provision would affect the substantive rights of a candidate — the right to run for the elective post for which he filed the certificate of candidacy. Although the law does

[7] 371 Phil. 377 (1999).

not specify what would be considered as a "material representation," the Court has interpreted this phrase in a line of decisions applying Section 78 of the Code.[8]

x x x x x x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code refer to qualifications for elective office. This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in his certificate of candidacy are grave — to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.

x x x x x x x x x

Aside from the requirement of materiality, a false representation under Section 78 must consist of a "deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." In other words, it must be made with an intention to deceive the electorate as to one's qualifications for public office. The use of surname, when not intended to mislead, or deceive the public as to one's identity is not within the scope of the provision.[9]

In *Aratea v. Commission on Elections*,[10] we proclaimed Estela D. Antipolo, the alleged second placer, as Mayor of San Antonio, Zambales, being the one who remained as the sole qualified candidate for the mayoralty post and obtained the highest number of votes, since the COC of Romeo D. Lonzanida, the first placer, was declared void *ab initio*. We find that violation of the three-term limit is an eligibility affecting the qualification of a candidate to elective office and the misrepresentation of such is a ground to grant the petition to deny due course or cancel a COC. We said that:

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[8] *Id.* at 385-386.

[9] *Id.* at 389-390. (Citations omitted)

[10] G.R. No. 195229, October 9, 2012, 683 SCRA 105.

Section 74 requires the candidate to certify that he is eligible for the public office he seeks election. Thus, Section 74 states that "the certificate of candidacy shall state that the person filing x x x is eligible for said office." The three-term limit rule, enacted to prevent the establishment of political dynasties and to enhance the electorate's freedom of choice, is found both in the Constitution and the law. After being elected and serving for three consecutive terms, an elective local official cannot seek immediate reelection for the same office in the next regular election because he is ineligible. One who has an ineligibility to run for elective public office is not "eligible for [the] office." As used in Section 74, the word "eligible" means having the right to run for elective public office, that is, having all the qualifications and none of the ineligibilities to run for the public office.[11]

x x x x x x x x x

In a certificate of candidacy, the candidate is asked to certify under oath his eligibility, and thus qualification, to the office he seeks election. Even though the certificate of candidacy does not specifically ask the candidate for the number of terms elected and served in an elective position, such fact is material in determining a candidate's eligibility, and thus qualification for the office. Election to and service of the same local elective position for three consecutive terms renders a candidate ineligible from running for the same position in the succeeding elections. Lonzanida misrepresented his eligibility because he knew full well that he had been elected, and had served, as mayor of San Antonio, Zambales for more than three consecutive terms yet he still certified that he was eligible to run for mayor for the next succeeding term. Thus, Lonzanida's representation that he was eligible for the office that he sought election constitutes false material representation as to his qualification or eligibility for the office.[12]

In *Justimbaste v. Commission on Elections,*[13] where petitioner therein claimed that respondent committed material misrepresentation when he stated his name in the COC as Rustico Besa Balderian instead of Chu Teck Siao, we found that it had been established that in all of respondent's school records,

[11] *Id.* at 136-137.

[12] *Id.* at 143-144.

[13] G.R. No. 179413, November 28, 2008, 572 SCRA 736.

he had been using Rustico Besa Balderian, the name under which he was baptized and known since he can remember. He never used the name Chu Teck Siao by which he was registered. It was also established that he had filed a petition for change of name to avoid any confusion and which the RTC had granted. We then said, that—

> AT ALL EVENTS, the use of a name other than that stated in the certificate of birth is not a material misrepresentation, as "material misrepresentation" under the earlier-quoted Section 78 of the Omnibus Election Code refers to "qualifications for elective office." It need not be emphasized that there is no showing that there was an intent to deceive the electorate as to private respondent's identity, nor that by using his Filipino name the voting public was thereby deceived.[14]

Clearly, from the foregoing, for the petition to deny due course or cancel the COC of one candidate to prosper, the candidate must have made a material misrepresentation involving his eligibility or qualification for the office to which he seeks election, such as the requisite residency, age, citizenship or any other legal qualification necessary to run for local elective office as provided in the Local Government Code.[15] Hence, petitioner's allegation that respondent's nickname "LRAY JR. MIGZ" written in his COC is a material misrepresentation is devoid of merit. Respondent's nickname written in the COC cannot be considered a material fact which pertains to his eligibility and thus qualification to run for public office.

Moreover, the false representation under Section 78 must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible. As we said, respondent's nickname is not considered a material fact, and there is no substantial evidence showing that in writing the nickname "LRAY JR. MIGZ" in his COC, respondent had the intention to deceive the voters as to his identity which has an effect on his eligibility or qualification for the office he seeks to assume.

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[14] *Id.* at 748-749.

[15] *Salcedo II v. COMELEC*, *supra* note 7, at 389, citing RA 7160, Section 39 on qualifications.

Notably, respondent is known to the voters of the Province of Camarines Sur as the son of the then incumbent Governor of the province, popularly known as "LRay." Their relationship is shown by the posters, streamers and billboards displayed in the province with the faces of both the father and son on them. Thus, the voters of the Province of Camarines Sur know who respondent is. Moreover, it was established by the affidavits of respondent's witnesses that as the father and son have striking similarities, such as their looks and mannerisms, which remained unrebutted, the appellation of LRAY JR. has been used to refer to respondent. Hence, the appellation LRAY JR., accompanied by the name MIGZ[16] written as respondent's nickname in his COC, is not at all misleading to the voters, as in fact, such name distinguishes respondent from his father, the then incumbent "Governor LRAY," who was running for a Congressional seat in the 2nd District of Camarines Sur. As we ruled in *Salcedo II v. COMELEC*,[17] the use of a surname, when not intended to mislead or deceive the public as to one's identity, is not within the scope of Section 78 of the Omnibus Election Code. Thus, respondent's nickname written in his COC, without intending to mislead the voters as to his identity, cannot be canceled. We find no grave abuse of discretion committed by the COMELEC *En Banc* in finding that respondent did not commit material misrepresentation in his COC.

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[16] Section 211. *Rules for the appreciation of ballots.* - In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x x x x x x x

13. The use of the nicknames and appellations of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul such vote, except when they were used as a means to identify the voter, in which case the whole ballot is invalid: Provided, That if the nickname used is unaccompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality, the name shall be counted in favor of said candidate, if there is no other candidate for the same office with the same nickname.

[17] *Supra* note 7, at 390.

Petitioner relies on *Villarosa v. House of Representatives Electoral Tribunal*[18] to justify the annulment of respondent's COC. In *Villarosa*, which involves the counting of ballots under the manual elections, respondent Quintos filed an election protest relating to the proclamation of Amelita Villarosa (*Villarosa*) alleging that the "JTV" votes should not be counted in the latter's favor. We then held that Villarosa's use of "JTV" as her nickname was a clever ploy to make a mockery of the election process; thus, votes of "JTV" were considered stray votes. In so ruling, we found that "JTV" is the nickname of Villarosa's husband, who was then the incumbent representative of Occidental Mindoro; that when Villarosa's husband ran and campaigned for as representative in both the 1992 and 1995 elections in the same legislative district where Villarosa ran in the May 1998 elections, he was generally known as "JTV." We thus ruled that the voters who wrote "JTV" in the ballots had no other person in mind except then incumbent representative Jose Tapales Villarosa, or the same person whom they have known for a long time as "JTV." We also took into consideration Villarosa's statement in her affidavit admitting that she was generally and popularly known in every barangay in Occidental Mindoro as "GIRLIE" before and after she filed her COC; and even her counsel asserted during the oral argument that her other nickname before she filed her COC was "Mrs. JTV" and not "JTV." We also found that since the name "GIRLIE" written on the space for representative was in fact claimed by petitioner Villarosa and credited in her favor, then the "JTV" votes under the *idem sonans* rule cannot be counted for Villarosa, because only one nickname or stagename is allowed; and that Rule 13 of Section 211 of the Omnibus Election Code, which allows the use of a nickname and appellation of affection and friendship, provided that it is accompanied by the first name or surname of the candidate, was not applied since the "JTV" votes were unaccompanied by her first name or surname. Thus, we found that malice and bad faith on the part of Villarosa was evident when, in her COC and campaign

[18] 394 Phil. 730 (2001).

materials, she appropriated the initials or nickname of her husband, the incumbent representative of the district in question.

Villarosa is not on all fours with this case. This case is a petition to deny due course and to cancel COC on the ground of a statement of a material representation that is false; to be material, such must refer to an eligibility or qualification for the elective office the candidate seeks to hold. Here, respondent's nickname is not a qualification for a public office which affects his eligibility. Notably, respondent's father, who won 3 consecutive terms as Governor of the Province of Camarines Norte, is popularly known as "LRAY," so when respondent wrote in his COC, "LRAY JR. MIGZ" as his nickname, he differentiated himself from Governor "LRAY," which negates any intention to mislead or misinform or hide a fact which would otherwise render him ineligible. Also, the appellation LRAY JR. was accompanied by the name MIGZ which was not so in the *Villarosa* case.

It bears stressing that Section 74 requires, among others, that a candidate shall use in a COC the name by which he has been baptized, unless the candidate has changed his name through court-approved proceedings, and that he may include one nickname or stagename by which he is generally or popularly known in the locality, which respondent did. As we have discussed, the name which respondent wrote in his COC to appear in the ballot, is not considered a material misrepresentation under Section 78 of the Omnibus Election Code, as it does not pertain to his qualification or eligibility to run for an elective public office. By invoking the case of *Villarosa* which is in the nature of an election protest relating to the proclamation of Villarosa, petitioner should have instead filed an election protest and prayed that the votes for respondent be declared as stray votes, and not a petition to deny due course or cancel the COC.

Finally, petitioner claims that the false representation of respondent's nickname written on the COC is meant to undermine the statutory requirement regarding the alphabetical listing/ arrangement of names of the candidate as provided under

Section 13[19] of Republic Act No. (RA) 9369 amending RA 8436, the automated election system; that he would be put to a great and undue disadvantage as he became no. 5, while respondent was in no. 4 in the list of candidates for Governor of Camarines Sur.

We are not persuaded.

Considering that respondent's name is **VILLAFUERTE, LRAY JR.-MIGZ,** his name would indeed be ahead of petitioner's name, **VILLAFUERTE, LUIS**, in the official ballot which contains the alphabetical listing of the candidates for the gubernatorial position of the Province of Camarines Sur. However, petitioner's claim that such listing would lead to confusion as to put him to undue disadvantage is merely speculative and without basis as the voters can identify the candidate they want to vote for.

WHEREFORE, the petition is **DENIED**. The Resolution dated April 1, 2013, of the Commission on Elections *En Banc,* is hereby **AFFIRMED**.

SO ORDERED.

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[19] Sec. 13. Section 11 of Republic Act No. 8436 is hereby amended to read as follows:

SEC. 15. *Official Ballot.* — The Commission shall prescribe the format of the electronic display and/or the size and form of the official ballot, which shall contain the titles of the position to be filled and/or the proposition to be voted upon in an initiative, referendum or plebiscite. Where practicable, electronic displays must be constructed to present the names of all candidates for the same position in the same page or screen, otherwise, the electronic displays must be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot. **Under each position to be filled, the names of candidates shall be arranged alphabetically by surname and uniformly indicated using the same type size.** The maiden or married name shall be listed in the official ballot, as preferred by the female candidate. Under each proposition to be vote upon, the choices should be uniformly indicated using the same font and size. (Emphasis supplied).

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

Brion, J., on leave.

EN BANC

[G.R. No. 209185. February 25, 2014]

MARC DOUGLAS IV C. CAGAS, *petitioner, vs.* **COMMISSION ON ELECTIONS, represented by its CHAIRMAN, ATTY. SIXTO BRILLANTES, JR., and the PROVINCIAL ELECTION OFFICER OF DAVAO DEL SUR, represented by ATTY. MA. FEBES BARLAAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; PETITIONER'S EXPLANATION IN HIS COMPLIANCE, FOUND UNSATISFACTORY.— We find Cagas' explanation in his Compliance unsatisfactory. Although he proffers his apologies and regrets to the Court, we find that his explanation is less than candid. To exculpate himself from liability, Cagas states that his emotional outburst was contained in a personal letter addressed to a friend, who happens to be Court Administrator Marquez. However, Cagas cannot raise the defense of privacy of communication, especially after his admission that he requested Court Administrator Marquez to show the DVDs to the members of this Court. Cagas had to admit this since in his letter to Court Administrator Marquez he actually asked the latter thus: "x x x *ipapanood mo* please *sa mga* A. Justices *para malaman nila ang totoo.*" In any event, messages addressed to the members of the Court, regardless of media or even of intermediary, in connection with the performance of their judicial functions become part of the judicial

record and are a matter of concern for the entire Court. The fact that said letters are not technically considered pleadings, nor the fact that they were submitted after the main petition had been finally resolved does not detract from the gravity of contempt committed. The constitutional right of freedom of speech or right to privacy cannot be used as a shield for contemptuous acts against the Court.

2. **ID.; ID.; ID.; PETITIONER'S EXPLOITATION OF COURT ADMINISTRATOR MARQUEZ'S POSITION IS DEPLORABLE AND IS A PRIME EXAMPLE OF AN ATTITUDE THAT BLATANTLY DISREGARDS COURT PROCESSES.—** Cagas clearly wanted to exploit his seeming friendly ties with Court Administrator Marquez and have *pards* utilize his official connections. Instead of filing a pleading, Cagas sent a package containing the letter and DVDs to Court Administrator Marquez's office address, with the intent of having the contents of the DVDs viewed by the members of this Court. Cagas impressed upon Court Administrator Marquez their friendship, which is underscored by the use of *pards* and *pare*. Cagas also attempted to sway the members of this Court through the intercession of his friend who, to his imagined convenience, is an official of the Judiciary. The Court does not countenance this kind of behavior. Indeed, Cagas' exploitation of Court Administrator Marquez's position is deplorable and is a prime example of an attitude that blatantly disregards Court processes. Despite Cagas' claim that his letter to Court Administrator Marquez was merely personal, and not official, communication, his admission that he requested Court Administrator Marquez to show the DVDs to the justices via special *de abot*, is also an admission that he tried to take advantage of Court Administrator Marquez's position to gain access to the members of this Court outside of the regular Court processes. Court Administrator Marquez, meanwhile, had the duty to properly indorse to the appropriate office all communication relating to the Court.

3. **ID.; ID.; ID.; THE MAKING OF CONTEMPTUOUS STATEMENTS DIRECTED AGAINST THE COURT IS AN ABUSE OF THE RIGHT TO FREE SPEECH AND DEGRADES THE ADMINISTRATION OF JUSTICE.—** We also remind Cagas that this Court's decisions, though assigned to be written by one Justice, are always collegial. This Court was unanimous

in its Decision to dismiss Cagas' Petition for Prohibition for lack of merit. Apart from his emotional exasperation, Cagas offered no further explanation for his statement about the "level of deceitfulness" of the *ponente* and that the decision can "poison the minds of law students." He then points to his "continuing faith in the Court's capacity to act on the truth," hence his admission that he requested Court Administrator Marquez to distribute the DVDs to the members of this Court. The making of contemptuous statements directed against the Court is an abuse of the right to free speech and degrades the administration of justice. Hence, the defamatory statements in the letter impaired public confidence in the integrity of the judiciary and not just of the *ponente* alone.

4. ID.; ID.; ID.; PETITIONER IS GUILTY OF INDIRECT CONTEMPT.— We appreciate that Cagas takes "full responsibility" for his "emotional, but personal" message to Court Administrator Marquez. For his exploitation of Court Administrator Marquez's position and for his defamatory statements against the Court in general and to the *ponente* in particular in his letter to Court Administrator Marquez, we hold Cagas guilty of indirect contempt of court under Section 3(c) and (d), Rule 71 of the 1997 Rules of Civil Procedure as amended, thus: Section 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt; x x x (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule; (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice.

APPEARANCES OF COUNSEL

Benjamin B. Wong and *Aspiras & Aspiras Law Offices* for petitioner.

The Solicitor General for respondents.

R E S O L U T I O N

CARPIO, *J.*:

On 26 November 2013, we issued a Resolution directing petitioner Marc Douglas IV C. Cagas (Cagas) to explain why he should not be cited in contempt of court for the letter[1] he sent to Court Administrator Jose Midas Marquez (Court Administrator Marquez).[2]

Cagas, this time assisted by Atty. Raquel V. Aspiras-Sanchez of Aspiras and Aspiras Law Offices, and without indicating the date of his receipt of our Resolution, posted his Compliance on 9 January 2014.

The contents of Cagas' Compliance are reproduced below:

COMPLIANCE

Petitioner MARC DOUGLAS IV C. CAGAS, by himself and with the assistance of the undersigned counsel by way of special

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[1] For reference, Cagas' letter to Court Administrator Marquez reads:

> Atty. Jose Midas Marquez
> SC Building, P. Faura St., Manila
>
> *Kamusta ka Pards*, the recent SC decision in *Cagas vs COMELEC* did not surprise me. What struck me was the level of deceitfulness of whoever wrote the decision. It can poison the minds of law students.
>
> *Pare may padala ako na* dvds *parang awa mo na sa taga* Davao del Sur *at sa sambayanan, ipapanood mo* please *sa mga* A. Justices *para malaman nila ang totoo.*
>
> God never sleeps. God rewards the faithful.
>
> *Salamat Pards.*
>
> (signed)
>
> Marc Cagas

[2] The envelope containing the letter was addressed to Atty. Jose Midas Marquez, Philippine Supreme Court Spokesperson. Atty. Marquez's official designation is Court Administrator. Atty. Theodore O. Te is Assistant Court Administrator and Chief of the Public Information Office.

appearance, in compliance with the show-cause order embodied in the Honorable Court's resolution dated November 16, 2013, respectfully states:

1. The aforesaid resolution directs [Cagas] to show cause why he should not be held in contempt of court for innuendoes against the Honorable Court *en banc* contained in a letter he wrote to Atty. Jose Midas Marquez, presently the Court Administrator of the Supreme Court.

2. With all due respect, the letter was a personal communication made by [Cagas] to a friend—thus the use of the words "*pards*" and "*pare*"— and was not meant nor intended to be an official communication to Atty. Marquez in his capacity as Court Administrator of the Honorable Court.

3. Be that as it may, [Cagas] sincerely apologizes to the Court *en banc* and to all its members for the unfortunate language used in the letter, in particular in its first paragraph.

4. With deep regret, [Cagas] admits that the said first paragraph expressed his emotional exasperation at the time the letter was written. [Cagas] got carried away by his passion and desire to improve the lot of his home province and its people, and for this he is truly sorry and takes full responsibility.

5. In mitigation, [Cagas] respectfully submits that he did not mean nor intend the letter to be an affront or a sign of disrespect to the Honorable Court. Far from being that, the letter, in its entirety, actually shows [Cagas'] belief in the fairness of the court and its members. [Cagas] may have expressed himself poorly, but in the second paragraph of the letter, he communicates his continuing faith in the Court's capacity to act on the truth, hence his request for Atty. Marquez to show the DVDs to the justices "*para malaman nila ang totoo.*"

6. Once again, [Cagas] sincerely apologizes for whatever innuendoes against the Court his rather emotional, but personal, letter to Atty. Marquez may have communicated. [Cagas] is truly sorry for that, and begs the leniency and liberality of the Honorable Court. He means the Court and its members no disrespect, and continues to hold them in the highest esteem and regard.

PRAYER

WHEREFORE, it is respectfully prayed that [Cagas'] apologies be accepted and that the foregoing be considered as satisfactory compliance with the Honorable Court's show cause order in its November 26, 2013 resolution.

Petitioner prays for other just and equitable relief.

Respectfully submitted. Pasig City for Manila.

January 9, 2014.

[Signed]
MARC DOUGLAS IV C. CAGAS
By and for himself as Petitioner
Balintawak Street, Digos City

Assisted by:

ASPIRAS & ASPIRAS LAW OFFICES
By Special Appearance
1009 Prestige Tower, Emerald Avenue
Ortigas Center, 1605 Pasig City

[Signed]
RAQUEL V. ASPIRAS-SANCHEZ
ATTORNEY's ROLL NO. 39281
MCLE NO. IV – 0018383 / April 23, 2013
IBP No. 950691 / 01.06.2014/Pasig City
PTR No. 9844998 / 01.09.2014/ Pasig City

We find Cagas' explanation in his Compliance unsatisfactory. Although he proffers his apologies and regrets to the Court, we find that his explanation is less than candid.

To exculpate himself from liability, Cagas states that his emotional outburst was contained in a personal letter addressed to a friend, who happens to be Court Administrator Marquez. However, Cagas cannot raise the defense of privacy of communication, especially after his admission that he requested Court Administrator Marquez to show the DVDs to the members of this Court. Cagas had to admit this since in his letter to Court Administrator Marquez he actually asked the latter thus: "x x x *ipapanood mo* please sa *mga* A. Justices *para malaman*

nila ang totoo." In any event, messages addressed to the members of the Court, regardless of media or even of intermediary, in connection with the performance of their judicial functions become part of the judicial record and are a matter of concern for the entire Court.[3]

> The fact that said letters are not technically considered pleadings, nor the fact that they were submitted after the main petition had been finally resolved does not detract from the gravity of contempt committed. The constitutional right of freedom of speech or right to privacy cannot be used as a shield for contemptuous acts against the Court.[4]

Cagas clearly wanted to exploit his seeming friendly ties with Court Administrator Marquez and have *pards* utilize his official connections. Instead of filing a pleading, Cagas sent a package containing the letter and DVDs to Court Administrator Marquez's office address, with the intent of having the contents of the DVDs viewed by the members of this Court. Cagas impressed upon Court Administrator Marquez their friendship, which is underscored by the use of *pards* and *pare*. Cagas also attempted to sway the members of this Court through the intercession of his friend who, to his imagined convenience, is an official of the Judiciary.

The Court does not countenance this kind of behavior. Indeed, Cagas' exploitation of Court Administrator Marquez's position is deplorable and is a prime example of an attitude that blatantly disregards Court processes. Despite Cagas' claim that his letter to Court Administrator Marquez was merely personal, and not official, communication, his admission that he requested Court Administrator Marquez to show the DVDs to the justices via special *de abot*, is also an admission that he tried to take advantage of Court Administrator Marquez's position to gain access to the members of this Court outside of the regular Court processes. Court Administrator Marquez, meanwhile, had the duty to properly

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[3] See *In the Matter of Proceedings for Disciplinary Action against Atty. Wenceslao Laureta, etc.*, 232 Phil. 353 (1987).

[4] *Id.* at 388.

indorse to the appropriate office all communication relating to the Court.[5]

We also remind Cagas that this Court's decisions, though assigned to be written by one Justice, are always collegial. This Court was unanimous[6] in its Decision to dismiss Cagas' Petition for Prohibition for lack of merit. Apart from his emotional exasperation, Cagas offered no further explanation for his statement about the "level of deceitfulness" of the *ponente* and that the decision can "poison the minds of law students." He then points to his "continuing faith in the Court's capacity to act on the truth," hence his admission that he requested Court Administrator Marquez to distribute the DVDs to the members of this Court.

The making of contemptuous statements directed against the Court is an abuse of the right to free speech[7] and degrades the administration of justice. Hence, the defamatory statements in the letter impaired public confidence in the integrity of the judiciary and not just of the *ponente* alone.

> Generally, criticism of a court's rulings or decisions is not improper, and may not be restricted after a case has been finally disposed of and has ceased to be pending. So long as critics confine their criticisms to facts and base them on the decisions of the court, they commit

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[5] See Supreme Court Circular No. 30-91, Guidelines on the Functions of the Office of the Court Administrator, 30 September 1991.

> III. Matters Attended to by the Court Administrator
>
> B. Public Assistance and Information
>
> The Office of the Court Administrator shall attend to all matters of public assistance and information, requests for expeditious action on pending cases in the lower courts, indorsements from other government agencies and other matters which do not involve administrative or judicial adjudications, including queries on status of cases in the lower courts and on such other matters relative to pertinent circulars, memoranda, or administrative orders of the Supreme Court.

[6] The voting was 13-0, with Associate Justices Mariano C. del Castillo and Jose P. Perez on official leave.

[7] *Roxas v. De Zuzuarregui, Jr.,* 554 Phil. 323 (2007).

no contempt no matter how severe the criticism may be; but when they pass beyond that line and charge that judicial conduct was influenced by improper, corrupt, or selfish motives, or that such conduct was affected by political prejudice or interest, the tendency is to create distrust and destroy the confidence of the people in their courts.

Moreover, it has been held that criticism of courts after a case is finally disposed of, does not constitute contempt and, to this effect, a case may be said to be pending so long as there is still something for the court to do therein. But criticism should be distinguished from insult. A criticism after a case has been disposed of can no longer influence the court, and on that ground it does not constitute contempt. On the other hand, an insult hurled to the court, even after a case is decided, can under no circumstance be justified. Mere criticism or comment on the correctness or wrongness, soundness or unsoundness of the decision of the court in a pending case made in good faith may be tolerated; but to hurl the false charge that the Supreme Court has been committing deliberately so many blunders and injustices would tend necessarily to undermine the confidence of the people in the honesty and integrity of its members, and consequently to lower or degrade the administration of justice, and it constitutes contempt.[8]

We appreciate that Cagas takes "full responsibility" for his "emotional, but personal" message to Court Administrator Marquez.

For his exploitation of Court Administrator Marquez's position and for his defamatory statements against the Court in general and to the *ponente* in particular in his letter to Court Administrator Marquez, we hold Cagas guilty of indirect contempt of court under Section 3(c) and (d), Rule 71 of the 1997 Rules of Civil Procedure as amended, thus:

Section 3. *Indirect contempt to be punished after charge and hearing*. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt;

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[8] *People v. Godoy*, 312 Phil. 977, 1018-1019 (1995).

x x x x x x x x x

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x x x x x x x

WHEREFORE, considering the circumstances of the present case, Marc Douglas IV C. Cagas is declared **GUILTY** of indirect contempt of court. He is fined ₱10,000.00 for each offense, for a total of ₱20,000.00, and warned that a repetition of similar acts will warrant a more severe penalty.

SO ORDERED.

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

Brion, J., on leave.

SECOND DIVISION

[G.R. No. 180962. February 26, 2014]

PHILTRANCO SERVICE ENTERPRISES, INC., represented by its Vice-President for Administration, M/GEN. NEMESIO M. SIGAYA, *petitioner, vs.* **PHILTRANCO WORKERS UNION-ASSOCIATION OF GENUINE LABOR ORGANIZATIONS (PWU-AGLO), represented by JOSE JESSIE OLIVAR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* THE SECRETARY OF LABOR'S DECISION IN CASE NO. OS-VA-2007-008 IS A PROPER SUBJECT OF *CERTIORARI*.— It cannot be said that in taking cognizance of NCMB-NCR CASE No. NS-02-028-07, the Secretary of Labor did so in a limited capacity, *i.e.*, as a voluntary arbitrator. The fact is undeniable that by referring the case to the Secretary of Labor, Conciliator-Mediator Aglibut conceded that the case fell within the coverage of Article 263 of the Labor Code; the impending strike in Philtranco, a public transportation company whose business is imbued with public interest, required that the Secretary of Labor assume jurisdiction over the case, which he in fact did. By assuming jurisdiction over the case, the provisions of Article 263 became applicable, any representation to the contrary or that he is deciding the case in his capacity as a voluntary arbitrator notwithstanding. It has long been settled that the remedy of an aggrieved party in a decision or resolution of the Secretary of Labor is to timely file a motion for reconsideration as a precondition for any further or subsequent remedy, and then seasonably file a special civil action for *certiorari* under Rule 65 of the 1997 Rules on Civil Procedure. There is no distinction: when the Secretary of Labor assumes jurisdiction over a labor case in an industry indispensable to national interest, "he exercises great breadth of discretion" in finding a solution to the parties' dispute. "[T]he authority of the Secretary of Labor to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising therefrom. The power is plenary and discretionary in nature to enable him to effectively and efficiently dispose of the primary dispute." This wide latitude of discretion given to the Secretary of Labor may not be the subject of appeal. Accordingly, the Secretary of Labor's Decision in Case No. OS-VA-2007-008 is a proper subject of *certiorari*, pursuant to the Court's pronouncement in *National Federation of Labor v. Laguesma*.

2. ID.; ID.; ID.; THE PETITION FOR *CERTIORARI* WAS TIMELY FILED.— On the question of whether the Petition for *Certiorari* was timely filed, the Court agrees with petitioner's submission. Rule 65 states that where 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 60 days counted from the notice of the denial of the motion. This can only mean that even though a motion for reconsideration is not required or even prohibited by the concerned government office, and the petitioner files the motion just the same, the 60-day period shall nonetheless be counted from notice of the denial of the motion. **The very nature of *certiorari*** – which is an extraordinary remedy resorted to only in the absence of plain, available, speedy and adequate remedies in the course of law – requires that the office issuing the decision or order be given the **opportunity to correct itself**. Quite evidently, **this opportunity for rectification does not arise if no motion for reconsideration has been filed**. This is precisely what the Court said in the *ABS-CBN Union Members* case, whose essence continues to this day. x x x Indeed, what needs to be realized is that while a government office may prohibit altogether the filing of a motion for reconsideration with respect to its decisions or orders, the fact remains that *certiorari* inherently requires the filing of a motion for reconsideration, which is the tangible representation of the opportunity given to the office to correct itself. Unless it is filed, there could be no occasion to rectify. Worse, the remedy of *certiorari* would be unavailing. Simply put, regardless of the proscription against the filing of a motion for reconsideration, the same may be filed on the assumption that rectification of the decision or order must be obtained, and before a petition for *certiorari* may be instituted. Petitioner received a copy of the Acting Secretary of Labor's Decision on June 14, 2007. It timely filed a Motion for Reconsideration on June 25, which was a Monday, or the first working day following the last day (Sunday, June 24) for filing the motion. But for lack of procedural basis, the same was effectively denied by the Secretary of Labor via his August 15, 2007 Order which petitioner received on August 17. It then filed the Petition for *Certiorari* on August 29, or well within the fresh 60-day period allowed by the Rules from August 17. Given these facts, the Court finds that the Petition was timely filed.

APPEARANCES OF COUNSEL

Navarro Jumamil Escolin & Martinez Law Office for petitioner.

Miralles and Associates Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

While a government office[1] may prohibit altogether the filing of a motion for reconsideration with respect to its decisions or orders, the fact remains that *certiorari* inherently requires the filing of a motion for reconsideration, which is the tangible representation of the opportunity given to the office to correct itself. Unless it is filed, there could be no occasion to rectify. Worse, the remedy of *certiorari* would be unavailing. Simply put, regardless of the proscription against the filing of a motion for reconsideration, the same may be filed on the assumption that rectification of the decision or order must be obtained, and before a petition for *certiorari* may be instituted.

This Petition for Review on *Certiorari*[2] seeks a review and setting aside of the September 20, 2007 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 100324,[4] as well as its December 14, 2007 Resolution[5] denying petitioner's Motion for Reconsideration.

Factual Antecedents

On the ground that it was suffering business losses, petitioner Philtranco Service Enterprises, Inc., a local land transportation company engaged in the business of carrying passengers and freight, retrenched 21 of its employees. Consequently, the

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[1] Or person, tribunal, or board.

[2] *Rollo*, pp. 11-62.

[3] *Id.* at 64-67; penned by Associate Justice Rosalinda Asuncion-Vicente and concurred in by Associate Justices Remedios A. Salazar-Fernando and Enrico A. Lanzanas.

[4] Entitled "*Philtranco Service Enterprises, Inc., represented by its Vice President for Administration M/Gen. Nemesio M. Sigaya, petitioner, versus The Honorable Secretary of the Department of Labor and Employment (DOLE) and Philtranco Workers Union-Association of Genuine Labor Organizations, represented by Jose Jessie Olivar, respondents.*"

[5] *Rollo*, pp. 69-71.

company union, herein private respondent Philtranco Workers Union-Association of Genuine Labor Organizations (PWU-AGLU), filed a Notice of Strike with the Department of Labor and Employment (DOLE), claiming that petitioner engaged in unfair labor practices. The case was docketed as NCMB-NCR CASE No. NS-02-028-07.

Unable to settle their differences at the scheduled February 21, 2007 preliminary conference held before Conciliator-Mediator Amorsolo Aglibut (Aglibut) of the National Conciliation and Mediation Board (NCMB), the case was thereafter referred to the Office of the Secretary of the DOLE (Secretary of Labor), where the case was docketed as Case No. OS-VA-2007-008.

After considering the parties' respective position papers and other submissions, Acting DOLE Secretary Danilo P. Cruz issued a Decision[6] dated June 13, 2007, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, we hereby ORDER Philtranco to:
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> 1. REINSTATE to their former positions, without loss of seniority rights, the ILLEGALLY TERMINATED 17 "union officers", x x x, and PAY them BACKWAGES from the time of termination until their actual or payroll reinstatement, provided in the computation of backwages among the seventeen (17) who had received their separation pay should deduct the payments made to them from the backwages due them.
>
> 2. MAINTAIN the status quo and continue in full force and effect the terms and conditions of the existing CBA – specifically, Article VI on Salaries and Wages (commissions) and Article XI, on Medical and Hospitalization – until a new agreement is reached by the parties; and
>
> 3.REMIT the withheld union dues to PWU-AGLU without unnecessary delay.
>
> The PARTIES are enjoined to strictly and fully comply with the provisions of the existing CBA and the other dispositions of this Decision.

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[6] *Id.* at 109-127.

SO ORDERED.[7]

Petitioner received a copy of the above Decision on June 14, 2007. It filed a Motion for Reconsideration on June 25, 2007, a Monday. Private respondent, on the other hand, submitted a "Partial Appeal."

In an August 15, 2007 Order[8] which petitioner received on August 17, 2007, the Secretary of Labor declined to rule on petitioner's Motion for Reconsideration and private respondent's "Partial Appeal", citing a DOLE regulation[9] which provided that voluntary arbitrators' decisions, orders, resolutions or awards shall not be the subject of motions for reconsideration. The Secretary of Labor held:

WHEREFORE, the complainant's and the respondent's respective pleadings are hereby NOTED as pleadings that need not be acted upon for lack of legal basis.

SO ORDERED.[10]

The Assailed Court of Appeals Resolutions

On August 29, 2007, petitioner filed before the CA an original Petition for *Certiorari* and Prohibition, and sought injunctive relief, which case was docketed as CA-G.R. SP No. 100324.

On September 20, 2007, the CA issued the assailed Resolution which decreed as follows:

WHEREFORE, premises considered, the instant Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order and Preliminary Injunction is hereby DISMISSED. Philtranco's pleading entitled "Reiterating Motion for The Issuance of Writ of Preliminary Injunction and/or Temporary Restraining Order" is NOTED.

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[7] *Id.* at 127.

[8] *Id.* at 28; penned by then Secretary of Labor Arturo D. Brion (now a Member of this Court).

[9] DEPARTMENT ORDER NO. 40-03, Rule XIX, Section 7.

[10] *Rollo*, p. 128.

SO ORDERED.[11]

The CA held that, in assailing the Decision of the DOLE voluntary arbitrator, petitioner erred in filing a petition for *certiorari* under Rule 65 of the 1997 Rules, when it should have filed a petition for review under Rule 43 thereof, which properly covers decisions of voluntary labor arbitrators.[12] For this reason, the petition is dismissible pursuant to Supreme Court Circular No. 2-90.[13] The CA added that since the assailed Decision was not timely appealed within the reglementary 15-day period under Rule 43, the same became final and executory. Finally, the appellate court ruled that even assuming for the sake of argument that *certiorari* was indeed the correct remedy, still the petition should be dismissed for being filed out of time. Petitioner's unauthorized Motion for Reconsideration filed with the Secretary of Labor did not toll the running of the reglementary 60-day period within which to avail of *certiorari*; thus, from

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[11] *Id.* at 67.

[12] Rule 43, Section 1. Scope.

This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees, Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and **voluntary arbitrators authorized by law**. (Emphasis supplied)

[13] GUIDELINES TO BE OBSERVED IN APPEALS TO THE COURT OF APPEALS AND TO THE SUPREME COURT, which provides that:

4. Erroneous Appeals. – An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed. x x x

the time of its receipt of Acting Labor Secretary Cruz's June 13, 2007 Decision on June 14 or the following day, petitioner had until August 13 to file the petition – yet it filed the same only on August 29.

Petitioner filed a Motion for Reconsideration, which was denied by the CA through the second assailed December 14, 2007 Resolution. In denying the motion, the CA held that the fact that the Acting Secretary of Labor rendered the decision on the voluntary arbitration case did not remove the same from the jurisdiction of the NCMB, which thus places the case within the coverage of Rule 43.

Issues

In this Petition,[14] the following errors are assigned:

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONER AVAILED OF THE ERRONEOUS REMEDY IN FILING A PETITION FOR *CERTIORARI* UNDER RULE 65 INSTEAD OF UNDER RULE 43 OF THE RULES OF COURT.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD THAT THE PETITION FOR *CERTIORARI* WAS FILED OUT OF TIME.

THE HONORABLE COURT OF APPEALS ERRED WHEN IT DISMISSED THE PETITION OUTRIGHT ON THE BASIS OF PURE TECHNICALITY.[15]

Petitioner's Arguments

In its Petition and Reply,[16] petitioner argues that a petition for *certiorari* under Rule 65 – and not a petition for review under Rule 43 – is the proper remedy to assail the June 13,

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[14] In a February 13, 2008 Resolution, the Court initially denied the petition for failure to sufficiently show that the appellate court committed any reversible error. But on motion for reconsideration, the Court, in an August 27, 2008 Resolution, reconsidered, and reinstated the Petition. *Rollo*, pp. 389, 452.

[15] *Id.* at 24.

[16] *Id.* at 485-495.

2007 Decision of the DOLE Acting Secretary, pointing to the Court's pronouncement in *National Federation of Labor v. Hon. Laguesma*[17] that the remedy of an aggrieved party against the decisions and discretionary acts of the NLRC as well as the Secretary of Labor is to timely file a motion for reconsideration, and then seasonably file a special civil action for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.

Petitioner adds that, contrary to the CA's ruling, NCMB-NCR CASE No. NS-02-028-07 is not a simple voluntary arbitration case. The character of the case, which involves an impending strike by petitioner's employees; the nature of petitioner's business as a public transportation company, which is imbued with public interest; the merits of its case; and the assumption of jurisdiction by the Secretary of Labor – all these circumstances removed the case from the coverage of Article 262,[18] and instead placed it under Article 263,[19] of the Labor

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[17] 364 Phil. 44, 58 (1999).

[18] ART. 262. Jurisdiction over other labor disputes. —The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

[19] ART. 263. Strikes, picketing and lockouts. — (a) It is the policy of the State to encourage free trade unionism and free collective bargaining.

(b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes.

(c) In case of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the [Secretary] of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the [Department] to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Department may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the [Department the results of] the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

(g) When, in his opinion, there exists a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return-to-work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure the compliance with this provision as well as with such orders as he may issue to enforce the same.

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are

Code. Besides, Rule 43 does not apply to judgments or final orders issued under the Labor Code.[20]

On the procedural issue, petitioner insists that it timely filed the Petition for *Certiorari* with the CA, arguing that Rule 65 fixes the 60-day period within which to file the petition from notice of the denial of a timely filed motion for reconsideration, whether such motion is required or not. It cites the Court's pronouncement in *ABS-CBN Union Members v. ABS-CBN Corporation*[21] that "before a petition for *certiorari* under Rule 65 of the Rules of Court may be availed of, the filing of a

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necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.

(h) Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration.

(i) The Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or certification or submission of the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the voluntary arbitrator shall be final and executory ten (10) calendar days after receipt thereof by the parties.

[20] Citing Section 2 of the Rule, thus:

Sec. 2. Cases not covered.

This Rule shall not apply to judgments or final orders issued under the Labor Code of the Philippines.

[21] 364 Phil. 133, 141 (1999).

motion for reconsideration is a condition *sine qua non* to afford an opportunity for the correction of the error or mistake complained of" and since "a decision of the Secretary of Labor is subject to judicial review only through a special civil action of *certiorari* x x x [it] cannot be resorted to without the aggrieved party having exhausted administrative remedies through a motion for reconsideration."

Respondent's Arguments

In its Comment,[22] respondent argues that the Secretary of Labor decided Case No. OS-VA-2007-008 in his capacity as voluntary arbitrator; thus, his decision, being that of a voluntary arbitrator, is only assailable via a petition for review under Rule 43. It further echoes the CA's ruling that even granting that *certiorari* was the proper remedy, the same was filed out of time as the filing of a motion for reconsideration, which was an unauthorized pleading, did not toll the running of the 60-day period. Finally, it argues that on the merits, petitioner's case could not hold water as it failed to abide by the requirements of law in effecting a retrenchment on the ground of business losses.

Our Ruling

The Court grants the Petition.

It cannot be said that in taking cognizance of NCMB-NCR CASE No. NS-02-028-07, the Secretary of Labor did so in a limited capacity, *i.e.*, as a voluntary arbitrator. The fact is undeniable that by referring the case to the Secretary of Labor, Conciliator-Mediator Aglibut conceded that the case fell within the coverage of Article 263 of the Labor Code; the impending strike in Philtranco, a public transportation company whose business is imbued with public interest, required that the Secretary of Labor assume jurisdiction over the case, which he in fact did. By assuming jurisdiction over the case, the provisions of Article 263 became applicable, any representation to the contrary

[22] *Rollo*, pp. 454-469.

or that he is deciding the case in his capacity as a voluntary arbitrator notwithstanding.

It has long been settled that the remedy of an aggrieved party in a decision or resolution of the Secretary of Labor is to timely file a motion for reconsideration as a precondition for any further or subsequent remedy, and then seasonably file a special civil action for *certiorari* under Rule 65 of the 1997 Rules on Civil Procedure.[23] There is no distinction: when the Secretary of Labor assumes jurisdiction over a labor case in an industry indispensable to national interest, "he exercises great breadth of discretion" in finding a solution to the parties' dispute.[24] "[T]he authority of the Secretary of Labor to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to national interest includes and extends to all questions and controversies arising therefrom. The power is plenary and discretionary in nature to enable him to effectively and efficiently dispose of the primary dispute."[25] This wide latitude of discretion given to the Secretary of Labor may not be the subject of appeal.

Accordingly, the Secretary of Labor's Decision in Case No. OS-VA-2007-008 is a proper subject of *certiorari*, pursuant to the Court's pronouncement in *National Federation of Labor v. Laguesma*,[26] thus:

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[23] *Barairo v. Office of the President*, G.R. No. 189314, June 15, 2011, 652 SCRA 356, 358; *Masada Security Agency, Inc. v. Department of Labor and Employment*, G.R. No. 158750, September 27, 2010 (Resolution); *Philippine Long Distance Telephone Co. Inc. v. Manggagawa ng Komunikasyon sa Pilipinas*, 501 Phil. 704, 716 (2005); *Manila Pearl Corporation v. Manila Pearl Independent Workers Union*, 496 Phil. 158, 162-163 (2005); *University of Immaculate Concepcion v. Secretary of Labor and Employment*, 476 Phil. 704, 711-712 (2004).

[24] *Steel Corporation of the Philippines v. SCP Employees Union-National Federation of Labor Unions*, G.R. Nos. 169829-30, April 16, 2008, 551 SCRA 594, 609.

[25] *LMG Chemicals Corporation v. Secretary of Labor*, 408 Phil. 701, 711 (2001).

[26] *National Federation of Labor v. Hon. Laguesma*, *supra* note 16.

Though appeals from the NLRC to the Secretary of Labor were eliminated, presently there are several instances in the Labor Code and its implementing and related rules where an appeal can be filed with the Office of the Secretary of Labor or the Secretary of Labor issues a ruling, to wit:

x x x x x x x x x

(6) Art. 263 provides that the Secretary of Labor shall decide or resolve the labor dispute [over] which he assumed jurisdiction within thirty (30) days from the date of the assumption of jurisdiction. His decision shall be final and executory ten (10) calendar days after receipt thereof by the parties.

From the foregoing we see that the Labor Code and its implementing and related rules generally do not provide for any mode for reviewing the decision of the Secretary of Labor. It is further generally provided that the decision of the Secretary of Labor shall be final and executory after ten (10) days from notice. Yet, like decisions of the NLRC which under Art. 223 of the Labor Code become final after ten (10) days, decisions of the Secretary of Labor come to this Court by way of a petition for certiorari even beyond the ten-day period provided in the Labor Code and the implementing rules but within the reglementary period set for Rule 65 petitions under the 1997 Rules of Civil Procedure. x x x

x x x x x x x x x

In fine, we find that it is procedurally feasible as well as practicable that petitions for *certiorari* under Rule 65 against the decisions of the Secretary of Labor rendered under the Labor Code and its implementing and related rules be filed initially in the Court of Appeals. Paramount consideration is strict observance of the doctrine on the hierarchy of the courts, emphasized in *St. Martin Funeral Homes v. NLRC*, on "the judicial policy that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction."[27]

On the question of whether the Petition for *Certiorari* was timely filed, the Court agrees with petitioner's submission. Rule

[27] *Id.* at 54-58.

65 states that where 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 60 days counted from the notice of the denial of the motion.[28] This can only mean that even though a motion for reconsideration is not required or even prohibited by the concerned government office, and the petitioner files the motion just the same, the 60-day period shall nonetheless be counted from notice of the denial of the motion. **The very nature of *certiorari*** – which is an extraordinary remedy resorted to only in the absence of plain, available, speedy and adequate remedies in the course of law – requires that the office issuing the decision or order be given the **opportunity to correct itself**. Quite evidently, **this opportunity for rectification does not arise if no motion for reconsideration has been filed**. This is precisely what the Court said in the *ABS-CBN Union Members* case, whose essence continues to this day. Thus:

> Section 8, Rule VIII, Book V of the Omnibus Rules Implementing the Labor Code, provides:
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> > "The Secretary shall have fifteen (15) calendar days within which to decide the appeal from receipt of the records of the case. The decision of the Secretary shall be final and inappealable." x x x
>
> The aforecited provision cannot be construed to mean that the Decision of the public respondent cannot be reconsidered since the same is reviewable by *writ of certiorari* under Rule 65 of the Rules of Court. As a rule, the law requires a motion for reconsideration to enable the public respondent to correct his mistakes, if any. In *Pearl S. Buck Foundation, Inc. vs. NLRC*, this Court held:
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> > "Hence, the only way by which a labor case may reach the Supreme Court is through a petition for *certiorari* under Rule

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[28] 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.

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 the notice of the denial of the motion.

x x x x x x x x x

> 65 of the Rules of Court alleging lack or excess of jurisdiction or grave abuse of discretion. Such petition may be filed within a reasonable time from receipt of the resolution denying the motion for reconsideration of the NLRC decision." x x x

Clearly, before a petition for *certiorari* under Rule 65 of the Rules of Court may be availed of, the filing of a motion for reconsideration is a condition *sine qua non* to afford an opportunity for the correction of the error or mistake complained of.

So also, considering that a decision of the Secretary of Labor is subject to judicial review only through a special civil action of *certiorari* and, as a rule, cannot be resorted to without the aggrieved party having exhausted administrative remedies through a *motion for reconsideration*, the aggrieved party, must be allowed to move for a reconsideration of the same so that he can bring a special civil action for *certiorari* before the Supreme Court.[29]

Indeed, what needs to be realized is that while a government office may prohibit altogether the filing of a motion for reconsideration with respect to its decisions or orders, the fact remains that *certiorari* inherently requires the filing of a motion for reconsideration, which is the tangible representation of the opportunity given to the office to correct itself. Unless it is filed, there could be no occasion to rectify. Worse, the remedy of *certiorari* would be unavailing. Simply put, regardless of the proscription against the filing of a motion for reconsideration, the same may be filed on the assumption that rectification of the decision or order must be obtained, and before a petition for *certiorari* may be instituted.

Petitioner received a copy of the Acting Secretary of Labor's Decision on June 14, 2007. It timely filed a Motion for Reconsideration on June 25, which was a Monday, or the first working day following the last day (Sunday, June 24) for filing the motion. But for lack of procedural basis, the same was effectively denied by the Secretary of Labor via his August 15, 2007 Order which petitioner received on August 17. It then filed the Petition for *Certiorari* on August 29, or well

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[29] *ABS-CBN Union Members v. ABS-CBN Corporation*, *supra* note 21 at 140-141.

within the fresh 60-day period allowed by the Rules from August 17. Given these facts, the Court finds that the Petition was timely filed.

Going by the foregoing pronouncements, the CA doubly erred in dismissing CA-G.R. SP No. 100324.

WHEREFORE, the Petition is **GRANTED**. The assailed September 20, 2007 and December 14, 2007 Resolutions of the Court of Appeals are **REVERSED** and **SET ASIDE**. The Petition in CA-G.R. SP No. 100324 is ordered **REINSTATED** and the Court of Appeals is **DIRECTED** to **RESOLVE** the same with **DELIBERATE DISPATCH**.

SO ORDERED.

Carpio (Chairperson), Perez, Perlas-Bernabe, and *Leonen,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 189477, February 26, 2014]

HOMEOWNERS SAVINGS AND LOAN BANK, *petitioner-appellant, vs*. **ASUNCION P. FELONIA and LYDIA C. DE GUZMAN, represented by MARIBEL FRIAS,** *respondents-appellees*. **MARIE MICHELLE P. DELGADO, REGISTER OF DEEDS OF LAS PIÑAS CITY and RHANDOLFO B. AMANSEC, in his capacity as Clerk of Court Ex-Officio Sheriff, Office of the Clerk of Court, Las Piñas City,** *respondents-defendants*.

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* Per Raffle dated February 5, 2014.

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; SALES; THE RIGHTS OF THE PARTIES IN CASE AT BAR ARE DEFINED NOT BY THE DETERMINATION OF WHETHER OR NOT PETITIONER IS A MORTGAGEE IN GOOD FAITH, BUT WHETHER OR NOT PETITIONER IS A PURCHASER IN GOOD FAITH.— When the property was mortgaged to HSLB, the registered owner of the subject property was Delgado who had in her name TCT No. 44848. Thus, HSLB cannot be faulted in relying on the face of Delgado's title. The records indicate that Delgado was at the time of the mortgage in possession of the subject property and Delgado's title did not contain any annotation that would arouse HSLB's suspicion. HSLB, as a mortgagee, had a right to rely in good faith on Delgado's title, and in the absence of any sign that might arouse suspicion, HSLB had no obligation to undertake further investigation. As held by this Court in *Cebu International Finance Corp. v. CA*: The prevailing jurisprudence is that a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security and in the absence of any sign that might arouse suspicion, has no obligation to undertake further investigation. Hence, even if the mortgagor is not the rightful owner of, or does not have a valid title to, the mortgaged property, the mortgagee or transferee in good faith is nonetheless entitled to protection. However, the rights of the parties to the present case are defined not by the determination of whether or not HSLB is a mortgagee in good faith, but of whether or not HSLB is a purchaser in good faith. And, HSLB is not such a purchaser.

2. ID.; ID.; ID.; PETITIONER IS NOT A PURCHASER IN GOOD FAITH CONSIDERING THAT AT THE TIME IT PURCHASED THE SUBJECT PROPERTY THE NOTICE OF *LIS PENDENS* WAS ALREADY ANNOTATED ON THE TITLE.— A purchaser in good faith is defined as one who buys a property without notice that some other person has a right to, or interest in, the property and pays full and fair price at the time of purchase or before he has notice of the claim or interest of other persons in the property. When a prospective buyer is faced with facts and circumstances as to arouse his suspicion, he must take precautionary steps to qualify as a purchaser in good faith. In *Spouses Mathay v. CA*, we determined the duty of a

prospective buyer: Although it is a recognized principle that a person dealing on a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, it is of course, expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants, *i.e.*, whether or not the occupants possess the land *en concepto de dueño*, in the concept of the owner. As is the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would thereby preclude him from claiming or invoking the rights of a purchaser in good faith. In the case at bar, HSLB utterly failed to take the necessary precautions. At the time the subject property was mortgaged, there was yet no annotated Notice of *Lis Pendens*. However, at the time HSLB purchased the subject property, the Notice of *Lis Pendens* was already annotated on the title.

3. ID.; ID.; ID.; NOTICE OF *LIS PENDENS*; PURPOSE THEREOF.— *Lis pendens* is a Latin term which literally means, "a pending suit or a pending litigation" while a notice of *lis pendens* is an announcement to the whole world that a real property is in litigation, serving as a warning that anyone who acquires an interest over the property does so at his/her own risk, or that he/she gambles on the result of the litigation over the property. It is a warning to prospective buyers to take precautions and investigate the pending litigation. The purpose of a notice of *lis pendens* is to protect the rights of the registrant while the case is pending resolution or decision. With the notice of *lis pendens* duly recorded and remaining uncancelled, the registrant could rest secure that he/she will not lose the property or any part thereof during litigation. The doctrine of *lis pendens* is founded upon reason of public policy and necessity, the purpose of which is to keep the subject matter of the litigation within

the Court's jurisdiction until the judgment or the decree have been entered; otherwise, by successive alienations pending the litigation, its judgment or decree shall be rendered abortive and impossible of execution.

4. ID.; ID.; ID.; THERE IS NO DOUBT THAT AT THE TIME PETITIONER PURCHASED THE SUBJECT PROPERTY, IT WAS AWARE OF THE PENDING LITIGATION CONCERNING THE SAME PROPERTY AND THUS, THE TITLE ISSUED IN ITS FAVOR WAS SUBJECT TO THE OUTCOME OF THE SAID LITIGATION.— Indeed, at the time HSLB bought the subject property, HSLB had actual knowledge of the annotated Notice of *Lis Pendens*. Instead of heeding the same, HSLB continued with the purchase knowing the legal repercussions a notice of *lis pendens* entails. HSLB took upon itself the risk that the Notice of *Lis Pendens* leads to. As correctly found by the CA, "the notice of *lis pendens* was annotated on 14 September 1995, whereas the foreclosure sale, where the appellant was declared as the highest bidder, took place sometime in 1997. There is no doubt that at the time appellant purchased the subject property, it was aware of the pending litigation concerning the same property and thus, the title issued in its favor was subject to the outcome of said litigation."

5. ID.; ID.; MORTGAGE; FOR A VALID MORTGAGE TO EXIST, OWNERSHIP OF THE PROPERTY IS AN ESSENTIAL REQUISITE.— The subject of the *lis pendens* on the title of HSLB's vendor, Delgado, is the "Reformation case" filed against Delgado by the herein respondents. The case was decided with finality by the CA in favor of herein respondents. The contract of sale in favor of Delgado was ordered reformed into a contract of mortgage. By final decision of the CA, HSLB's vendor, Delgado, is not the property owner but only a mortgagee. As it turned out, Delgado could not have constituted a valid mortgage on the property. That the mortgagor be the absolute owner of the thing mortgaged is an essential requisite of a contract of mortgage. Article 2085 (2) of the Civil Code specifically says so: Art. 2085. The following requisites are essential to the contracts of pledge and mortgage: x x x (2) That the pledgor or mortagagor be the absolute owner of the thing pledged or mortgaged. Succinctly, for a valid mortgage to exist, ownership of the property is an essential requisite. *Reyes v. De Leon* cited the case of *Philippine National Bank v. Rocha*

where it was pronounced that "a mortgage of real property executed by one who is not an owner thereof at the time of the execution of the mortgage is without legal existence." Such that, according to *DBP v. Prudential Bank*, there being no valid mortgage, there could also be no valid foreclosure or valid auction sale.

6. ID.; ID.; ID.; INSOFAR AS PETITIONER IS CONCERNED, THERE IS NO LONGER ANY PUBLIC INTEREST IN UPHOLDING THE INDEFEASIBILITY OF THE CERTIFICATE OF TITLE OF ITS MORTGAGOR BECAUSE SUCH TITLE HAS BEEN NULLIFIED IN A DECISION THAT HAD BECOME FINAL AND EXECUTORY.— We go back to *Bank of Commerce v. San Pablo, Jr.* where the doctrine of mortgagee in good faith, upon which petitioner relies, was clarified as "based on the rule that all persons dealing with property covered by the Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. In turn, the rule is based on "x x x public interest in upholding the indefeasibility of a certificate of title, as evidence of lawful ownership of the land or of any encumbrance thereon." Insofar as the HSLB is concerned, there is no longer any public interest in upholding the indefeasibility of the certificate of title of its mortgagor, Delgado. Such title has been nullified in a decision that had become final and executory. Its own title, derived from the foreclosure of Delgado's mortgage in its favor, has likewise been nullified in the very same decision that restored the certificate of title in respondents' name. There is absolutely no reason that can support the prayer of HSLB to have its mortgage lien carried over and into the restored certificate of title of respondents.

APPEARANCES OF COUNSEL

PDIC Office of the General Counsel for petitioner-appellant.

Medina Libatique and Associates Law Office for Asuncion P. Felonia and Lydia C. de Guzman.

D E C I S I O N

PEREZ, *J.*:

Assailed in this Petition for Review on *Certiorari* is the Decision[1] and Resolution[2] of the Court of Appeals (CA), in CA-G.R. CV No. 87540, which affirmed with modifications, the Decision[3] of the Regional Trial Court (RTC), reinstating the title of respondents Asuncion Felonia (Felonia) and Lydia de Guzman (De Guzman) and cancelling the title of Marie Michelle Delgado (Delgado).

The facts as culled from the records are as follows:

Felonia and De Guzman were the registered owners of a parcel of land consisting of 532 square meters with a five-bedroom house, covered by Transfer of Certificate of Title (TCT) No. T-402 issued by the register of deeds of Las Piñas City.

Sometime in June 1990, Felonia and De Guzman mortgaged the property to Delgado to secure the loan in the amount of ₱1,655,000.00. However, instead of a real estate mortgage, the parties executed a Deed of Absolute Sale with an Option to Repurchase.[4]

On 20 December 1991, Felonia and De Guzman filed an action for Reformation of Contract (Reformation case), docketed as Civil Case No. 91-59654, before the RTC of Manila. On the findings that it is "very apparent that the transaction had between the parties is one of a mortgage and not a deed of sale with right to repurchase,"[5] the RTC, on 21 March 1995 rendered a judgment favorable to Felonia and De Guzman. Thus:

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[1] CA *rollo*, pp. 87-98; Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Mariflor P. Punzalan Castillo concurring.

[2] *Id.* at 112-114.

[3] *Rollo*, pp. 170-177; Penned by Presiding Judge Lorna Navarro Domingo.

[4] Records, pp. 779-781.

[5] *Id.* at 95.

WHEREFORE, judgment is hereby rendered directing the [Felonia and De Guzman] and the [Delgado] to execute a deed of mortgage over the property in question taking into account the payments made and the imposition of the legal interests on the principal loan.

On the other hand, the counterclaim is hereby dismissed for lack of merit.

No pronouncements as to attorney's fees and damages in both instances as the parties must bear their respective expenses incident to this suit.[6]

Aggrieved, Delgado elevated the case to the CA where it was docketed as CA-G.R. CV No. 49317. The CA affirmed the trial court decision. On 16 October 2000, the CA decision became final and executory.[7]

Inspite of the pendency of the Reformation case in which she was the defendant, Delgado filed a "Petition for Consolidation of Ownership of Property Sold with an Option to Repurchase and Issuance of a New Certificate of Title" (Consolidation case) in the RTC of Las Piñas, on 20 June 1994.[8] After an *ex-parte* hearing, the RTC ordered the issuance of a new title under Delgado's name, thus:

WHEREFORE, judgment is rendered —

1. Declaring [DELGADO] as absolute owner of the subject parcel of land covered by Transfer Certificate of Title No. T-402 of the Register of Deeds of Las Piñas, Metro Manila;

2. Ordering the Register of Deeds of Las Piñas, Metro Manila to cancel Transfer Certificate of Title No. T-402 and issue in lieu thereof a new certificate of title and owner's duplicate copy thereof in the name of [DELGADO].[9]

By virtue of the RTC decision, Delgado transferred the title to her name. Hence, TCT No. T-402, registered in the names

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[6] *Id*. at 46.

[7] *Id*. at 729-742; Exhibits "F-H".

[8] *Rollo*, p. 17; LRC Case No. M-3302, RTC-Las Piñas City, Branch 275.

[9] Records, p. 49.

of Felonia and De Guzman, was canceled and TCT No. 44848 in the name of Delgado, was issued.

Aggrieved, Felonia and De Guzman elevated the case to the CA through a Petition for Annulment of Judgment.[10]

Meanwhile, on 2 June 1995, Delgado mortgaged the subject property to Homeowners Savings and Loan Bank (HSLB) using her newly registered title. Three (3) days later, or on 5 June 1995, HSLB caused the annotation of the mortgage.

On 14 September 1995, Felonia and De Guzman caused the annotation of a Notice of *Lis Pendens* on Delgado's title, TCT No. 44848. The Notice states:

> Entry No. 8219/T-44848 – NOTICE OF *LIS PENDENS* – filed by Atty. Humberto A. Jambora, Counsel for the Plaintiff, that a case been commenced in the RTC, Branch 38, Manila, entitled ASUNCION P. FELONIA and LYDIA DE GUZMAN thru VERONICA P. BELMONTE, as Atty-in-fact (Plaintiffs) v.s. MARIE MICHELLE DELGADO defendant in Civil Case No. 91-59654 for Reformation of Instrument. Copy on file in this Registry.
> Date of Instrument – Sept. 11, 1995
> Date of Inscription – Sept. 14, 1995 at 9:55 a.m.[11]

On 20 November1997, HSLB foreclosed the subject property and later consolidated ownership in its favor, causing the issuance of a new title in its name, TCT No. 64668.

On 27 October 2000, the CA annulled and set aside the decision of the RTC, Las Piñas City in the Consolidation case. The decision of the CA, declaring Felonia and De Guzman as the absolute owners of the subject property and ordering the cancellation of Delgado's title, became final and executory on 1 December 2000.[12] Thus:

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[10] *Felonia, et al. v. Hon. Alfredo R. Enriquez, et al.,* CA-G.R. SP No. 43711, Court of Appeals, Eight Division.

[11] Records, p. 114.

[12] *Id*. at 752-759; Exhibits "N-O".

WHEREFORE, the petition is GRANTED and the subject judgment of the court *a quo* is ANNULLED and SET ASIDE.[13]

On 29 April 2003, Felonia and De Guzman, represented by Maribel Frias (Frias), claiming to be the absolute owners of the subject property, instituted the instant complaint against Delgado, HSLB, Register of Deeds of Las Piñas City and Rhandolfo B. Amansec before the RTC of Las Piñas City for Nullity of Mortgage and Foreclosure Sale, Annulment of Titles of Delgado and HSLB, and finally, Reconveyance of Possession and Ownership of the subject property in their favor.

As defendant, HSLB asserted that Felonia and De Guzman are barred from laches as they had slept on their rights to timely annotate, by way of Notice of *Lis Pendens*, the pendency of the Reformation case. HSLB also claimed that it should not be bound by the decisions of the CA in the Reformation and Consolidation cases because it was not a party therein. Finally, HSLB asserted that it was a mortgagee in good faith because the mortgage between Delgado and HSLB was annotated on the title on 5 June 1995, whereas the Notice of *Lis Pendens* was annotated only on 14 September 1995.

After trial, the RTC ruled in favor of Felonia and De Guzman as the absolute owners of the subject property. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, the Court hereby finds for the [Felonia and De Guzman] with references to the decision of the Court of Appeals in CA-G.R. CV No. 49317 and CA-G.R. SP No. 43711 as THESE TWO DECISIONS CANNOT BE IGNORED and against [Delgado] and [HSLB], Register of Deeds of Las Piñas City ordering the (sic) as follows:

1. The Register of Deeds of Las Piñas City to cancel Transfer Certificate of Title Nos. 44848 and T-64668 as null and void and reinstating Transfer Certificate of Title No. T-402 which shall contain a memorandum of the fact and shall in all respect be entitled to like faith and credit as the original certificate of title and shall, thereafter be

[13] *Id.* at 757.

regarded as such for all intents and purposes under the law;

2. Declaring the Mortgage Sheriff's Sale and the Certificate of Sale issued in favor of HSLB null and void, without prejudice to whatever rights the said Bank may have against [Delgado];

3. Ordering [Delgado] to pay [Felonia and De Guzman] the amount of PHP500,000.00 for compensatory damages;

4. Ordering [Delgado] to pay [Felonia and De Guzman] the amount of PHP500,000.00 for exemplary damages;

5. Ordering [Delgado] to pay [Felonia and De Guzman] the amount of PHP500,000.00 for moral damages;

6. Ordering [Delgado] to pay 20% of the total obligations as and by way of attorney's fees;

7. Ordering [Delgado] to pay cost of suit.[14]

On appeal, the CA affirmed with modifications the trial court decision. The dispositive portion of the appealed Decision reads:

WHEREFORE, in the light of the foregoing, the decision appealed from is AFFIRMED with the MODIFICATIONS that the awards of actual damages and attorney's fees are DELETED, moral and exemplary damages are REDUCED to ₱50,000.00 each, and Delgado is ordered to pay the appellees ₱25,000.00 as nominal damages.[15]

Hence, this petition.

Notably, HSLB does not question the affirmance by the CA of the trial court's ruling that TCT No. 44848, the certificate of title of its mortgagor-vendor, and TCT No. 64668, the certificate of title that was secured by virtue of the Sheriff's sale in its favor, should be cancelled "as null and void" and that TCT No. T-402 in the name of Felonia and De Guzman should be reinstated.

Recognizing the validity of TCT No. T-402 restored in the name of Felonia and De Guzman, petitioners pray that the decision

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[14] *Rollo*, pp. 176-177.

[15] CA *rollo*, p. 98.

of the CA be modified "to the effect that the mortgage lien in favor of petitioner HSLB annotated as entry No. 4708-12 on TCT No. 44848 be [ordered] carried over on TCT No. T-402 after it is reinstated in the name of [Felonia and De Guzman]."[16]

Proceeding from the ruling of the CA that it is a mortgagee in good faith, HSLB argues that a denial of its prayer would run counter to jurisprudence giving protection to a mortgagee in good faith by reason of public policy.

We cannot grant the prayer of petitioner. The priorly registered mortgage lien of HSLB is now worthless.

Arguably, HSLB was initially a mortgagee in good faith. In *Bank of Commerce v. San Pablo, Jr.*,[17] the doctrine of mortgagee in good faith was explained:

> There is, however, a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising there from are given effect by reason of public policy. This is the doctrine of "the mortgagee in good faith" based on the rule that all persons dealing with property covered by the Torrens Certificates of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. The public interest in upholding indefeasibility of a certificate of title, as evidence of lawful ownership of the land or of any encumbrance thereon, protects a buyer or mortgagee who, in good faith, relied upon what appears on the face of the certificate of title.

When the property was mortgaged to HSLB, the registered owner of the subject property was Delgado who had in her name TCT No. 44848. Thus, HSLB cannot be faulted in relying on the face of Delgado's title. The records indicate that Delgado was at the time of the mortgage in possession of the subject property and Delgado's title did not contain any annotation that

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[16] *Rollo*, p. 15.

[17] G.R. No. 167848, 27 April 2007, 522 SCRA 713, 726 citing *Cavite Development Bank v. Spouses Lim*, 381 Phil. 355, 368 (2000) as cited in *Ereña v. Querrer-Kauffman*, G.R. No. 165853, 22 June 2006, 492 SCRA 298, 319.

would arouse HSLB's suspicion. HSLB, as a mortgagee, had a right to rely in good faith on Delgado's title, and in the absence of any sign that might arouse suspicion, HSLB had no obligation to undertake further investigation. As held by this Court in *Cebu International Finance Corp. v. CA*:[18]

> The prevailing jurisprudence is that a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property given as security and in the absence of any sign that might arouse suspicion, has no obligation to undertake further investigation. Hence, even if the mortgagor is not the rightful owner of, or does not have a valid title to, the mortgaged property, the mortgagee or transferee in good faith is nonetheless entitled to protection.

However, the rights of the parties to the present case are defined not by the determination of whether or not HSLB is a mortgagee in good faith, but of whether or not HSLB is a purchaser in good faith. And, HSLB is not such a purchaser.

A purchaser in good faith is defined as one who buys a property without notice that some other person has a right to, or interest in, the property and pays full and fair price at the time of purchase or before he has notice of the claim or interest of other persons in the property.[19]

When a prospective buyer is faced with facts and circumstances as to arouse his suspicion, he must take precautionary steps to qualify as a purchaser in good faith. In *Spouses Mathay v. CA*,[20] we determined the duty of a prospective buyer:

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[18] 335 Phil. 643, 655 (1997).

[19] See *Sigaya v. Mayuga*, 504 Phil. 600, 613 (2005); *San Lorenzo Development Corp. v. CA*, 490 Phil. 7, 24 (2005); *Occeña v. Esponilla*, G.R. No. 156973, 4 June 2004, 431 SCRA 116, 124; *Sps. Castro v. Miat*, 445 Phil. 282, 298 (2003); *AFP Mutual Benefit Association, Inc. v. CA*, G.R. No. 104769 (consolidated with *Solid Homes, Inc. v. Investco, Inc.*, G.R. No. 135016), 417 Phil. 250, 256 (2001); *Republic of the Philippines v. CA*, 365 Phil. 522, 529 (1999) and *Sandoval v. CA*, 329 Phil. 48, 62 (1996).

[20] 356 Phil. 870, 892 (1998).

Although it is a recognized principle that a person dealing on a registered land need not go beyond its certificate of title, it is also a firmly settled rule that where there are circumstances which would put a party on guard and prompt him to investigate or inspect the property being sold to him, such as the presence of occupants/tenants thereon, it is of course, expected from the purchaser of a valued piece of land to inquire first into the status or nature of possession of the occupants, *i.e.*, whether or not the occupants possess the land *en concepto de dueño*, in the concept of the owner. As is the common practice in the real estate industry, an ocular inspection of the premises involved is a safeguard a cautious and prudent purchaser usually takes. Should he find out that the land he intends to buy is occupied by anybody else other than the seller who, as in this case, is not in actual possession, it would then be incumbent upon the purchaser to verify the extent of the occupant's possessory rights. The failure of a prospective buyer to take such precautionary steps would mean negligence on his part and would thereby preclude him from claiming or invoking the rights of a purchaser in good faith.

In the case at bar, HSLB utterly failed to take the necessary precautions. At the time the subject property was mortgaged, there was yet no annotated Notice of *Lis Pendens*. However, at the time HSLB purchased the subject property, the Notice of *Lis Pendens* was already annotated on the title.[21]

Lis pendens is a Latin term which literally means, "a pending suit or a pending litigation" while a notice of *lis pendens* is an announcement to the whole world that a real property is in litigation, serving as a warning that anyone who acquires an interest over the property does so at his/her own risk, or that he/she gambles on the result of the litigation over the property.[22]

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[21] Records, p. 744; Exhibits "I-3".

[22] *People v. RTC of Manila*, 258-A Phil. 68, 75 (1989) citing *Baranda, et al. v. Gustilo*, 248 Phil. 205 (1988); *Tanchoco v. Judge Aquino*, 238 Phil. 1 (1987); *Marasigan v. Intermediate Appellate Court*, 236 Phil. 274 (1987); *St. Dominic Corporation v. Intermediate Appellate Court*, 222 Phil. 540 (1985); *Constantino v. Espiritu*, 150-A Phil. 953 (1972); *Jose v. Cayetano*, 149 Phil. 451 (1971); *Nataño, et al. v. Esteban, et al.*, 124 Phil. 1067 (1966); See also *Rehabilitation Finance Corporation v. Morales*, 101 Phil. 171 (1957), and *Jamora v. Duran*, 69 Phil. 3 (1939).

It is a warning to prospective buyers to take precautions and investigate the pending litigation.

The purpose of a notice of *lis pendens* is to protect the rights of the registrant while the case is pending resolution or decision. With the notice of *lis pendens* duly recorded and remaining uncancelled, the registrant could rest secure that he/she will not lose the property or any part thereof during litigation.

The doctrine of *lis pendens* is founded upon reason of public policy and necessity, the purpose of which is to keep the subject matter of the litigation within the Court's jurisdiction until the judgment or the decree have been entered; otherwise, by successive alienations pending the litigation, its judgment or decree shall be rendered abortive and impossible of execution.[23]

Indeed, at the time HSLB bought the subject property, HSLB had actual knowledge of the annotated Notice of *Lis Pendens*. Instead of heeding the same, HSLB continued with the purchase knowing the legal repercussions a notice of *lis pendens* entails. HSLB took upon itself the risk that the Notice of *Lis Pendens* leads to. As correctly found by the CA, "the notice of *lis pendens* was annotated on 14 September 1995, whereas the foreclosure sale, where the appellant was declared as the highest bidder, took place sometime in 1997. There is no doubt that at the time appellant purchased the subject property, it was aware of the pending litigation concerning the same property and thus, the title issued in its favor was subject to the outcome of said litigation."[24]

This ruling is in accord with *Rehabilitation Finance Corp. v. Morales*,[25] which underscored the significance of a *lis pendens*, then defined in Sec. 24, Rule 7 now Sec. 14 of Rule 13 in relation to a mortgage priorly annotated on the title covering the property. Thus:

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[23] *Laroza v. Guia*, G.R. No. L-45252, 31 January 1985, 134 SCRA 341, 345.

[24] *Rollo*, p. 83.

[25] 101 Phil. 171 (1957).

The notice of *lis pendens* in question was annotated on the back of the certificate of title as a necessary incident of the civil action to recover the ownership of the property affected by it. The mortgage executed in favor of petitioner corporation was annotated on the same title prior to the annotation of the notice of *lis pendens*; but when petitioner bought the property as the highest bidder at the auction sale made as an aftermath of the foreclosure of the mortgage, the title already bore the notice of *lis pendens*. *Held*: While the notice of *lis pendens* cannot affect petitioner's right as mortgagee, because the same was annotated subsequent to the mortgage, yet the said notice affects its right as purchaser because notice of *lis pendens* simply means that a certain property is involved in a litigation and serves as a notice to the whole world that one who buys the same does so at his own risk.[26]

The subject of the *lis pendens* on the title of HSLB's vendor, Delgado, is the "Reformation case" filed against Delgado by the herein respondents. The case was decided with finality by the CA in favor of herein respondents. The contract of sale in favor of Delgado was ordered reformed into a contract of mortgage. By final decision of the CA, HSLB's vendor, Delgado, is not the property owner but only a mortgagee. As it turned out, Delgado could not have constituted a valid mortgage on the property. That the mortgagor be the absolute owner of the thing mortgaged is an essential requisite of a contract of mortgage. Article 2085 (2) of the Civil Code specifically says so:

> Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:
>
> x x x x x x x x x
>
> (2) That the pledgor or mortagagor be the absolute owner of the thing pledged or mortgaged.

Succinctly, for a valid mortgage to exist, ownership of the property is an essential requisite.[27]

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[26] *Id.* at 171-172.

[27] *Reyes v. De Leon*, 126 Phil. 710, 716 (1967).

Reyes v. De Leon[28] cited the case of *Philippine National Bank v. Rocha*[29] where it was pronounced that "a mortgage of real property executed by one who is not an owner thereof at the time of the execution of the mortgage is without legal existence." Such that, according to *DBP v. Prudential Bank*,[30] there being no valid mortgage, there could also be no valid foreclosure or valid auction sale.

We go back to *Bank of Commerce v. San Pablo, Jr.*[31] where the doctrine of mortgagee in good faith, upon which petitioner relies, was clarified as "based on the rule that all persons dealing with property covered by the Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. In turn, the rule is based on "x x x public interest in upholding the indefeasibility of a certificate of title, as evidence of lawful ownership of the land or of any encumbrance thereon."[32]

Insofar as the HSLB is concerned, there is no longer any public interest in upholding the indefeasibility of the certificate of title of its mortgagor, Delgado. Such title has been nullified in a decision that had become final and executory. Its own title, derived from the foreclosure of Delgado's mortgage in its favor, has likewise been nullified in the very same decision that restored the certificate of title in respondents' name. There is absolutely no reason that can support the prayer of HSLB to have its mortgage lien carried over and into the restored certificate of title of respondents.

WHEREFORE, the Petition is **DENIED**. The Decision of the Court of Appeals in CA-G.R. CV No. 87540 is **AFFIRMED**.

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[28] *Id*.

[29] 55 Phil. 497 (1930).

[30] 512 Phil. 267, 278 (2005) citing *Cruz v. Bancom Finance Corporation*, 429 Phil. 225 (2002).

[31] *Supra* note 17.

[32] *Id*.

SO ORDERED.

Carpio[*] *Acting C.J. (Chairperson), del Castillo, Perlas-Bernabe,* and *Leonen,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 190028. February 26, 2014]

LETICIA P. LIGON, *petitioner, vs.* **THE REGIONAL TRIAL COURT, BRANCH 56 AT MAKATI CITY and its Presiding Judge, JUDGE REYNALDO M. LAIGO, SHERIFF IV LUCITO V. ALEJO, ATTY. SILVERIO GARING, MR. LEONARDO J. TING, and MR. BENITO G. TECHICO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; ATTACHMENT; THE ATTACHING CREDITOR ACQUIRES A SPECIFIC LIEN ON THE ATTACHED PROPERTY WHICH CAN ONLY BE DESTROYED BY DISSOLUTION OF THE ATTACHMENT OR LEVY ITSELF.— Attachment is defined as a provisional remedy by which the property of an adverse party is taken into legal custody, either at the commencement of an action or at any time thereafter, as a security for the satisfaction of any judgment that may be recovered by the plaintiff or any proper party. Case law instructs that an attachment is a proceeding *in rem*, and, hence, is against the particular property, enforceable against the whole world. Accordingly, the attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the

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[*] Per Special Order No. 1644 dated 26 February 2014.

[**] Per Special Order No. 1636 dated 17 February 2014.

attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien continues until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law. Thus, a prior registration of an attachment lien creates a preference, such that when an attachment has been duly levied upon a property, a purchaser thereof subsequent to the attachment takes the property subject to the said attachment. As provided under PD 1529, said registration operates as a form of constructive notice to all persons.

2. ID.; ID.; ID.; THE ISSUANCE OF A NEW CERTIFICATE OF TITLE FREE FROM ANY LIENS AND ENCUMBRANCES, DESPITE PETITIONER'S PRIOR ATTACHMENT LIEN OVER THE SUBJECT PROPERTY CONSTITUTES GRAVE ABUSE OF DISCRETION; CASE AT BAR.— Applying these principles to this case, the Court finds that the CA erred in holding that the RTC did not gravely abuse its discretion in issuing the Assailed Orders as these issuances essentially disregarded, *inter alia*, Ligon's prior attachment lien over the subject property patently anathema to the nature of attachment proceedings which is well-established in law and jurisprudence. In this case, Ligon, in order to secure the satisfaction of a favorable judgment in the Quezon City Case, applied for and was eventually able to secure a writ of preliminary attachment over the subject property on November 25, 2002, which was later annotated on the dorsal portion of TCT No. 9273 in the name of Polished Arrow on December 3, 2002. Notwithstanding the subsequent cancellation of TCT No. 9273 due to the Makati City RTC's December 9, 2004 Decision rescinding the transfer of the subject property from Sps. Baladjay to Polished Arrow upon a finding that the same was made in fraud of creditors, Ligon's attachment lien over the subject property continued to subsist since the attachment she had earlier secured binds the property itself, and, hence, continues until the judgment debt of Sps. Baladjay to Ligon as adjudged in the Quezon City Case is satisfied, or the attachment discharged or vacated in some manner provided by law. The grave abuse of discretion of the Makati City RTC lies with its directive to issue a new certificate of title in the name of Ting (*i.e.*, TCT No. 19756), free from any liens and

encumbrances. This course of action clearly negates the efficacy of Ligon's attachment lien and, also, defies the legal characterization of attachment proceedings. It bears noting that Ligon's claim, secured by the aforesaid attachment, is against Sps. Baladjay whose ownership over the subject property had been effectively restored in view of the RTC's rescission of the property's previous sale to Polished Arrow. Thus, Sps. Ligon's attachment lien against Sps. Baladjay as well as their successors-in-interest should have been preserved, and the annotation thereof carried over to any subsequent certificate of title, the most recent of which as it appears on record is TCT No. 31001 in the name of Techico, without prejudice to the latter's right to protect his own ownership interest over the subject property.

3. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; DEFINED; INDIRECT CONTEMPT, NOT ESTABLISHED.— Contempt of court has been defined as a **willful disregard or disobedience of a public authority**. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court. Contempt of court is of two (2) kinds, namely: direct and indirect contempt. **Indirect contempt** or constructive contempt is that which is committed out of the presence of the court. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice would constitute indirect contempt. The indirect contempt charges in this case involve an invocation of paragraphs b, c, and d, Section 3, Rule 71 of the Rules of Court which read as follows: Section 3. *Indirect contempt to be punished after charge and hearing*. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt: x x x (b) Disobedience of or resistance to a lawful writ, x x x; (c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under

Section 1 of this Rule; (d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice.

APPEARANCES OF COUNSEL

De Guzman and Remigio Law and Consultancy Firm for petitioner.

Norman R. Gabriel for Benito G. Techico.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] is the Decision[2] dated October 30, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 106175, finding no grave abuse of discretion on the part of the Regional Trial Court of Makati City, Branch 56 (Makati City RTC) in issuing the following orders (Assailed Orders) in Civil Case No. 03-186:

(*a*) the Order[3] dated February 9, 2007 which directed the Register of Deeds of Muntinlupa City, respondent Atty. Silverio Garing (Atty. Garing), to (1) register the Officer's Final Deed of Sale issued by respondent Sheriff Lucito V. Alejo (Sheriff Alejo) on October 27, 2006 in favor of the highest bidder, respondent Leonardo J. Ting (Ting), (2) cancel Transfer Certificate of Title (TCT) No. 8502/ T44 in the name of Spouses Rosario and Saturnino Baladjay (Sps. Baladjay), and (3) issue a new certificate of title in favor of Ting, free from any liens and encumbrances;

(*b*) the Order[4] dated March 20, 2007 which directed Atty.

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[1] *Rollo*, pp. 24-127.

[2] *Id.* at 554-570. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Andres B. Reyes, Jr. and Marlene Gonzales-Sison, concurring.

[3] *Id.* at 294-295. Penned by Judge Reynaldo M. Laigo.

[4] *Id.* at 299-301.

Garing to comply with the February 9, 2007 Order under pain of contempt of court; and

(*c*) the Order[5] dated April 25, 2007 which reiterated the directive to Atty. Garing to issue a new title in favor of Ting after the latter's payment of capital gains, documentary and transfer taxes, as required.

The Facts

On November 20, 2002, petitioner Leticia P. Ligon (Ligon) filed an amended complaint[6] before the Regional Trial Court of Quezon City, Branch 101 (Quezon City RTC) for collection of sum of money and damages, rescission of contract, and nullification of title with prayer for the issuance of a writ of preliminary attachment, docketed as **Civil Case No. Q-10-48145** (Quezon City Case), against Sps. Baladjay, a certain Olivia Marasigan (Marasigan), Polished Arrow Holdings, Inc. (Polished Arrow), and its incorporators,[7] namely, Spouses Julius Gonzalo and Charaine Doreece Anne Fuentebella (Sps. Fuentebella), Ma. Linda Mendoza (Mendoza), Barbara C. Clavo (Clavo), Bayani E. Arit, Jr. (Arit, Jr.), and Peter M. Kairuz (Kairuz), as well as the latter's spouses (individual defendants).

In her complaint, Ligon alleged, *inter alia*, that Rosario Baladjay (Rosario) enticed her to extend a short-term loan in the amount of ₱3,000,000.00, payable in a month's time and secured by an Allied Bank post-dated check for the same amount.[8] Ligon likewise claimed that Rosario, as further enticement for the loan extension, represented that she and her husband Saturnino were in the process of selling their property in Ayala Alabang Village, Muntinlupa City (subject property), covered by a clean title, *i.e.*, **TCT No. 8502**[9] in the name of

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[5] *Id.* at 302-303.

[6] CA *rollo*, pp. 74-93.

[7] *Rollo*, p. 225.

[8] CA *rollo*, pp. 77-78.

[9] *Rollo*, pp. 220-222.

Rosario Baladjay, married to Saturnino Baladjay, and that the proceeds of the said sale could easily pay-off the loan.[10] Unfortunately, the Allied Bank check was dishonored upon presentment and, despite assurances to replace it with cash, Rosario failed to do so. Moreover, Ligon discovered that the subject property had already been transferred to Polished Arrow, alleged to be a dummy corporation of Sps. Baladjay and the individual defendants (defendants). As a result, TCT No. 8502 was cancelled and replaced on October 11, 2002 by **TCT No. 9273**[11] **in the name of Polished Arrow**. Thus, Ligon prayed that all defendants be held solidarily liable to pay her the amount of ₱3,000,000.00, with interest due, as well as ₱1,000,000.00 as attorney's fees and another ₱1,000,000.00 by way of moral and exemplary damages. Asserting that the transfer of the subject property to Polished Arrow was made in fraud of Sps. Baladjay's creditors, Ligon also prayed that the said transfer be nullified, and that a writ of preliminary attachment be issued in the interim against defendants' assets, including the subject property. **Subsequently, an Amended Writ of Preliminary Attachment**[12] **was issued on November 26, 2002, and annotated on the dorsal portion**[13] **of TCT No. 9273 on December 3, 2002** (December 3, 2002 attachment annotation).

On February 18, 2003, a similar complaint for collection of sum of money, damages, and cancellation of title with prayer for issuance of a writ of preliminary attachment was lodged before the Makati City RTC, docketed as **Civil Case No. 03-186** (Makati City Case), by Spouses Cecilia and Gil Vicente (Sps. Vicente) against Sps. Baladjay, Polished Arrow, and other corporations. [14] In that case, it was established that Sps. Baladjay solicited millions of pesos in investments from Sps. Vicente using conduit companies that were controlled by Rosario, as

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[10] CA *rollo*, p. 79.

[11] *Rollo*, pp. 179-186.

[12] *Id.* at 543.

[13] *Id.* at 181.

[14] See Partial Decision dated April 23, 2004; *id.* at 545-550.

President and Chairperson. **During the proceedings therein, a writ of preliminary attachment also against the subject property was issued and annotated on the dorsal portion of TCT No. 9273 on March 12, 2003**. Thereafter, but before the Quezon City Case was concluded, the Makati City RTC rendered a Decision[15] dated December 9, 2004 (December 9, 2004 Decision), rescinding the transfer of the subject property from Sps. Baladjay to Polished Arrow upon a finding that the same was made in fraud of creditors.[16] Consequently, the Makati City RTC directed the Register of Deeds of Muntinlupa City to: (*a*) cancel TCT No. 9273 in the name of Polished Arrow; and (*b*) restore TCT No. 8502 "in its previous condition" in the name of Rosario Baladjay, married to Saturnino Baladjay.

Meanwhile, in the pending Quezon City Case, Polished Arrow and the individual defendants (with the exception of Marasigan) were successively dropped[17] as party-defendants, after it was established that they, by themselves directly or through other persons, had no more ownership, interest, title, or claim over the subject property. The parties stipulated on the existence of the December 9, 2004 Decision of the Makati City RTC, and the fact that the same was no longer questioned by defendants Sps. Fuentebella, Arit, Jr., and Polished Arrow were made conditions for their dropping as party-defendants in the case.[18] In view of the foregoing, the Quezon City Case proceeded only against Sps. Baladjay and Marasigan and, after due proceedings, the Quezon City RTC rendered a Decision[19] dated

[15] *Id.* at 187-190. Penned by Judge Nemesio S. Felix.

[16] *Id.* at 189.

[17] See Order dated April 11, 2007 dismissing the complaint against defendant Ma. Linda Mendoza and her spouse Alfredo Mendoza (*Id.* at 261-262); Order dated June 22, 2007 dismissing the case with respect to Peter Kairuz and spouse as well as Barbara Clavo and spouse (Records, Volume 3, p. 1129); see also Order dated June 29, 2007 dropping defendants Polished Arrow Holdings, Inc., Sps. Julius Gonzalo and Charaine Doreece Anne Fuentebella and Bayani Arit, Jr. from the amended complaint (*Id.* at 282-283).

[18] See Order dated June 29, 2007; *rollo*, pp. 282-283.

[19] *Id.* at 286-289. Penned by Judge Evangeline C. Castillo-Marigomen.

March 26, 2008 (March 26, 2008 Decision), directing Sps. Baladjay to pay Ligon the amount of ₱3,000,000.00 with interest, as well as attorney's fees and costs of suit.

On September 25, 2008, the March 26, 2008 Decision of the Quezon City RTC became final and executory.[20] However, when Ligon sought its execution, she discovered that the December 3, 2002 attachment annotation had been deleted from TCT No. 9273 when the subject property was sold by way of public auction on September 9, 2005 to the highest bidder, respondent Ting, for the amount of ₱9,000,000.00 during the execution proceedings in the Makati City Case, as evidenced by the Officer's Final Deed of Sale[21] dated October 27, 2006 (Officer's Final Deed of Sale) issued by Sheriff Alejo. In this regard, Ligon learned that the Makati City RTC had issued its first assailed **Order**[22] **dated February 9, 2007** (First Assailed Order), directing Atty. Garing, as the Register of Deeds of Muntinlupa City, to: (*a*) register the Officer's Final Deed of Sale on the official Record Book of the Register of Deeds of Muntinlupa City; and (*b*) cancel TCT No. 8502 in the name of Sps. Baladjay and **issue a new title in the name of Ting, free from any liens and encumbrances**.

Atty. Garing manifested[23] before the Makati City RTC that it submitted the matter *en consulta*[24] to the Land Registration Authority (LRA) as he was uncertain whether the annotations on TCT No. 9273 should be carried over to TCT No. 8502. In response to the manifestation, the Makati City RTC issued its second assailed **Order**[25] **dated March 20, 2007** (Second Assailed Order), directing Atty. Garing to comply with the First Assailed Order under pain of contempt. It explained that it

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[20] *Id.* at 290.

[21] *Id.* at 198-199.

[22] *Id.* at 294-295. Penned by Judge Reynaldo M. Laigo.

[23] Manifestation dated February 28, 2007; *id.* at 297-298.

[24] *Id.* at 296.

[25] *Id.* at 299-301.

could not allow the LRA to carry over all annotations previously annotated on TCT No. 9273 in the name of Polished Arrow as said course of action would run counter to its December 9, 2004 Decision which specifically ordered the cancellation of said TCT and the restoration of TCT No. 8502 in its previous condition. It further clarified that:[26]

> [I]f there were liens or encumbrances annotated on TCT No. 8502 in the name of Rosario Baladjay when the same was cancelled and TCT No. 9273 was issued by the Register of Deeds of Muntinlupa City in favor of Polished Arrow Holdings, Inc. based on the Deed of Absolute Sale executed between the former and the latter, **only such liens or encumbrances will have to be carried over to the new Transfer Certificate of Title that he (Atty. Garing) is mandated to immediately issue in favor of Leonardo J. Ting even as the Order of the Court dated February 9, 2007 decreed that a new TCT be issued in the name of Mr. Leonardo J. Ting, free from any encumbrance**. On the other hand, if TCT No. 8502 in the name of Rosario Baladjay was free from any liens or encumbrances when the same was cancelled and TCT No. 9273 was issued by the Register of Deeds of Muntinlupa City in favor of Polished Arrow Holdings, Inc. by virtue of that Deed of Absolute Sale executed between Rosario Baladjay and Polished Arrow Holdings, Inc., **it necessarily follows that the new Transfer of Certificate of Title that the said Registrar of Deeds is duty bound to issue immediately in favor of Leonardo Ting will also be freed from any liens and encumbrances, as simple as that**. (Emphases and underscoring supplied)

Based on the foregoing, it pronounced that it was Atty. Garing's ministerial duty "to promptly cancel TCT No. 8502/T-44 in the name of defendant-spouses Baladjay and to issue a new Transfer Certificate of Title in the name of the highest bidder, Leonardo J. Ting."[27]

Separately, Ting filed a motion before the Makati City RTC on account of Atty. Garing's letter[28] dated March 26, 2006 requiring him to comply with certain documentary requirements

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[26] *Id.* at 300.

[27] *Id.*

[28] CA *rollo*, p. 169.

and to pay the appropriate capital gains, documentary stamp and transfer taxes before a new title could be issued in his name. In its third assailed **Order**[29] **dated April 25, 2007** (Third Assailed Order**)**, the Makati City RTC directed Ting to pay the aforesaid taxes and ordered Atty. Garing to immediately cancel TCT No. 8502 and issue a new title in the former's name.

On June 7, 2007, Atty. Garing issued **TCT No. 19756**[30] in the name of **Ting**, **free from any liens and encumbrances**. Later, Ting sold[31] the subject property to respondent Benito G. Techico (Techico), resulting in the cancellation of TCT No. 19756 and the issuance of **TCT No. 31001**[32] in **Techico's name.**

In view of the preceding circumstances, Ligon filed, *inter alia*, a *certiorari* petition[33] against respondent Presiding Judge Reynaldo Laigo (Judge Laigo), Sheriff Alejo, Atty. Garing, Ting, and Techico (respondents), alleging, among others, that the Makati City RTC committed grave abuse of discretion in issuing the Assailed Orders. In this relation, she prayed that the said orders be declared null and void for having been issued in violation of her right to due process, and resulting in (*a*) the deletion of the December 3, 2002 attachment annotation on TCT No. 9273 which evidences her prior attachment lien over the subject property, and (*b*) the issuance of new titles in the names of Ting and Techico.

Consolidated with Ligon's *certiorari* petition is a complaint for indirect contempt[34] against respondents, whereby it was alleged that the latter unlawfully interfered with the court processes of the Quezon City RTC, particularly by deleting the December 3, 2002 attachment annotation on TCT No. 9273

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[29] *Rollo*, pp. 302-303.

[30] *Id.* at 192-194.

[31] *Id.* at 315-316.

[32] *Id.* at 195-197.

[33] CA *rollo*, pp. 2-50.

[34] *Id.* at 47.

which thereby prevented the execution of the Quezon City RTC's March 26, 2008 Decision.

The CA Ruling

In a Decision[35] dated October 30, 2009, the CA dismissed Ligon's *certiorari* petition, finding that the Makati City RTC did not gravely abuse its discretion in issuing the Assailed Orders, adding further that the same was tantamount to a collateral attack against the titles of both Ting and Techico, which is prohibited under Section 48[36] of Presidential Decree No. (PD) 1529.[37] Likewise, it dismissed the indirect contempt charge for lack of sufficient basis, emphasizing that the Assailed Orders were issued prior to the Quezon City RTC's Decision, meaning that the said issuances could not have been issued in disregard of the latter decision.

Aggrieved, Ligon filed the present petition.

The Issues Before the Court

The Court resolves the following essential issues: (*a*) whether or not the CA erred in ruling that the Makati City RTC did not gravely abuse its discretion in issuing the Assailed Orders; and (*b*) whether or not Judge Laigo should be cited in contempt and penalized administratively.

The Court's Ruling

The petition is partly meritorious.

A. Issuance of the Assailed Orders vis-à-vis Grave Abuse of Discretion.

Attachment is defined as a provisional remedy by which the property of an adverse party is taken into legal custody,

[35] *Rollo,* pp. 554-570.

[36] Section 48. *Certificate not subject to collateral attack.* A certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law.

[37] Entitled "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES"; otherwise known as the "Property Registration Decree."

either at the commencement of an action or at any time thereafter, as a security for the satisfaction of any judgment that may be recovered by the plaintiff or any proper party.[38] Case law instructs that an attachment is a proceeding *in rem*, and, hence, is against the particular property, enforceable against the whole world. Accordingly, the attaching creditor acquires a specific lien on the attached property which nothing can subsequently destroy except the very dissolution of the attachment or levy itself. Such a proceeding, in effect, means that the property attached is an indebted thing and a virtual condemnation of it to pay the owner's debt. The lien continues until the debt is paid, or sale is had under execution issued on the judgment, or until the judgment is satisfied, or the attachment discharged or vacated in some manner provided by law.[39] Thus, a prior registration[40] of an attachment lien creates a preference,[41] such that when an attachment has been duly levied upon a property, a purchaser thereof subsequent to the attachment takes the property subject to the said attachment.[42] As provided under PD 1529, said

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[38] *Sps. Olib v. Judge Pastoral*, G.R. No. 81120, August 20, 1990, 188 SCRA692, 696-697.

[39] *Valdevieso v. Damalerio*, 492 Phil. 51, 58 (2005).

[40] Section 69 of PD 1529 states the rule on the registration of an attachment:

Section 69. *Attachments*. An attachment, or a copy of any writ, order or process issued by a court of record, intended to create or preserve any lien, status, right, or attachment upon registered land, shall be filed and registered in the Registry of Deeds for the province or city in which the land lies, and, in addition to the particulars required in such papers for registration, shall contain a reference to the number of the certificate of title to be affected and the registered owner or owners thereof, and also if the attachment, order, process or lien is not claimed on all the land in any certificate of title a description sufficiently accurate for identification of the land or interest intended to be affected. A restraining order, injunction or *mandamus* issued by the court shall be entered and registered on the certificate of title affected, free of charge.

[41] *Philippine Veterans Bank v. Monillas*, G.R. No. 167098, March 28, 2008, 550 SCRA 251, 257.

[42] See *Joaquin v. Avellano*, 6 Phil. 551 (1906).

registration operates as a form of constructive notice to all persons.[43]

Applying these principles to this case, the Court finds that the CA erred in holding that the RTC did not gravely abuse its discretion in issuing the Assailed Orders as these issuances essentially disregarded, *inter alia*, Ligon's prior attachment lien over the subject property patently anathema to the nature of attachment proceedings which is well-established in law and jurisprudence.[44] In this case, Ligon, in order to secure the satisfaction of a favorable judgment in the Quezon City Case, applied for and was eventually able to secure a writ of preliminary attachment[45] over the subject property on November 25, 2002, which was later annotated on the dorsal portion[46] of TCT No. 9273 in the name of Polished Arrow on December 3, 2002. Notwithstanding the subsequent cancellation of TCT No. 9273 due to the Makati City RTC's December 9, 2004 Decision rescinding the transfer of the subject property from Sps. Baladjay to Polished Arrow upon a finding that the same was made in fraud of creditors, Ligon's attachment lien over the subject property continued to subsist since the attachment she had earlier secured binds the property itself, and, hence, continues until the judgment debt of Sps. Baladjay to Ligon as adjudged in the Quezon City Case is satisfied, or the attachment discharged or vacated in some manner provided by law. The grave abuse of

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[43] Section 52 of PD 1529 provides:

Section 52. *Constructive notice upon registration.* Every conveyance, mortgage, lease, lien, **attachment**, order, judgment, instrument or entry affecting registered land **shall, if registered, filed or entered in the office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering**. (Emphases and underscoring supplied)

[44] "[G]rave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence." (*Sps. Marquez v. Sps. Alindog*, G.R. No. 184045, January 22, 2014.)

[45] See *Joaquin v. Avellano*, *supra* note 42, at 552-553.

[46] *Rollo*, p. 181.

discretion of the Makati City RTC lies with its directive to issue a new certificate of title in the name of Ting (*i.e.*, TCT No. 19756),[47] free from any liens and encumbrances. This course of action clearly negates the efficacy of Ligon's attachment lien and, also, defies the legal characterization of attachment proceedings. It bears noting that Ligon's claim, secured by the aforesaid attachment, is against Sps. Baladjay whose ownership over the subject property had been effectively restored in view of the RTC's rescission of the property's previous sale to Polished Arrow.[48] Thus, Sps. Ligon's attachment lien against Sps. Baladjay as well as their successors-in-interest should have been preserved, and the annotation thereof carried over to any subsequent certificate of title,[49] the most recent of which as it appears on record is TCT No. 31001 in the name of Techico, without prejudice to the latter's right to protect his own ownership interest over the subject property.

That said, the Court now proceeds to resolve the second and final issue on indirect contempt.

B. Indirect Contempt Charges.

While the Court agrees with Ligon's position on the issue of grave abuse of discretion, it holds an opposite view anent its complaint for indirect contempt against Judge Laigo and/or the respondents in this case.

Contempt of court has been defined as a **willful disregard or disobedience of a public authority**. In its broad sense,

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[47] *Id.* at 192-194.

[48] As it appears from the records of this case, Polished Arrow – which, through the individual defendants, even admitted during the proceedings in the Quezon City Case that it was merely a dummy corporation used by Sps. Baladjay – maintains no interest over the subject property. (*Id.* at 282-283.)

[49] Section 59 of PD 1529 provides:

Section 59. *Carry over of encumbrances.* If, at the time of any transfer, subsisting encumbrances or annotations appear in the registration book, they shall be carried over and stated in the new certificate or certificates; except so far as they may be simultaneously released or discharged.

contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court.[50]

Contempt of court is of two (2) kinds, namely: direct and indirect contempt. **Indirect contempt** or constructive contempt is that which is committed out of the presence of the court. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice would constitute indirect contempt.[51]

The indirect contempt charges in this case involve an invocation of paragraphs b, c, and d, Section 3, Rule 71 of the Rules of Court which read as follows:

Section 3. *Indirect contempt to be punished after charge and hearing*. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

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(b) Disobedience of or resistance to a lawful writ, x x x;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede,

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[50] *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, G.R. No. 155849, August 31, 2011, 656 SCRA 331, 342-343.

[51] *Baculi v. Belen*, A.M. No. RTJ-09-2176, April 20, 2009, 586 SCRA 69, 77, citing *Re: Conviction of Judge Adoracion G. Angeles, RTC, Br. 121, Caloocan City in Crim. Cases Q-97-69655 to 56 for Child Abuse*, 567 Phil. 189, 203-204 (2008).

obstruct, or degrade the administration of justice;

Examining the petition, the Court finds that Ligon failed to sufficiently show how the acts of each of the respondents, or more specifically, Judge Laigo, constituted any of the acts punishable under the foregoing section tending towards a wilful disregard or disobedience of a public authority. In issuing the Assailed Orders, Judge Laigo merely performed his judicial functions pursuant to the December 9, 2004 Decision in the Makati City Case which had already attained finality. Thus, without Ligon's proper substantiation, considering too that Judge Laigo's official acts are accorded with the presumption of regularity,[52] the Court is constrained to dismiss the indirect contempt charges in this case.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated October 30, 2009 of the Court of Appeals in CA-G.R. SP No. 106175 is **REVERSED** and **SET ASIDE**. Accordingly, the Assailed Orders subject of this case are hereby declared **NULL** and **VOID** only insofar as they relate to the issuance of Transfer Certificate of Title No. 19756 in the name of respondent Leonardo J. Ting free from any liens and encumbrances. The Register of Deeds of Muntinlupa City is **DIRECTED** to carry over and annotate on TCT No. 31001 in the name of respondent Benito G. Techico the original attachment lien of petitioner Leticia P. Ligon as described in this Decision. The indirect contempt charges are, however, **DISMISSED**.

SO ORDERED.

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

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[52] See Section 3(m), Rule 131 of the Rules of Court.

[*] Designated Acting Chief Justice per Special Order No. 1644 dated February 25, 2014.

[**] Designated Acting Member per Special Order No. 1643 dated February 25, 2014.

SECOND DIVISION

[G.R. No. 190632. February 26, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANOLITO LUCENA *y* VELASQUEZ, *alias* "Machete,"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** Primarily, in reviewing rape cases, this Court is guided with three settled principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Rape is a serious transgression with grave consequences both for the accused and the complainant. Following the above principles, this Court is duty-bound to conduct a thorough and exhaustive evaluation of a judgment of conviction for rape.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; HOW COMMITTED; EXPOUNDED.—** Carnal knowledge of a woman under any of the following instances constitutes rape: (1) when **force or intimidation is used**; (2) when the woman is deprived of reason or is otherwise unconscious; and (3) when she is under twelve (12) years of age. The force and violence required in rape cases is relative and need not be overpowering or irresistible when applied. For rape to exist, it is not necessary that the force or intimidation be so great or be of such character as could not be resisted – **it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind**. Further, it should be viewed from the perception and judgment of the victim at the time of the commission of the crime. **What is vital is that the force or**

intimidation be of such degree as to cow the unprotected and vulnerable victim into submission. Force is sufficient if it produces fear in the victim, such as when the latter is threatened with death.

3. ID.; ID.; ID.; ELEMENT OF FORCE AND INTIMIDATION; ESTABLISHED.— In the case at bench, as can be gleaned from the transcript of stenographic notes and as observed by the trial court, which the Court of Appeals sustained, AAA's categorical, straightforward and positive testimony revealed that the appellant was armed with a gun and the same was pointed at her while she was ordered to lie down and to take off her clothes, to which she acceded because of fear for her life and personal safety. The appellant then put the gun down on the ground and successfully inserted his penis into AAA's vagina, not only once but thrice. This happened despite AAA's plea not to rape her. And, after satisfying his lust, the appellant threatened AAA that he would kill her should she tell anyone about the incident. This same threat of killing AAA was first made by the appellant while the former was still inside the tricycle on their way to *Kabuboy* Bridge. It cannot be denied, therefore, that force and intimidation were employed by the appellant upon AAA in order to achieve his depraved desires.

4. ID.; ID.; ID.; PHYSICAL RESISTANCE BY THE VICTIM IS NOT AN ESSENTIAL ELEMENT OF RAPE AND NEED NOT BE ESTABLISHED WHEN INTIMIDATION IS EXERCISED UPON THE VICTIM, AND THE LATTER SUBMITS HERSELF, AGAINST HER WILL, TO THE RAPIST'S EMBRACE BECAUSE OF FEAR FOR HER LIFE AND PERSONAL SAFETY.— While it is true that the appellant had already put the gun down on the ground the moment he inserted his penis into AAA's vagina and was actually unarmed on those three (3) episodes of sexual intercourse, the same does not necessarily take away the fear of being killed that had already been instilled in the mind of AAA. Emphasis must be given to the fact that the gun was still within appellant's reach, therefore, he could still make good of his threat on AAA at anytime the latter would show any resistance to his evil desires. AAA's lack of physical resistance, therefore, is understandable and would not in any way discredit her testimony. It must be borne in mind that when a rape victim becomes paralyzed with fear, she cannot be expected to think and act coherently. Further, as has been

consistently held by this Court, **physical resistance is not an essential element of rape** and need not be established when intimidation is exercised upon the victim, and, the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety. The victim's failure to shout or offer tenacious resistance did not make voluntary her submission to the criminal acts of her aggressor. It bears stressing that not every rape victim can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; **people react differently**. Some may shout, some may faint, while others may be shocked into insensibility.

5. ID.; ID.; ID.; A MEDICAL EXAMINATION AND A MEDICAL CERTIFICATE ARE MERELY CORROBORATIVE OF THE COMMISSION OF RAPE AND ARE NOT INDISPENSABLE TO A SUCCESSFUL PROSECUTION FOR RAPE.— In his attempt to ruin AAA's credibility in order to exculpate himself from all the charges, the appellant puts stress on the portion of the result of AAA's medical examination disclosing that even her anal orifice was also penetrated by a hard object, which she never mentioned in her testimony. To the mind of this Court, such argument is flimsy and totally misplaced. It would not even work to appellant's advantage and would not in any way cast doubt on the veracity of AAA's testimony. As this Court has previously stated, a medical examination and a medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape. Moreover, even though AAA made no mention of any anal penetration, such omission would not change the fact that she was, indeed, raped by the appellant. As succinctly found by both lower courts, AAA categorically, straightforwardly, clearly and positively narrated her harrowing experience in the hands of the appellant. She recounted in detail how the appellant took advantage of her by bringing her to *Kabuboy* Bridge, where nobody was present; commanding her to lie down and undress herself at a point of a gun; and successfully inserting his penis into her vagina, not only once but thrice. AAA stated that after the first penetration the appellant stopped. After about five minutes, however, the appellant, once again, inserted his penis into her vagina. Thereafter, the appellant stopped. For the third and last time, the appellant again inserted his penis

into her vagina. This narration was consistent with the rest of the medical findings showing fresh hymenal lacerations on AAA's vagina, which according to Dr. Tan is a clear evidence of "blunt force or penetrating trauma" - a disclosure of sexual abuse.

6. ID.; ID.; ID.; APPELLANT'S CONVICTION FOR THE THREE COUNTS OF RAPE IS PROPER; THE THREE INSERTIONS INTO THE VICTIM WERE IN SATIATION OF SUCCESSIVE BUT DISTINCT CRIMINAL CARNALITY.— The appellant, citing *People v. Aaron* (*Aaron Case*), insists that he cannot be convicted of three (3) counts of rape despite the three (3) penetrations because he was motivated by a single criminal intent. This Court finds this contention fallacious. In the *Aaron Case*, the accused inserted his penis into the victim's vagina; he then withdrew it and ordered the latter to lie down on the floor and, for the second time, he inserted again his penis into the victim's vagina; the accused, thereafter, stood up and commanded the victim to lie near the headboard of the makeshift bed and, for the third time, he inserted again his penis into the victim's vagina and continued making pumping motions. From these sets of facts, this Court convicted the accused therein for only one count of rape despite the three successful penetrations because there is no indication in the records from which it can be inferred that the accused decided to commit those separate and distinct acts of sexual assault **other than his lustful desire to change positions inside the room where the crime was committed**. This Court, thus, viewed that the three penetrations occurred during one continuing act of rape in which the accused was obviously motivated by a single criminal intent. The circumstances in the present case, however, are far different from the *Aaron Case*. Here, we quote with approval the observations of the Court of Appeals, which affirmed that of the trial court, to wit: We agree with the trial court that the [herein appellant] should be convicted of three (3) counts of rape. It appears from the facts that the [appellant] thrice succeeded in inserting his penis into the private part of [AAA]. The three (3) penetrations occurred one after the other at an interval of five (5) minutes wherein the **[appellant] would rest after satiating his lust upon his victim and, after he has regained his strength, he would again rape [AAA]**. Hence, it can be clearly inferred from the foregoing that when the

[appellant] decided to commit those separate and distinct acts of sexual assault upon [AAA], he was not motivated by a single impulse[,] but rather by several criminal intent. Hence, his conviction for three (3) counts of rape is indubitable. This Court sustains the findings of both lower courts that, indeed, the three insertions into AAA were in satiation of successive but distinct criminal carnality. Therefore, the appellant's conviction for three counts of rape is proper.

7. ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY, WHICH IS MANDATORY IN A FINDING OF RAPE IS DISTINCT FROM AND SHOULD NOT BE DENOMINATED AS MORAL DAMAGES WHICH ARE BASED ON DIFFERENT JURAL FOUNDATIONS AND ASSESSED BY THE COURT IN THE EXERCISE OF SOUND DISCRETION.— Civil indemnity, which is mandatory in a finding of rape is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion. The award of moral damages, on the other hand, is automatically granted in rape cases without need of further proof other than the commission of the crime because it is assumed that a rape victim has actually suffered moral injuries entitling her to such award. Hence, this Court upholds the P50,000.00 civil indemnity and P50,000.00 moral damages, for each count of rape, that were awarded by both lower courts in favor of AAA.

8. ID.; ID.; ID.; AWARD OF EXEMPLARY DAMAGES IN FAVOR OF THE VICTIM IS JUSTIFIED CONSIDERING THE PRESENCE OF AN AGGRAVATING CIRCUMSTANCE IN THE COMMISSION OF THE CRIME.— In addition, this Court deems it proper to award exemplary damages in favor of AAA. The award of exemplary damages is justified under Article 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying. In this case, since the qualifying circumstance of the use of a deadly weapon was present in the commission of the crime, exemplary damages in the amount of ₱30,000.00, for each count of rape, is awarded in favor of AAA. Moreover, in line with recent jurisprudence, the interest at the rate of 6% *per annum* shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.

9. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; APPELLANT FAILED TO SUFFICIENTLY ESTABLISH THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE SCENE OF THE CRIME WHEN IT WAS COMMITTED.— For his ultimate defense, the appellant puts forward denial and *alibi*. Notably, these defenses are totally inconsistent with his line of argument that the rape was committed without force or intimidation thereby implying that the sexual intercourse between him and AAA was consensual. Time and again, this Court has viewed denial and *alibi* as inherently weak defenses, unless supported by clear and convincing evidence, the same cannot prevail over the positive declarations of the victim who, in a simple and straightforward manner, convincingly identified the appellant as the defiler of her chastity. Simply put, the positive assertions of AAA that he raped her are entitled to greater weight. While denial and *alibi* are legitimate defenses in rape cases, bare assertions to this effect cannot overcome the categorical testimony of the victim, as in this case. Also, appellant's *alibi* that on the night the rape incident happened, he was at the *barangay* hall doing his job as radio operator and at 12:00 midnight he already went home, failed to sufficiently establish that it was physically impossible for him to be at the scene of the crime when it was committed. Moreover, the corroborating testimony of defense witness Corpuz that the appellant left at about past 12:00 midnight, almost the same time the rape incident happened, and then returned after two (2) hours, even bolster the possibility of the appellant's presence at the scene of the crime.

10. ID.; ID.; CREDIBILITY OF WITNESSES; ABSENCE OF ILL-MOTIVE ON THE PART OF THE VICTIM TO FALSELY TESTIFY AGAINST THE ACCUSED BOLSTERS THE VERACITY OF THE ACCUSATION.— This Court also notes that the appellant failed to show any ill-motive on the part of AAA to testify falsely against him. This bolsters the veracity of AAA's accusation since no woman would concoct a tale that would tarnish her reputation, bring humiliation and disgrace to herself and her family, and submit herself to the rigors, shame, and stigma attendant to the prosecution of rape, unless she is motivated by her quest to seek justice for the crime committed against her.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

The subject of this appeal is the Decision[1] dated 24 August 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03371 affirming the Decision[2] dated 30 April 2008 of the Regional Trial Court (RTC) of Parañaque City, Branch 260, in Criminal Cases Nos. 03-0763 to 03-0765, finding herein appellant Manolito Lucena *y* Velasquez *alias* "Machete" guilty beyond reasonable doubt of three counts of rape, thereby sentencing him to suffer the penalty of *reclusion perpetua* for each count and ordering him to pay AAA[3] the amount of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity also for each count.

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[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Estela M. Perlas-Bernabe (now a member of this Court) and Stephen C. Cruz, concurring. *Rollo*, pp. 2-13.

[2] Penned by Judge Jaime M. Guray. CA *rollo*, pp. 20-33.

[3] This is pursuant to the ruling of this Court in *People v. Cabalquinto*, 533 Phil. 703 (2006), wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective 15 November 2004.

Three (3) similarly worded Informations,[4] all dated 24 June 2003 allege:

> That on or about the 28th day of April 2003, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], a *Barangay Tanod* Volunteer, who took advantage of his position to facilitate the commission of the crime, **by means of force, threat or intimidation and with the use of a gun** did then and there willfully, unlawfully and feloniously **have carnal knowledge of the complainant AAA, a minor, 17 years of age, against her will and consent**. (Emphasis and italics supplied).

The appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY to all the charges against him.[5] Thereafter, the cases were jointly tried.

The prosecution presented AAA, the victim herself; and Dr. Merle Tan (Dr. Tan) of the Child Protection Unit, University of the Philippines – Philippine General Hospital (UP-PGH), who examined the victim.

The testimonies of the above-named prosecution witnesses established that on 28 April 2003, at around 11:30 p.m., while AAA, who was then 17 years old, having been born on 10 July 1986, was walking and chatting with her friends along one of the streets of San Dionisio, Parañaque City, two (2) *barangay tanods*, one of whom is the appellant, approached and informed them that they were being arrested for violating a city ordinance imposing curfew against minors. AAA's companions, however, managed to escape, thus, she alone was apprehended.[6] AAA was then ordered by the *barangay tanods* to board the tricycle. Afraid that she might spend the night in jail, AAA pleaded with them and protested that she did not commit any offense as she was just chatting with her friends. AAA's plea, however, remained unheeded.[7]

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[4] Records, pp. 1-3.

[5] Per Certificate of Arraignment and RTC Order both dated 24 September 2004. *Id.* at 34 and 36-37.

[6] Testimony of AAA, TSN, 3 March 2005, pp. 4-6.

[7] Testimony of AAA, TSN, 6 May 2005, p. 7.

AAA was then brought by the two (2) *barangay tanods* within the vicinity of the San Dionisio *Barangay* Hall. Afterwards, one of them alighted from the tricycle and went inside the *barangay* hall. The appellant, on the other hand, stayed in the tricycle to guard AAA. After a while, the *barangay tanod*, the one who went inside the *barangay* hall, returned. But, the appellant told the former that he will just be the one to bring AAA back to her house.[8]

But, instead of escorting AAA back to her house, the appellant brought her to *Kabuboy* Bridge in San Dionisio, Parañaque City. While on their way, the appellant threatened AAA that he would kill her once she resists or jumps off the tricycle. Upon arrival, the appellant ordered AAA to alight from the tricycle. AAA asked the appellant what he would do with her but the former did not respond. The appellant then took out the backseat of the tricycle and positioned it in a grassy area. He subsequently pointed a gun at AAA and commanded her to lie down and to take off her clothes. The appellant later put the gun down on the ground and inserted his penis into AAA's vagina despite the latter's plea not to rape her. Satisfied, the appellant stopped. But, after a short while, or after about five (5) minutes, the appellant, once again, inserted his penis into AAA's vagina. Thereafter, he stopped. On the third time, the appellant inserted again his penis into AAA's vagina. Fulfilling his bestial desire, the appellant stopped and finally ordered AAA to dress up. The appellant even threatened AAA that he would kill her should she tell anyone about what happened between them.[9]

The appellant, thereafter, directed AAA to board the tricycle. He then brought AAA in front of a school in Parañaque City. But, before allowing AAA to get off, the appellant repeated his threat to kill her should she tell anyone about the incident.[10]

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[8] Testimony of AAA, TSN, 3 March 2005, pp. 6-7.

[9] Testimony of AAA, *id.* at 7-10; Testimony of AAA, TSN, 6 May 2005, pp. 10-13.

[10] Testimony of AAA, *id.* at 10.

The following day, AAA took the courage to seek the assistance of their *barangay kagawad*, who simply advised her to just proceed to the *barangay* hall to lodge her complaint against the appellant. AAA and her mother subsequently went to PGH, where she was subjected to physical examination by Dr. Tan,[11] which resulted in the following findings:

HYMEN	Tanner Stage 3, healing laceration[s] 3 and 5 o'clock area with petechiae, fresh laceration at 9 o'clock area with eccymosi at 8-10 o'clock area, Type of Hymen: Crescentic
x x x	x x x x x x
ANAL EXAMINATION	Perianal Skin: fresh laceration[s] at 12 and 1 o'clock area. No evident injury at the time of examination.
x x x	x x x x x x
IMPRESSIONS	
	Disclosure of sexual abuse. Genital findings show clear Evidence Of Blunt Force Or Penetrating Trauma.[12] (Emphasis supplied).

AAA also went to the Coastal Road Police Headquarters, where she executed her sworn statement accusing the appellant of rape. AAA was able to identify the appellant as her assailant because the former was wearing a jacket emblazoned with "*Barangay* Police," as well as a *Barangay* Identification Card, at the time of the incident.[13]

The appellant and Rodel Corpuz (Corpuz) took the witness stand for the defense.

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[11] Testimony of AAA, *id.* at 11-12; Testimony of Dr. Merle Tan, TSN, 24 June 2005, p. 6.

[12] Per Medico-Legal Report Number 2003-04-0078. Records, p. 11; *Id.* at 9-18.

[13] Testimony of AAA, TSN, 3 March 2005, pp. 13-16; Court of Appeals Decision dated 24 August 2009. *Rollo*, p. 5.

In the course of Corpuz's direct examination, however, the parties made the following stipulations: (1) that the [herein appellant] was the assigned *barangay* radio operator on that date, [28 April 2003], and he stayed at the *barangay* hall from 12:00 midnight to 5:00 a.m.; (2) that the witness was there up to 12:00 midnight, but at about past 12:00, he left and returned after two (2) hours, at 2:00 o'clock a.m.; and (3) that when he woke up at 5:00 o'clock in the morning, the [appellant] was still there. With these stipulations, Corpuz's testimony was dispensed with.[14]

The appellant, for his part, could only muster the defenses of denial and *alibi*. He, thus, offered a different version of the story.

On 28 April 2003, the appellant claimed that he was on duty as a radio operator at the *barangay hall*. His task as such was to receive complaints from the residents of the *barangay*, as well as to receive calls from fellow *barangay* officials who are in need of assistance. On the same day, he received a call from his companion, who is also a *barangay tanod*. He cannot, however, recall any unusual incident that transpired on that day.[15]

The appellant admitted that he knew AAA as the one who lodged a complaint against him but he denied that he knew her personally. He also vehemently denied the following: (1) that he raped AAA; (2) that he was one of those *barangay tanods* who apprehended AAA for violating the curfew ordinance of their *barangay*; and (3) that he was the one driving the tricycle in going to the *barangay* hall. Instead, the appellant claimed that after 12:00 midnight of 28 April 2003, he went home already. In fact, he was shocked when he was arrested on 25 September 2003 as he did not commit any crime.[16]

In its Decision dated 30 April 2008, the trial court, giving credence to the categorical, straightforward and positive

[14] RTC Order dated 13 September 2007. Records, pp. 119-120.

[15] Testimony of the appellant, TSN, 7 September 2006, p. 5.

[16] *Id.* at 3-4, 7-9 and 13-16.

testimony of AAA, coupled with the medical findings of sexual abuse, convicted the appellant of three (3) counts of rape as defined and penalized under paragraph 1(a) of Article 266-A, in relation to Article 266-B, of the Revised Penal Code of the Philippines, as amended. The trial court, thus, decreed:

> **WHEREFORE**, the Court finds the [herein appellant] **MANOLITO LUCENA *y* VELASQUEZ *alias* MACHETE**, **GUILTY** beyond reasonable doubt of three (3) counts of ***Rape (under Art. 266-a par. 1(a) in relation to Art. 266-B of the RPC as amended by RA 8353)*** and is hereby sentenced to suffer the penalty of ***reclusion perpetua for each count of Rape***. In addition, the [appellant] is ordered to pay [AAA] the amount of ***₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity for each count***.[17] (Emphasis and italics theirs).

The appellant appealed[18] the trial court's Decision to the Court of Appeals with the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE [HEREIN APPELLANT] OF RAPE DESPITE THE PROSECUTION'S FAILURE TO PROVE THE ELEMENT OF FORCE AND INTIMIDATION.

II.

GRANTING, *ARGUENDO*, THAT THE [APPELLANT] COMMITTED THE CRIME CHARGED, THE TRIAL COURT GRAVELY ERRED IN CONVICTING HIM OF THREE (3) COUNTS OF RAPE.[19]

After a thorough study of the records, the Court of Appeals rendered its now assailed Decision dated 24 August 2009 sustaining appellant's conviction for three (3) counts of rape, as well as the damages awarded to AAA. In doing so, the Court of Appeals explained that the facts revealed that the appellant succeeded thrice in inserting his penis into AAA's vagina. The said three (3) penetrations happened one after

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

[18] Per Notice of Appeal dated 20 May 2008. *Id.* at 34.

[19] Appellant's Brief dated 16 December 2008. *Id.* at 48.

another at an interval of five (5) minutes, wherein the appellant would take a rest after satiating his lust and after regaining his strength would again rape AAA. Undoubtedly, the appellant decided to commit those separate and distinct acts of sexual assault on AAA. Thus, his conviction for three (3) counts of rape is irrefutable.[20]

Hence, this appeal.[21]

Both parties in their manifestations[22] before this Court adopted their respective appeal briefs[23] filed with the Court of Appeals *in lieu* of Supplemental Briefs.

In his Brief, the appellant contends that the prosecution failed to prove that force or intimidation attended the commission of rape. Records revealed that AAA did not even attempt to resist his alleged sexual advances over her person. Instead, AAA opted to remain passive throughout her ordeal despite the fact that during the three (3) episodes of their sexual intercourse he was unarmed and she, thus, had all the opportunity to escape, which she never did. These reactions of AAA were contrary to human experience, thus, cast serious doubts on the veracity of her testimony and on her credibility as a witness.

The appellant similarly argues that the result of AAA's medical examination is quite disturbing as it appears that her anal orifice was also penetrated by a hard object though nothing was said to this effect in her testimony.

The appellant likewise avers that he cannot be convicted of three counts of rape. The intervening period of five (5) minutes between each penetration does not necessarily prove that he decided to commit three separate acts of rape. He maintains that what is of prime importance is that he was motivated by a single criminal intent.

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[20] *Rollo*, p. 12.

[21] Per Notice of Appeal dated 11 September 2009. *Id.* at 14-15.

[22] *Id.* at 29-30 and 38-40.

[23] CA *rollo*, pp. 46-61 and 88-113.

With the foregoing, the appellant believes that his guilt was not proven beyond reasonable doubt; hence, his acquittal is inevitable.

This Court holds otherwise. The conviction of the appellant, thus, stands but the damages awarded in favor AAA must be modified.

Primarily, in reviewing rape cases, this Court is guided with three settled principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[24]

Rape is a serious transgression with grave consequences both for the accused and the complainant. Following the above principles, this Court is duty-bound to conduct a thorough and exhaustive evaluation of a judgment of conviction for rape.[25]

After a careful scrutiny of the entire records, however, this Court finds no justifiable reason to reverse the rulings of the lower courts.

All the Informations in this case charged the appellant with rape under paragraph 1(a), Article 266-A, in relation to paragraph 2, Article 266-B, of the Revised Penal Code, as amended. These provisions specifically state:

ART. 266-A. *Rape; When and How Committed*. — Rape is committed —

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

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[24] *People v. Celocelo*, G.R. No. 173798, 15 December 2010, 638 SCRA 576, 583-584.

[25] *Id.* at 584.

a) Through **force, threat or intimidation**;

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

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

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

x x x x x x x x x

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

Whenever the rape is committed **with the use of a deadly weapon** or by two or more persons, the penalty shall be *reclusion perpetua* to death. (Emphasis supplied).

Certainly, carnal knowledge of a woman under any of the following instances constitutes rape: (1) when **force or intimidation is used**; (2) when the woman is deprived of reason or is otherwise unconscious; and (3) when she is under twelve (12) years of age.[26]

The force and violence required in rape cases is relative and need not be overpowering or irresistible when applied. For rape to exist, it is not necessary that the force or intimidation be so great or be of such character as could not be resisted – **it is only necessary that the force or intimidation be sufficient to consummate the purpose which the accused had in mind**.[27] Further, it should be viewed from the perception and judgment of the victim at the time of the commission of the crime. **What is vital is that the force or intimidation be of such degree as to cow the unprotected and vulnerable victim into submission. Force is sufficient if it produces fear in the victim, such as when the latter is threatened with death**.[28]

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[26] *Id.*

[27] *People v. Javier*, 370 Phil. 128, 145 (1999).

[28] *People v. Cañada*, G.R. No. 175317, 2 October 2009, 602 SCRA 378, 392.

In the case at bench, as can be gleaned from the transcript of stenographic notes and as observed by the trial court, which the Court of Appeals sustained, AAA's categorical, straightforward and positive testimony revealed that the appellant was armed with a gun and the same was pointed at her while she was ordered to lie down and to take off her clothes, to which she acceded because of fear for her life and personal safety. The appellant then put the gun down on the ground and successfully inserted his penis into AAA's vagina, not only once but thrice. This happened despite AAA's plea not to rape her. And, after satisfying his lust, the appellant threatened AAA that he would kill her should she tell anyone about the incident. This same threat of killing AAA was first made by the appellant while the former was still inside the tricycle on their way to *Kabuboy* Bridge.[29] It cannot be denied, therefore, that force and intimidation were employed by the appellant upon AAA in order to achieve his depraved desires.

While it is true that the appellant had already put the gun down on the ground the moment he inserted his penis into AAA's vagina and was actually unarmed on those three (3) episodes of sexual intercourse, the same does not necessarily take away the fear of being killed that had already been instilled in the mind of AAA. Emphasis must be given to the fact that the gun was still within appellant's reach, therefore, he could still make good of his threat on AAA at anytime the latter would show any resistance to his evil desires. AAA's lack of physical resistance, therefore, is understandable and would not in any way discredit her testimony.

It must be borne in mind that when a rape victim becomes paralyzed with fear, she cannot be expected to think and act coherently. Further, as has been consistently held by this Court, **physical resistance is not an essential element of rape** and need not be established when intimidation is exercised upon the victim, and, the latter submits herself, against her will, to the rapist's embrace because of fear for her life and personal safety. The victim's failure to shout or offer tenacious resistance

[29] Testimony of AAA, TSN, 6 May 2005, p. 10.

did not make voluntary her submission to the criminal acts of her aggressor. It bears stressing that not every rape victim can be expected to act with reason or in conformity with the usual expectations of everyone. The workings of a human mind placed under emotional stress are unpredictable; **people react differently**. Some may shout, some may faint, while others may be shocked into insensibility.[30]

In his attempt to ruin AAA's credibility in order to exculpate himself from all the charges, the appellant puts stress on the portion of the result of AAA's medical examination disclosing that even her anal orifice was also penetrated by a hard object, which she never mentioned in her testimony.

To the mind of this Court, such argument is flimsy and totally misplaced. It would not even work to appellant's advantage and would not in any way cast doubt on the veracity of AAA's testimony. As this Court has previously stated, a medical examination and a medical certificate, albeit corroborative of the commission of rape, are not indispensable to a successful prosecution for rape.[31] Moreover, even though AAA made no mention of any anal penetration, such omission would not change the fact that she was, indeed, raped by the appellant. As succinctly found by both lower courts, AAA categorically, straightforwardly, clearly and positively narrated her harrowing experience in the hands of the appellant. She recounted in detail how the appellant took advantage of her by bringing her to *Kabuboy* Bridge, where nobody was present; commanding her to lie down and undress herself at a point of a gun; and successfully inserting his penis into her vagina, not only once but thrice. AAA stated that after the first penetration the appellant stopped. After about five minutes, however, the appellant, once again, inserted his penis into her vagina. Thereafter, the appellant stopped. For the third and last time, the appellant again inserted his penis into her vagina. This narration was consistent with the rest of the medical findings

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[30] *People v. Alberio*, G.R. No. 152584, 6 July 2004, 433 SCRA 469, 475.

[31] *People v. Linsie*, G.R. No. 199494, 27 November 2013.

showing fresh hymenal lacerations on AAA's vagina, which according to Dr. Tan is a clear evidence of "blunt force or penetrating trauma" - a disclosure of sexual abuse.

For his ultimate defense, the appellant puts forward denial and *alibi*. Notably, these defenses are totally inconsistent with his line of argument that the rape was committed without force or intimidation thereby implying that the sexual intercourse between him and AAA was consensual.

Time and again, this Court has viewed denial and *alibi* as inherently weak defenses, unless supported by clear and convincing evidence, the same cannot prevail over the positive declarations of the victim who, in a simple and straightforward manner, convincingly identified the appellant as the defiler of her chastity.[32] Simply put, the positive assertions of AAA that he raped her are entitled to greater weight. While denial and *alibi* are legitimate defenses in rape cases, bare assertions to this effect cannot overcome the categorical testimony of the victim,[33] as in this case.

Also, appellant's *alibi* that on the night the rape incident happened, he was at the *barangay* hall doing his job as radio operator and at 12:00 midnight he already went home, failed to sufficiently establish that it was physically impossible for him to be at the scene of the crime when it was committed. Moreover, the corroborating testimony of defense witness Corpuz that the appellant left at about past 12:00 midnight, almost the same time the rape incident happened, and then returned after two (2) hours, even bolster the possibility of the appellant's presence at the scene of the crime.

This Court also notes that the appellant failed to show any ill-motive on the part of AAA to testify falsely against him. This bolsters the veracity of AAA's accusation since no woman would concoct a tale that would tarnish her reputation, bring humiliation and disgrace to herself and her family, and submit herself to the rigors, shame, and stigma attendant to the prosecution

[32] *People v. Mercado*, 419 Phil. 534, 543 (2001).

[33] *Id.*

of rape, unless she is motivated by her quest to seek justice for the crime committed against her.[34]

In light of the foregoing, it is beyond any cavil of doubt that the appellant's guilt for the crime of rape has been proven beyond reasonable doubt.

As to the number of rapes committed. The appellant, citing *People v. Aaron* (*Aaron Case*),[35] insists that he cannot be convicted of three (3) counts of rape despite the three (3) penetrations because he was motivated by a single criminal intent. This Court finds this contention fallacious.

In the *Aaron Case*, the accused inserted his penis into the victim's vagina; he then withdrew it and ordered the latter to lie down on the floor and, for the second time, he inserted again his penis into the victim's vagina; the accused, thereafter, stood up and commanded the victim to lie near the headboard of the makeshift bed and, for the third time, he inserted again his penis into the victim's vagina and continued making pumping motions. From these sets of facts, this Court convicted the accused therein for only one count of rape despite the three successful penetrations because there is no indication in the records from which it can be inferred that the accused decided to commit those separate and distinct acts of sexual assault **other than his lustful desire to change positions inside the room where the crime was committed**. This Court, thus, viewed that the three penetrations occurred during one continuing act of rape in which the accused was obviously motivated by a single criminal intent.

The circumstances in the present case, however, are far different from the *Aaron Case*. Here, we quote with approval the observations of the Court of Appeals, which affirmed that of the trial court, to wit:

We agree with the trial court that the [herein appellant] should be convicted of three (3) counts of rape. It appears from the facts

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[34] *People v. Linsie*, *supra* note 31.

[35] 438 Phil. 296 (2002).

that the [appellant] thrice succeeded in inserting his penis into the private part of [AAA]. The three (3) penetrations occurred one after the other at an interval of five (5) minutes wherein the **[appellant] would rest after satiating his lust upon his victim and, after he has regained his strength, he would again rape [AAA]**. Hence, it can be clearly inferred from the foregoing that when the **[appellant] decided to commit those separate and distinct acts of sexual assault upon [AAA], he was not motivated by a single impulse[,] but rather by several criminal intent**. Hence, his conviction for three (3) counts of rape is indubitable.[36] (Emphasis supplied).

This Court sustains the findings of both lower courts that, indeed, the three insertions into AAA were in satiation of successive but distinct criminal carnality. Therefore, the appellant's conviction for three counts of rape is proper.

As to penalty. The second paragraph of Art. 266-B of the Revised Penal Code, as amended, provides that "[w]henever the rape is committed **with the use of a deadly weapon** x x x the penalty shall be *reclusion perpetua* to death." As it was properly alleged and proved that the appellant used a gun in order to consummate his evil desires, thus, both lower courts correctly imposed upon him the penalty of *reclusion perpetua* for each count of rape.

As to damages. Civil indemnity, which is mandatory in a finding of rape is distinct from and should not be denominated as moral damages which are based on different jural foundations and assessed by the court in the exercise of sound discretion.[37] The award of moral damages, on the other hand, is automatically granted in rape cases without need of further proof other than the commission of the crime because it is assumed that a rape victim has actually suffered moral injuries entitling her to such award.[38] Hence, this Court upholds the ₱50,000.00 civil indemnity and ₱50,000.00 moral damages, for each count of rape, that were awarded by both lower courts in favor of AAA.

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[36] *Rollo*, p. 12.

[37] *People v. Montemayor*, 444 Phil. 169, 190 (2003).

[38] *People v. Dimaano*, 506 Phil. 630, 652 (2005).

In addition, this Court deems it proper to award exemplary damages in favor of AAA. The award of exemplary damages is justified under Article 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying.[39] In this case, since the qualifying circumstance of the use of a deadly weapon was present in the commission of the crime, exemplary damages in the amount of ₱30,000.00, for each count of rape, is awarded in favor of AAA. Moreover, in line with recent jurisprudence, the interest at the rate of 6% *per annum* shall be imposed on all damages awarded from the date of the finality of this judgment until fully paid.[40]

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03371 dated 24 August 2009 finding herein appellant guilty beyond reasonable doubt of three counts of rape is hereby **AFFIRMED** with the **MODIFICATIONS** that: (1) the exemplary damages in the amount of ₱30,000.00, for each count of rape, is awarded in favor of AAA; and (2) the appellant is ordered to pay AAA the interest on all damages at the legal rate of 6% *per annum* from the date of finality of this judgment.

SO ORDERED.

Carpio[*] *(Acting C.J. (Chairperson), del Castillo, Mendoza,*[**] and *Leonen,*[***] *JJ.,* concur.

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[39] *People v. Montemayor*, *supra* note 37 at 190.

[40] *People v. Linsie*, *supra* note 31.

[*] Per Special Order No. 1644 dated 25 February 2014.

[**] Per Raffle dated 13 January 2014.

[***] Per Special Order No. 1636 dated 17 February 2014.

THIRD DIVISION

[G.R. No. 191714. February 26, 2014]

T & H SHOPFITTERS CORPORATION/GIN QUEEN CORPORATION, STINNES HUANG, BEN HUANG and ROGELIO MADRIAGA, *petitioners, vs.* **T & H SHOPFITTERS CORPORATION/GIN QUEEN WORKERS UNION, ELPIDIO ZALDIVAR, DARIOS GONZALES, WILLIAM DOMINGO, BOBBY CASTILLO, JIMMY M. PASCUA, GERMANO M. BAJO, RICO L. MANZANO, ALLAN L. CALLORINA, ROMEO BLANCO, GILBERT M. GARCIA, CARLOS F. GERILLO, EDUARDO A. GRANDE, EDILBRANDO MARTICIO, VIVENCIO SUSANO, ROLANDO GARCIA, JR., MICHAEL FABABIER, ROWELL MADRIAGA, PRESNIL TOLENTINO, MARVIN VENTURA, FRANCISCO RIVARES, PLACIDO TOLENTINO and ROLANDO ROMERO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; RIGHT TO SELF-ORGANIZATION; UNFAIR LABOR PRACTICE; TEST WHETHER AN EMPLOYER HAS INTERFERED WITH AND COERCED EMPLOYEES IN THE EXERCISE OF THEIR RIGHT TO SELF ORGANIZATION.— In the case of *Insular Life Assurance Co., Ltd. Employees Association – NATU v. Insular Life Assurance Co. Ltd.*, this Court had occasion to lay down the test of whether an employer has interfered with and coerced employees in the exercise of their right to self-organization, that is, whether the employer has engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employees' rights; and that it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a reasonable inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining.

2. ID.; ID.; ID.; ID.; ID.; PETITIONER'S UNDISPUTED ACTIONS PRIOR AND IMMEDIATELY BEFORE THE SCHEDULED CERTIFICATION ELECTION, WHILE SEEMINGLY INNOCUOUS, UNDULY MEDDLED IN THE AFFAIRS OF ITS EMPLOYEES IN SELECTING THEIR EXCLUSIVE BARGAINING REPRESENTATIVE.— The questioned acts of petitioners, namely: 1) sponsoring a field trip to Zambales for its employees, to the exclusion of union members, before the scheduled certification election; 2) the active campaign by the sales officer of petitioners against the union prevailing as a bargaining agent during the field trip; 3) escorting its employees after the field trip to the polling center; 4) the continuous hiring of subcontractors performing respondents' functions; 5) assigning union members to the Cabangan site to work as grass cutters; and 6) the enforcement of work on a rotational basis for union members, all reek of interference on the part of petitioners. Indubitably, the various acts of petitioners, taken together, reasonably support an inference that, indeed, such were all orchestrated to restrict respondents' free exercise of their right to self-organization. The Court is of the considered view that petitioners' undisputed actions prior and immediately before the scheduled certification election, while seemingly innocuous, unduly meddled in the affairs of its employees in selecting their exclusive bargaining representative. In *Holy Child Catholic School v. Hon. Patricia Sto. Tomas*, the Court ruled that a certification election was the sole concern of the workers, save when the employer itself had to file the petition x x x, but even after such filing, its role in the certification process ceased and became merely a bystander. Thus, petitioners had no business persuading and/or assisting its employees in their legally protected independent process of selecting their exclusive bargaining representative.

3. ID.; ID.; ID.; ID.; ID.; THERE IS SUFFICIENT FACTUAL AND LEGAL BASES TO SUPPORT THE FINDING OF UNFAIR LABOR PRACTICE.— Not content with achieving a "no union" vote in the certification election, petitioners launched a vindictive campaign against union members by assigning work on a rotational basis while subcontractors performed the latter's functions regularly. Worse, some of the respondents were made to work as grass cutters in an effort to dissuade them from further collective action. Again, this cannot be countenanced. More importantly, petitioners' bare denial of some of the

complained acts and unacceptable explanations, a mere afterthought at best, cannot prevail over respondents' detailed narration of the events that transpired. At this juncture, it bears to emphasize that in labor cases, the quantum of proof necessary is substantial evidence, or 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. In fine, mindful of the nature of the charge of ULP, including its civil and/or criminal consequences, the Court finds that the NLRC, as correctly sustained by the CA, had sufficient factual and legal bases to support its finding of ULP.

4. ID.; ID.; ATTORNEY'S FEES; AWARD PROPERLY DELETED IN CASE AT BAR; THE AWARD OF 10% ATTORNEY'S FEES UNDER ARTICLE 111 OF THE LABOR CODE IS LIMITED TO CASES OF UNLAWFUL WITHHOLDING OF WAGES.— Anent the issue on the award of attorney's fees, the applicable law concerning the grant thereof in labor cases is Article 111 of the Labor Code. Pursuant thereto, the award of 10% attorney's fees is limited to cases of unlawful withholding of wages. In this case, however, the Court cannot find any claim or proof that petitioners unlawfully withheld the wages of respondents. Consequently, the grant of 10% attorney's fees in favor of respondents is not justified under the circumstances. Accordingly, the Court deems it proper to delete the same.

APPEARANCES OF COUNSEL

Dionisio Javier & Argamosa Law Office for petitioners.
Ernesto R. Arellano for respondents.

D E C I S I O N

MENDOZA, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are: 1) the November 12, 2009 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 107188,

[1] *Rollo*, pp. 34-45. Penned by Associate Justice Jose C. Reyes with Presiding Justice Conrado M. Vasquez and Associate Justice Apolinario D. Bruselas, Jr., concurring.

which affirmed the July 24, 2007 and November 13, 2008 Decision[2] of the National Labor Relations Commission *(NLRC)*; and 2) its March 24, 2010 Resolution[3] denying reconsideration of its decision.

The Facts

On September 7, 2004, the T&H Shopfitters Corporation/ Gin Queen Corporation workers union *(THS-GQ Union)* and Elpidio Zaldivar,[4] Darios Gonzales, William Domingo, Bobby Castillo, Jimmy M. Pascua, Germano M. Bajo,[5] Rico L. Manzano, Allan L. Callorina,[6] Romeo Blanco, Gilbert M. Garcia, Carlos F. Gerillo, Eduardo A. Grande, Edilbrando Marticio, Vivencio Susano, Rolando Garcia, Jr., Michael Fababier, Rowell Madriaga, Presnil Tolentino, Marvin Ventura, Francisco Rivares, Placido Tolentino, and Rolando Romero *(respondents)*, all of whom are officers and/or members of THS-GQ union, filed their Complaint[7] for Unfair Labor Practice *(ULP)* by way of union busting, and Illegal Lockout, with moral and exemplary damages and attorney's fees, against T&H Shopfitters Corporation *(T&H Shopfitters)* and Gin Queen Corporation *(Gin Queen)* (collectively referred to as "*petitioners*"), before the Labor Arbiter *(LA)*.

Respondents treated T&H Shopfitters and Gin Queen as a single entity and their sole employer. In their desire to improve their working conditions, respondents and other employees of petitioners held their first formal meeting on November 23, 2003 to discuss the formation of a union. The following day or on November 24, 2003, seventeen (17) employees were barred

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[2] *Id.* at 81-90 and 91-93, respectively.

[3] *Id.* at 47.

[4] Also referred to as Elpidio Saldivar in the Certification Against Non-forum Shopping filed before the LA, *id.* at 105.

[5] Also referred to as Germano P. Bajo in the Certification Against Non-forum Shopping filed before the LA, *id.*

[6] Also referred to as Allan F. Callorina in the Certification Against Non-forum Shopping filed before the LA, *id.*

[7] *Id.* at 104-106.

from entering petitioners' factory premises located in Castillejos, Zambales, and ordered to transfer to T&H Shopfitters' warehouse at Subic Bay Freeport Zone *(SBFZ)* purportedly because of its expansion. Afterwards, the said seventeen (17) employees were repeatedly ordered to go on forced leave due to the unavailability of work.

On December 18, 2003, the Department of Labor and Employment *(DOLE)*, Regional Office No. III issued a certificate of registration in favor of THS-GQ Union.

Respondents contended that the affected employees were not given regular work assignments, while subcontractors were continuously hired to perform their functions. This development prompted respondents to seek the assistance of the National Conciliation and Mediation Board. Subsequently, an agreement between petitioners and THS-GQ Union was reached. Petitioners agreed to give priority to regular employees in the distribution of work assignments. Respondents averred, however, that petitioners never complied with its commitment but instead hired contractual workers.

On March 24, 2004, THS-GQ Union filed a petition for certification election. On July 12, 2004, an order was issued to hold the certification election in both T&H Shopfitters and Gin Queen. Eventually, the certification election was scheduled on October 11, 2004.

Meanwhile, through a memorandum, dated August 17, 2004, petitioner Ben Huang *(Huang)*, Director for Gin Queen, informed its employees of the expiration of the lease contract between Gin Queen and its lessor in Castillejos, Zambales and announced the relocation of its office and workers to Cabangan, Zambales. Some of the respondents, who visited the site in Cabangan, discovered that it was a "*talahiban*" or grassland. Later, the said union officers and members were made to work as grass cutters in Cabangan, under the supervision of a certain Barangay Captain Greg Pangan. Due to these circumstances, the employees assigned in Cabangan did not report for work. As a consequence, the THS-GQ Union president was made to explain why he should not be terminated for insubordination. The other employees

who likewise failed to report in Cabangan were meted out with suspension.

On October 10, 2004, petitioners sponsored a field trip to Iba, Zambales, for its employees. The officers and members of the THS-GQ Union were purportedly excluded from the field trip. On the evening of the field trip, a certain Angel Madriaga, a sales officer of petitioners, campaigned against the union in the forthcoming certification election.

The following day or on October 11, 2004, the employees were escorted from the field trip to the polling center in Zambales to cast their votes. On October 13, 2004, the remaining employees situated at the SBFZ plant cast their votes as well. Due to the heavy pressure exerted by petitioners, the votes for "no union" prevailed. On October 14, 2004, the THS-GQ Union filed its protest with respect to the certification election proceedings.

Respondents averred that the following week after the certification elections were held, petitioners retrenched THG-GQ Union officers and members assigned at the Zambales plant. Respondents claimed that the work weeks of those employees in the SBFZ plant were drastically reduced to only three (3) days in a month.

In its defense, Gin Queen, claiming that it is a corporation separate and distinct from T&H Shopfitters, stressed that respondents were all employees. Gin Queen claimed that due to the decrease in orders from its customers, they had to resort to cost cutting measures to avoid anticipated financial losses. Thus, it assigned work on a rotational basis. It was of the impression that the employees, who opposed its economic measures, were merely motivated by spite in filing the complaint for ULP against it.

In addition, Gin Queen explained that its transfer from Castillejos, Zambales to Cabangan, Zambales was a result of the expiration of its lease agreement with Myra D. Lumibao *(Myra)*, its lessor. Since the Cabangan site was bare and still required construction, Gin Queen offered work, to employees who opted to stay, on rotation as well.

In its Decision,[8] dated December 21, 2005, the LA dismissed respondents' complaint and all their money claims for lack of merit.

In dismissing the complaint, the LA explained:

x x x x x x x x x.

In the case at bar, we carefully examined the grounds raised by the complainants [herein respondents] as basis for claiming that the respondents [herein petitioners] committed unfair labor practices by way of illegal lockout, one of which is the alleged transfer of 17 workers to Subic Bay Freeport Zone, however, we are dismay *(sic)* to know that not even one of these 17 workers is a complainant in these cases. While the labor union may represent its members in filing cases before this Office, at least these members must show their intention to file a case by signing in the complaint to prove that they have grievances against their employer which was lacking in these cases. Further, there was no showing that the transfer of these 17 workers is considered an unfair labor practice of the respondents considering that their transfer was effected long before the union was organized.

We also analyzed the allegations of the complainants that the transfer of the working cite *(sic)* of the respondent Gin Queen Corporation was a part of the unfair labor practices committed by the respondents, however, the complainants failed miserably to controvert the documentary evidence adduced by the respondent Gin Queen Corporation that the lease contract agreement of the place had already expired and it was the management prerogative to transfer as a cost cutting measures. Again the transfer of the place of work would not be considered as unfair labor practice.

Complainants alleged that the respondents committed unfair labor practices by means of 'lockout' wherein the respondents should have temporarily refused to provide work to the complainants by a result of labor or industrial dispute. Complainants failed to show that the rotation of work for them is considered an unfair labor practice and considered a 'Lockout'. Complainants rather submitted several notices showing that the company has no sufficient orders coming from clients and does not have enough raw materials for production as basis for these complainants not to render work and be rotated, and thus

[8] *Id.* at 203-215.

controvert their allegations that there was 'lockout' committed by the respondents. Further, the documentary evidences adduced by the complainants clearly show that respondents never terminated the complainants when they were given their notices of suspension negating the claim that there was 'lockout' committed by respondents.

x x x x x x x x x.[9]

Aggrieved, respondents appealed to the NLRC. In its July 24, 2007 Decision, the NLRC *reversed* the LA decision and ruled in favor of respondents. The dispositive portion of the said decision reads:

WHEREFORE, the decision appealed from is hereby **REVERSED**.

Respondents T & H Shopfitters Corp., Gin Queen Corp. (or 'MDL', as it is now called), Stennis Huang, as well as the presidents of the respondent corporations as of November 2003 and the date of the execution of this decision are hereby ordered to pay each of the complainants moral and exemplary damages amounting to ₱50,000.00 and ₱35,000.00 respectively. In addition, they shall pay the complainants attorney's fees equivalent to ten percent (10%) of the total judgment award.

SO ORDERED.

In granting the appeal, the NLRC reasoned:

Based on the above-mentioned affidavits,[10] it may be concluded that the respondents [herein petitioners] committed unfair labor practice acts consisting in interfering with the exercise of the employees' right to self-organization (specifically, sponsoring a field trip on the day preceding the certification election, warning the employees of dire consequences should the union prevail, and escorting them to the polling center) and discriminating in regard to conditions of employment in order to discourage union membership (assigning union officers and active union members as grass cutters on rotation basis).

x x x x x x x x x

[9] Citations omitted.

[10] Executed by herein respondent Elpidio Zaldivar; and a certain Darius Bustamante, who is not a party in the present case.

Furthermore, it is noteworthy that, based on their Articles of Incorporation, T & H Corporation and Gin Queen Corporation are engaged in the same line of business.

It should also be noted that respondents did not controvert the allegations to the effect that Myra D. Lumibao, the supposed lessor of respondent corporations, is the wife of respondent Stennis Huang, and that Gin Queen Corporation has been renamed 'MDL', but still carries on the same business in the same premises using the same machines and facilities. These circumstances, together with the supposed assignment of respondent Stennis Huang's interest in Gin Queen Corporation to a third party are badges of fraud that justify the piercing of the veil of corporate fiction. x x x

Thus, based on the foregoing, respondents T & H Shopfitters Corporation, Gin Queen Corporation (now known as 'MDL') and Stennis Huang, as well as the presidents of the respondent corporations as of November 2003 and the date of execution of this decision may be held liable for unfair labor practice and the corresponding award of moral and exemplary damages.[11]

Petitioners filed a motion for reconsideration but the NLRC denied the same in its November 13, 2008 Decision.

Dissatisfied with the adverse ruling, petitioners instituted a petition for *certiorari* under Rule 65 of the Rules of Court before the CA arguing grave abuse of discretion on the part of the NLRC in reversing the LA decision.

In its Decision, dated November 12, 2009, the CA *sustained* the NLRC ruling. The *fallo* of which reads:

WHEREFORE, premises considered, the petition for *certiorari* is DENIED. The NLRC Decisions dated July 24, 2007 and November 13, 2008 in NLRC NCR CA NO. 048258 (NLRC RAB III-09-7882-04, NLRC RAB III-09-7980-04) are AFFIRMED.

SO ORDERED.

The CA held that errors of judgment are not within the province of a special civil action for *certiorari*. It declared that factual findings of quasi-judicial agencies that had acquired

[11] Citations omitted.

expertise in matters entrusted to their jurisdiction were accorded not only respect but finality if they were supported by substantial evidence. The CA noted that the NLRC considered the evidence and applied the law in this case, thus, no grave abuse of discretion could be imputed on the part of the NLRC in reversing the LA ruling.

Petitioners moved for reconsideration but the same was denied by the CA in its March 24, 2010 Resolution.

Not in conformity with the ruling of the CA, petitioners seek relief with this Court raising the following

ISSUES

I. WHETHER OR NOT PETITIONERS T & H SHOPFITTERS CORPORATION AND GIN QUEEN CORPORATION ARE ONE AND THE SAME CORPORATION.

II. WHETHER OR NOT PETITIONER GIN QUEEN CORPORATION IS LIABLE TO THE RESPONDENTS FOR UNFAIR LABOR PRACTICE.

III. WHETHER OR NOT THE AWARD OF MORAL AND EXEMPLARY DAMAGES IN FAVOR OF THE RESPONDENTS IS PROPER.

IV. WHETHER OR NOT THE AWARD OF TEN PERCENT (10%) ATTORNEY'S FEES IN FAVOR OF THE RESPONDENT IS PROPER.[12]

Simply put, the issue for the Court's resolution is whether ULP acts were committed by petitioners against respondents in the case at bench.

In support of their position, petitioners stress that T&H Shopfitters and Gin Queen are corporations separate and distinct from each other. Consequently, T&H Shopfitters and Stinnes Huang, an officer of T&H Shopfitters, cannot be held liable for ULP for the reason that there is no employer-employee relationship between the former and respondents. Further, Gin Queen avers that its decision to implement an enforced rotation of work

[12] *Rollo,* p. 16.

assignments for respondents was a management prerogative permitted by law, justified by the decrease in the orders it received from its customers. It explains that its failure to present concrete proof of its decreasing orders was due to the impossibility of proving a negative assertion. It also asserts that the transfer from Castillejos to Cabangan was made in good faith and solely because of the expiration of its lease contract in Castillejos.

The Court's Ruling

As to the issue of ULP, petitioners' argument is utterly without merit.

In the case at bench, petitioners are being accused of violations of paragraphs (a), (c), and (e) of Article 257 (formerly Article 248) of the Labor Code,[13] to wit:

Article 257. *Unfair labor practices of employers*.—It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

x x x x x x x x x

(c) To contract out services or functions being performed by union members when such will interfere with, restrain, or coerce employees in the exercise of their right to self-organization;

x x x x x x x x x

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. x x x

The concept of ULP is embodied in Article 256 (formerly Article 247) of the Labor Code,[14] which provides:

Article 256. *Concept of unfair labor practice and procedure for prosecution thereof*.—Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to

[13] Renumbered pursuant to Republic Act No. 10151.

[14] Renumbered pursuant to Republic Act No. 10151.

the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

x x x x x x x x x

In essence, ULP relates to the commission of acts that transgress the workers' right to organize. As specified in Articles 248 [now Article 257] and 249 [now Article 258] of the Labor Code, the prohibited acts must necessarily relate to the workers' right to self-organization x x x.[15]

In the case of *Insular Life Assurance Co., Ltd. Employees Association – NATU v. Insular Life Assurance Co. Ltd.*,[16] this Court had occasion to lay down the test of whether an employer has interfered with and coerced employees in the exercise of their right to self-organization, that is, whether the employer has engaged in conduct which, it may reasonably be said, tends to interfere with the free exercise of employees' rights; and that it is not necessary that there be direct evidence that any employee was in fact intimidated or coerced by statements of threats of the employer if there is a reasonable inference that anti-union conduct of the employer does have an adverse effect on self-organization and collective bargaining.

The questioned acts of petitioners, namely: 1) sponsoring a field trip to Zambales for its employees, to the exclusion of union members, before the scheduled certification election; 2) the active campaign by the sales officer of petitioners against the union prevailing as a bargaining agent during the field trip; 3) escorting its employees after the field trip to the polling center; 4) the continuous hiring of subcontractors performing respondents' functions; 5) assigning union members to the Cabangan site to work as grass cutters; and 6) the enforcement of work on a rotational basis for union members, all reek of interference on the part of petitioners.

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[15] *Baptista v. Villanueva*, G.R. No. 194709, July 31, 2013.

[16] 147 Phil. 194 (1971).

Indubitably, the various acts of petitioners, taken together, reasonably support an inference that, indeed, such were all orchestrated to restrict respondents' free exercise of their right to self-organization. The Court is of the considered view that petitioners' undisputed actions prior and immediately before the scheduled certification election, while seemingly innocuous, unduly meddled in the affairs of its employees in selecting their exclusive bargaining representative. In *Holy Child Catholic School v. Hon. Patricia Sto. Tomas*,[17] the Court ruled that a certification election was the sole concern of the workers, save when the employer itself had to file the petition x x x, but even after such filing, its role in the certification process ceased and became merely a bystander. Thus, petitioners had no business persuading and/or assisting its employees in their legally protected independent process of selecting their exclusive bargaining representative. The fact and peculiar timing of the field trip sponsored by petitioners for its employees not affiliated with THS-GQ Union, although a positive enticement, was undoubtedly extraneous influence designed to impede respondents in their quest to be certified. This cannot be countenanced.

Not content with achieving a "no union" vote in the certification election, petitioners launched a vindictive campaign against union members by assigning work on a rotational basis while subcontractors performed the latter's functions regularly. Worse, some of the respondents were made to work as grass cutters in an effort to dissuade them from further collective action. Again, this cannot be countenanced.

More importantly, petitioners' bare denial of some of the complained acts and unacceptable explanations, a mere afterthought at best, cannot prevail over respondents' detailed narration of the events that transpired. At this juncture, it bears to emphasize that in labor cases, the quantum of proof necessary is substantial evidence,[18] or that amount of relevant evidence as a reasonable mind might accept as adequate to support a

[17] G.R. No. 179146, July 23, 2013.

[18] *Antiquina v. Magsaysay Maritime Corporation*, G.R. No. 168922, April 13, 2011, 648 SCRA 659, 675, citing *National Union of Workers in Hotels,*

conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[19]

In fine, mindful of the nature of the charge of ULP, including its civil and/or criminal consequences, the Court finds that the NLRC, as correctly sustained by the CA, had sufficient factual and legal bases to support its finding of ULP.

Anent the issue on the award of attorney's fees, the applicable law concerning the grant thereof in labor cases is Article 111[20] of the Labor Code. Pursuant thereto, the award of 10% attorney's fees is limited to cases of unlawful withholding of wages. In this case, however, the Court cannot find any claim or proof that petitioners unlawfully withheld the wages of respondents. Consequently, the grant of 10% attorney's fees in favor of respondents is not justified under the circumstances. Accordingly, the Court deems it proper to delete the same.

WHEREFORE, the November 12, 2009 Decision of the Court of Appeals and its March 24, 2010 Resolution, in CA-G.R. SP No. 107188, are **AFFIRMED**, except with respect to the award of attorney's fees which is hereby **DELETED.**

SO ORDERED.

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

Restaurants and Allied Industries-Manila Pavilion Hotel Chapter v. National Labor Relations Commission, G.R. No. 179402, September 30, 2008, 567 SCRA 291.

[19] *Surigao Del Norte Electric Cooperative v. Gonzaga*, G.R. No. 187722, June 10, 2013, citing *Caltex Philippines, Inc. v. Agad*, G.R. No. 162017, April 23, 2010, 619 SCRA 196, 207.

[20] Art. 111. Attorney's fees.

a. In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

b. It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

* Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

THIRD DIVISION

[G.R. No. 193217. February 26, 2014]

CORAZON MACAPAGAL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; PETITIONER AVAILED OF THE WRONG MODE OF ASSAILING THE TRIAL COURT'S DENIAL OF HER NOTICE OF APPEAL; THE QUESTIONED ORDER DENYING HER NOTICE OF APPEAL IS NOT A DECISION OR FINAL ORDER FROM WHICH AN APPEAL MAY BE TAKEN.— Petitioner availed of the wrong mode of assailing the trial court's denial of her notice of appeal. Sections 2 and 3, Rule 122 of the Revised Rules of Criminal Procedure lay down the rules on where, how and when appeal is taken. x x x Consequently, the disallowance of the notice of appeal signifies the disallowance of the appeal itself. A petition for review under Rule 45 of the Rules of Court is a mode of appeal of a lower court's decision or final order direct to the Supreme Court. However, the questioned Order denying her notice of appeal is not a decision or final order from which an appeal may be taken. The Rules of Court specifically provides that no appeal shall be taken from an order disallowing or dismissing an appeal. Rather, the aggrieved party can elevate the matter through a special civil action under Rule 65. Thus, in availing of the wrong mode of appeal in this petition under Rule 45 instead of the appropriate remedy of Rule 65, the petition merits an outright dismissal. The Court has often admonished litigants for unnecessarily burdening it with the task of determining under which rule a petition should fall. It has likewise warned lawyers to follow the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to the client's cause.

2. ID.; ID.; ID.; EVEN IF THE PRESENT PETITION IS TREATED AS ONE FOR *CERTIORARI* UNDER RULE 65, IT IS STILL DISMISSIBLE FOR VIOLATION OF THE HIERARCHY OF COURTS.— Even if we treat this petition as one for *certiorari* under Rule 65, it is still dismissible for violation of the hierarchy

of courts. Although the Supreme Court has concurrent jurisdiction with the RTC and the CA to issue writs of *certiorari*, this should not be taken as granting parties the absolute and unrestrained freedom of choice of the court to which an application will be directed. Direct resort to this Court is allowed only if there are special, important and compelling reasons clearly and specifically spelled out in the petition, which are not present in this case.

3. ID.; ID.; ID.; THE PETITION IS BOUND TO FAIL BECAUSE OF PETITIONER'S REPEATED DISREGARD OF THE RULES AND THE COURT'S LAWFUL ORDERS.— This petition is bound to fail because of petitioner's repeated disregard of the Rules and the Court's lawful orders. In a Resolution dated September 15, 2010, the Court required petitioner to fully comply with the Rules of Court. x x x Despite the directive, no such compliance was made prompting the Court to require her counsel to show cause why he should not be disciplinary dealt with for non-compliance. Records likewise show that petitioner also failed to file a Reply to respondent's Comment to the petition. On August 2, 2011, petitioner's counsel submitted his explanation for non-compliance and asked for more time within which to comply with the Court's resolution, because of heavy workload and his failure to contact petitioner who apparently transferred residence. In a Resolution dated August 31, 2011, the Court, while granting the motion for extension requested, admonished petitioner's counsel for the unsatisfactory explanation. Yet again, petitioner failed to file the required Reply prompting the Court again to ask for the counsel's explanation why he should not be disciplinary dealt with. Petitioner's counsel claimed that he could not prepare the required reply because the documents needed had been destroyed by typhoon "Pedring." He, likewise, pointed out that he exerted earnest efforts to locate petitioner but he could not do so at that point. After the Court required him again to show cause why he should not be disciplinary dealt with for not complying with the Court's resolutions, and since his efforts to communicate with his client proved futile, he asked the Court that he be relieved of all his duties and responsibilities as counsel on record. In a Resolution dated December 10, 2012, we required petitioner herself to comment thereon, but no such compliance was made to date.

4. ID.; ID.; ID.; THE REQUIREMENTS OF THE RULES ON APPEAL CANNOT BE CONSIDERED AS MERELY HARMLESS AND TRIVIAL TECHNICALITIES THAT CAN BE DISCARDED AT WHIM; PARTIES HAVE TO ABIDE WITH GREATER FIDELITY IN ORDER TO FACILITATE THE ORDERLY AND EXPEDITIOUS DISPOSITION OF CASES.— Indeed, cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections in order to serve better the ends of justice. It is the duty of the counsel to make sure of the nature of the errors he proposes to assign, to determine which court has appellate jurisdiction, and to follow the requisites for appeal. Any error in compliance may be fatal to the client's cause. It should be stressed that the right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin and may be exercised only in the manner prescribed by the provisions of law authorizing its exercise. The requirements of the rules on appeal cannot be considered as merely harmless and trivial technicalities that can be discarded at whim. In these times when court dockets are clogged with numerous litigations, parties have to abide by these rules with greater fidelity in order to facilitate the orderly and expeditious disposition of cases.

5. ID.; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; A PETITION FOR REVIEW ON *CERTIORARI* TO THE SUPREME COURT MUST CONTAIN A CERTIFIED TRUE COPY OR DUPLICATE ORIGINAL OF THE ASSAILED DECISION, FINAL ORDER OR JUDGMENT; FAILURE TO COMPLY WITH SUCH REQUIREMENT SHALL BE SUFFICIENT GROUND FOR THE DISMISSAL OF THE PETITION.— Even if we ignore the above non-compliance and consider the petition as an appeal of the trial court's decision convicting her of estafa, again, we cannot do so for yet another fatal procedural shortcoming committed by petitioner. As stated earlier, petitioner elevated to this Court not only the Order denying her notice of appeal but also the Decision convicting her of *estafa* and the Order denying her motion for reconsideration. In utter disregard of the rules of procedure, petitioner attached to the petition only the June 29, 2010 RTC Order denying her notice of appeal but she failed to attach a clearly legible duplicate original or a certified true copy of the

assailed decision convicting her of estafa and the order denying her motion for reconsideration. A petition for review on *certiorari* under Rule 45 of the Rules of Court must contain a certified true copy or duplicate original of the assailed decision, final order or judgment. Failure to comply with such requirement shall be sufficient ground for the dismissal of the petition. The main reason for the prescribed attachments is to facilitate the review and evaluation of the petition by making readily available to the Court all the orders, resolutions, decisions, pleadings, transcripts, documents, and pieces of evidence that are material and relevant to the issues presented in the petition without relying on the case records of the lower court.

APPEARANCES OF COUNSEL

Joel Amos P. Alejandro for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Regional Trial Court[1] *(RTC)* Decision dated November 25, 2008 convicting petitioner Corazon Macapagal of the crime of *Estafa*;[2] the Order denying her Motion for Reconsideration and/or New Trial;[3] and the Order[4] dated June 29, 2010 denying her Notice of Appeal,[5] in Criminal Case No. 98-166722.

For a proper perspective, a brief statement of the factual and procedural antecedents of the case follows:

On November 25, 2008, the RTC rendered a decision finding petitioner guilty of the crime of *Estafa* for misappropriating,

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[1] Branch 9, Manila.

[2] Petition, *rollo*, pp. 3-4.

[3] *Id.* at 4.

[4] Penned by Presiding Judge Amelia Tria-Infante, *id.* at 24-25.

[5] *Rollo*, pp. 19-23.

for her own benefit, the total amount of ₱800,000.00, which is the value of the unreturned and unsold pieces of jewelry.[6] Petitioner received the decision on January 13, 2009 then she timely moved for reconsideration, but was likewise denied in an Order dated May 20, 2009 which the petitioner allegedly received on July 31, 2009. She supposedly filed a Notice of Appeal[7] on August 3, 2009, but the same was denied on June 29, 2010 for having been filed out of time.[8]

Aggrieved, petitioner comes directly before the Court in this petition for review on *certiorari* with the following assignment of errors:

I.

THE REGIONAL TRIAL COURT OF MANILA, BRANCH 9, GRAVELY ERRED IN DENYING THE NOTICE OF APPEAL FILED BY THE HEREIN PETITIONER-APPELLANT.

II.

THE REGIONAL TRIAL COURT OF MANILA, BRANCH 9, GRAVELY ERRED IN CONVICTING THE HEREIN PETITIONER-APPELLANT OF THE CRIME OF ESTAFA.

III.

THE REGIONAL TRIAL COURT OF MANILA, BRANCH 9, GRAVELY ERRED IN DENYING THE MOTION FOR RECONSIDERATION AND/OR NEW TRIAL FILED BY THE HEREIN PETITIONER-APPELLANT.[9]

We deny the petition.

At the outset, the Court notes that the instant case suffers from various procedural infirmities which this Court cannot ignore and are fatal to petitioner's cause. It appears that petitioner assails not only the denial by the RTC of her notice of appeal but likewise seeks the reversal of her conviction for estafa.

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[6] Comment, *id.* at 29-30.

[7] *Rollo,* pp. 19-23.

[8] *Id.* at 24-25.

[9] Petition, *id.* at 7-8.

For reasons that will be discussed below, the petition is bound to fail, because of petitioner's complete disregard of the procedural rules and the orders of the Court.

First, petitioner availed of the wrong mode of assailing the trial court's denial of her notice of appeal. Sections 2 and 3, Rule 122 of the Revised Rules of Criminal Procedure lay down the rules on where, how and when appeal is taken, to wit:

> SEC. 2. *Where to appeal*. – The appeal may be taken as follows:
>
> x x x x x x x x x
>
> (b) To the Court of Appeals or to the Supreme Court in the proper cases provided by law, in cases decided by the Regional Trial Court; and
>
> x x x x x x x x x
>
> SEC. 3. *How appeal taken*. – (a) The appeal to the Regional Trial Court or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, shall be taken by filing a notice of appeal filed with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.
>
> SEC. 6. *When appeal to be taken*. – An appeal must be taken within fifteen days from promulgation of the judgment or from notice of the final order appealed from x x x.

Consequently, the disallowance of the notice of appeal signifies the disallowance of the appeal itself.[10] A petition for review under Rule 45 of the Rules of Court is a mode of appeal of a lower court's decision or final order direct to the Supreme Court. However, the questioned Order denying her notice of appeal is not a decision or final order from which an appeal may be taken.[11] The Rules of Court specifically provides that no appeal shall be taken from an order disallowing or dismissing an appeal. Rather, the aggrieved party can elevate the matter through a special civil action under Rule 65. Thus, in availing of the wrong

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[10] *Neplum, Inc. v. Orbeso*, 433 Phil. 844, 854 (2002).

[11] *Id.*

mode of appeal in this petition under Rule 45 instead of the appropriate remedy of Rule 65, the petition merits an outright dismissal.[12]

The Court has often admonished litigants for unnecessarily burdening it with the task of determining under which rule a petition should fall. It has likewise warned lawyers to follow the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to the client's cause.[13]

Second, even if we treat this petition as one for *certiorari* under Rule 65, it is still dismissible for violation of the hierarchy of courts.[14] Although the Supreme Court has concurrent jurisdiction with the RTC and the CA to issue writs of *certiorari*, this should not be taken as granting parties the absolute and unrestrained freedom of choice of the court to which an application will be directed.[15] Direct resort to this Court is allowed only if there are special, important and compelling reasons clearly and specifically spelled out in the petition, which are not present in this case.[16]

Third, even if we ignore the above non-compliance and consider the petition as an appeal of the trial court's decision convicting her of estafa, again, we cannot do so for yet another fatal procedural shortcoming committed by petitioner. As stated earlier, petitioner elevated to this Court not only the Order denying her notice of appeal but also the Decision convicting her of *estafa* and the Order denying her motion for reconsideration. In utter disregard of the rules of procedure, petitioner attached to the petition only the June 29, 2010 RTC Order denying her notice of appeal but she failed to attach a clearly legible duplicate

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[12] *Id.* at 855.

[13] *Id.* at 856.

[14] *Heirs of Teofilo Gaudiano v. Benemerito*, 545 Phil. 311, 319 (2007).

[15] *Id.* at 319-320.

[16] *Id.* at 320.

original or a certified true copy of the assailed decision convicting her of estafa and the order denying her motion for reconsideration.[17] A petition for review on *certiorari* under Rule 45 of the Rules of Court must contain a certified true copy or duplicate original of the assailed decision, final order or judgment.[18] Failure to comply with such requirement shall be sufficient ground for the dismissal of the petition.[19]

The main reason for the prescribed attachments is to facilitate the review and evaluation of the petition by making readily available to the Court all the orders, resolutions, decisions, pleadings, transcripts, documents, and pieces of evidence that are material and relevant to the issues presented in the petition without relying on the case records of the lower court.[20]

Lastly, this petition is bound to fail because of petitioner's repeated disregard of the Rules and the Court's lawful orders. In a Resolution[21] dated September 15, 2010, the Court required petitioner to fully comply with the Rules of Court, the pertinent portion of which reads:

x x x x x x x x x

2. petitioner to **FULLY COMPLY** with the Rules by submitting: (a) an affidavit of service on the RTC and on the Office of the Solicitor General; (b) a proper verification in accordance with Section 1, Rule 45 in relation to Section 4, Rule 7 of the Rules, and a valid certification of non-forum shopping in accordance with Section 5, Rule 7, with

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[17] Rules of Court, Rule 45, Sec. 4 reads:

SEC. 4. *Contents of the petition.* – The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by petitioner, and shall x x x (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; x x x.

[18] *Spouses Lanaria v. Planta*, 563 Phil. 400, 414 (2007).

[19] Rules of Court, Rule 45, Sec. 5.

[20] *B.E. San Diego, Inc. v. Alzul*, 551. Phil. 841, 860 (2007).

[21] *Rollo*, pp. 27-28.

properly accomplished *jurat* showing that the affiant exhibited before the notary public at least one current identification document issued by an official agency **bearing the photograph and signature** of the affiant as required under Sections 6 and 12, Rule II of the 2004 Rules on Notarial Practice, as amended by Court *En Banc* Resolution dated 19 February 2008 in A.M. No. 02-8-13-SC; and (c) her counsel's contact details pursuant to the *En Banc* Resolution dated 10 July 2007 in A.M. No. 07-6-5-SC, all within five (5) days from notice. x x x[22]

Despite the directive, no such compliance was made prompting the Court to require her counsel to show cause why he should not be disciplinary dealt with for non-compliance. Records likewise show that petitioner also failed to file a Reply to respondent's Comment to the petition.

On August 2, 2011, petitioner's counsel submitted his explanation for non-compliance and asked for more time within which to comply with the Court's resolution, because of heavy workload and his failure to contact petitioner who apparently transferred residence. In a Resolution[23] dated August 31, 2011, the Court, while granting the motion for extension requested, admonished petitioner's counsel for the unsatisfactory explanation. Yet again, petitioner failed to file the required Reply prompting the Court again to ask for the counsel's explanation why he should not be disciplinary dealt with. Petitioner's counsel claimed that he could not prepare the required reply because the documents needed had been destroyed by typhoon "Pedring." He, likewise, pointed out that he exerted earnest efforts to locate petitioner but he could not do so at that point.[24] After the Court required him again to show cause why he should not be disciplinary dealt with for not complying with the Court's resolutions, and since his efforts to communicate with his client proved futile, he asked the Court that he be relieved of all his duties and responsibilities as counsel on record.[25] In a Resolution[26]

[22] *Id.* at 27. (Emphasis in the original)

[23] *Id.* at 54-55.

[24] *Id.* at 57-61.

[25] *Id.* at 65-68.

[26] *Id.* at 70.

dated December 10, 2012, we required petitioner herself to comment thereon, but no such compliance was made to date.

Indeed, cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections in order to serve better the ends of justice.[27] It is the duty of the counsel to make sure of the nature of the errors he proposes to assign, to determine which court has appellate jurisdiction, and to follow the requisites for appeal.[28] Any error in compliance may be fatal to the client's cause.[29] It should be stressed that the right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin and may be exercised only in the manner prescribed by the provisions of law authorizing its exercise.[30] The requirements of the rules on appeal cannot be considered as merely harmless and trivial technicalities that can be discarded at whim. In these times when court dockets are clogged with numerous litigations, parties have to abide by these rules with greater fidelity in order to facilitate the orderly and expeditious disposition of cases.[31]

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.

SO ORDERED.

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

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[27] *Hilario v. People*, G.R. No. 161070, April 14, 2008, 551 SCRA 191, 203.

[28] *Neplum, Inc. v. Orbeso, supra* note 10, at 855.

[29] *Id.* at 856.

[30] *Heirs of Teofilo Gaudiano v. Benemerito, supra* note 14, at 320; *id.* at 867.

[31] *Basuel v. Fact-Finding and Intelligence Bureau (FFIB)*, 526 Phil. 608, 614 (2006).

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

SECOND DIVISION

[G.R. No. 196112. February 26, 2014]

GMA NETWORK, INC., *petitioner, vs.* **NATIONAL TELECOMMUNICATIONS COMMISSION,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; PUBLIC SERVICE ACT; THE 60-DAY PRESCRIPTIVE PERIOD PROVIDED UNDER SECTION 28 OF THE PUBLIC SERVICE ACT CAN BE AVAILED ONLY IN CRIMINAL PROCEEDINGS FILED UNDER CHAPTER IV THEREOF, AND NOT IN PROCEEDINGS THAT PERTAIN TO THE REGULATORY OR ADMINISTRATIVE ASPECTS OF A PUBLIC SERVICE UTILITY'S OBSERVANCE OF THE TERMS AND CONDITIONS OF ITS PERMIT TO OPERATE.— The NTC's authority to impose fines for a public service utility's violation or failure to comply with the terms and conditions of any certificate/s issued by it is expressly sanctioned under Section 21 of the Public Service Act. x x x In *Globe Telecom, Inc. v. NTC,* the Court intimated that the NTC's imposition of a fine pursuant to Section 21 of the Public Service Act is made in an **administrative** proceeding, and thus, must comply with the requirements of notice and hearing. Also, in the same case, the Court classified the fine imposed under the same provision to be one which is **regulatory** and **punitive** in character. x x x In this relation, the Court, in *Sambrano*, ruled that the 60-day prescriptive period provided under Section 28 of the Public Service Act **can be availed of as defenses only in criminal proceedings filed under Chapter IV thereof, and not in proceedings that pertain to the regulatory or administrative aspects of a public service utility's observance of the terms and conditions of his permit to operate.** x x x It is well to note that the criminal proceedings under Chapter IV of the Public Service Act, as mentioned in the *Sambrano* ruling, pertain to those found under Sections 23, 24, 25, and 26 thereof as these provisions pertain to fines imposed "in the discretion of the court" – which means they are imposed in criminal court proceedings – as contradistinguished from Section 21 which

may be imposed by the NTC (then, by the Public Service Commission), after due notice and hearing, In view of the foregoing, the Court thus finds GMA's reliance on the 60-day prescriptive period under Section 28 of the Public Service Act to be misplaced considering that the fine it assails was imposed in an administrative and not a criminal proceeding. Akin to the action taken by the Public Service Commission in the *Sambrano* case, the fine imposed by the NTC was made in line with its authority to enforce the rules and regulations concerning the conduct and operation of GMA as a public service utility, which was particularly meted out to ensure its compliance with the terms and conditions of its PA. There being no cogent reason to depart from established jurisprudence on the matter, the Court therefore holds that the NTC's action in this case had not been barred under the parameters of Section 28 of the Public Service Act.

2. ID.; ID.; FINE IMPOSED BY THE NATIONAL TELECOMMUNICATIONS COMMISSION (NTC) IS NOT UNCONSCIONABLE BECAUSE IT IS THE LAW ITSELF WHICH HAD PROVIDED THE ALLOWABLE THRESHOLD FOR THE AMOUNT THEREFOR.— The applicable provision is Section 21 of the Public Service Act as it specifically governs the NTC's imposition of a fine not exceeding ₱200.00 per day for every day during which the public service utility's violation or non-compliance with the terms and conditions of the certificate/s issued by the NTC continues. On the other hand, Section 23 of the Public Service Act deals with a public service corporation's performance, commission or doing of any forbidden or prohibited act under the same law, as well as its neglect, failure or omission to do or perform an act or thing required thereunder. As earlier mentioned, the proceedings under Section 23 pertain to criminal proceedings conducted in court, whereby the fine imposed, if so determined, is made in the court's discretion, whereas Section 21 pertains to administrative proceedings conducted by the NTC on the grounds stated thereunder. As the present case evidently involves the latter violation, Section 21 and not Section 23 of the Public Service Act applies. Thus, finding that the fine imposed by the NTC at the reduced rate of ₱50.00 per day is consistent with the ₱200.00 per day limitation under Section 21 of the Public Service Act, the fine of ₱76,500.00 for GMA's

failure to comply with the terms and conditions of its PA for a period of 1,521 days was proper. The conscionability of the amount imposed should not be at issue as it is the law itself which had provided the allowable threshold for the amount therefor.

3. ID.; ID.; PETITIONER CANNOT RELY ON THE TEMPORARY PERMITS TO JUSTIFY ITS CONTINUED OPERATION ON AN EXPIRED PROVISIONAL AUTHORITY; A TEMPORARY PERMIT IS NOT INTENDED TO BE A SUBSTITUTE FOR A PROVISIONAL AUTHORITY WHICH MUST BE CONSTANTLY RENEWED DESPITE THE ISSUANCE OF A TEMPORARY PERMIT.— GMA cannot rely on the temporary permits to justify its continued operation on an expired PA. As the NTC itself discloses, a temporary permit is not intended to be a substitute for a PA which must be constantly renewed despite the issuance of a temporary permit. As clarified by the NTC itself in its Comment: [A] **P.A. refers to an authority given to an entity qualified to operate a public utility for a limited period during the pendency of its application for, or before the issuance of its Certificate of Public Convenience (CPC**). It has a general scope because it is akin to a provisional CPC in that it gives a public utility provider power to operate as such and be bound by the laws and rules governing public utilities, pending the issuance of its actual CPC. On the other hand, **a [t]emporary [p]ermit is a document containing the call sign, authorized power, frequency/channel, class station, hours of operation, points of communication and equipment particulars granted to an authorized public utility**. **Its scope is more specific than a P.A. because it contains details and specifications under which a public utility x x x should operate x x x pursuant to a previously updated P.A.** As may be gleaned from the NTC's statement, the operational validity of a temporary permit flows only from "a previously updated PA." This means that there should be an effective PA before a temporary permit is issued. The latter is a specific issuance which proceeds from a pre-requisite PA. While GMA may have been able to secure the successive issuance of temporary permits from the NTC to cover even the PA's expired period, this does not detract from the apparent irregularity of the procedure. The fact remains that GMA operated its radio station between the time that its PA expired on July 14, 1998 and the application for its renewal

was filed on April 13, 2002. Without an updated PA therefor, GMA should not have been issued temporary permits.

4. ID.; ID.; NATIONAL TELECOMMUNICATIONS COMMISSION (NTC); INSOFAR AS THE REGULATION OF THE TELECOMMUNICATIONS INDUSTRY IS CONCERNED, THE NTC HAS EXCLUSIVE JURISDICTION TO "ESTABLISH AND PRESCRIBE RULES, REGULATIONS, STANDARDS AND SPECIFICATIONS IN ALL CASES RELATED TO THE ISSUED CERTIFICATE OF PUBLIC CONVENIENCE AND ADMINISTER AND ENFORCE THE SAME." — GMA must be reminded that the NTC, insofar as the regulation of the telecommunications industry is concerned, has exclusive jurisdiction to "establish and prescribe rules, regulations, standards and specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same." As such, and considering further its expertise on the matter, its interpretation of the rules and regulations it itself promulgates are traditionally accorded by the Court with great weight and respect. As enunciated in *Eastern Telecommunications Phils., Inc. v. International Communication Corporation*: The **NTC**, **being the government agency entrusted with the regulation of activities coming under its special and technical forte**, and possessing the necessary rule-making power to implement its objectives, is **in the best position to interpret its own rules, regulations and guidelines**. The Court has **consistently yielded and accorded great respect** to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law.

5. ID.; ID.; ID.; ALTHOUGH PETITIONER WAS GRANTED NUMEROUS TEMPORARY PERMITS, IT DOES NOT REMOVE THE FACT THAT IT WAS OPERATING ON AN EXPIRED PROVISIONAL AUTHORITY WHICH INFRACTION IS SUBJECT TO THE PENALTY OF FINE UNDER SECTION 21 OF THE PUBLIC SERVICE ACT.— Equally significant is the principle that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. Hence, whatever irregularity had attended the issuance of the temporary permits in this case does not render correct what appears to be erroneous procedure. The NTC itself recognizes this when it stated in its Comment that: Technically speaking, [GMA] should not have

been issued a Temporary Permit. The Temporary Permits relied upon by [GMA] were issued to it on the assumption that its P.A. was up to date. Had [NTC] known that [GMA] had an expired P.A., it would not have granted [GMA] a Temporary Permit to operate its subject radio broadcasting station. Before [GMA] could legally operate its subject radio station, it should have both an updated P.A. and a Temporary Permit for such purpose. Verily, the Court agrees with the NTC's submission that although GMA was granted numerous temporary permits, it does not remove the fact that it was operating on an expired PA, which infraction is subject to the penalty of fine under Section 21 of the Public Service Act. The Court, however, expresses that the NTC should be more circumspect with the enforcement of its internal procedures if only to prevent any future incident similar to the present case. The ideal of public accountability befittingly demands that administrative agencies, such as the NTC, devise appropriate governance systems to ensure that its rules and regulations are followed and complied, and deviations therefrom deterred and quelled. Truth be told, it is through an honest and effective bureaucracy that the government gains the people's trust and deference.

APPEARANCES OF COUNSEL

Belo Gozon Elma Parel Asuncion and Lucila for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated October 12, 2010 and a Resolution[3] dated March 9, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 112437 which affirmed the Orders dated May 25, 2009[4] and

[1] *Rollo*, pp. 3-46.

[2] *Id.* at 52-65. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan, concurring.

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

[4] *Id.* at 96-100. Signed by Commissioner Ruel V. Canobas and Deputy Commissioners Jaime M. Fortes, Jr. and Douglas Michael N. Mallillin.

January 8, 2010[5] of respondent National Telecommunications Commission in BMC Case No. 93-538, imposing a fine against petitioner GMA Network, Inc. for operating a radio station with an expired provisional authority.

The Facts

Petitioner GMA Network, Inc. (GMA), formerly known as Republic Broadcasting System, Inc., is a Filipino-owned domestic corporation engaged in the business of radio and television broadcasting, which has been granted a legislative franchise to construct, install, operate and maintain radio and television broadcasting stations in the Philippines for a period of 25 years under Republic Act No. (RA) 7252,[6] enacted on March 20, 1992.[7]

On the other hand, respondent National Telecommunications Commission (NTC) is a government agency which, under Executive Order No. (EO) 546[8] dated July 23, 1979, has been authorized to, *inter alia*, (*a*) "[i]ssue Certificate[s] of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities," and (*b*) "[g]rant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems."[9]

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[5] *Id.* at 110-115. Signed by Commissioner Gamaliel A. Cordoba and Deputy Commissioners Jaime M. Fortes, Jr. and Douglas Michael N. Mallillin.

[6] Entitled "AN ACT GRANTING THE REPUBLIC BROADCASTING SYSTEM, INC. A FRANCHISE TO CONSTRUCT, INSTALL, OPERATE AND MAINTAIN RADIO AND TELEVISION BROADCASTING STATIONS IN THE PHILIPPINES."

[7] *Rollo*, p. 167.

[8] Entitled "CREATING A MINISTRY OF PUBLIC WORKS AND A MINISTRY OF TRANSPORTATION AND COMMUNICATIONS."

[9] Section 15 of EO 546 dated July 23, 1979.

GMA, by virtue of its legislative franchise, filed with the NTC an application for the issuance of a Certificate of Public Convenience (CPC) to install, operate and maintain a 5-kilowatt amplitude modulation (AM) radio station in Puerto Princesa City, Palawan, docketed as BMC Case No. 93-538. Pending approval, the NTC issued an Order[10] dated January 14, 1997, provisionally authorizing GMA to install, operate and maintain said radio station. The provisional authority (PA) was valid for 18 months from date, or until July 14, 1998, and expressly stated that it may be "subject to amendment, alteration, suspension, revocation or cancellation when public welfare, morals and national security so requires or when grantee operates beyond its authorization granted." As manifested in its Compliance[11] dated January 27, 1997, GMA accepted the terms and conditions stated in the PA.

GMA failed to renew its PA upon its expiration on July 14, 1998. Nevertheless, it continued its broadcast operations on the basis of temporary permits issued by the NTC, the first of which, numbered BSD-0356-98, was issued on April 14, 1998 for the period April 2, 1998 to April 1, 2001,[12] and the second, numbered BSD-0195-2001, on May 21, 2001 for the period April 2, 2001 to April 1, 2004.[13]

On September 13, 2002, some four (4) years after the expiration of its PA, GMA filed with the NTC an *Ex-Parte* Motion for Issuance of Certificate of Public Convenience[14] (*Ex-Parte* Motion), claiming: (*a*) full compliance with the terms and conditions of its PA; and (*b*) its current operation of said radio station by virtue of temporary permit number BSD-0195-2001. Meanwhile, GMA continued to operate its radio station on the strength of NTC-issued temporary permits, the third of which, numbered BSD-0302-2004, was issued on June 23, 2004 for

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[10] *Rollo*, pp. 69-78. Signed by Commissioner Simeon L. Kintanar.

[11] *Id.* at 79.

[12] *Id.* at 80.

[13] *Id.* at 81.

[14] *Id.* at 84-85.

the period April 2, 2004 to April 1, 2007,[15] and the fourth, numbered BSD-0197-2007, on March 27, 2007 for the period April 2, 2007 to April 1, 2010. [16]

In an Order[17] dated February 26, 2009, the NTC set the *Ex-Parte* Motion for clarificatory hearing and also directed GMA to submit a written explanation (within 10 days from receipt) why it should not be administratively sanctioned for the motion's late filing and for operating its radio station with an expired PA.

In its Compliance[18] dated March 12, 2009, GMA explained that its failure to timely renew its PA was without deliberate intent but by mere inadvertence caused by the confusion in the turn-over of the custody of its documents from its previous lawyer, and that it immediately filed the *Ex-Parte* Motion upon discovering its omission. Further, it alleged that notwithstanding the non-renewal of its PA, it had fully complied with the terms and conditions thereof, and that its continued operation was actually authorized by the NTC by virtue of the four (4) temporary permits covering the period 1998 to 2010. Finally, invoking the 60-day prescriptive period under Section 28 of Commonwealth Act No. 146,[19] as amended, otherwise known as the "Public Service Act" (Public Service Act), it argued that the NTC could no longer sanction the late filing of its *Ex-Parte* Motion considering the lapse of more than six (6) years from its filing on September 13, 2002.[20]

In an Order[21] dated May 25, 2009, the NTC renewed GMA's PA for three (3) years, or until July 14, 2012, but, pursuant to

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[15] *Id.* at 82.

[16] *Id.* at 83.

[17] *Id.* at 86-87.

[18] *Id.* at 88-91.

[19] Entitled "AN ACT TO REORGANIZE THE PUBLIC SERVICE COMMISSION, PRESCRIBE ITS POWERS AND DUTIES, DEFINE AND REGULATE PUBLIC SERVICES, PROVIDE AND FIX THE RATES AND QUOTA OF EXPENSES TO BE PAID BY THE SAME, AND FOR OTHER PURPOSES."

[20] *Rollo*, pp. 54-55.

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

Section 21 of the Public Service Act, imposed upon it a fine of ₱152,100.00 for operating its radio station with an expired PA from July 14, 1998 to September 13, 2002, or for 1521 days (the fine having been pegged at the rate of ₱100 per day).

Consequently, GMA filed a Motion for Partial Reconsideration[22] from the imposition of the aforesaid fine, but the NTC, in an Order[23] dated January 8, 2010, merely reduced its amount to ₱76,050.00. Dissatisfied, GMA elevated the matter to the CA,[24] contending that: (*a*) the 60-day prescriptive period provided under Section 28 of the Public Service Act already barred the NTC from imposing said fine; (*b*) the fine imposed amounts to more than ₱25,000.00 and, hence, contrary to the policy embodied in Section 23 of the Public Service Act; and (*c*) the imposition of said fine was improper considering that the NTC had already authorized it to operate its radio station through temporary permits

The CA Ruling

In a Decision[25] dated October 12, 2010, the CA dismissed the appeal, finding no merit in GMA's contention that the violation committed had already prescribed pursuant to Section 28 of the Public Service Act. Citing the 1962 case of *Sambrano v. PSC and Phil. Rabbit Bus Lines, Inc.*[26] (*Sambrano*), it held that the abovementioned 60-day prescriptive period is only available as a defense in criminal proceedings, and not to those which are administrative in character.[27] Hence, since the assailed fine was imposed by the NTC to administratively sanction GMA for its non-compliance with the conditions of its PA pursuant to Section 21 of the Public Service Act,[28] the 60-day prescriptive

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[22] *Id.* at 101-109.

[23] *Id.* at 110-115.

[24] *Id.* at 116-141.

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

[26] 116 Phil. 552 (1962).

[27] *Rollo*, p. 59.

[28] *Id.* at 60.

period cannot be raised by GMA as a defense. Further, the CA found that the NTC's imposition of the assailed fine at the reduced rate of ₱50.00 per day was well within the limit of Section 21 of the Public Service Act, noting too that the fine was, at best, minimal and conservative in light of the duration of GMA violation.[29] It appears though that the CA did not address GMA's argument anent the fact that its continued operation was based on temporary permits issued by the NTC.

Feeling aggrieved, GMA moved for reconsideration which was, however, denied in a Resolution[30] dated March 9, 2011, hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in upholding the ₱76,050.00 fine imposed by the NTC upon GMA.

The Court's Ruling

The petition lacks merit.

A. Prescriptibility

While it was clearly established that GMA violated the terms and conditions of its PA when it continued to operate its radio station despite the PA's expiration,[31] it, however, invokes the 60-day prescriptive period under Section 28 of the Public Service Act which states that:

Section 28. **Violations of the orders, decisions, and regulations of the Commission and the terms and conditions of any certificates issued by the Commission shall prescribe after sixty days** and

[29] *Id.* at 63.

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

[31] The NTC's Order dated January 14, 1997 granting its PA provides that:

> Applicant-Grantee shall secure with this Commission permit and licenses for its equipments, facilities and operations and shall x x x have at all times valid permits and licenses to cover its equipment, facilities and operations. (*Id.* at 75.)

violations of the provisions of this Act shall prescribe after one hundred and eighty days. (Emphasis and underscoring supplied)

It asseverates that the NTC's attempt to penalize it for supposedly operating with an expired PA should be deemed barred by the afore-cited limitation since the NTC's action came only after the lapse of almost 10 years from the time its alleged violation took place – that is, after the subject PA expired on July 14, 1998.[32]

The Court disagrees.

The NTC's authority to impose fines for a public service utility's violation or failure to comply with the terms and conditions of any certificate/s issued by it is expressly sanctioned under Section 21 of the Public Service Act which reads as follows:

Section 21. **Every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the Commission shall be subject to a fine of not exceeding two hundred pesos per day for every day during which such default or violation continues; and the Commission is hereby authorized or empowered to impose such fine, after due notice and hearing**.

The fines so imposed shall be paid to the Government of the Philippines through the Commission, and failure to pay the fine in any case within the time specified in the order or decision of the Commission shall be deemed good and sufficient reason for the suspension of the certificate of said public service until payment shall be made. The remedy provided in this section shall not be a bar to, or affect any other remedy provided in this Act but shall be cumulative and additional to such remedy or remedies. (Emphasis supplied)

In *Globe Telecom, Inc. v. NTC*,[33] the Court intimated that the NTC's imposition of a fine pursuant to Section 21 of the Public Service Act is made in an **administrative** proceeding, and thus, must comply with the requirements of notice and hearing. Also, in the same case, the Court classified the fine

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[32] *Id.* at 260.

[33] 479 Phil. 1 (2004).

imposed under the same provision to be one which is **regulatory** and **punitive** in character, *viz.*:[34]

> Section 21 requires notice and hearing because fine is a sanction, **regulatory and even punitive in character**. Indeed, the requirement is the essence of due process. Notice and hearing are the bulwark of **administrative due process**, the right to which is among the primary rights that must be respected even in **administrative proceedings**. The right is guaranteed by the Constitution itself and does not need legislative enactment. The statutory affirmation of the requirement serves merely to enhance the fundamental precept. The right to notice and hearing is essential to due process and its non-observance will, as a rule, invalidate the **administrative proceedings**.
>
> In citing Section 21 as the basis of the fine, NTC effectively concedes the necessity of prior notice and hearing. Yet the agency contends that the sanction was justified by arguing that when it took cognizance of Smart's complaint for interconnection, "it may very well look into the issue of whether the parties had the requisite authority to operate such services." As a result, both parties were sufficiently notified that this was a matter that NTC could look into in the course of the proceedings. The parties subsequently attended at least five hearings presided by NTC.
>
> That particular argument of the NTC has been previously disposed of. But it is essential to emphasize the need for a hearing before a fine may be imposed, as it is clearly a punitive measure undertaken by an administrative agency in the exercise of its quasi-judicial functions. Inherently, notice and hearing are indispensable for the valid exercise by an administrative agency of its quasi-judicial functions. (Emphases and underscoring supplied; citations omitted)

In this relation, the Court, in *Sambrano*, ruled that the 60-day prescriptive period provided under Section 28 of the Public Service Act **can be availed of as defenses only in criminal proceedings filed under Chapter IV thereof, and not in proceedings that pertain to the regulatory or administrative aspects of a public service utility's observance of the terms and conditions of his permit to operate**, *viz.*:[35]

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[34] *Id.* at 38-39.

[35] *Sambrano v. PSC and Phil. Rabbit Bus Lines, Inc.*, *supra* note 26, at 554-555.

This Court has already held, in *Collector of Internal Revenue, et al. vs. Buan*, G. R. L-11438; and Sambrano v. Public Service Commission, G.R. L-11439 and L-11542, decided on July 31, 1958, that **the 60-day prescriptive period fixed by Section 28 of the Public Service Law is available as a defense only in criminal or penal proceedings filed under Chapter IV of the Act**. Consequently, **the Public Service Commission is not barred from receiving evidence of the prescribed violations for the purpose of determining whether an operator has or has not faithfully kept the conditions of his certificate of permit, whether he failed or not to render the services he is required to furnish to the customers, and whether or not the infractions are sufficient cause to cancel or modify the certificate. Proceedings of this kind are held primarily to ensure adequate and efficient service as well as to protect the public against the operator's malfeasances or abuses; they are not penal in character**. True, the cancellation of the certificate may mean for an operator actual financial hardship; yet the latter is merely incidental to the protection of the traveling public. Hence, in refusing to admit evidence of prescribed violations as part of the complainant's case against the Philippine Rabbit Lines for a modification or cancellation of the latter's permit, we hold that the Commission committed error.

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The order appealed from is modified in the sense that the respondent Commission shall admit evidence of violations committed by the respondent Philippine Rabbit Bus Lines, Inc., even if no complaint against such violations were filed within 60 days from their commission. x x x. (Emphasis supplied)

It is well to note that the criminal proceedings under Chapter IV of the Public Service Act, as mentioned in the *Sambrano* ruling, pertain to those found under Sections 23, 24, 25, and 26[36] thereof as these provisions pertain to fines imposed "in

[36] Sections 23, 24, 25, and 26, Chapter IV of the Public Service Act provide:

Section 23. Any public service corporation that shall perform, commit, or do any act or thing forbidden or prohibited or shall neglect, fail or omit to do or perform any act or thing herein to be done or performed, shall be punished by a fine not exceeding twenty-five thousand pesos, or by imprisonment not exceeding five years, or both, **in the discretion of the court**.

the discretion of the court" – which means they are imposed in criminal court proceedings – as contradistinguished from Section 21 which may be imposed by the NTC (then, by the Public Service Commission), after due notice and hearing,

In view of the foregoing, the Court thus finds GMA's reliance on the 60-day prescriptive period under Section 28 of the Public Service Act to be misplaced considering that the fine it assails was imposed in an administrative and not a criminal proceeding. Akin to the action taken by the Public Service Commission in the *Sambrano* case, the fine imposed by the NTC was made in line with its authority to enforce the rules and regulations

Section 24. Any person who shall knowingly and willfully perform, commit, or do, or participate in performing, committing, or doing, or who shall knowingly and willfully cause, participate, or join with others in causing any public service corporation or company to do, perform or commit, or who shall advice, solicit, persuade, or knowingly and willfully instruct, direct, or order any officer, agent, or employee of any public service corporation or company to perform, commit, or do any act or thing forbidden or prohibited by this Act, shall be punished by a fine not exceeding two thousand pesos, or imprisonment not exceeding two years, or both, **in the discretion of the court**: Provided, however, that for operating a private passenger automobile as a public service without having a certificate of public convenience for the same the offender shall be subject to the penalties provided for in section sixty-seven (j) of Act numbered thirty-nine hundred an ninety-two.

Section 25. Any person who shall knowingly and willfully neglect, fail, or omit to do or perform, or who shall knowingly and willfully cause or join or participate with others in causing any public service corporation or company to neglect, fail or omit to do or perform, or who shall advise, solicit, or persuade, or knowingly and willfully instruct, direct, or order any officer, agent, or employee of any public service corporation or company to neglect, fail, or omit to do any act or thing required to be done by this Act, shall be published by a fine not exceeding two thousand pesos or by imprisonment not exceeding two years, or both, **in the discretion of the court**.

Section 26. Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by to in charge of the Commission or its agents, shall be deemed guilty of a misdemeanor and upon conviction shall be published by a fine not exceeding one thousand pesos or imprisonment not exceeding six months, or both **in the discretion of the court**.

Any public service permitting the destruction, injury to, or interference with, any such apparatus or appliances shall forfeit a sum not exceeding four thousand pesos for each offense. (Emphases supplied)

concerning the conduct and operation of GMA as a public service utility, which was particularly meted out to ensure its compliance with the terms and conditions of its PA. There being no cogent reason to depart from established jurisprudence on the matter, the Court therefore holds that the NTC's action in this case had not been barred under the parameters of Section 28 of the Public Service Act.

B. Unconscionability

Granting that the NTC was not time-barred to impose the fine, GMA asserts that the amount so imposed (*i.e.*, ₱76,050.00 in total, at the reduced rate of ₱50.00 per day for 1,521 days) is unconscionable as it contravenes Section 23 of the Public Service Act which states that:

> Section 23. Any public service corporation that shall perform, commit or do any act or thing forbidden or prohibited or shall neglect, fail or omit to do or perform any act or thing herein to be done or performed, shall be punished by **a fine not exceeding twenty-five thousand pesos**, or by imprisonment not exceeding five years, or both, **in the discretion of the court**.

The argument is untenable.

The applicable provision is Section 21 of the Public Service Act as it specifically governs the NTC's imposition of a fine not exceeding ₱200.00 per day for every day during which the public service utility's violation or non-compliance with the terms and conditions of the certificate/s issued by the NTC continues. On the other hand, Section 23 of the Public Service Act deals with a public service corporation's performance, commission or doing of any forbidden or prohibited act under the same law, as well as its neglect, failure or omission to do or perform an act or thing required thereunder. As earlier mentioned, the proceedings under Section 23 pertain to criminal proceedings conducted in court, whereby the fine imposed, if so determined, is made in the court's discretion, whereas Section 21 pertains to administrative proceedings conducted by the NTC on the grounds stated thereunder. As the present case evidently involves

the latter violation, Section 21 and not Section 23 of the Public Service Act applies. Thus, finding that the fine imposed by the NTC at the reduced rate of ₱50.00 per day is consistent with the ₱200.00 per day limitation under Section 21 of the Public Service Act, the fine of ₱76,500.00 for GMA's failure to comply with the terms and conditions of its PA for a period of 1,521 days was proper. The conscionability of the amount imposed should not be at issue as it is the law itself which had provided the allowable threshold for the amount therefor.

C. Effect of Temporary Permits

Lastly, GMA avers that it cannot be said to have operated its radio station illegally and without authority from the NTC because the latter had successively issued temporary permits which encompass the period during which GMA allegedly operated the same station on an expired PA. The temporary permits expressly state:

> REPUBLIC BROADCASTING SYSTEM, INC.
>
> is hereby granted a Temporary Permit to operate a BROADCASTING STATION located at Brgy. San Pedro, Puerto Princesa, Palawan.

GMA argues, therefore, that having been authorized to operate by the NTC itself through the latter's continued issuance of temporary permits, the imposition of the fine becomes highly iniquitous if not legally unfounded.[37]

The Court finds no merit in this contention.

GMA cannot rely on the temporary permits to justify its continued operation on an expired PA. As the NTC itself discloses, a temporary permit is not intended to be a substitute for a PA which must be constantly renewed despite the issuance of a temporary permit. As clarified by the NTC itself in its Comment:[38]

> [A] **P.A. refers to an authority given to an entity qualified to operate a public utility for a limited period during the pendency of**

[37] See *rollo*, pp. 269-271.

[38] See Comment; *id.* at 333.

its application for, or before the issuance of its Certificate of Public Convenience (CPC). It has a general scope because it is akin to a provisional CPC in that it gives a public utility provider power to operate as such and be bound by the laws and rules governing public utilities, pending the issuance of its actual CPC.

On the other hand, **a [t]emporary [p]ermit is a document containing the call sign, authorized power, frequency/channel, class station, hours of operation, points of communication and equipment particulars granted to an authorized public utility**. **Its scope is more specific than a P.A. because it contains details and specifications under which a public utility x x x should operate x x x pursuant to a previously updated P.A.** (Emphases and underscoring supplied)

As may be gleaned from the NTC's statement, the operational validity of a temporary permit flows only from "a previously updated PA." This means that there should be an effective PA before a temporary permit is issued. The latter is a specific issuance which proceeds from a pre-requisite PA. While GMA may have been able to secure the successive issuance of temporary permits from the NTC to cover even the PA's expired period, this does not detract from the apparent irregularity of the procedure. The fact remains that GMA operated its radio station between the time that its PA expired on July 14, 1998 and the application for its renewal was filed on April 13, 2002. Without an updated PA therefor, GMA should not have been issued temporary permits.

GMA must be reminded that the NTC, insofar as the regulation of the telecommunications industry is concerned, has exclusive jurisdiction to "establish and prescribe rules, regulations, standards and specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same."[39] As such, and considering further its expertise on the matter, its interpretation of the rules and regulations it itself promulgates are traditionally accorded by the Court with great weight and respect. As enunciated in *Eastern Telecommunications Phils., Inc. v. International Communication Corporation*:[40]

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[39] See Section 15 of EO 546 dated July 23, 1979.

[40] G.R. No. 135992, January 31, 2006, 481 SCRA 163, 166-167.

The **NTC**, **being the government agency entrusted with the regulation of activities coming under its special and technical forte**, and possessing the necessary rule-making power to implement its objectives, is **in the best position to interpret its own rules, regulations and guidelines**. The Court has **consistently yielded and accorded great respect** to the interpretation by administrative agencies of their own rules unless there is an error of law, abuse of power, lack of jurisdiction or grave abuse of discretion clearly conflicting with the letter and spirit of the law. (Emphases and underscoring supplied)

Equally significant is the principle that the State cannot be put in estoppel by the mistakes or errors of its officials or agents.[41] Hence, whatever irregularity had attended the issuance of the temporary permits in this case does not render correct what appears to be erroneous procedure. The NTC itself recognizes this when it stated in its Comment that: [42]

Technically speaking, [GMA] should not have been issued a Temporary Permit. The Temporary Permits relied upon by [GMA] were issued to it on the assumption that its P.A. was up to date. Had [NTC] known that [GMA] had an expired P.A., it would not have granted [GMA] a Temporary Permit to operate its subject radio broadcasting station. Before [GMA] could legally operate its subject radio station, it should have both an updated P.A. and a Temporary Permit for such purpose.

Verily, the Court agrees with the NTC's submission that although GMA was granted numerous temporary permits, it does not remove the fact that it was operating on an expired PA, which infraction is subject to the penalty of fine under Section 21 of the Public Service Act.[43] The Court, however, expresses that the NTC should be more circumspect with the enforcement of its internal procedures if only to prevent any future incident similar to the present case. The ideal of public accountability befittingly demands that administrative agencies, such as the NTC, devise appropriate governance systems to

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[41] *Republic of the Phils. v. CA*, 361 Phil. 319, 329 (1999).

[42] See Comment; *rollo*, p. 334.

[43] *Id.* at 335.

ensure that its rules and regulations are followed and complied, and deviations therefrom deterred and quelled. Truth be told, it is through an honest and effective bureaucracy that the government gains the people's trust and deference.

All told, the fine against GMA in the amount of ₱76,500.00 for its failure to comply with the terms and conditions of its PA stands, without prejudice to any separate administrative proceeding which may be initiated against any public officer responsible for the aforementioned irregularity.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197307. February 26, 2014]

FLOR GUPILAN-AGUILAR and HONORE R. HERNANDEZ, *petitioners, vs.* **OFFICE OF THE OMBUDSMAN, represented by HON. SIMEON V. MARCELO; and PNP-CIDG, represented by DIR. EDUARDO MATILLANO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 CONSTITUTION; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; IN

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[*] Designated Acting Chief Justice per Special Order No. 1644 dated February 25, 2014.

[**] Designated Acting Member per Special Order No. 1643 dated February 25, 2014.

ADMINISTRATIVE DISCIPLINARY CASES, AN APPEAL FROM THE OMBUDSMAN'S DECISION SHOULD BE TAKEN TO THE COURT OF APPEALS UNDER RULE 43 OF THE RULES OF COURT, UNLESS THE DECISION IS NOT APPEALABLE OWING TO THE PENALTY IMPOSED.— The Ombudsman has defined prosecutorial powers and possesses adjudicative competence over administrative disciplinary cases filed against public officers. What presently concerns the Court relates to the grievance mechanism available to challenge the OMB's decisions in the exercise of that disciplinary jurisdiction. The nature of the case before the Office of the Ombudsman (OMB) determines the proper remedy available to the aggrieved party and with which court it should be filed. In administrative disciplinary cases, an appeal from the OMB's decision should be taken to the CA under Rule 43, unless the decision is not appealable owing to the penalty imposed. In the case at bar, the Ombudsman, in the exercise of his administrative disciplinary jurisdiction had, after due investigation, adjudged petitioners guilty of grave misconduct and dishonesty and meted the corresponding penalty. Recourse to the CA via a Rule 43 petition is the proper mode of appeal. Rule 43 governs appeals to the CA from decisions or final orders of quasi-judicial agencies. Reliance by the CA on Sec. 14 in relation to Sec. 27 of RA 6770 to support its position as to which court a party may repair to assail the OMB's decision in disciplinary cases is misinformed. As has been held, those portions of said Sec. 27 and any other provisions implementing RA 6770, insofar as they expanded the appellate jurisdiction of this Court without its concurrence, violate Article VI, Sec. 30 of the 1987 Constitution. We said so in the landmark *Fabian v. Desierto*: **WHEREFORE**, Section 27 of [RA] 6770 (Ombudsman Act of 1989), together with Section 7, Rule III of [A.O.]. 07 (Rules of Procedure of the [OMB]), and any other provision of law or issuance implementing the aforesaid Act and **insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court, are hereby declared INVALID and of no further force and effect**. As a consequence and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43. *Barata v. Abalos, Jr., Coronel*

v. Desierto, and recently *Dimagiba v. Espartero* have reiterated the pertinent holding in *Fabian*.

2. ID.; ID.; ID.; ID.; THE DECISION OF THE OFFICE OF THE OMBUDSMAN IS MANDATORY AND IMMEDIATELY EXECUTORY.— The then Sec. 7, Rule III of Administrative Order No. 07 (AO 07) or the Rules of Procedure of the OMB, in turn, stated: Sec. 7. *Finality of decision*. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, **unless a motion for reconsideration or petition for *certiorari,* shall have been filed by him as prescribed in Section 27 of RA 6770**. The Court, in *Lapid v. Court of Appeals*, has interpreted the above-quoted provision to mean that the sanctions imposed by the Ombudsman other than public censure, reprimand, suspension of not more than one month or a fine equivalent to one month salary are not immediately executory and can be stayed by an appeal timely filed. The pertinent ruling in *Lapid* has, however, been superseded. On August 17, 2000, AO 14-A was issued amending Sec. 7, Rule III of the Rules of Procedure of the OMB. The rule, as thus amended, pertinently reads: Section 7. *Finality and execution of decision*. – Where x x x the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision may be appealed x x x. **An appeal shall not stop the decision from being executory**. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Then came AO 17 dated September 15, 2003 further amending Sec. 7 of Rule III. Thus, the section now provides: Section 7. *Finality and execution of decision*. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory, and

unappealable. In all other cases, the decision may be appealed to the Court of Appeals x x x. **An appeal shall not stop the decision from being executory**. **In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.** Clearly then, as early as August 17, 2000, when AO 14-A was issued, the OMB-imposed penalties in administrative disciplinary cases were already immediately executory notwithstanding an appeal timely filed. In this case, it must be noted that the complaint dated July 28, 2003 was filed on August 20, 2003 or after the AO 14-A has come into effect. Thus, no error can be attributed to the CA when it ruled that the penalties imposed by the Ombudsman against petitioners are immediately executory. Immediate execution argues against the outlandish notion that the Ombudsman can only recommend disciplinary sanctions.

3. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS; DISHONESTY; THE ACTS COMPLAINED OF CONSTITUTE DISHONESTY BUT NOT GRAVE MISCONDUCT.— The charges against petitioners for grave misconduct and dishonesty basically stemmed from their alleged act of amassing unexplained wealth or acquiring properties disproportionate to their income, petitioner Aguilar's alleged failure to declare them in her SALNs, and for petitioner Hernandez's alleged acquiescence to be her dummy. To our mind, however, we find that even if petitioners, for argument, failed to include several properties in their SALNs, the omission, by itself, does not amount to grave misconduct. *Largo v. Court of Appeals* is instructional as to the nature of the offense. To constitute misconduct, the complained act/s or omission must have a direct relation and be linked to the performance of official duties. The Court wrote in *Amosco v. Magro*: x x x By uniform legal definition, **it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual.** In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful,

intentional neglect and failure to discharge the duties of the office x x x. Owning properties disproportionate to one's salary and not declaring them in the corresponding SALNs cannot, without more, be classified as grave misconduct. Even if these allegations were true, we cannot see our way clear how the fact of non-declarations would have a bearing on the performance of functions by petitioner Aguilar, as Customs Chief of the Miscellaneous Division, and by petitioner Hernandez, as Customs Operations Officer. It is *non-sequitur* to assume that the omission to declare has served, in some way, to hinder the rendition of sound public service for there is no direct relation or connection between the two. Without a nexus between the act complained of and the discharge of duty, the charge of grave misconduct shall necessarily fail.

4. **ID.; ID.; ID.; ID.; DISHONESTY IS A MALEVOLENT ACT THAT PUTS SERIOUS DOUBT UPON ONE'S ABILITY TO PERFORM DUTIES WITH INTEGRITY AND UPRIGHTNESS DEMANDED OF A PUBLIC OFFICER OR EMPLOYEE.—** Dishonesty, as juridically understood, implies the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty or probity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. It is a malevolent act that puts serious doubt upon one's ability to perform duties with the integrity and uprightness demanded of a public officer or employee. The inculpatory allegations in the controversy, if proved, qualify as acts of dishonesty that would merit dismissal from service. The requirement of filing a SALN is enshrined, as it were, in the Constitution to promote transparency in the civil service and operates as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, it behooves every government official or employee to make a complete disclosure of his or her assets, liabilities and net worth in order to suppress any questionable accumulation of wealth because the latter usually results from non-disclosure of such matters.

5. **ID.; ID.; ID.; ID.; DISHONESTY REQUIRES MALICIOUS INTENT TO CONCEAL THE TRUTH OR TO MAKE FALSE STATEMENTS.—** The significance of requiring the filing of a complete, truthful, and sworn SALN as a measure to curb corruption in the bureaucracy cannot be gainsaid. Secs. 7 and

8 of the *Anti-Graft and Corrupt Practices Act* (RA 3019) are emphatic on this point. x x x The aforequoted Section 8 speaks of unlawful acquisition of wealth and excessive expenditure, the evil sought to be suppressed and avoided, and Section 7, which directs full disclosure of wealth in the SALN, is a means of preventing said evil and is aimed particularly at minimizing if not altogether curtailing the opportunities for official corruption and maintaining a standard of honesty in the public service. By the SALN, the public is able to monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth. The failure to file a truthful SALN puts in doubts the integrity of the officer and would normally amount to dishonesty. It should be emphasized, however, that mere misdeclaration in the SALN does not automatically amount to such an offense. Dishonesty requires malicious intent to conceal the truth or to make false statements; otherwise, the government employee may only liable for negligence, not for dishonesty. In addition, only when the accumulated wealth becomes manifestly disproportionate to the income of the public officer/employee and income from other sources, and the public officer/employee fails to properly account or explain these sources of income and acquisitions, does he or she become susceptible to dishonesty.

6. ID.; ID.; SUBSTANTIAL EVIDENCE REQUIREMENT IN ADMINISTRATIVE PROCEEDINGS.— Administrative proceedings are governed by the "substantial evidence rule," meaning a finding of guilt in an administrative case may and would issue if supported by substantial evidence that the respondent has committed the acts stated in the complaint. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Its absence is not shown by stressing that there is contrary evidence, direct or circumstantial, on record.

7. ID.; ID.; ID.; THE REQUIRED EVIDENCE SUFFICIENT TO JUSTIFY HOLDING PETITIONER ADMINISTRATIVELY LIABLE FOR DISHONESTY HAS BEEN SATISFIED; THE DISCREPANCY IN THE TOTAL VALUATION OF PETITIONER'S DECLARED AND UNDECLARED ASSETS IS TOO GLARING AN OMISSION TO BE WRITTEN OFF AS

MERE NEGLIGENCE OR CARELESSNESS.— In the case at bar, the required evidence sufficient to justify holding petitioner Aguilar administratively liable has been, to us, as to the CA, satisfied. Not only did she fail to declare in her SALN the residential lot located at Panicuason, Naga City, she likewise failed to satisfactorily explain her beneficial ownership of the Antel Seaview Towers four-bedroom condominium unit and her use of the two BMWs registered in the name of different corporations, which, as the records show, are both based in Olongapo City. Relevant to this determination is Sec. 2 of RA 1379, in relation to Sec. 8 of RA 3019, which states that whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. When the presumption holds, the burden of evidence then shifts to the respondent, in this instance petitioner Aguilar, to show that the financial resources used to acquire the undeclared assets and her expenditures came from lawful income. To be sure, petitioner Aguilar has failed to discharge this burden, as the CA, and the OMB before it, have determined. The explanation she offered when confronted with her undeclared acquisitions and travel splurge is too flimsy compared to her own admissions as to her beneficial ownership over the properties. Her SALNs during the years in question clearly indicated she was a pure compensation income earner. With an annual salary of PhP 249,876, it is incomprehensible how she could have acquired her undeclared assets on top of paying for her annual travels and living expenses. The discrepancy in the total valuation of her declared and undeclared assets is also too glaring for petitioner Aguilar's omission to be written off as mere negligence or carelessness. As a result, no error can be attributed to the CA and the Ombudsman adjudging her guilty of dishonesty.

8. ID.; ID.; ID.; PETITIONER'S ACQUITTAL IN THE CRIMINAL CASE HAS NO BEARING IN THE INSTANT ADMINISTRATIVE CASE.— Petitioner Aguilar's acquittal in Crim. Case No. 08-263022 of the Manila RTC on the ground of insufficiency of evidence would not carry the day for her. The dismissal of the criminal aspect of the complaint filed against

Aguilar has hardly any bearing on the administrative case mainly because the quantum of evidence required to support a finding of guilt in a criminal case is proof beyond reasonable doubt. Administrative cases are, as a rule, separate and independent from criminal suits and are governed by differing evidentiary criteria. The acquittal of an accused who is also a respondent in an administrative case does not conclude the administrative proceedings, nor carry with it relief from administrative liability. This is because unlike in criminal cases where the threshold quantum of evidence required is proof beyond reasonable doubt, only substantial evidence is necessary in administrative cases.

9. ID.; ID.; ID.; ACQUITTAL OF PETITIONER HERNANDEZ AND HIS CONSEQUENT REINSTATEMENT IS IN PROPER ORDER.— In ruling for petitioner Hernandez, we do so taking stock of the pronouncement in the first-issued *Decision* of the Ombudsman. There was indeed no specific allegation in the complaint against him other than his owning an Isuzu Trooper vehicle, which he declared in his SALN. But mere ownership is not an actionable administrative offense. The PNP-CIDG also did not present any additional evidence as against petitioner Hernandez. We are, thus, at a loss to understand how the Ombudsman, after saying in not so many words that Hernandez was not guilty, would completely reverse itself in the *Supplement*. Having already disposed of the issue as regards petitioner Hernandez in the *Decision*, it was then quite improper for the Ombudsman to reverse its findings six months after, albeit no evidence had been adduced in the interim to support the new finding. While the Ombudsman's reasoning––as adopted by the CA, regarding petitioner Hernandez's purchasing capability, or lack of it—may be plausible at first blush, the latter was able to justify his ownership of the Isuzu Trooper. Evidence on record would show that aside from his employment, he and his wife have other sources of income. As he alleged in his pleadings, his wife, Ruth, is a practicing physician who, besides maintaining a clinic in both the Seamen's Hospital in Manila and at the Medical Center Muntinlupa, engages in OB-GYN consultancy. And as seen in his SALN for 2002, the couple run Sarah Katrina's Drugstore in Las Piñas City and even own shares of stocks in Medical Center Muntinlupa. A car loan worth PhP 1,600,000 was also reported in his 2002 SALN. In fine, there is valid reason to conclude that the Hernandez couple,

with their combined income, could very well afford a medium-priced motor van. Given these circumstances, the innocence claim of petitioner Hernandez becomes all the more credible and the justifications offered sufficient to absolve him of administrative liability. It should be understood that the laws on SALN aim to curtail the acquisition of unexplained wealth. Where the source of the undisclosed wealth can be properly accounted for, as in the case of petitioner Hernandez, then it is "explained wealth" which the law does not penalize. Under OMB AO 17, if the respondent, meted by OMB the penalty of suspension or removal, is exonerated on appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he failed to receive by reason of that suspension or removal. So it must be in the case of petitioner Hernandez.

APPEARANCES OF COUNSEL

De Castro & Cagampang Law Offices for petitioners.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This Petition for Review on *Certiorari* under Rule 45 seeks to reverse and set aside the July 22, 2009[1] Decision of the Court of Appeals and its June 13, 2011 Resolution in CA-G.R. SP No.88954, affirming the decision of the Ombudsman in OMB-C-A-03-0327-I that found petitioners guilty of grave misconduct and dishonesty and dismissed them from the service.

The Facts

In June 2003, the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG) conducted an investigation on the lavish lifestyle and alleged nefarious activities

[1] Penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Isaias P. Dicdican.

of certain personnel of the Bureau of Customs, among them petitioners Flor Gupilan-Aguilar (Aguilar), then Chief of the Miscellaneous Division, and Honore Hernandez (Hernandez), Customs Officer III. Aguilar was then receiving a basic annual salary of PhP 249,876. Her year-to-year assets, liabilities and net worth for CYs 1999 to 2002, taken from her Statement of Assets, Liabilities and Net Worth (SALNs) for the corresponding years, are shown below:

Real Properties[2]	**1999**[3]	**2000**[4]	**2001**[5]	**2002**[6]
House and Lot in Quezon City	₱880,000.00	₱980,000.00	₱1,030,000.00	₱1,030,000.00
Apartment in Caloocan City	₱500,000.00	₱550,000.00	₱550,000.00	₱550,000.00
Personal Properties[7]				
Car	₱450,000.00	₱450,000.00	₱450,000.00	₱900,000.00
Jewelry	₱500,000.00	₱600,000.00	₱650,000.00	₱750,000.00
Appliances	₱100,000.00	₱120,000.00	₱125,000.00	₱135,000.00
Furniture and Fixture	₱100,000.00	₱120,000.00	₱125,000.00	₱150,000.00
Total Assets	**₱2,530,000.00**	**₱2,820,000.00**	**₱2,930,000.00**	**₱3,515,000.00**
Liabilities				
GSIS	-	₱450,000.00	₱400,000.00	₱300,000.00
Car Loan	-	-	-	₱500,000.00
Total Liabilities	-	**₱450,000.00**	**₱400,000.00**	**₱800,000.00**
Net Worth	**₱2,530,000.00**	**₱2,370,000.00**	**₱2,530,000.00**	**₱2,715,000.00**

[2] Valuation based on acquisition cost.

[3] CA *rollo*, p. 187.

[4] *Id.* at 188.

[5] *Id.* at 189.

[6] *Id.* at 190.

[7] Valuation based on acquisition cost.

Her SALNs for the years aforementioned do not reflect any income source other than her employment. The spaces for her spouse's name and business interest were left in blank.

Following weeks of surveillance and lifestyle probe, the PNP-CIDG investigating team, headed by Atty. Virgilio Pablico, executed on July 28, 2003 a *Joint-Affidavit*, depicting Aguilar, who, in her Personal Data Sheet, indicated "Blk 21 Lot 8 Percentage St. BIR Vill, Fairview, QC" as her home address, as owning properties not declared or properly identified in her SALNs, specifically the following:

Real Properties

1. Lot 6, Blk 21, BIR Village, Fairview, Quezon City worth approximately Php1,000,000.00;
2. A 4-bedroom Unit 1007-A Antel Seaview Towers, 2626 Roxas Blvd., Pasay City worth Php12,000,000.00, with rights to 4 parking slots; and
3. Residential lot in Naga City worth Php148,200.00

Personal Properties

Make/Model	Plate No.	Registered Owner
Honda CRV	BIM-888	Flor G. Aguilar
Isuzu Trooper	HRH-659	Honore R. Hernandez
BMW (red)	XCR-500	Asia Int'l Auctioneer, Inc.
BMW (silver)	XFD-441	Southwing Heavy Industries, Inc.[8]

It was also unearthed that, during a four-year stretch, from July 1999 to June 2003, Aguilar, per the Bureau of Immigration (BI) records, took 13 unofficial trips abroad, eight to Los Angeles, California, accompanied most of the time by daughter Josephine. During the same period, her two other daughters also collectively made nine travels abroad. Per the PNP-CIDG's estimate, Aguilar would have spent around PhP 3,400,000 for her and her daughters' foreign travels.

In view of what it deemed to be a wide variance between Aguilar's acquired assets and what she spent for her four-

[8] *Rollo*, pp. 39-40.

year overseas travels, on one hand, and her income, on the other, the PNP-CIDG, through P/Director Eduardo Matillano––in a letter-complaint of July 28, 2003, with enclosures, on a finding that she has violated Republic Act No. (RA) 1379[9] in relation to RA 3019[10] and 6713[11]—charged her with grave misconduct and dishonesty. Hernandez was charged too with the same offenses. Upon evaluation of the complaint and of the evidence presented, which included the aforementioned joint-affidavit, the Ombudsman created an investigating panel which then conducted administrative proceedings on the complaint, docketed as OMB-C-A-03-0327-I.

By Order of September 3, 2003, then Overall Deputy Ombudsman Margarito Gervacio, Jr. placed Aguilar under preventive suspension for six (6) months without pay. Another Order,[12] however, was issued, effectively lifting the order of preventive suspension on the stated ground that Aguilar's untraversed controverting evidence "considerably demonstrated the weakness of the evidence in support of the complaint."

In the meantime, Aguilar filed her *Counter-Affidavit*,[13] primarily addressing the allegations in the aforementioned joint-affidavit. In it, she belied allegations about not declaring Lot 6, Blk 21, BIR Village, Fairview. As explained, what she considers her dwelling in that area consists of a duplex-type structure that sits on the Lot 8 she originally owned and the contiguous Lot 6, which she subsequently acquired from one Norma Jurado.

Anent Unit 1007-A of Antel Seaview Towers, Aguilar pointed to her US-based brother Carlo as owner of this condo unit,

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[9] An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor.

[10] Anti-Graft and Corrupt Practices Act.

[11] Code of Ethical Standard for Public Officials and Employees.

[12] *Rollo*, pp. 237-241, signed also by Overall Deputy Ombudsman Gervacio, Jr.

[13] *Id.* at 197-204.

the latter having purchased it from Mina Gabor on July 14, 2003. Carlo, as she averred, has allowed her to stay in the unit. Appended to Aguilar's counter-affidavit is a Deed of Sale[14] purportedly executed in Los Angeles in favor of Carlo.

Aguilar also denied owning the so-called third real property, the Panicuason, Naga City lot, since she had already sold it in 1992.

As to allegations that she owns but failed to declare the four above-listed vehicles, Aguilar admitted to owning only the subject Honda CRV van, but denied the charge of failing to declare it in her SALN. She ascribed ownership of the Isuzu Trooper to Hernandez. As for the red and silver BMW cars registered in the name of the entities mentioned in the complaint, Aguilar alleged that they were merely lent to her by her brother's friend.

Not being the owner of the properties aforementioned, Aguilar wondered how she can be expected to include them in her SALN.

Finally, she claimed having seven brothers and two sisters in the US who had sponsored her US trips and who at times even sent airline tickets for her and her daughters' use.

Hernandez, for his defense, alleged that the complaint adverted only to his being the registered owner of an Isuzu Trooper. There is no specification, he added, as to his acquisition of, and not declaring, unexplained wealth.[15]

Ruling of the Ombudsman

Based on the evidence on record and the parties' position papers, the investigating panel issued for approval a draft *Decision*[16] dated June 3, 2004, which found Aguilar guilty of the offenses charged. And while Hernandez was also charged and investigated, the *fallo* and even the body of the proposed decision was silent as to him, save for the following line:

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

[15] Ombudsman records, pp. 239-241.

[16] *Rollo*, pp. 127-144.

x x x the fact that the motor vehicle, Isuzu Trooper with Plate No. HRH 659 is registered in his [Hernandez's] name, does not make him administratively liable.[17]

Evidently not totally satisfied with the panel's recommended action, the Ombudsman directed that a joint clarificatory hearing be conducted, and one was held on September 23, 2004. The proceedings resulted in the issuance of what the investigating panel styled as *Supplemental Decision*[18] dated January 6, 2005 further detailing the bases for the earlier finding on Aguilar's liability. Like the earlier draft, no reference was made in the *fallo* of the *Supplemental Decision* to Hernandez's guilt or innocence.

Following a review of the two issuances thus submitted, then Ombudsman Simeon Marcelo issued on January 18, 2005 a decision denominated *Supplement*,[19] approving, with modification, the adverted *Decision* and *Supplemental Decision*. The modification relates to the liability of Hernandez whom the Ombudsman found to be Aguilar's dummy and equally guilty of grave misconduct and dishonesty deserving too of the penalty of dismissal from the service. Dispositively, the *Supplement* reads:

WHEREFORE, the Decision dated 03 June 2004 and Supplemental Decision dated 06 January 2005 are approved insofar as it finds respondent Flor Aguilar guilty of the administrative offenses of Grave Misconduct and Dishonesty and is hereby meted the penalty of DISMISSAL from the service, with the accessory penalty of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

Further, the undersigned hereby disapproves the ruling contained in the Decision dated 03 June 2004 with regard to Honore Hernandez, the latter being likewise found guilty of the administrative offenses of Grave Misconduct and Dishonesty and is hereby meted the penalty of Dismissal from the service, with the accessory penalty of cancellation

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[17] *Id.* at 142.

[18] *Id.* at 145-170.

[19] *Id.* at 171-182.

of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

SO ORDERED.

Aguilar and Hernandez moved for but were denied reconsideration[20] via an Order[21] of February 28, 2005. The two then went to the Court of Appeals (CA) on a petition for review under Rule 43, docketed as CA-G.R. SP No. 88954. Even as they decried what they tag as a case disposition in installments, petitioners asserted the absence of substantial evidence to support the allegations in the complaint, and that the judgment of dismissal is recommendatory and not immediately executory.

Ruling of the Court of Appeals

The CA, in its assailed Decision of July 22, 2009, affirmed that of the Ombudsman, disposing as follows:

WHEREFORE, the instant petition is DENIED and the assailed Decision of the Ombudsman finding petitioners guilty of Grave Misconduct and Dishonesty, and meted them the penalty of DISMISSAL from the government service, with the accessory penalty of cancellation of elibility, forfeiture of retirement benefits and perpetual disqualification for reemployment in the government service in OMB-C-A-03-0327-I is AFFIRMED.

SO ORDERED.[22]

Even as it junked petitioners' contention on the sufficiency of the complainant's inculpating evidence and on the nature of the Ombudsman's judgment, the CA declared that petitioners' remedy under the premises is an appeal to this Court by force of Section 14 in relation to Sec. 27 of RA 6770 or the *Ombudsman Act of 1989*. Sec. 14 provides that **"[n]o court shall hear any appeal or application for remedy against the decisions or findings of the Ombudsman, except the Supreme Court**

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[20] *Id.* at 183-194.

[21] *Id.* at 209-212.

[22] *Id.* at 56.

on pure questions of law," while Sec. 27 states that **"[f]indings of fact by the [OMB] when supported by substantial evidence are conclusive."**

On June 13, 2011, the CA denied petitioners' motion for reconsideration.

Hence, the present petition raising the following issues:

1. Whether or not a Rule 43 petition to assail the findings or decisions of the Ombudsman in an administrative case is proper;
2. Whether or not the acts complained of constitute grave misconduct, dishonesty or both;
3. Whether or not there is substantial evidence to support the assailed findings of the Ombudsman and the CA; and
4. Whether or not the decision of the Ombudsman is but recommendatory or immediately executory.

Petitioners also invite attention to the June 4, 2012 decision of the Regional Trial Court (RTC) of Manila in Criminal Case No. 08-263022, acquitting Aguilar for falsification allegedly involving the same disputed transactions in OMB-C-A-03-0327-I.

The Court's Ruling

The petition, on its procedural and substantial aspects, is partly meritorious. The Court shall first address procedural issues and concerns raised in this recourse.

Petitioners properly appealed to the CA

Petitioners first contend that the CA erred in its holding that, in line with Sec. 14[23] and Sec. 27 of RA 6770, they should have

[23] **Section 14. Restrictions.** — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a *prima facie* evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

appealed the Ombudsman's Decision to this Court on questions of law instead of filing a Rule 43 petition before the CA.

Petitioners stand on solid ground on this issue.

The Ombudsman has defined prosecutorial powers and possesses adjudicative competence over administrative disciplinary cases filed against public officers. What presently concerns the Court relates to the grievance mechanism available to challenge the OMB's decisions in the exercise of that disciplinary jurisdiction.

The nature of the case before the Office of the Ombudsman (OMB) determines the proper remedy available to the aggrieved party and with which court it should be filed. In administrative disciplinary cases, an appeal from the OMB's decision should be taken to the CA under Rule 43, unless the decision is not appealable owing to the penalty imposed.

In the case at bar, the Ombudsman, in the exercise of his administrative disciplinary jurisdiction had, after due investigation, adjudged petitioners guilty of grave misconduct and dishonesty and meted the corresponding penalty. Recourse to the CA via a Rule 43 petition is the proper mode of appeal. Rule 43 governs appeals to the CA from decisions or final orders of quasi-judicial agencies.[24]

Reliance by the CA on Sec. 14 in relation to Sec. 27 of RA 6770 to support its position as to which court a party may repair to assail the OMB's decision in disciplinary cases is misinformed. As has been held, those portions of said Sec. 27 and any other provisions implementing RA 6770, insofar as they expanded the appellate jurisdiction of this Court without its concurrence, violate Article VI, Sec. 30 of the 1987 Constitution.[25] We said so in the landmark *Fabian v. Desierto*:[26]

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[24] *Pleyto v. PNP-CIDG*, G.R. No. 169982, November 23, 2007, 538 SCRA 534.

[25] **Section 30.** No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

[26] G.R. No. 129742, September 16, 1998, 295 SCRA 470, 493.

WHEREFORE, Section 27 of [RA] 6770 (Ombudsman Act of 1989), together with Section 7, Rule III of [A.O.]. 07 (Rules of Procedure of the [OMB]), and any other provision of law or issuance implementing the aforesaid Act and **insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court, are hereby declared INVALID and of no further force and effect**. (Emphasis added.)

As a consequence and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43.[27] *Barata v. Abalos, Jr.*,[28] *Coronel v. Desierto*,[29] and recently *Dimagiba v. Espartero*[30] have reiterated the pertinent holding in *Fabian*.

The Decision of the Ombudsman is mandatory and immediately executory

This brings us to the issue on the nature of the Ombudsman's decisions in administrative disciplinary suits, it being petitioners' posture that such decisions, as here, are only recommendatory and, at any event, not immediately executory for the reason that the PNP-CIDG filed the basic complaint on August 20, 2003[31] when the ruling in *Tapiador v. Office of the Ombudsman*[32] had still controlling sway. To petitioners, *Tapiador* enunciated the dictum that the Ombudsman's disciplinary power is only to recommend, the power to suspend and dismiss erring personnel being vested in the head of the office concerned. As a corollary point, petitioners also advance the argument that the legal situation changed only when *Office of the Ombudsman v. Court of*

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[27] *Id.* at 490.

[28] G.R. No. 142888, June 6, 2001, 358 SCRA 575, 579-560.

[29] G.R. No. 149022, April 8, 2003, 401 SCRA 27, 32-33.

[30] G.R. No. 154952, July 16, 2012, 676 SCRA 420.

[31] CA *rollo*, p. 96.

[32] G.R. No. 129124, March 15, 2002, 379 SCRA 322.

Appeals[33] and *Ombudsman v. Samaniego*[34] were decided in June 2006 and September 2008, respectively.

We are not impressed.

Petitioners' witting or unwitting invocation of *Tapiador* is specious. Administrative disciplinary authority of the OMB does not end with a recommendation to punish. The statement in *Tapiador* that the Ombudsman is without authority to directly dismiss an erring public official as its mandate is only to recommend was mere *obiter dictum*, and cannot, in the words of *Ledesma v. Court of Appeals*,[35] "be cited as a doctrinal declaration of the Supreme Court." In fact, the pronouncement in *Tapiador* on the Ombudsman's disciplinary authority was only limited to two sentences, to wit:

> x x x Besides, assuming *arguendo*, that petitioner were administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service x x x. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned.[36]

The terse *obiter* in *Tapiador* should be compared with the holding in *Ombudsman v. De Leon*[37] which even chronicled the pertinent internal rules of procedure in the Office of the Ombudsman (OMB) and illustrated that, as early as 2000, rules were already enforced by the OMB that provide for the immediate execution of judgments pending appeal. As pointed out in *De Leon*, Sec. 27 of the *Ombudsman Act of 1989* prescribes the rules on the effectivity and finality of the OMB's decisions:

> SEC. 27. *Effectivity and Finality of Decisions.* – (1) All provisionary orders at the Office of the Ombudsman are immediately effective and executory.

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[33] G.R. No. 160675, June 16, 2006, 491 SCRA 92.

[34] G.R. No. 175573, September 11, 2008, 564 SCRA 567.

[35] G.R. No. 161629, July 29, 2005, 465 SCRA 437.

[36] *Supra* note 32.

[37] G.R. No. 154083, February 27, 2013.

x x x x x x x x x

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman x x x. (Emphasis supplied.)

The then Sec. 7, Rule III of Administrative Order No. 07 (AO 07) or the Rules of Procedure of the OMB, in turn, stated:

Sec. 7. *Finality of decision*. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, **unless a motion for reconsideration or petition for *certiorari*, shall have been filed by him as prescribed in Section 27 of RA 6770**. (Emphasis supplied.)

The Court, in *Lapid v. Court of Appeals*,[38] has interpreted the above-quoted provision to mean that the sanctions imposed by the Ombudsman other than public censure, reprimand, suspension of not more than one month or a fine equivalent to one month salary are not immediately executory and can be stayed by an appeal timely filed. The pertinent ruling in *Lapid* has, however, been superseded.[39] On August 17, 2000, AO 14-A was issued amending Sec. 7, Rule III of the Rules of Procedure of the OMB. The rule, as thus amended, pertinently reads:

Section 7. *Finality and execution of decision*. – Where x x x the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the

[38] G.R. No. 142261, June 29, 2000, 334 SCRA 738.

[39] *Office of the Ombudsman v. Court of Appeals*, G.R. No. 159395, May 7, 2008, 554 SCRA 75.

decision shall be final and unappealable. In all other cases, the decision may be appealed x x x.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. (Emphasis supplied.)

Then came AO 17 dated September 15, 2003 further amending Sec. 7 of Rule III. Thus, the section now provides:

Section 7. *Finality and execution of decision*. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory, and unappealable. In all other cases, the decision may be appealed to the Court of Appeals x x x.

An appeal shall not stop the decision from being executory. **In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.** (Emphasis supplied.)

Clearly then, as early as August 17, 2000, when AO 14-A was issued, the OMB-imposed penalties in administrative disciplinary cases were already immediately executory notwithstanding an appeal timely filed. In this case, it must be noted that the complaint dated July 28, 2003 was filed on August 20, 2003 or after the AO 14-A has come into effect. Thus, no error can be attributed to the CA when it ruled that the penalties imposed by the Ombudsman against petitioners are immediately executory. Immediate execution argues against the outlandish notion that the Ombudsman can only recommend disciplinary sanctions.

The acts complained of constitute Dishonesty but not Grave Misconduct

a. Grave Misconduct

The charges against petitioners for grave misconduct and dishonesty basically stemmed from their alleged act of amassing unexplained wealth or acquiring properties disproportionate to their income, petitioner Aguilar's alleged failure to declare them in her SALNs, and for petitioner Hernandez's alleged acquiescence to be her dummy. To our mind, however, we find that even if petitioners, for argument, failed to include several properties in their SALNs, the omission, by itself, does not amount to grave misconduct.

Largo v. Court of Appeals[40] is instructional as to the nature of the offense. To constitute misconduct, the complained act/s or omission must have a direct relation and be linked to the performance of official duties. The Court wrote in *Amosco v. Magro*:

> x x x By uniform legal definition, **it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual.** In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x.[41]

Owning properties disproportionate to one's salary and not declaring them in the corresponding SALNs cannot, without more, be classified as grave misconduct. Even if these allegations were true, we cannot see our way clear how the fact of non-declarations would have a bearing on the performance of functions by petitioner Aguilar, as Customs Chief of the Miscellaneous Division, and by petitioner Hernandez, as Customs Operations Officer. It is *non-sequitur* to assume that the omission to declare has served, in some way, to hinder the rendition of

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[40] G.R. No. 177244, November 20, 2007, 537 SCRA 721, 730-731.

[41] A.M. No. 439-MJ, September 30, 1976, 73 SCRA 107, 108-109.

sound public service for there is no direct relation or connection between the two. Without a nexus between the act complained of and the discharge of duty, the charge of grave misconduct shall necessarily fail.

b. Dishonesty

Dishonesty, as juridically understood, implies the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty or probity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[42] It is a malevolent act that puts serious doubt upon one's ability to perform duties with the integrity and uprightness demanded of a public officer or employee.[43]

The inculpatory allegations in the controversy, if proved, qualify as acts of dishonesty that would merit dismissal from service. The requirement of filing a SALN is enshrined, as it were, in the Constitution[44] to promote transparency in the civil service and operates as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, it behooves every government official or employee to make a complete disclosure of his or her assets, liabilities and net worth in order to suppress any questionable accumulation of wealth because the latter usually results from non-disclosure of such matters.[45]

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[42] *Ampong v. Civil Service Commission, CSC-Regional Office No. 11*, G.R. No. 167916, August 26, 2008, 563 SCRA 293, 307.

[43] *Civil Service Commission v. Sta. Ana*, A.M. No. OCA-01-5, August 1, 2002, 386 SCRA 1, 11-12.

[44] Art. XI, Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

[45] *Ombudsman v. Racho*, G.R. No. 185685, January 31, 2011, 641 SCRA 148, 159.

The significance of requiring the filing of a complete, truthful, and sworn SALN as a measure to curb corruption in the bureaucracy cannot be gainsaid. Secs. 7 and 8 of the *Anti-Graft and Corrupt Practices Act* (RA 3019) are emphatic on this point:

> Sec. 7. *Statement of Assets and Liabilities*. — Every public officer, within thirty days after assuming office, and thereafter, on or before the fifteenth day of April following the close of every calendar year, x x x shall prepare and file x x x a true, detailed and sworn statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year x x x.
>
> Sec. 8. *Prima Facie Evidence of and Dismissal Due to Unexplained Wealth*. — If in accordance with the provisions of [RA 1379], a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. x x x [M]anifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including x x x frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this Section x x x. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

The aforequoted Section 8 speaks of unlawful acquisition of wealth and excessive expenditure, the evil sought to be suppressed and avoided, and Section 7, which directs full disclosure of wealth in the SALN, is a means of preventing said evil and is aimed particularly at minimizing if not altogether curtailing the opportunities for official corruption and maintaining a standard of honesty in the public service. By the SALN, the public is able to monitor movement in the fortune of a public official; it

serves as a valid check and balance mechanism to verify undisclosed properties and wealth.[46]

The failure to file a truthful SALN puts in doubts the integrity of the officer and would normally amount to dishonesty. It should be emphasized, however, that mere misdeclaration in the SALN does not automatically amount to such an offense. Dishonesty requires malicious intent to conceal the truth or to make false statements; otherwise, the government employee may only liable for negligence, not for dishonesty.[47] In addition, only when the accumulated wealth becomes manifestly disproportionate to the income of the public officer/employee and income from other sources, and the public officer/employee fails to properly account or explain these sources of income and acquisitions, does he or she become susceptible to dishonesty.[48]

Substantial evidence

The core of the controversy in this case lies in whether or not the complainant's pieces of evidence extant in and deducible from the records meet the quantum of evidence required to justify the dismissal action taken against petitioners. Petitioner Aguilar argues that the initial evidentiary assessment by the OMB when it lifted the order of preventive suspension was correct. To recall, the OMB declared at that time that the evidence PNP-CIDG presented was not strong enough to support the basic complaint.

In essence, petitioners, Aguilar in particular, urge us to gauge whether or not the complainant has hurdled the quantum of evidence requirement in administrative cases so as to shift the burden of evidence on them. Respondents, on the other hand, are correct in pointing out that a review of the evidence would necessarily entail a corresponding evaluation of facts ascertained by the Ombudsman and the CA, and that as a general rule, the Court should refrain from delving into factual questions. However,

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[46] *Ombudsman v. Valeroso*, G.R. No. 167828, April 2, 2007, 520 SCRA 140.

[47] *Pleyto v. PNP-CIDG*, G.R. No. 169982, November 23, 2007, 538 SCRA 534.

[48] *Ombudsman v. Racho*, *supra* note 45, at 163.

we have already held in a catena of cases that the general rule admits of exceptions, including when the judgment is based on misappreciation of facts or when the findings of facts are conflicting.[49] In light of the series of seemingly confusing orders and rulings promulgated by the Ombudsman, it is beyond cavil that a review of the facts in this case is warranted.

a. Evidence against petitioner Aguilar

i. Lot 6, Block 21, BIR Village, Fairview, Quezon City

Petitioner Aguilar admits owning this parcel of land, but insists at every turn that she had consistently declared it in her SALNs. A perusal of her SALNs from 1999-2002 would indeed show that she had declared ownership of the Fairview property, entering it merely as "House & Lot, Q.C." This is as opposed to the allegations of the PNP-CIDG that what she has been declaring is Lot 8 of Block 21, and not Lot 6.

We sustain the findings of the Ombudsman contained in the *Supplemental Decision* as to the validity of petitioner Aguilar's account on this point. As observed by the Ombudsman, the house and lot she declared as residence is actually a duplex-type structure, with a party wall in the middle, erected on two lots, Lots 6 and 8. When petitioner Aguilar purchased Lot 8 from one Norma Jurado, she dismantled the dividing wall to make a solitary unit.

This explanation finds support from a perusal of her travel documents wherein she interchanges her address between said Lot 6 and Lot 8.

ii. Antel Towers

Petitioner Aguilar argues next that the four-bedroom condominium apartment with two parking slots along Pasay City is actually owned by her US-based brother Carlo who allegedly purchased it from Mina Gabor, as evidenced by the Deed of Sale dated July 14, 2003.

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[49] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660.

The Court, as were the CA and the OMB, is unconvinced. A cursory reading of the deed shows July 14, 2003, or a month after the PNP-CIDG initiated an investigation over Aguilar's lifestyle, as its date of execution. On the other hand, petitioner Aguilar admitted during the clarificatory hearing conducted on September 23, 2004 that, as early as 2000, she and her daughter have already been occupying the apartment, thus:

> **Q**: You said in your direct clarificatory questioning that you don't know when Carlo Gupilan bought this property?
>
> A: Yes, sir.
>
> **Q**: But when did you reside in that property for the first time?
>
> **A:** ***Mga 2000 pa yun.***
>
> Q: When for the first time did you know that Carlo Gupilan acquired that Antel Towers property?
>
> **A**: *Noon pong sinabi niya: "Ate, napakalayo sa opisina mo ang bahay mo. Gusto mo gamitin mo yung bahay ko sa Pasay?"*
>
> **Q**: *Mga kailan yun?*
>
> **A:** ***Mga 2000.***[50]

Evidently, a serious disparity exists between the document presented and the statements petitioner Aguilar herself made. As the CA observed, citing the Ombudsman's findings, petitioner insists that the property is owned by her brother Carlo who invited her to stay in his condo unit in 2000. However, per the document she presented, the alleged Deed of Sale between him and Gabor, was only executed on July 14, 2003.

On what authority then she has been staying on the apartment unit before the alleged Carlo-Gabor sales transaction was executed remained unexplained. This aberration coupled by her beneficial ownership of the property, as demonstrated by her possession and occupancy of the unit, casts serious doubts as to her brother's alleged ownership of the unit since 2000 and renders dubious the alleged deed of sale. To recall, graft

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[50] CA *rollo*, p. 568.

investigators will not only look into properties in a public servant's name, but also those claimed by their relatives or dummies. The SALN requirement will be a useless ritual if public officers can easily evade the obligation to disclose if they register the asset under someone else's name.

iii. Naga City property

As petitioner Aguilar alleged, she purchased the property from her parents who, in June 1990, executed the corresponding deed of sale in her favor. This sale may be documented, but her claim that she subsequently sold the Naga property to one Rosendo Gonzales sometime in 1992 is not supported by evidence. She has not adduced any document or deed proving that she no longer owns the property. On the other hand, the PNP-CIDG was able to secure from the City Assessor's office a copy of the tax declaration of the property in 2002 which, on its face, clearly yields this fact: the property is still registered under Aguilar's name; the alleged sale between her and Rosendo Gonzales was not annotated.

iv. Vehicles

There is no quibbling as to the ownership of the Honda CRV and the Isuzu Trooper. The question pivots only as to the two (2) BMWs that petitioner Aguilar had acknowledged using.

Per petitioner Aguilar's account, a friend of another brother, Salvador, has allowed her the use of the BMWs. As claimed, US-based Salvador is in the business of exporting used cars from the US to the Philippines and has local contacts which include the two corporations under whose names the BMWs are registered. The PNP-CIDG, on the other hand, submitted pictures[51] taken during its surveillance of Aguilar showing the red and silver BMWs leaving the parking space of Antel Towers, if not parked at slots reserved for the use of the unit Aguilar has been occupying.

We rule, as the CA and the Ombudsman earlier did, against petitioner Aguilar on this point. As found by the Ombudsman

[51] *Id.* at 154-156, 158, 160, 162.

and confirmed by the CA, petitioner Aguilar had control and possession—both attributes of ownership—of the two BMW vehicles. While she alleged having only borrowed them, her statement during the clarificatory hearings that she does not know who the real owners are over stretches credulity. Her allegation was that the vehicles were only lent her by her brother's friend. But when pressed on how she came into contact with the friend, who was unnamed, since her brother is in the US, she was unable to give a direct answer.[52]

In another perspective, it bears to stress that petitioner Aguilar, a ranking customs official, had veritably admitted to receiving benefits from the above named corporations which had been facilitating her brother's used car export business. As correctly observed by the Ombudsman, Sec. 7 of RA 6713 or the *Code of Ethical Standards*[53] prohibits public officials and employees from directly or indirectly soliciting or accepting gifts, favor or things of monetary value from anyone in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office. The *Anti-Graft and Corrupt Practices Act* declares and penalizes similar acts.[54]

The act complained of as regards the BMW cars for sure is indicative of corruption, tending to suggest that petitioner Aguilar had used her position in the customs bureau to advance her brother's business interests as well as that of the two corporations which facilitate the vehicle exportation and importation business. Thus, even in the absence of compelling evidence to prove that petitioner Aguilar is the actual owner of the subject high-priced BMW vehicles, she can still be held amenable under the premises for conduct prejudicial to the best interest of the service.

v. Foreign Travels

Petitioner Aguilar's exculpating allegations, as earlier narrated, as to her foreign travels during the period material fail to convince.

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[52] *Id.* at 547-551.

[53] RA 6713, Sec. 7(d).

[54] RA 3019, Sec. 3(b).

While indeed some of her siblings executed affidavits tending to prove they have sufficient income to shoulder her travels, they stopped short of saying that they did in fact contribute or entirely pay, as Aguilar urges the Court to believe, for her and her daughters' trip to Los Angeles. Nowhere in the documents was it mentioned that they defrayed petitioner Aguilar's expenses for her visits. The general affidavits merely indicated their jobs and how much salary they receive monthly. As held in *Office of the Ombudsman v. Racho*,[55] an unexplained wealth case, the documents that Racho presented, purportedly showing his brothers' financial capability to send or contribute large sum of money for their business, do not prove that they did, in fact, contribute or remit money for their supposed joint business venture.

As a final note on the matter, petitioner Aguilar had submitted affidavits[56] wherein she averred that all expenses for her and her daughter's travel shall be borne or defrayed by her alone.[57] So what happens to her claim that her siblings shouldered most of her travel expenses?

vi. Summary

Administrative proceedings are governed by the "substantial evidence rule," meaning a finding of guilt in an administrative case may and would issue if supported by substantial evidence that the respondent has committed the acts stated in the complaint. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[58] Its absence is not shown by stressing that there is contrary evidence, direct or circumstantial, on record.[59]

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[55] *Supra* note 45.

[56] CA *rollo*, p. 132.

[57] *Id.* at 111-112.

[58] *Office of the Ombudsman v. Bernardo*, G.R. No. 181598, March 6, 2013.

[59] *Picardal v. Lladas*, No. L-21309, December 29, 1967, 21 SCRA 1483.

In the case at bar, the required evidence sufficient to justify holding petitioner Aguilar administratively liable has been, to us, as to the CA, satisfied. Not only did she fail to declare in her SALN the residential lot located at Panicuason, Naga City, she likewise failed to satisfactorily explain her beneficial ownership of the Antel Seaview Towers four-bedroom condominium unit and her use of the two BMWs registered in the name of different corporations, which, as the records show, are both based in Olongapo City.

Relevant to this determination is Sec. 2 of RA 1379,[60] in relation to Sec. 8 of RA 3019, which states that whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. When the presumption holds, the burden of evidence then shifts to the respondent, in this instance petitioner Aguilar, to show that the financial resources used to acquire the undeclared assets and her expenditures came from lawful income. To be sure, petitioner Aguilar has failed to discharge this burden, as the CA, and the OMB before it, have determined. The explanation she offered when confronted with her undeclared acquisitions and travel splurge is too flimsy compared to her own admissions as to her beneficial ownership over the properties. Her SALNs during the years in question clearly indicated she was a pure compensation income earner. With an annual salary of PhP 249,876, it is incomprehensible how she could have acquired her undeclared assets on top of paying for her annual travels and living expenses. The discrepancy in the total valuation of her declared and undeclared assets is also too glaring for petitioner Aguilar's omission to be written off as mere negligence or carelessness. As a result, no error can be attributed to the CA and the Ombudsman adjudging her guilty of dishonesty.

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[60] An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor.

Petitioner Aguilar's acquittal in Crim. Case No. 08-263022 of the Manila RTC on the ground of insufficiency of evidence would not carry the day for her. The dismissal of the criminal aspect of the complaint filed against Aguilar has hardly any bearing on the administrative case mainly because the quantum of evidence required to support a finding of guilt in a criminal case is proof beyond reasonable doubt. Administrative cases are, as a rule, separate and independent from criminal suits and are governed by differing evidentiary criteria. The acquittal of an accused who is also a respondent in an administrative case does not conclude the administrative proceedings, nor carry with it relief from administrative liability. This is because unlike in criminal cases where the threshold quantum of evidence required is proof beyond reasonable doubt, only substantial evidence is necessary in administrative cases.[61]

b. Evidence against petitioner Hernandez

Unlike in the case of his co-petitioner, this Court is unable to make out a case of dishonesty, let alone grave misconduct against petitioner Hernandez. To be sure, the OMB investigating panel, in the *Decision* dated June 3, 2004, recommended petitioner Hernandez's exoneration. However, in a bizarre twist, the Ombudsman, in its *Supplement* dated January 18, 2005, disapproved the panel's own assessment of the sufficiency of evidence as regards petitioner Hernandez and ruled that, while the Isuzu Trooper with Plate No. HRH-659 was registered under his name, it is actually owned by Aguilar. Accordingly, the Ombudsman decreed Hernandez's dismissal for supposedly consenting to act as Aguilar's dummy. The Ombudsman, in net effect, used petitioner Hernandez's own admission of vehicle ownership against him and ruled that he could not afford to acquire the car on his salary of PhP 14,098 a month.

In ruling for petitioner Hernandez, we do so taking stock of the pronouncement in the first-issued *Decision* of the Ombudsman. There was indeed no specific allegation in the complaint against him other than his owning an Isuzu Trooper

[61] *Barillo v. Gervacio*, G.R. No. 155088, August 31, 2006, 500 SCRA 561, 572.

vehicle, which he declared in his SALN. But mere ownership is not an actionable administrative offense. The PNP-CIDG also did not present any additional evidence as against petitioner Hernandez. We are, thus, at a loss to understand how the Ombudsman, after saying in not so many words that Hernandez was not guilty, would completely reverse itself in the *Supplement*. Having already disposed of the issue as regards petitioner Hernandez in the *Decision*, it was then quite improper for the Ombudsman to reverse its findings six months after, albeit no evidence had been adduced in the interim to support the new finding.

While the Ombudsman's reasoning—as adopted by the CA, regarding petitioner Hernandez's purchasing capability, or lack of it—may be plausible at first blush, the latter was able to justify his ownership of the Isuzu Trooper. Evidence on record would show that aside from his employment, he and his wife have other sources of income. As he alleged in his pleadings, his wife, Ruth, is a practicing physician who, besides maintaining a clinic in both the Seamen's Hospital in Manila and at the Medical Center Muntinlupa, engages in OB-GYN consultancy. And as seen in his SALN for 2002, the couple run Sarah Katrina's Drugstore in Las Piñas City and even own shares of stocks in Medical Center Muntinlupa. A car loan worth PhP 1,600,000 was also reported in his 2002 SALN.[62] In fine, there is valid reason to conclude that the Hernandez couple, with their combined income, could very well afford a medium-priced motor van.

Given these circumstances, the innocence claim of petitioner Hernandez becomes all the more credible and the justifications offered sufficient to absolve him of administrative liability. It should be understood that the laws on SALN aim to curtail the acquisition of unexplained wealth. Where the source of the undisclosed wealth can be properly accounted for, as in the case of petitioner Hernandez, then it is "explained wealth" which the law does not penalize.[63]

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[62] CA *rollo*, p. 272.

[63] See *Ombudsman v. Racho*, *supra* note 45.

Under OMB AO 17, if the respondent, meted by OMB the penalty of suspension or removal, is exonerated on appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he failed to receive by reason of that suspension or removal. So it must be in the case of petitioner Hernandez.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The appealed July 22, 2009 Decision and June 13, 2011 Resolution in CA-G.R. SP No.88954 are **MODIFIED**. The charge for Grave Misconduct against Flor Gupilan-Aguilar is **DISMISSED**, while the appellate court's finding of her liability for Dishonesty and the corresponding penalty imposed are **AFFIRMED**.

The CA Decision, however, insofar as it finds Honore Hernandez guilty of the offenses charged against him, is hereby **REVERSED** and **SET ASIDE**. The complaint against him for Grave Misconduct and Dishonesty is accordingly **DISMISSED**. He is accordingly ordered **REINSTATED** immediately to his former or equivalent position in the Bureau of Customs without loss or diminution in his salaries and benefits. In addition, he shall be paid his salary and such other emoluments corresponding to the period he was out of the service by reason of the judgment of dismissal decreed by the Office of the Ombudsman, as affirmed by the Court of Appeals.

SO ORDERED.

Peralta, Bersamin,[*] *Mendoza,* and *Leonen, JJ.,* concur.

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[*] Designated Acting Member per Special Order No. 1640 dated February 19, 2014.

SECOND DIVISION

[G.R. No. 203161. February 26, 2014]

MARTIN K. AYUNGO, *petitioner, vs.* **BEAMKO SHIPMANAGEMENT CORPORATION, EAGLE MARITIME RAK FZE, and JUANITO G. SALVATIERRA, JR.,**[*] *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PETITIONER MUST SATISFACTORILY SHOW THAT THE COURT OR *QUASI-JUDICIAL* AUTHORITY GRAVELY ABUSED THE DISCRETION CONFERRED UPON THEM.— To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon them. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," the discretionary authority must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.

2. LABOR AND SOCIAL LEGISLATION; EMPLOYEE'S COMPENSATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT STANDARD EMPLOYMENT CONTRACT (POEA-SEC); FOR DISABILITY TO BE COMPENSABLE.— For a disability to be compensable, the seafarer must establish that there exists "a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had." In other words, not only must the seafarer establish that his injury or illness rendered him permanently or partially disabled, it is equally pertinent

[*] "Juanito Salvatierra" in some parts of the records.

that he shows a causal connection between such injury or illness and the work for which he had been contracted. NLRC gravely abused its discretion in affirming the LA's findings that Ayungo is entitled to disability benefits on the ground that Beamko and Eagle Maritime assumed the risk of liability of his weakened condition. Beamko and Eagle Maritime's subsequent hiring of Ayungo, despite knowledge of his Diabetes Mellitus, did not make them guarantors of his health nor did it warrant outright compensation in favor of Ayungo. Indeed, despite the pre-existing nature of his Diabetes Mellitus and the concomitant disputable presumption that it is work-related, Ayungo still had the burden to prove the causal link between his Diabetes Mellitus and his duties as Chief Engineer.

3. ID.; ID.; ID.; HYPERTENSION, WHEN CONSIDERED COMPENSABLE.— Hypertension is considered compensable when it is shown that: (*a*) it causes impairment of function of body organs like kidneys, heart, eyes, and brain, resulting in permanent disability; and (*b*) there are documents that substantiate said finding, such as chest x-ray report, ECG report, blood chemistry report, funduscopy report, and C-T scan.

4. ID.; ID.; ID.; WHEN DOCTOR APPOINTED BY THE SEAFARER DISAGREES WITH THE ASSESSMENT OF THE COMPANY DOCTOR, THIRD DOCTOR'S DECISION SHALL BE BINDING.— Section 20(B)(3) of the 2000 POEA-SEC which provides that "[i]f a doctor appointed by the seafarer disagrees with the assessment [of the company doctor], a third doctor may be agreed jointly between the Employer and the seafarer," and that "[t]he third doctor's decision shall be final and binding on both parties."

APPEARANCES OF COUNSEL

R. Go, Jr. Law Office for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 4, 2012 and Resolution[3] dated August 16, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 117162 which reversed and set aside the Resolutions[4] dated July 20, 2010 and September 28, 2010 of the National Labor Relations Commission (NLRC) in OFW (M) 09-12328-08 dismissing petitioner Martin K. Ayungo's (Ayungo) claim for disability benefits.

The Facts

On October 11, 2007, Ayungo entered into a twelve (12) month Contract of Employment[5] with respondent Beamko Shipmanagement Corporation (Beamko) on behalf of its foreign principal, respondent Eagle Maritime RAK FZE (Eagle Maritime), whereby he was engaged as Chief Engineer for the vessel M/V World Star (vessel).

Prior to his embarkation, or on October 10, 2007, Ayungo underwent a pre-employment medical examination[6] (PEME) at the Sagrada Corazon Medical and Allied Services Center, Inc. (SCMASCI) in Ermita, Manila. During his PEME, Ayungo disclosed that he had Diabetes Mellitus. However, when asked if he suffered from High Blood Pressure (Hypertension), he answered in the negative. With these representations, Dr. Janilyn M. Ong and Dr. Catalina P. Ricohermoso of SCMASCI declared

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[1] *Rollo*, pp. 33-81.

[2] *Id.* at 8-30. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Jose C. Reyes, Jr. and Franchito N. Diamante, concurring.

[3] *Id.* at 108-109.

[4] *Id.* at 505-524 and 551-552, respectively. Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Teresita D. Castillon-Lora and Napoleon M. Menese, concurring.

[5] *Id.* at 144.

[6] *Id.* at 145.

Ayungo "FIT FOR SEA DUTY." Thereafter, Ayungo left Manila and boarded the vessel on October 14, 2007.[7]

In the morning of March 15, 2008, Ayungo suddenly lost his sense of hearing while on duty in the engine room, and only heard a continuous ringing noise. But since the vessel was about to reach the port of Yokohama, Japan, Ayungo continued to work until 8:00 in the evening of that day. After three (3) hours, Ayungo woke up and felt like his surroundings were spinning. Then, he vomited, lost consciousness, and was later found by Oiler Desiderio Sumalinog lying on the floor. The incident was reported[8] to the master of the vessel, Captain J. A. Clenista, for proper action.[9]

Upon reaching the port of Yokohama, Japan on March 16, 2008, Ayungo was confined at the Yokohama Red Cross Hospital and was initially diagnosed with "sudden dysacousis" – a condition in which certain sounds produce discomfort (auditory dysesthesia).[10] On March 25, 2008, he was repatriated to the Philippines for further medical treatment and examination.[11]

Following his repatriation, Ayungo was attended to by Dr. Robert Lim (Dr. Lim) of the Metropolitan Medical Center (MMC), the designated physician of Beamko. In a Medical Certificate[12] dated March 26, 2008, his tests reflected the following impressions: (*a*) to consider Meniere's Syndrome (Endolymphatics Hydrops); (*b*) Hypertension; and (*c*) Diabetes Mellitus. It was also revealed that Ayungo was previously diagnosed with Hypertension which he maintained by taking the prescriptive drug Lifezar.

In another Medical Report[13] dated May 21, 2008, Ayungo was further diagnosed with Multiple Lacunar Infarcts and Coronary Artery Disease (CAD).

[7] *Id.* at 10.

[8] *Id.* at 148.

[9] *Id.* at 10.

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

[11] *Id.* at 10.

[12] *Id.* at 231-232.

[13] *Id.* at 238.

On July 9, 2008, Dr. Mylene Cruz-Balbon (Dr. Cruz-Balbon) and Dr. Lim of the MMC issued another report,[14] finding that Ayungo's Hypertension and Diabetes Mellitus were both pre-existing and not work-related, *viz.*:

> As per our reply to your previous inquiry dated April 10, 2008, his **Hypertension and Diabetes Mellitus are both pre-existing** and can be contributory to the Multiple Lacunar Infarcts noted on CT Scan.
>
> x x x x x x x x x
>
> **Hypertension is not work-related.** It is multifactorial in origin which includes genetic predisposition, poor lifestyle, high salt intake, smoking, Diabetes Mellitus, age and increased sympathetic activity.
>
> **Diabetes Mellitus is usually familial/hereditary and is not work related.** (Emphases and underscoring supplied)

Unconvinced, Ayungo consulted another physician, Dr. May S. Donato-Tan (Dr. Donato-Tan) of the Philippine Heart Center. In an undated medical certificate,[15] the latter declared him to be suffering from CAD, Hypertension and Diabetes Mellitus that rendered him unfit for sea duty in any capacity, the status thereof being that of a permanent total disability.[16]

On September 2, 2008, Ayungo filed a complaint[17] before the NLRC for the payment of permanent total disability benefits, sickness allowance, reimbursement of medical expenses, damages and attorney's fees against Beamko, respondent Juanito G. Salvatierra, Jr. (Salvatierra, Jr.), in his capacity as President of Beamko, and Eagle Maritime (respondents).

In his Position Paper[18] dated February 4, 2009, Ayungo claimed that he is entitled to permanent total disability benefits considering that: (*a*) his medical records disclose that his Hypertension

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[14] *Id.* at 242.

[15] *Id.* at 165-166.

[16] *Id.* at 166.

[17] *Id.* at 110-112.

[18] *Id.* at 114-143.

caused the impairment of his heart and kidney organs;[19] (*b*) his Hypertension and CAD developed and/or became aggravated as a result of the conditions of his employment;[20] and (*c*) by employing Ayungo despite the disclosure in his PEME that he had Diabetes Mellitus, Beamko and Eagle Maritime assumed the risk of liability arising from his weakened medical condition.[21]

In opposition, respondents contended[22] that: (*a*) Ayungo was already suffering from his illnesses when he entered into the contract of employment with Beamko and Eagle Maritime;[23] and (*b*) his illnesses were not work-related under the 2000 Philippine Overseas Employment Agency Standard Employment Contract (2000 POEA-SEC).[24]

The LA Ruling

In a Decision[25] dated May 14, 2009, the Labor Arbiter (LA) ordered Beamko, Eagle Maritime, and Salvatierra, Jr. to jointly and severally pay Ayungo the sum of: (*a*) US$60,000.00 as permanent total disability benefits, as well as US$6,300.00 sickness allowance, to be paid in Philippine currency at the time of payment; (*b*) ₱100,000.00 as moral damages; (*c*) ₱100,000.00 as exemplary damages; and (*d*) attorney's fees equivalent to 10% of the total monetary award.

The LA held that Beamko, Eagle Maritime, and Salvatierra, Jr. cannot evade liability by claiming that Ayungo's illnesses were pre-existing considering that during his PEME, he divulged that he had Diabetes Mellitus, and despite such, was still declared "fit for sea duty."[26] The LA did not give credence to Dr. Cruz-Balbon's and Dr. Lim's findings that Ayungo's Diabetes Mellitus

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[19] *Id.* at 124.

[20] *Id.* at 134.

[21] *Id.* at 135.

[22] See Position Paper dated November 22, 2008; *id.* at 186-221.

[23] *Id.* at 192-193.

[24] *Id.* at 196.

[25] *Id.* at 355-365. Penned by LA Madjayran H. Ajan.

[26] See *id.* at 358-360.

and Hypertension were not work-related as the same appeared to be mere general statements unsupported by medical and laboratory tests.[27] Lastly, the LA concluded that Ayungo's Hypertension can be classified as primary or essential for the reason that it had caused the impairment of his heart and kidney organs.[28]

Dissatisfied, respondents filed an appeal to the NLRC.

The NLRC Ruling

In a Resolution[29] dated July 20, 2010, the NLRC denied the appeal, and thereby affirmed the LA's ruling *in toto*. It fully subscribed to the findings of the LA that Ayungo's Diabetes Mellitus and Hypertension were work-related and, hence, compensable, effectively debunking respondents' contention that Ayungo is not entitled to permanent total disability benefits on the ground that his illnesses were pre-existing.

Respondents moved for reconsideration which the NLRC denied in a Resolution[30] dated September 28, 2010, prompting the filing of a petition for *certiorari* before the CA.

Pending resolution thereof, both parties jointly filed a Conditional Satisfaction of Judgment Award[31] before the NLRC, wherein Ayungo manifested his receipt[32] of the sum of ₱3,391,506.31 from respondents, without prejudice to the outcome of the *certiorari* case filed before the CA.

The CA Ruling

In a Decision[33] dated May 4, 2012, the CA granted the *certiorari* petition, and thereby set aside the NLRC's decision. It found that while Ayungo indeed disclosed that he had Diabetes

[27] See *id.* at 360-362.

[28] *Id.* at 361.

[29] *Id.* at 505-524.

[30] *Id.* at 551-552.

[31] *Id.* at 662-666.

[32] *Id.* at 667-668.

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

Mellitus, this fact alone does not entitle him to disability benefits as he failed to show the causal connection between his illness and the work for which he was contracted.[34] Similarly, the CA rejected Ayungo's claim in connection with his Hypertension as it was not shown that said illness impaired the function of any of his body organs.[35] Lastly, the CA stated that the undated medical certificate of Dr. Donato-Tan cannot be given credence for failing to show that Ayungo's illnesses were work-related, considering too that Ayungo failed to refer the matter to a "third doctor" as prescribed under the 2000 POEA-SEC.[36]

Dissatisfied, Ayungo filed a motion for reconsideration which was denied in a Resolution[37] dated August 16, 2012, hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in granting respondents' petition for *certiorari*, thereby setting aside the NLRC's decision holding that Ayungo was entitled to disability benefits.

The Court's Ruling

To justify the grant of the extraordinary remedy of *certiorari*, the petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon them. Grave abuse of discretion connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," the discretionary authority must be exercised in a despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act all in contemplation of law.[38]

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[34] *Id.* at 100-102.

[35] *Id.* at 102.

[36] *Id.* at 103.

[37] *Id.* at 108-109.

[38] *Ramos v. BPI Family Savings Bank, Inc.*, G.R. No. 203186, December 4, 2013.

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and the conclusions reached thereby are not supported by substantial evidence.[39] This requirement is clearly expressed in Section 5, Rule 133 of the Rules of Court which provides that "[i]n cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

Guided by the foregoing considerations, the Court finds that the CA correctly granted respondents' *certiorari* petition since the NLRC gravely abused its discretion when it held that Ayungo was entitled to disability benefits notwithstanding the latter's failure to establish his claim through substantial evidence.

Specifically, Ayungo was not able to demonstrate, under the parameters of the above-mentioned evidentiary threshold, that his Diabetes Mellitus was related to his work as Chief Engineer during the course of his employment. It is well-settled that for a disability to be compensable, the seafarer must establish that there exists "a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had."[40] In other words, not only must the seafarer establish that his injury or illness rendered him permanently or partially disabled, it is equally pertinent that he shows a causal connection between such injury or illness and the work for which he had been contracted.[41]

In this case, the NLRC gravely abused its discretion in affirming the LA's findings that Ayungo is entitled to disability benefits on the ground that Beamko and Eagle Maritime assumed the

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[39] See *id.*; citations omitted.

[40] *Magsaysay Maritime Services v. Laurel*, G.R. No. 195518, March 20, 2013, 694 SCRA 225, 242; see also Section 20(B) of the 2000 POEA-SEC.

[41] See *Magsaysay Maritime Corporation v. NLRC (Second Division)*, G.R. No. 186180, March 22, 2010, 616 SCRA 362, 373-374.

risk of liability of his weakened condition.[42] Beamko and Eagle Maritime's subsequent hiring of Ayungo, despite knowledge of his Diabetes Mellitus, did not make them guarantors of his health nor did it warrant outright compensation in favor of Ayungo.[43] Indeed, despite the pre-existing nature of his Diabetes Mellitus and the concomitant disputable presumption that it is work-related,[44] Ayungo still had the burden to prove the causal link between his Diabetes Mellitus and his duties as Chief Engineer. As pronounced in *Quizora v. Denholm Crew Management (Philippines), Inc.*:[45]

> At any rate, granting that the provisions of the 2000 POEA-SEC apply, the disputable presumption provision in Section 20 (B) does not allow him to just sit down and wait for respondent company to present evidence to overcome the disputable presumption of work-relatedness of the illness. **Contrary to his position, he still has to substantiate his claim in order to be entitled to disability compensation. He has to prove that the illness he suffered was work-related and that it must have existed during the term of his employment contract.** He cannot simply argue that the burden of proof belongs to respondent company. (Emphasis supplied)

Thus, considering that Ayungo failed to establish the work-relatedness of his Diabetes Mellitus through substantial evidence, his claim for disability benefits therefor should not have been granted by the NLRC.

As for Ayungo's Hypertension, suffice it to state that he did not disclose that he had been suffering from the same and/or had been actually taking medications therefor (*i.e.*, Lifezar) during his PEME.[46] As the records would show, the existence of Ayungo's Hypertension was only revealed after his repatriation, as reflected in the Medical Report[47] dated March

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[42] *Rollo,* pp. 515-516.

[43] *Francisco v. Bahia Shipping Services, Inc.*, G.R. No. 190545, November 22, 2010, 635 SCRA 660.

[44] See Section 32-A (List of Occupational Diseases) of the 2000 POEA-SEC.

[45] G.R. No. 185412, November 16, 2012, 660 SCRA 309, 319.

[46] *Rollo,* p. 145.

[47] *Id.* at 231-232.

26, 2008 and reinforced by subsequent medical reports[48] issued by MMC. To the Court's mind, Ayungo's non-disclosure constitutes fraudulent misrepresentation which, pursuant to Section 20(E) of the 2000 POEA-SEC,[49] disqualifies him from claiming any disability benefits from his employer. In fact, even if the Court were to discount Ayungo's misrepresentation on the premise that his Hypertension was not pre-existing, his claim for disability benefits therefor should remain dismissible given that he had still failed to satisfy the requirements stated in Section 32-A(20) of the 2000 POEA-SEC, *viz.*:

> 20. Essential Hypertension.
>
> Hypertension classified as primary or essential **is considered compensable if it causes impairment of function of body organs like kidneys, heart, eyes and brain, resulting in permanent disability**; Provided, that the following documents substantiate it: (a) chest x-ray report, (b) ECG report (c) blood chemistry report, (d) funduscopy report, and (e) C-T scan. (Emphasis supplied)

Breaking down the provision, Hypertension is considered compensable when it is shown that: (*a*) it causes impairment of function of body organs like kidneys, heart, eyes, and brain, resulting in permanent disability; and (*b*) there are documents that substantiate said finding, such as chest x-ray report, ECG report, blood chemistry report, funduscopy report, and C-T scan. As records are bereft of any showing that these requirements had been complied with by Ayungo, his Hypertension should not have been considered by the NLRC as compensable.

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[48] See Medical Reports dated April 10, 2008 and July 9, 2008, *id.* at 241-242.

[49] SECTION 20. COMPENSATION AND BENEFITS

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E. **A seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits**. This may also be a valid ground for termination of employment and imposition of the appropriate administrative and legal sanctions. (Emphasis and underscoring supplied)

Finally, the Court deems it worthy to note that Ayungo failed to comply with the procedure laid down under Section 20(B)(3) of the 2000 POEA-SEC which provides that "[i]f a doctor appointed by the seafarer disagrees with the assessment [of the company doctor], a third doctor may be agreed jointly between the Employer and the seafarer," and that "[t]he third doctor's decision shall be final and binding on both parties." In *Philippine Hammonia Ship Agency, Inc. v. Dumadag*[50] (*Philippine Hammonia*), the Court held that the seafarer's non-compliance with the said conflict-resolution procedure results in the affirmance of the fit-to-work certification of the company-designated physician, *viz.*:

The filing of the complaint constituted a breach of Dumadag's contractual obligation to have the conflicting assessments of his disability referred to a third doctor for a binding opinion. x x x **Thus, the complaint should have been dismissed, for without a binding third opinion, the fit-to-work certification of the company-designated physician stands** x x x.

x x x x x x x x x

Whatever his reasons might have been, Dumadag's disregard of the conflict-resolution procedure under the POEA-SEC and the CBA cannot and should not be tolerated and allowed to stand, lest it encourage a similar defiance. x x x The third-doctor-referral provision of the POEA-SEC, it appears to us, has been honored more in the breach than in the compliance. This is unfortunate considering that the provision is intended to settle disability claims voluntarily at the parties' level where the claims can be resolved more speedily than if they were brought to court.

Given the circumstances under which Dumadag pursued his claim, especially the fact that he caused the non-referral to a third doctor, Dr. Dacanay's fit-to-work certification must be upheld. In *Santiago v. Pacbasin Ship Management, Inc.*, the Court declared: "[t]here was no agreement on a third doctor who shall examine him anew and whose finding shall be final and binding. x x x **[T]his Court is left without choice but to uphold the certification made by Dr. Lim with respect to Santiago's disability**. (Emphases and underscoring supplied)

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[50] G.R. No. 194362, June 26, 2013; citations omitted.

In this case, the findings of Beamko and Eagle Maritime's physicians that Ayungo's illnesses were not work-related were, in turn, controverted by Ayungo's personal doctor stating otherwise. In light of these contrasting diagnoses, Ayungo prematurely filed his complaint before the NLRC without any regard to the conflict-resolution procedure under Section 20(B)(3) of the 2000 POEA-SEC. Thus, consistent with *Philippine Hammonia*, the Court is inclined to uphold the opinion of Beamko and Eagle Maritime's physicians that Ayungo's illnesses were pre-existing and not work-related, hence, non-compensable.

In sum, the CA rightfully granted respondents' *certiorari* petition as the NLRC findings and the conclusions reached thereby are tainted with grave abuse of discretion considering that Ayungo's claim for disability benefits remains unsupported by substantial evidence and is even anathema to the provisions of the 2000 POEA-SEC. Verily, while the Court adheres to the principle of liberality in favor of the seafarer in construing the POEA Standard Contract, it cannot allow claims for compensation based on surmises. When the evidence presented then negates compensability, the claim must fail, lest it causes injustice to the employer.[51]

WHEREFORE, the petition is **DENIED**. The Decision dated May 4, 2012 and Resolution dated August 16, 2012 of the Court of Appeals in CA-G.R. SP No. 117162 are **AFFIRMED.**

SO ORDERED.

Carpio,[**] *Acting C.J. (Chairperson), del Castillo, Perez,* and *Leonen,*[***] *JJ.,* concur.

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[51] *Francisco v. Bahia Shipping Services, Inc.*, *supra* note 43, at 667.

[**] Designated Acting Chief Justice per Special Order No. 1644 dated February 25, 2014.

[***] Designated Acting Member per Special Order No. 1643 dated February 25, 2014.

THIRD DIVISION

[G.R. No. 203947. February 26, 2014]

RUFA A. RUBIO, BARTOLOME BANTOTO, LEON ALAGADMO, RODRIGO DELICTA, and ADRIANO ALABATA, *petitioners, vs.* **LOURDES ALABATA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENT; PREVAILING PARTY CAN ENFORCE JUDGMENT BY MERE MOTION OR BY INDEPENDENT ACTION; PERIOD FOR FILING.— This case falls under Section 6, Rule 39 of the 1997 Rules of Civil Procedure. xxx Indeed, both the RTC-42 and the CA were acting in accordance with the rules and jurisprudence when they dismissed the action for revival of judgment. Section 6 is clear. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five (5) years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five (5) years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within ten (10) years from the time the judgment becomes final.

2. ID.; ID.; RULES OF COURT; LIBERAL INTERPRETATION OF THE RULES OF PROCEDURE, ALLOWED UNDER THE PRINCIPLE OF EQUITY; CASE AT BAR.— It appears from the records that a copy of the Entry of Judgment was sent to Atty. Ma. Lourdes Naz, the SAC-PAO lawyer in charge of petititioners' case, who had resigned. Unfortunately, she failed to inform petitioners of the said entry of judgment before her resignation in November 1997. She also failed to inform PAO-Dumaguete of such development. It was only in November 2007, when petitioners actually discovered that their victory was already final after their nephew secured a copy of the entry of judgment from RTC-43. x x x An action for revival of judgment is governed by Article 1144 (3), Article 1152 of the Civil Code and Section 6, Rule 39 of the Rules of Court. Thus, *Art. 1144.*

> The following actions must be brought **within ten years** from the time the right of action accrues: x x x (3) Upon a judgment. Art. 1152 of the Civil Code states that the period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final. To allow a strict application of the rules, however, would result in an injustice to petitioners considering (1) that respondent decided not to contest the RTC-43 decision and withdrew her appeal and (2) that no fault could be attributed to petitioners. x x x No prejudice is caused to respondent because she withdrew her appeal. x x x Since the decision became final and executory, she has been in possession of the property which rightfully belongs to petitioners. She will continue to hold on to the property just because of a technicality. Due to the peculiarities of this case, the Court, in the exercise of its equity jurisdiction, relaxes the rules and decides to allow the action for the revival of judgment filed by petitioners. The Court believes that it is its bounden duty to exact justice in every way possible and exercise its soundest discretion to prevent a wrong. Although strict compliance with the rules of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice; and that it is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Rudy T. Enriquez for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 seeks to annul and set aside the November 16, 2011 Decision[1] and

[1] *Rollo*, pp. 23-28. Penned by Justice Eduardo B. Peralta Jr. with Associate Justice Pampio A. Abarintos and Associate Justice Gabriel T. Ingles, concurring.

the September 26, 2012 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 02497, which affirmed the February 28, 2008 Resolution of the Regional Trial Court, Branch 42, Dumaguete City *(RTC-42)*, in an action for revival of judgment.

The Facts:

Petitioners Rufa A. Rubio, Bartolome Bantoto, Leon Alagadmo, Rodrigo Delicta, and Adriano Alabata *(petitioners)* and respondent Lourdes Alabata *(respondent)* were protagonists in an earlier case for annulment of declaration of heirship and sale, reconveyance and damages before the Regional Trial Court, Branch 43, Dumaguete City *(RTC-43)*. Docketed as Civil Case No. 10153, the case was decided in favor of petitioner. In its October 31, 1995 Decision, the RTC-43 (1) voided the "Declaration of Heirship and Sale;" (2) ordered respondent to reconvey the entire subject property to petitioners; (3) dismissed respondent's counterclaim; and (4) ordered her to pay moral and exemplary damages plus the cost of suit.[3]

Not in conformity, respondent elevated the RTC-43 case to the CA. She, however, later withdrew her appeal which paved the way for the RTC-43 Decision to lapse into finality. The CA resolution granting respondent's motion to withdraw became final and executory on June 20, 1997. On August 20, 1997, the Entry of Judgment[4] was issued and recorded in the CA Book of Entries of Judgments.

Unfortunately, the judgment was not executed. Petitioners claim that their counsel at the Public Attorney's Office, Dumaguete City *(PAO-Dumaguete)*, was never informed that the entry of judgment had already been issued.[5] They pointed out that, initially, their case was handled by the PAO-Dumaguete, but when the RTC-43 decision was appealed to the CA by respondent, their case was handed over to the Special Appealed

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[2] *Id.* at 28-29.

[3] *Id.* at 49-50.

[4] *Id.* at 23-24 and 51.

[5] *Id.* at 24.

Cases Division *(SAC-PAO)* at the PAO Central Office in Manila. They explained that although a copy of the Entry of Judgment was sent to Atty. Ma. Lourdes Naz, the SAC-PAO lawyer in charge of their case, she failed to inform petitioners of the issued entry of judgment before she resigned from PAO sometime in November 1997. She also failed to inform PAO-Dumaguete of the said development. When petitioners followed up with PAO-Dumaguete, it was of the belief that the appeal of respondent was still pending.[6]

In November 2007, or more than ten (10) years from the date when the RTC-43 decision was entered in the CA Book of Entries of Judgments, petitioners found out that the said decision had become final and executory when their nephew secured a copy of the Entry of Judgment.

On December 5, 2007, petitioners, through PAO-Dumaguete, filed an action for revival of judgment which was raffled to RTC-42. On February 28, 2008, after respondent filed her Answer with Affirmative Defenses, RTC-42 granted her Motion to Dismiss and ordered petitioners' case for revival of judgment dismissed on the ground of prescription. Petitioners sought reconsideration, but RTC-42 denied the motion on April 4, 2008.[7]

Petitioners then interposed an appeal before the CA. The latter, on November 16, 2011, rendered its assailed decision denying petitioners' appeal and affirming the dismissal by the RTC-42 of their case for revival of judgment. On September 26, 2012, the CA denied petitioners' motion for reconsideration.

Hence, this petition.

LONE ISSUE

THE COURT *A QUO* ERRED IN STRICTLY APPLYING THE PROCEDURAL RULES ON PRESCRIPTION AND DISMISSING THE CASE BASED ON THE SAID GROUND, INSPITE [OF] THE FACT THAT PETITIONERS WILL SUFFER MANIFEST INJUSTICE AND

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

[7] *Id.*

DEPRIVATION OF THEIR PROPERTY, DUE TO A FAULT NOT ATTRIBUTABLE TO THEM.[8]

The Court resolves to grant the petition.

This case falls under Section 6, Rule 39 of the 1997 Rules of Civil Procedure which states:

> **SEC.6.** *Execution by motion or by independent action.* – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

The prior case before the RTC-43 involved a reconveyance of a parcel of land in favor of the rightful owners, the heirs of one Agapito Alagadmo. Petitioners, in instituting the case against respondent, showed their desire and resolve to pursue and take back what was rightfully theirs. Eventually, they succeeded in obtaining justice and won back what was theirs. For their sufferings, the trial court saw it fit to also assess moral damages and exemplary damages against respondent.[9]

When the case was elevated by respondent to the CA, the PAO continued to represent petitioners' cause. As it was an appealed case, the matter was referred to, and handled by, SAC-PAO in Manila.

For reasons known only to her, the respondent withdrew her appeal, which resulted in the RTC-43 Decision becoming final and executory. The petitioners, however, never knew of this because when they followed up the case with PAO-Dumaguete, they were informed that the appeal was still pending.[10]

It appears from the records that a copy of the Entry of Judgment was sent to Atty. Ma. Lourdes Naz, the SAC-PAO lawyer in

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[8] *Id.* at 13.

[9] *Id.* at 49.

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

charge of their case, who had resigned. Unfortunately, she failed to inform petitioners of the said entry of judgment before her resignation in November 1997. She also failed to inform PAO-Dumaguete of such development.

It was only in November 2007, when petitioners actually discovered that their victory was already final after their nephew secured a copy of the entry of judgment from RTC-43.

Indeed, both the RTC-42 and the CA were acting in accordance with the rules and jurisprudence when they dismissed the action for revival of judgment. Section 6 is clear. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right by mere motion within five (5) years from the date of entry of judgment. If the prevailing party fails to have the decision enforced by a motion after the lapse of five (5) years, the said judgment is reduced to a right of action which must be enforced by the institution of a complaint in a regular court within ten (10) years from the time the judgment becomes final.[11]

An action for revival of judgment is governed by Article 1144 (3), Article 1152 of the Civil Code and Section 6, Rule 39 of the Rules of Court. Thus,

Art. 1144. The following actions must be brought **within ten years** from the time the right of action accrues:

x x x x x x x x x

(3) Upon a judgment

Article 1152 of the Civil Code states:

Art. 1152. The period for prescription of actions to demand the fulfillment of obligations declared by a judgment commences from the time the judgment became final.

To allow a strict application of the rules, however, would result in an injustice to petitioners considering (1) that respondent

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[11] *Villeza v. German Management and Services, Inc.*, G.R. No. 182937, August 8, 2010, 627 SCRA 425, 431.

decided not to contest the RTC-43 decision and withdrew her appeal and (2) that no fault could be attributed to petitioners.

Petitioners could not afford to engage the services of a private counsel and so were represented by the PAO. As has been repeatedly stated all over the records, PAO, SAC-PAO in particular, failed them. SAC-PAO never informed them of the abandonment by respondent of her appeal or of the entry of judgment. Under the circumstances, they could not be faulted for their subsequent actions. They went to PAO-Dumaguete and they were told that the case was still pending on appeal. Due to their penury and unfamiliarity or downright ignorance of the rules, they could not be expected to bypass PAO-Dumaguete and directly verify the status of the case with the SAC-PAO. They had to trust their lawyer and wait.

No prejudice is caused to respondent because she withdrew her appeal. Withdrawing her appeal means that she respected the RTC-43 Decision, which voided the "Declaration of Heirship and Sale," dismissed respondent's counterclaim, and ordered her to reconvey the entire subject property to petitioners and to pay moral and exemplary damages plus the cost of suit. Since the decision became final and executory, she has been in possession of the property which rightfully belongs to petitioners. She will continue to hold on to the property just because of a technicality.

Due to the peculiarities of this case, the Court, in the exercise of its equity jurisdiction, relaxes the rules and decides to allow the action for the revival of judgment filed by petitioners. The Court believes that it is its bounden duty to exact justice in every way possible and exercise its soundest discretion to prevent a wrong. Although strict compliance with the rules of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice; and that it is a better rule that courts, under the principle of equity, will not be guided or bound strictly by the statute of limitations or the doctrine of laches when to do so, manifest wrong or injustice would result.[12] Thus:

[12] *Id.* at 432-433.

"x x x procedural rules may, nonetheless, be relaxed for the most persuasive of reasons in order to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. Corollarily, the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires.[13]

WHEREFORE, the petition is **GRANTED**. The November 16, 2011 Decision and the September 26, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 02497 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Regional Trial Court for appropriate action.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 204406. February 26, 2014]

MACARTHUR MALICDEM and HERMENIGILDO FLORES, *petitioners, vs.* **MARULAS INDUSTRIAL CORPORATION and MIKE MANCILLA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL ISSUES CANNOT BE RAISED

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[13] *Sy v. Local Government of Quezon City*, G.R. No. 202690, June 5, 2013.

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

THEREIN.— The CA denied the petition, finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC. It ruled that the issue of whether or not the petitioners were project employees or regular employees was factual in nature and, thus, not within the ambit of a petition for *certiorari*. Moreover, it accorded respect and due consideration to the factual findings of the NLRC, affirming those of the LA, as they were supported by substantial evidence.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; SECURITY OF TENURE; PROJECT EMPLOYMENT CONTRACTS THAT VIOLATE SECURITY OF TENURE DISREGARDED FOR BEING CONTRARY TO PUBLIC POLICY.— A reading of the 2008 employment contracts, denominated as "Project Employment Agreement," reveals that there was a stipulated probationary period of six (6) months from its commencement. It was provided therein that in the event that they would be able to comply with the company's standards and criteria within such period, they shall be reclassified as project employees with respect to the remaining period of the effectivity of the contract. xxx To begin with, there is no actual project. The only stipulations in the contracts were the dates of their effectivity, the duties and responsibilities of the petitioners as extruder operators, the rights and obligations of the parties, and the petitioners' compensation and allowances. x x x The respondents cannot use the alleged expiration of the employment contracts of the petitioners as a shield of their illegal acts. The project employment contracts that the petitioners were made to sign every year since the start of their employment were only a stratagem to violate their security of tenure in the company. As restated in *Poseidon Fishing v. NLRC*, "if from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be disregarded for being contrary to public policy."

3. ID.; ID.; REGULAR EMPLOYEE; PROBATIONARY EMPLOYEE, WHEN CONSIDERED REGULAR EMPLOYEE.— Under Article 281 of the Labor Code, however, "an employee who is allowed to work after a probationary period shall be considered a regular employee." When an employer renews a contract of employment after the lapse of the six-month probationary period, the employee thereby becomes a regular employee. *No employer is allowed to determine indefinitely the fitness of its employees.*

4. ID.; ID.; ID.; PROJECT EMPLOYEE, WHEN CONSIDERED REGULAR EMPLOYEE.— While length of time is not the controlling test for project employment, it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary and indispensable to the usual business of trade of the employer. Thus, in the earlier case of *Maraguinot, Jr. v. NLRC*, it was ruled that a project or work pool employee, who has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) those tasks are vital, necessary and indispensable to the usual business or trade of the employer, must be deemed a regular employee. xxx Next, granting that they were project employees, the petitioners could only be considered as regular employees as the two factors enumerated in *Maraguinot, Jr.*, are present in this case. It is undisputed that the petitioners were continuously rehired by the same employer for the same position as extruder operators. As such, they were responsible for the operation of machines that produced the sacks. Hence, their work was vital, necessary and indispensable to the usual business or trade of the employer.

5. ID.; ID.; ID.; TEST TO DETERMINE REGULAR EMPLOYMENT.— The test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business.

6. ID.; ID.; PROJECT EMPLOYEE; IN THE CONSTRUCTION INDUSTRY, A PROJECT EMPLOYEE'S TENURE IS COTERMINOUS WITH HIS ASSIGNED WORK.— It is widely known that in the construction industry, a project employee's work depends on the availability of projects, necessarily the duration of his employment. It is not permanent but coterminous with the work to which he is assigned. It would be extremely burdensome for the employer, who depends on the availability of projects, to carry him as a permanent employee and pay him wages even if there are no projects for him to work on. The rationale behind this is that once the project is

completed it would be unjust to require the employer to maintain these employees in their payroll. To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair to the employers and amounts to labor coddling at the expense of management.

7. ID.; ID.; DISMISSAL OF EMPLOYEE; UNJUSTLY DISMISSED EMPLOYEE ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND OTHER PRIVILEGES AND TO FULL BACKWAGES AND OTHER BENEFITS.— Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. The law intends the award of backwages and similar benefits to accumulate past the date of the LA decision until the dismissed employee is actually reinstated.

APPEARANCES OF COUNSEL

Urbano Palamos & Fabros for petitioners.
Fortun Narvasa & Salazar for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Macarthur Malicdem *(Malicdem)* and Hermenigildo Flores *(Flores)* assails the July 18, 2012 Decision[2] and the November 12, 2012 Resolution[3] of the Court of Appeals

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[1] *Rollo*, pp. 26-44.

[2] *Id.* at 8-21; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Franchito N. Diamante and Abraham B. Borreta, concurring.

[3] *Id.* at 23-24; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Franchito N. Diamante and Abraham B. Borreta, concurring.

(CA) in CA-G.R. SP No. 124470, dismissing their petition for *certiorari* under Rule 65 in an action for illegal dismissal.

The Facts:

A complaint[4] for illegal dismissal, separation pay, money claims, moral and exemplary damages, and attorney's fees was filed by petitioners Malicdem and Flores against respondents Marulas Industrial Corporation *(Marulas)* and Mike Mancilla *(Mancilla)*, who were engaged in the business of manufacturing sacks intended for local and export markets.

Malicdem and Flores were first hired by Marulas as extruder operators in 2006, as shown by their employment contracts. They were responsible for the bagging of filament yarn, the quality of pp yarn package and the cleanliness of the work place area. Their employment contracts were for a period of one (1) year. Every year thereafter, they would sign a Resignation/Quitclaim in favor of Marulas a day after their contracts ended, and then sign another contract for one (1) year. Until one day, on December 16, 2010, Flores was told not to report for work anymore after being asked to sign a paper by Marulas' HR Head to the effect that he acknowledged the completion of his contractual status. On February 1, 2011, Malicdem was also terminated after signing a similar document. Thus, both claimed to have been illegally dismissed.

Marulas countered that their contracts showed that they were fixed-term employees for a specific undertaking which was to work on a particular order of a customer for a specific period. Their severance from employment was due to the expiration of their contracts.

On February 7, 2011, Malicdem and Flores lodged a complaint against Marulas and Mancilla for illegal dismissal.

On July 13, 2011, the Labor Arbiter *(LA)* rendered a decision[5] in favor of the respondents, finding no illegal dismissal. He

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[4] *Id.* at 63-64.

[5] *Id.* at 141-149. Penned by Labor Arbiter Raymund M. Celino.

ruled that Malicdem and Flores were not terminated and that their employment naturally ceased when their contracts expired. The LA, however, ordered Marulas to pay Malicdem and Flores their respective wage differentials, to wit:

WHEREFORE, the complaints for illegal dismissal are dismissed for lack of merit. Respondent Marulas Industrial Corporation is, however, ordered to pay complainants wage differential in the following amounts:

1.	Macarthur Malicdem	₱20,111.26
	2/2/07 – 6/13/08 = None	
	6/14/08 – 8/27/08 = 2.47 mos.	
	₱377 – 362 = ₱15	
	x 26 days x 2.47 mos. =	963.30
	8/28/08 – 6/30/10 = 22.06 mos.	
	₱382 – ₱362 = ₱20	
	x 26 days x 22.06 mos. =	11,471.20
	7/1/10 – 2/2/11 = 7.03 mos.	
	₱404 – ₱362 = ₱42	
	x 26 days x 7.03 mos. =	7,676.76
		20,111.26

; and

2.	Herminigildo Flores	₱18,440.50
	2/2/08 – 6/13/08 = 4.36 mos. None	
	6/14/08 – 8/27/08 =	963.30
	8/28/08 – 6/30/10 =	11,471.20
	7/1/10 – 12/16/10 = 5.50 mos.	
	₱404 x ₱362 = ₱42	
	x 26 days x 5.50 mos. =	6,006.00
		18,440.50

All other claims are dismissed for lack of merit.

SO ORDERED.[6]

Malicdem and Flores appealed to the NLRC which partially granted their appeal with the award of payment of 13th month pay, service incentive leave and holiday pay for three (3) years.

[6] *Id.* at 148.

The dispositive portion of its December 19, 2011 Decision[7] reads:

> **WHEREFORE,** the appeal is **GRANTED IN PART**. The Decision of Labor Arbiter Raymund M. Celino, dated July 13, 2011, is **MODIFIED.** In addition to the award of salary differentials, complainants should also be awarded 13th month pay, service incentive leave and holiday pay for three years.
>
> **SO ORDERED**.[8]

Still, petitioners filed a motion for reconsideration, but it was denied by the NLRC on February 29, 2011.

Aggrieved, Malicdem and Flores filed a petition for *certiorari* under Rule 65 with the CA.

On July 18, 2012, the CA denied the petition,[9] finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC. It ruled that the issue of whether or not the petitioners were project employees or regular employees was factual in nature and, thus, not within the ambit of a petition for *certiorari*. Moreover, it accorded respect and due consideration to the factual findings of the NLRC, affirming those of the LA, as they were supported by substantial evidence.

On the substantive issue, the CA explained that "the repeated and successive rehiring of project employees do not qualify them as regular employees, as length of service is not the controlling determinant of the employment tenure of a project employee, but whether the employment has been fixed for a specific project or undertaking, its completion has been determined at the time of the engagement of the employee."[10]

Corollarily, considering that there was no illegal dismissal, the CA ruled that payment of backwages, separation pay,

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[7] *Id.* at 175-183. Penned by Commissioner Dolores M. Peralta-Beley.

[8] *Id.* at 182.

[9] *Id.* at 56.

[10] *Id.* at 55.

damages, and attorney's fees had no factual and legal bases. Hence, they could not be awarded to the petitioners.

Aggrieved, Malicdem and Flores filed a motion for reconsideration, but their pleas were denied in the CA Resolution, dated November 12, 2012.

The Petition

Malicdem and Flores now come before this Court by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court praying for the reversal of the CA decision anchored on the principal argument that the appellate court erred in affirming the NLRC decision that there was no illegal dismissal because the petitioners' contracts of employment with the respondents simply expired. They claim that their continuous rehiring paved the way for their regularization and, for said reason, they could not be terminated from their jobs without just cause.

In their Comment,[11] the respondents averred that the petitioners failed to show that the CA erred in affirming the NLRC decision. They posit that the petitioners were contractual employees and their rehiring did not amount to regularization. The CA cited *William Uy Construction Corp. v. Trinidad*,[12] where it was held that the repeated and successive rehiring of project employees did not qualify them as regular employees, as length of service was not the controlling determinant of the employment tenure of a project employee, but whether the employment had been fixed for a specific project or undertaking, its completion had been determined at the time of the engagement of the employee. The respondents add that for said reason, the petitioners were not entitled to full backwages, separation pay, moral and exemplary damages, and attorney's fees.

Now, the question is whether or not the CA erred in not finding any grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the NLRC.

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[11] *Id.* at 227-235.

[12] G.R. No. 183250, March 10, 2010, 615 SCRA 180, citing *Caseres v. Universal Robina Sugar Milling Corporation,* 560 Phil. 615 (2007).

The Court's Ruling:

The Court grants the petition.

The petitioners have convincingly shown that they should be considered regular employees and, as such, entitled to full backwages and other entitlements.

A reading of the 2008 employment contracts,[13] denominated as "Project Employment Agreement," reveals that there was a stipulated probationary period of six (6) months from its commencement. It was provided therein that in the event that they would be able to comply with the company's standards and criteria within such period, they shall be reclassified as project employees with respect to the remaining period of the effectivity of the contract. Specifically, paragraph 3(b) of the agreement reads:

> The SECOND PARTY hereby acknowledges, agrees and understands that the nature of his/her employment is probationary and on a project-basis. The SECOND PARTY further acknowledges, agrees and understands that within the effectivity of this Contract, his/her job performance will be evaluated in accordance with the standards and criteria explained and disclosed to him/her prior to signing of this Contract. **In the event that the SECOND PARTY is able to comply with the said standards and criteria within the probationary period of six month/s from commencement of this Contract, he/she shall be reclassified as a project employee of (o)f the FIRST PARTY** with respect to the remaining period of the effectivity of this Contract.

Under Article 281 of the Labor Code, however, "an employee who is allowed to work after a probationary period shall be considered a regular employee." When an employer renews a contract of employment after the lapse of the six-month probationary period, the employee thereby becomes a regular employee. *No employer is allowed to determine indefinitely the fitness of its employees.*[14] While length of time is not the

[13] *Rollo,* pp. 91-124.

[14] *Voyeur Visage Studio, Inc. v. Court of Appeals*, 493 Phil. 831 (2005), citing *CENECO v. NLRC*, G.R. No. 106246, September 1, 1994, 263 SCRA 108.

controlling test for project employment, it is vital in determining if the employee was hired for a specific undertaking or tasked to perform functions vital, necessary and indispensable to the usual business of trade of the employer.[15] Thus, in the earlier case of *Maraguinot, Jr. v. NLRC*,[16] it was ruled that a project or work pool employee, who has been: (1) continuously, as opposed to intermittently, rehired by the same employer for the same tasks or nature of tasks; and (2) those tasks are vital, necessary and indispensable to the usual business or trade of the employer, must be deemed a regular employee. Thus:

> x x x. Lest it be misunderstood, this ruling does not mean that simply because an employee is a project or work pool employee even outside the construction industry, he is deemed, *ipso jure*, a regular employee. All that we hold today is that once a project or work pool employee has been: (1) continuously, as opposed to intermittently, re-hired by the same employer for the same tasks or nature of tasks; and (2) these tasks are vital, necessary and indispensable to the usual business or trade of the employer, then the employee must be deemed a regular employee, pursuant to Article 280 of the Labor Code and jurisprudence. To rule otherwise would allow circumvention of labor laws in industries not falling within the ambit of Policy Instruction No. 20/Department Order No. 19, hence allowing the prevention of acquisition of tenurial security by project or work pool employees who have already gained the status of regular employees by the employer's conduct.

The test to determine whether employment is regular or not is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. If the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity, if not indispensability of that activity to the business.[17]

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[15] *Liganza v. RBL Shipyard Corporation,* 534 Phil. 662 (2006).

[16] 348 Phil. 580 (1998).

[17] *Integrated Contractor and Plumbing Works, Inc. vs. NLRC*, 503 Phil. 875 (2005).

Guided by the foregoing, the Court is of the considered view that there was clearly a deliberate intent to prevent the regularization of the petitioners.

To begin with, there is no actual project. The only stipulations in the contracts were the dates of their effectivity, the duties and responsibilities of the petitioners as extruder operators, the rights and obligations of the parties, and the petitioners' compensation and allowances. As there was no specific project or undertaking to speak of, the respondents cannot invoke the exception in Article 280 of the Labor Code.[18] This is a clear attempt to frustrate the regularization of the petitioners and to circumvent the law.

Next, granting that they were project employees, the petitioners could only be considered as regular employees as the two factors enumerated in *Maraguinot, Jr.*, are present in this case. It is undisputed that the petitioners were continuously rehired by the same employer for the same position as extruder operators. As such, they were responsible for the operation of machines that produced the sacks. Hence, their work was vital, necessary and indispensable to the usual business or trade of the employer.

In *D.M. Consunji, Inc. v. Estelito Jamin*[19] and *Liganza v. RBL Shipyard Corporation*,[20] the Court reiterated the ruling that an employment ceases to be coterminous with specific projects when the employee is continuously rehired due to the demands of the employer's business and re-engaged for many more projects without interruption.

The respondents cannot use the alleged expiration of the employment contracts of the petitioners as a shield of their illegal acts. The project employment contracts that the petitioners were made to sign every year since the start of their employment were only a stratagem to violate their security of tenure in the company.

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[18] Except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee.

[19] G.R. No. 192514, April 18, 2012, 670 SCRA 235.

[20] 534 Phil. 662 (2006).

As restated in *Poseidon Fishing v. NLRC*,[21] "if from the circumstances it is apparent that periods have been imposed to preclude acquisition of tenurial security by the employee, they should be disregarded for being contrary to public policy."

The respondents' invocation of *William Uy Construction Corp. v. Trinidad*[22] is misplaced because it is applicable only in cases involving the tenure of project employees in the construction industry. It is widely known that in the construction industry, a project employee's work depends on the availability of projects, necessarily the duration of his employment.[23] It is not permanent but coterminous with the work to which he is assigned.[24] It would be extremely burdensome for the employer, who depends on the availability of projects, to carry him as a permanent employee and pay him wages even if there are no projects for him to work on.[25] The rationale behind this is that once the project is completed it would be unjust to require the employer to maintain these employees in their payroll. To do so would make the employee a privileged retainer who collects payment from his employer for work not done. This is extremely unfair to the employers and amounts to labor coddling at the expense of management."[26]

Now that it has been clearly established that the petitioners were regular employees, their termination is considered illegal for lack of just or authorized causes. Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent

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[21] 518 Phil. 146 (2006).

[22] *Supra* note 12.

[23] *Archbuild Masters and Construction, Inc. and Joaquin C. Regala v. NLRC and Rogelio Cayanga*, 321 Phil. 869 (1995).

[24] *Mamansag v. NLRC*, G.R. No. 97520, February 9, 1992, 218 SCRA 722.

[25] *Cartegenas v. Romago*, 258 Phil. 445 (1989).

[26] *De Ocampo v. NLRC*, 264 Phil. 728 (1990).

computed from the time his compensation was withheld from him up to the time of his actual reinstatement. The law intends the award of backwages and similar benefits to accumulate past the date of the LA decision until the dismissed employee is actually reinstated.

WHEREFORE, the petition is **GRANTED.** The assailed July 18, 2012 decision of the Court of Appeals and its November 12, 2012 Resolution in CA-G.R. SP No. 124470, are hereby **ANNULLED** and **SET ASIDE**.

Accordingly, respondent Marulas Industrial Corporation is hereby ordered to reinstate petitioners Macarthur Malicdem and Hermenigildo Flores to their former positions without loss of seniority rights and other privileges and to pay their full backwages, inclusive of allowances and their other benefits or their monetary equivalent computed from the time their compensations were withheld from them up to the time of their actual reinstatement plus the wage differentials stated in the July 13, 2011 decision of the Labor Arbiter, as modified by the December 19, 2011 NLRC decision.

SO ORDERED.

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

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[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

THIRD DIVISION

[G.R. No. 171496. March 3, 2014]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), *petitioner, vs.* **ORTIGAS AND COMPANY LIMITED PARTNERSHIP,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; PROPER REMEDY TO APPEAL THE DECISION OF THE REGIONAL TRIAL COURT WITH THE SUPREME COURT RAISING PURELY QUESTIONS OF LAW.—** Section 2 of Rule 50 of the Rules of Court provides that appeals taken from the Regional Trial Court to the Court of Appeals raising only pure questions of law are not reviewable by the Court of Appeals. In which case, the appeal shall not be transferred to the appropriate court. Instead, it shall be dismissed outright. Appeals from the decisions of the Regional Trial Court, raising purely questions of law must, in all cases, be taken to the Supreme Court on a petition for review on *certiorari* in accordance with Rule 45. An appeal by notice of appeal from the decision of the Regional Trial Court in the exercise of its original jurisdiction to the Court of Appeals is proper if the appellant raises questions of fact or both questions of fact and questions of law.

2. **ID.; ID.; ID.; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.—** There is a question of law when the appellant raises an issue as to what law shall be applied on a given set of facts. Questions of law do "not involve an examination of the probative value of the evidence presented." Its resolution rests solely on the application of a law given the circumstances. There is a question of fact when the court is required to examine the truth or falsity of the facts presented. A question of fact "invites a review of the evidence."

3. **ID.; ID.; ID.; RULE 41, SECTION 1; PROHIBITS APPEALS FROM INTERLOCUTORY ORDERS; INTERLOCUTORY ORDER, DEFINED.—** [W]hat Section 1 of Rule 41 prohibits is an appeal

taken from an interlocutory order. An interlocutory order or judgment, unlike a final order or judgment, does "not completely dispose of the case [because it leaves to the court] something else to be decided upon." Appeals from interlocutory orders are generally prohibited to prevent delay in the administration of justice and to prevent "undue burden upon the courts."

4. ID.; ID.; ID.; ID.; ID.; AN ORDER DENYING A MOTION FOR RECONSIDERATION OF AN ORDER OF DISMISSAL OF A COMPLAINT IS SUBJECT TO AN APPEAL AS IT IS NOT AN INTERLOCUTORY ORDER.— Orders denying motions for reconsideration are not always interlocutory orders. A motion for reconsideration may be considered a final decision, subject to an appeal, if "it puts an end to a particular matter," leaving the court with nothing else to do but to execute the decision. "An appeal from an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself." It is an appeal from a final decision or order.

5. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); SUBDIVISION AND CONSOLIDATION PLANS; SECTION 50 OF THE LAW CONTEMPLATES ROADS AND STREETS IN A SUBDIVIDED PROPERTY.— Section 50 [of Presidential Decree No. 1529] contemplates roads and streets in a subdivided property, not public thoroughfares built on a private property that was taken from an owner for public purpose. A public thoroughfare is not a subdivision road or street.

6. POLITICAL LAW; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; WHEN A PROPERTY IS TAKEN FOR A PUBLIC PURPOSE, THE OWNER OF THE PROPERTY IS ENTITLED TO BE COMPENSATED; TAKING, WHEN PRESENT.— [W]hen there is taking of private property for some public purpose, the owner of the property taken is entitled to be compensated. There is taking when the following elements are present: 1. The government must enter the private property; 2. The entrance into the private property must be indefinite or permanent; 3. There is color of legal authority in the entry into the property; 4. The property is devoted to public use or purpose; 5. The use of property for public use removed from the owner all beneficial enjoyment of the property.

7. CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; DELINEATED ROADS AND STREETS, WHETHER PART OF A SUBDIVISION OR SEGREGATED FOR PUBLIC USE, REMAIN PRIVATE AND WILL REMAIN AS SUCH UNTIL CONVEYED TO THE GOVERNMENT BY DONATION OR THROUGH EXPROPRIATION PROCEEDINGS.— Delineated roads and streets, whether part of a subdivision or segregated for public use, remain private and will remain as such until conveyed to the government by donation or through expropriation proceedings. An owner may not be forced to donate his or her property even if it has been delineated as road lots because that would partake of an illegal taking. He or she may even choose to retain said properties. If he or she chooses to retain them, however, he or she also retains the burden of maintaining them and paying for real estate taxes.

8. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO COMPENSATION; CANNOT BE INVOKED BY AN OWNER OF A PRIVATE SUBDIVISION STREET WHICH WAS NOT TAKEN FOR PUBLIC USE AS IT MAY ONLY BE DONATED TO THE GOVERNMENT.— An owner of a subdivision street which was not taken by the government for public use would retain such burden even if he or she would no longer derive any commercial value from said street. To remedy such burden, he or she may opt to donate it to the government. In such case, however, the owner may not force the government to purchase the property. That would be tantamount to allowing the government to take private property to benefit private individuals. This is not allowed under the Constitution, which requires that taking must be for public use. Further, since the Constitution proscribes taking of private property without just compensation, any taking must entail a corresponding appropriation for that purpose. Public funds, however, may only be appropriated for public purpose. Employment of public funds to benefit a private individual constitutes malversation. Therefore, private subdivision streets not taken for public use may only be donated to the government.

9. ID.; ID.; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; DELIMITED BY THE RIGHT OF AN INDIVIDUAL TO BE COMPENSATED.— [W]hen the road or street was delineated upon government request and taken for public use, as in this case, the government has no choice but to compensate

the owner for his or her sacrifice, lest it violates the constitutional provision against taking without just compensation x x x. The right to compensation under Article III, Section 9 of the Constitution was put in place to protect the individual from and restrain the State's sovereign power of eminent domain, which is the government's power to condemn private properties within its territory for public use or purpose. This power is inherent and need not be granted by law. Thus, while the government's power to take for public purpose is inherent, immense, and broad in scope, it is delimited by the right of an individual to be compensated. In a nutshell, the government may take, but it must pay. x x x Taking of private property without just compensation is a violation of a person's property right. In situations where the government does not take the trouble of initiating an expropriation proceeding, the private owner has the option to compel payment of the property taken, when justified.

10. ID.: ID.; ID.; ID.; NEGOTIATED SALE; RECOGNIZED IN LAW AS A MODE OF GOVERNMENT ACQUISITION OF PRIVATE PROPERTY FOR PUBLIC PURPOSE.— Title to the subject lot remains under respondent Ortigas' name. The government is already in possession of the property but is yet to acquire title to it. To legitimize such possession, petitioner Republic of the Philippines must acquire the property from respondent Ortigas by instituting expropriation proceedings or through negotiated sale, which has already been recognized in law as a mode of government acquisition of private property for public purpose. In a negotiated sale, the government offers to acquire for public purpose a private property, and the owner may accept or reject it. A rejection of the offer, however, would most likely merely result in the commencement of an expropriation proceeding that would eventually transfer title to the government. Hence, the government's offer to acquire for public purpose a private property may be considered as an act preparatory to an expropriation proceeding. Therefore, a private owner's initiative to segregate a property to accommodate government needs saves the government from a long and arduous expropriation proceeding. This is a commendable act on the part of the owner. It must be encouraged, not dampened by threats of property deprivation without compensation.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Padilla Asuncion Bote-Veguillas Matta Corpus Law Offices for respondent.

D E C I S I O N

LEONEN, *J.*:

Owners whose properties were taken for public use are entitled to just compensation.

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to nullify and set aside the Court of Appeals' resolution dated October 14, 2005. The Court of Appeals' resolution dismissed petitioner Republic of the Philippines' appeal from the decision of the Regional Trial Court granting private respondent Ortigas' petition for authority to sell. This petition also seeks to nullify the Court of Appeals' resolution dated February 9, 2006, which denied petitioner Republic of the Philippines' motion for reconsideration.

Respondent, Ortigas and Company Limited Partnership, is the owner of a parcel of land known as Lot 5-B-2 with an area of 70,278 square meters in Pasig City.[1]

Upon the request of the Department of Public Works and Highways, respondent Ortigas caused the segregation of its property into five lots and reserved one portion for road widening for the C-5 flyover project.[2] It designated Lot 5-B-2-A, a 1,445-square-meter portion of its property, for the road widening of Ortigas Avenue.[3] Respondent Ortigas also caused the annotation of the term "road widening" on its title. The title was then inscribed with an encumbrance that it was for road widening and subject to Section 50 of Presidential Decree No. 1529 or

[1] *Rollo*, p. 7.

[2] *Id.* at 96.

[3] *Id.* at 7.

the Property Registration Decree.[4]

The C-5-Ortigas Avenue flyover was completed in 1999, utilizing only 396 square meters of the 1,445-square-meter allotment for the project.[5]

Consequently, respondent Ortigas further subdivided Lot 5-B-2-A into two lots: Lot 5-B-2-A-1, which was the portion actually used for road widening, and Lot 5-B-2-A-2, which was the unutilized portion of Lot 5-B-2-A.[6]

On February 14, 2001, respondent Ortigas filed with the Regional Trial Court of Pasig a petition for authority to sell to the government Lot 5-B-2-A-1.[7] Respondent Ortigas alleged that the Department of Public Works and Highways requested the conveyance of the property for road widening purposes.[8] The case was raffled to Branch 267.[9]

In an order dated March 9, 2001,[10] the Regional Trial Court set the case for hearing on April 27, 2001, giving opportunity to any interested person to appear, oppose, and show cause why respondent Ortigas' petition may not be granted. In the same order, respondent Ortigas was directed to cause the publication of both the Regional Trial Court's order and respondent Ortigas' petition. The trial court also directed the Sheriff to serve copies of its order and respondent Ortigas' petition to the Office of the Solicitor General, Office of the City Prosecutor, Department of Public Works and Highways, City Engineer of Pasig, and the Register of Deeds of Pasig.

Despite due notice to the public, including the Office of the Solicitor General and the Department of Public Works and

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[4] *Id.* at 93.

[5] *Id.*

[6] *Id.* at 8.

[7] *Id.*

[8] *Id.* at 8 and 82.

[9] *Id.* at 8.

[10] *Id.* at 91.

Highways, no one appeared to oppose respondent Ortigas' petition in the hearing on April 27, 2001.[11] Respondent Ortigas was able to establish the jurisdictional facts of the case and was allowed to present evidence *ex parte* before the appointed Commissioner, the Branch Clerk of Court, Atty. Edelyn M. Murillo.[12]

Respondent Ortigas presented Mr. Romulo Rosete to support its allegations in its petition for authority to sell to the government.[13] Rosete was respondent Ortigas' liaison officer who represented respondent Ortigas in government transactions.[14] He testified that he was aware of respondent Ortigas' ownership of the 70,278-square-meter property in Pasig and its subdivision for the purpose of designating an area for the C-5-Ortigas Avenue flyover project.[15] He also testified that only 396 square meters of the 1,445-square-meter designated lot was actually utilized after the road had been finished being constructed in 1999.[16] This caused respondent Ortigas to further subdivide the designated property into two lots.[17] Rosete presented a certified true copy of the title of the utilized portion of the lot to prove respondent Ortigas' ownership.[18] He also alleged that respondent Ortigas was not compensated for the use of its property, and respondent Ortigas was requested by the Department of Public Works and Highways to convey the utilized property to the government.[19] Hence, to facilitate the processing of its compensation, respondent Ortigas filed a petition with the Regional Trial Court.[20]

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[11] *Id.* at 92.

[12] *Id.*

[13] *Id.* at 93.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

Finding merit in respondent Ortigas' petition, the Regional Trial Court issued an order on June 11, 2001, authorizing the sale of Lot 5-B-2-A-1 to petitioner Republic of the Philippines.[21]

On June 27, 2001, petitioner Republic of the Philippines, represented by the Office of the Solicitor General, filed an opposition, alleging that respondent Ortigas' property can only be conveyed by way of donation to the government, citing Section 50 of Presidential Decree No. 1529, also known as the Property Registration Decree.[22]

On June 29, 2001, petitioner Republic of the Philippines filed a motion for reconsideration of the Regional Trial Court order dated June 11, 2001, reiterating its argument in its opposition.[23]

In an order dated October 3, 2001, the Regional Trial Court denied petitioner Republic of the Philippines' motion for reconsideration.[24]

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[21] *Id.* at 9, 92-94.

[22] *Id.* at 9; Presidential Decree No. 1529 (1978), Sec. 50 reads:

Section 50. *Subdivision and consolidation plans.* Any owner subdividing a tract of registered land into lots which do not constitute a subdivision project has defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or with the Bureau of Lands a subdivision plan of such land on which all boundaries, streets, passageways and waterways, if any, shall be distinctly and accurately delineated.

If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner's duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: **Provided, however, that the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of the national government,** province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated. (Emphasis supplied)

[23] *Rollo*, p. 10.

[24] *Id.* at 95-96.

Petitioner Republic of the Philippines filed a notice of appeal on October 24, 2001, which reads:

> The REPUBLIC OF THE PHILIPPINES, by counsel, hereby respectfully serves notice of appeal to the Court of Appeals from this Honorable Court's Order dated **October 3, 2001** (copy of which was received by the Office of the Solicitor General on October 15, 2001) on the ground that said Order is contrary to law and evidence.[25] (Emphasis supplied)

In its appellant's brief, petitioner Republic of the Philippines argued that the Regional Trial Court erred in granting respondent Ortigas the authority to sell its property to the government because the lot can only be conveyed by donation to the government.[26]

In a resolution dated October 14, 2005, the Court of Appeals dismissed petitioner Republic of the Philippines' appeal on the ground that an order or judgment denying a motion for reconsideration is not appealable.[27]

Petitioner Republic of the Philippines filed a motion for reconsideration of the Court of Appeals' resolution. In its motion for reconsideration, petitioner Republic of the Philippines pointed out that its reference in the notice of appeal to the October 3, 2001 order denying the motion for reconsideration of the trial court's decision was merely due to inadvertence. In any case, Rule 37, Section 9 of the Rules of Procedure contemplates as non-appealable only those orders which are not yet final. The October 3, 2001 order was already final as it confirmed the June 11, 2001 judgment of the court.[28]

In its resolution dated February 9, 2006, the Court of Appeals denied the motion for reconsideration on the ground of lack of jurisdiction. The Court of Appeals noted that even if the order denying the motion for reconsideration was appealable, the appeal was still dismissible for lack of jurisdiction because petitioner

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[25] *Id.* at 10.

[26] *Id.* at 103.

[27] *Id.* at 7-12.

[28] *Id.* at 13-19.

Republic of the Philippines raised only a question of law.[29]

The issues for our consideration are the following:[30]

a) Whether the Court of Appeals gravely erred in denying petitioner Republic of the Philippines' appeal based on technicalities;

b) Whether the Court of Appeals gravely erred in dismissing the appeal from the trial court order granting respondent Ortigas authority to sell the land to the Republic of the Philippines.

The Office of the Solicitor General argued that strict application of the rules of procedure overrides substantial justice, in this case, to the detriment of petitioner Republic of the Philippines.[31]

On the trial court's grant of authority to respondent Ortigas to sell its property to the government, the Office of the Solicitor General stated while citing *Young v. City of Manila*[32] that respondent Ortigas' subdivision of its land for road widening automatically withdrew the land from the commerce of man.[33] Further, a piece of land segregated by a private owner for public use may only be conveyed by donation to the government based on Section 50 of Presidential Decree No. 1529.[34] "Presently, said land is already being used by the public as part of the 'widened' road beside the C-5 [flyover] x x x."[35]

In its comment dated July 25, 2006, respondent Ortigas argued that the Office of the Solicitor General committed a fatal mistake when it brought by way of appeal the denial of its motion for reconsideration before the Court of Appeals.[36]

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[29] *Id.* at 20-25.

[30] *Id.* at 37-38.

[31] *Id.* at 39-41.

[32] 73 Phil. 537, 552 (1941).

[33] *Rollo*, pp. 45-46.

[34] *Id.* at 45.

[35] *Id.* at 42.

[36] *Id.* at 136-138.

This petition lacks merit.

Appeals from the Regional Trial Court to the Court of Appeals under Rule 41 must raise both questions of fact and law

Section 2 of Rule 50 of the Rules of Court provides that appeals taken from the Regional Trial Court to the Court of Appeals raising only pure questions of law are not reviewable by the Court of Appeals. In which case, the appeal shall not be transferred to the appropriate court. Instead, it shall be dismissed outright.

Appeals from the decisions of the Regional Trial Court, raising purely questions of law must, in all cases, be taken to the Supreme Court on a petition for review on *certiorari* in accordance with Rule 45.[37] An appeal by notice of appeal from the decision of the Regional Trial Court in the exercise of its original jurisdiction to the Court of Appeals is proper if the appellant raises questions of fact or both questions of fact and questions of law.[38]

There is a question of law when the appellant raises an issue as to what law shall be applied on a given set of facts.[39] Questions of law do "not involve an examination of the probative value of the evidence presented."[40] Its resolution rests solely on the application of a law given the circumstances.[41] There is a question of fact when the court is required to examine the truth or falsity

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[37] RULES OF COURT, Rule 41, Sec. 2 (c).

[38] See *Badillo v. Court of Appeals*, 578 Phil. 404, 416-417 (2008) [Per *J.* Carpio, First Division; *C.J.* Puno, *JJ.* Corona, Azcuna, and Leonardo-De Castro, concur], *citing Sevilleno v. Carilo*, 559 Phil. 789, 791-792 (2007) [Per *J.* Sandoval-Gutierrez, First Division].

[39] See *Macababbad, Jr. v. Masirag*, 596 Phil. 76, 89 (2009) [Per *J.* Brion, Second Division].

[40] See *Lorzano v. Tabayag, Jr.*, G.R. No. 189647, February 6, 2012, 665 SCRA 38, 46 [Per *J.* Reyes, Second Division; *JJ.* Carpio, Brion, Perez, and Sereno, concur].

[41] *Id.* at 46-47.

of the facts presented.[42] A question of fact "invites a review of the evidence."[43]

The sole issue raised by petitioner Republic of the Philippines to the Court of Appeals is whether respondent Ortigas' property should be conveyed to it only by donation, in accordance with Section 50 of Presidential Decree No. 1529. This question involves the interpretation and application of the provision. It does not require the Court of Appeals to examine the truth or falsity of the facts presented. Neither does it invite a review of the evidence. The issue raised before the Court of Appeals was, therefore, a question purely of law. The proper mode of appeal is through a petition for review under Rule 45. Hence, the Court of Appeals did not err in dismissing the appeal on this ground.

Nevertheless, we take time to emphasize that Rule 41, Section 1, paragraph (a) of the Rules of Court, which provides that "[n]o appeal may be taken from [a]n order denying a x x x motion for reconsideration," is based on the implied premise in the same section that the judgment or order does not completely dispose of the case. The pertinent portion of Rule 41, Section 1 provides:

> Section 1. *Subject of appeal.* – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

In other words, what Section 1 of Rule 41 prohibits is an appeal taken from an interlocutory order. An interlocutory order or judgment, unlike a final order or judgment, does "not completely dispose of the case [because it leaves to the court] something else to be decided upon."[44] Appeals from interlocutory orders are generally prohibited to prevent delay in the administration

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[42] See *Macababbad, Jr. v. Masirag,* 596 Phil. 76, 90 (2009) [Per J. Brion, Second Division].

[43] *Lorzano v. Tabayag, Jr.,* G.R. No. 189647, February 6, 2012, 665 SCRA 38, 47 [Per J. Reyes, Second Division; JJ. Carpio, Brion, Perez, and Sereno, concur].

[44] *Jose v. Javellana, et al.,* G.R. No. 158239, January 25, 2012, 664 SCRA 11, 19 [Per J. Bersamin, First Division; JJ. Corona, Leonardo-De

of justice and to prevent "undue burden upon the courts."[45]

Orders denying motions for reconsideration are not always interlocutory orders. A motion for reconsideration may be considered a final decision, subject to an appeal, if "it puts an end to a particular matter,"[46] leaving the court with nothing else to do but to execute the decision.

"An appeal from an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself."[47] It is an appeal from a final decision or order.

The trial court's order denying petitioner Republic of the Philippines' motion for reconsideration of the decision granting respondent Ortigas the authority to sell its property to the government was not an interlocutory order because it completely disposed of a particular matter. An appeal from it would not cause delay in the administration of justice. Petitioner Republic of the Philippines' appeal to the Court of Appeals, however, was properly dismissed because the former used the wrong mode of appeal.

In any event, we resolve the substantive issue on whether respondent Ortigas may not sell and may only donate its property to the government in accordance with Section 50 of Presidential Decree No. 1529.

Section 50 of Presidential Decree No. 1529 does not apply in a case that is the proper subject of an expropriation proceeding

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Castro, Abad, and Villarama, concur], quoting *Pahila-Garrido v. Tortogo*, G.R. No. 156358, August 17, 2011, 655 SCRA 553.

[45] See *Nabua v. Lu Ym*, 594 Phil. 515, 527 (2008) [Per J. Reyes, R.T., Third Division; JJ. Ynares-Santiago, Austria-Martinez, Chico-Nazario, Nachura, concur].

[46] *Id.* at 528.

[47] *Id.*, citing *Quelnan v. VHF Philippines, Inc.*, G.R. No. 145911, July 7, 2004, 433 SCRA 631, 638.

Respondent Ortigas may sell its property to the government. It must be compensated because its property was taken and utilized for public road purposes.

Petitioner Republic of the Philippines insists that the subject property may not be conveyed to the government through modes other than by donation. It relies on Section 50 of the Property Registration Decree, which provides that delineated boundaries, streets, passageways, and waterways of a subdivided land may not be closed or disposed of by the owner except by donation to the government. It reads:

> Section 50. Subdivision and consolidation plans. Any owner subdividing a tract of registered land into lots which do not constitute a subdivision project as defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or the Bureau of Lands a subdivision plan of such land on which **all boundaries, streets, passageways and waterways**, if any, shall be distinctly and accurately delineated.
>
> If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner's duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: Provided, however, that the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that **except by way of donation in favor of the national government, province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated.** (Emphasis supplied)

Petitioner Republic of the Philippines' reliance on Section 50 of the Property Registration Decree is erroneous. Section 50 contemplates roads and streets in a subdivided property, not public thoroughfares built on a private property that was taken from an owner for public purpose. A public thoroughfare is not a subdivision road or street.

More importantly, when there is taking of private property for some public purpose, the owner of the property taken is entitled to be compensated.[48]

There is taking when the following elements are present:

1. The government must enter the private property;
2. The entrance into the private property must be indefinite or permanent;
3. There is color of legal authority in the entry into the property;
4. The property is devoted to public use or purpose;
5. The use of property for public use removed from the owner all beneficial enjoyment of the property.[49]

All of the above elements are present in this case. Petitioner Republic of the Philippines' construction of a road — a permanent structure — on respondent Ortigas' property for the use of the general public is an obvious permanent entry on petitioner Republic of the Philippines' part. Given that the road was constructed for general public use stamps it with public character, and coursing the entry through the Department of Public Works and Highways gives it a color of legal authority.

As a result of petitioner Republic of the Philippines' entry, respondent Ortigas may not enjoy the property as it did before. It may not anymore use the property for whatever legal purpose it may desire. Neither may it occupy, sell, lease, and receive its proceeds. It cannot anymore prevent other persons from entering or using the property. In other words, respondent Ortigas was effectively deprived of all the bundle of rights[50] attached to ownership of property.

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[48] See *DESAMA v. Gozun*, 520 Phil. 457, 477 (2006) [Per *J.* Chico-Nazario, First Division; *C.J.* Panganiban, *JJ.* Ynares-Santiago, Austria-Martinez, Callejo, Sr., concur].

[49] *Republic v. Vda. de Castellvi, et al.*, 157 Phil. 329, 345-347 (1974) [Per *J.* Zaldivar, *En Banc*].

[50] CIVIL CODE, Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

It is true that the lot reserved for road widening, together with five other lots, formed part of a bigger property before it was subdivided. However, this does not mean that all lots delineated as roads and streets form part of subdivision roads and streets that are subject to Section 50 of the Property Registration Decree. Subdivision roads and streets are constructed primarily for the benefit of the owners of the surrounding properties. They are, thus, constructed primarily for private use — as opposed to delineated road lots taken at the instance of the government for the use and benefit of the general public.

In this case, the lot was reserved for road widening at the instance of petitioner Republic of the Philippines. While the lot segregated for road widening used to be part of the subdivided lots, the intention to separate it from the delineated subdivision streets was obvious from the fact that it was located at the fringes of the original lot[51] — exactly at petitioner Republic of the Philippines' intended location for the road widening project. Moreover, petitioner Republic of the Philippines' intention to take the property for public use was obvious from the completion of the road widening for the C-5 flyover project and from the fact that the general public was already taking advantage of the thoroughfare.

Delineated roads and streets, whether part of a subdivision or segregated for public use, remain private and will remain as such until conveyed to the government by donation or through expropriation proceedings.[52] An owner may not be forced to donate his or her property even if it has been delineated as

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The owner has also a right of action against the holder and possessor of the thing in order to recover it. *See* A. TOLENTINO, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES*, 2 45-46 [2004] enumerates the bundle of rights: 1) the right to enjoy which includes the right to receive from the thing what it produces or *jus utendi*, and the right to consume the thing by its use or *jus abutendi*; 2) the right to dispose or *jus disponendi*; and 3) the right to exclude others from the possession of the thing or *jus vindicandi*.

[51] *See* map, *rollo*, p. 75.

[52] See also *White Plains v. Court of Appeals*, 358 Phil. 184, 207 (1998) [Per *J.* Martinez, Second Division; (Acting) *C.J.* Regalado, *JJ.* Melo, and

road lots because that would partake of an illegal taking.[53] He or she may even choose to retain said properties.[54] If he or she chooses to retain them, however, he or she also retains the burden of maintaining them and paying for real estate taxes.

An owner of a subdivision street which was not taken by the government for public use would retain such burden even if he or she would no longer derive any commercial value from said street. To remedy such burden, he or she may opt to donate it to the government. In such case, however, the owner may not force the government to purchase the property. That would be tantamount to allowing the government to take private property to benefit private individuals. This is not allowed under the Constitution, which requires that taking must be for public use.[55]

Further, since the Constitution proscribes taking of private property without just compensation,[56] any taking must entail a corresponding appropriation for that purpose. Public funds, however, may only be appropriated for public purpose.[57] Employment of public funds to benefit a private individual constitutes malversation.[58] Therefore, private subdivision streets not taken for public use may only be donated to the government.

In contrast, when the road or street was delineated upon government request and taken for public use, as in this case, the government has no choice but to compensate the owner

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Mendoza, concur] [*J*. Puno, no part due to close relation with some parties], citing *Young v. City of Manila*, 73 Phil. 537 (1941).

[53] *Id.* at 201.

[54] *Id.* at 203.

[55] CONSTI., Art. III, Sec. 9; See also *Brgy. Sindalan v. Court of Appeals*, 547 Phil. 542, 558 (2007) [Per *J*. Velasco, Jr., Second Division; *JJ*. Quisumbing (Chairperson), Carpio, Carpio-Morales, and Tinga, concur].

[56] CONSTI., Art. III, Sec. 9.

[57] *Pascual v. Secretary of Public Works*, 110 Phil. 331, 340 (1960) [Per J. Concepcion, *En Banc*; *C. J.* Parás, JJ. Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Gutiérrez David, Paredes, and Dizon, concur].

[58] See also *Brgy. Sindalan v. Court of Appeals*, 547 Phil. 542, 559 (2007) [Per *J*. Velasco, Jr., Second Division; *JJ*. Quisumbing (Chairperson), Carpio, Carpio-Morales, and Tinga, concur].

for his or her sacrifice, lest it violates the constitutional provision against taking without just compensation, thus:

> Section 9. Private property shall not be taken for public use without just compensation.[59]

As with all laws, Section 50 of the Property Registration Decree cannot be interpreted to mean a license on the part of the government to disregard constitutionally guaranteed rights.

The right to compensation under Article III, Section 9 of the Constitution was put in place to protect the individual from and restrain the State's sovereign power of eminent domain,[60] which is the government's power to condemn private properties within its territory for public use or purpose.[61] This power is inherent and need not be granted by law.[62] Thus, while the government's power to take for public purpose is inherent, immense, and broad in scope, it is delimited by the right of an individual to be compensated. In a nutshell, the government may take, but it must pay.

Respondent Ortigas, immediately upon the government's suggestion that it needed a portion of its property for road purposes, went so far as to go through the process of annotating on its own title that the property was reserved for road purposes. Without question, respondent Ortigas allowed the government to construct the road and occupy the property when it could have compelled the government to resort to expropriation proceedings and ensure that it would be compensated. Now, the property is being utilized, not for the benefit of respondent

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[59] CONSTI., Art. III.

[60] See *Manapat v. Court of Appeals*, 562 Phil. 31, 47 (2007) [Per *J.* Nachura, Third Division; *JJ.* Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, concur].

[61] *DESAMA v. Gozun*, 520 Phil. 457, 476 (2006) [Per *J.* Chico-Nazario, First Division; *C.J.* Panganiban, *JJ.* Ynares-Santiago, Austria-Martinez, Callejo, Sr., concur].

[62] *Id.*; See *Manapat v. Court of Appeals*, 562 Phil. 31, 47 (2007) [Per *J.* Nachura, Third Division; *JJ.* Ynares-Santiago (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, concur].

Ortigas as a private entity but by the public. Respondent Ortigas remains uncompensated. Instead of acknowledging respondent Ortigas' obliging attitude, however, petitioner Republic of the Philippines refuses to pay, telling instead that the property must be given to it at no cost. This is unfair.

In the parallel case of *Alfonso v. Pasay City*[63] wherein Alfonso was deprived of his property for road purposes, was uncompensated, and was left without any expropriation proceeding undertaken, this court said:

> When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates, in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are first initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and difficulty for the Government, but all of its own making.[64]

"There is nothing that can more speedily and effectively embitter a citizen and taxpayer against his Government and alienate his faith in it, than an injustice and unfair dealing like the present case."[65]

Title to the subject lot remains under respondent Ortigas' name. The government is already in possession of the property but is yet to acquire title to it. To legitimize such possession, petitioner Republic of the Philippines must acquire the property from respondent Ortigas by instituting expropriation proceedings or through negotiated sale, which has already been recognized in law as a mode of government acquisition of private property for public purpose.[66]

In a negotiated sale, the government offers to acquire for public purpose a private property, and the owner may accept

[63] 106 Phil. 1017 (1960) [Per *J.* Montemayor].

[64] *Id.* at 1021.

[65] *Herrera v. Auditor General,* 102 Phil. 875, 882 (1958) [Per *J.* Montemayor].

[66] *See for example* Republic Act No. 8974 (2000), Sec. 3; Executive Order No. 1035 (1985), Secs. 6-7.

or reject it. A rejection of the offer, however, would most likely merely result in the commencement of an expropriation proceeding that would eventually transfer title to the government. Hence, the government's offer to acquire for public purpose a private property may be considered as an act preparatory to an expropriation proceeding. Therefore, a private owner's initiative to segregate a property to accommodate government needs saves the government from a long and arduous expropriation proceeding. This is a commendable act on the part of the owner. It must be encouraged, not dampened by threats of property deprivation without compensation.

Respondent Ortigas, which merely accommodated petitioner Republic of the Philippines' request, remains uncompensated for the taking of its property. Respondent Ortigas could have brought action to recover possession of the property, but it instead chose to sell its property to petitioner Republic of the Philippines. This is both fair and convenient as the road construction had long been completed, and the road is already being utilized by the public.

Taking of private property without just compensation is a violation of a person's property right. In situations where the government does not take the trouble of initiating an expropriation proceeding, the private owner has the option to compel payment of the property taken, when justified. The trial court should continue to proceed with this case to determine just compensation in accordance with law.

WHEREFORE, the petition is **DENIED.** The decision of the Court of Appeals is **AFFIRMED.** The trial court is directed to proceed with the case with due and deliberate dispatch in accordance with this decision.

SO ORDERED.

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

[*] Associate Justice Lucas P. Bersamin was designated as Acting Member of the Third Division, vice Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

SECOND DIVISION

[G.R. No. 193047. March 3, 2014]

FIL-PRIDE SHIPPING COMPANY, INC., CAPTAIN NICOLAS T. DOLLOLASA and OCEAN EAGLE SHIPMANAGEMENT COMPANY, PTE. LTD., *petitioners, vs.* **EDGAR A. BALASTA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; IN DISABILITY COMPENSATION, IT IS THE INCAPACITY TO WORK RESULTING IN THE IMPAIRMENT OF ONE'S EARNING CAPACITY WHICH IS COMPENSATED.— Regarding the issue of compensability, it has been the Court's consistent ruling that in disability compensation, "it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity." Moreover, "the list of illnesses/ diseases in Section 32-A does not preclude other illnesses/ diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties."

2. ID.; ID.; ID.; OCCUPATIONAL DISEASES; CARDIOVASCULAR DISEASE, CORONARY ARTERY DISEASE AND HEART AILMENTS ARE COMPENSABLE.— Just the same, in several cases, cardiovascular disease, coronary artery disease, as well as other heart ailments were held to be compensable. x x x [P]etitioners failed to refute respondent's allegations x x x that in the performance of his duties as Able Seaman, he inhaled, was exposed to, and came into direct contact with various injurious and harmful chemicals, dust, fumes/emissions, and other irritant agents; that he performed strenuous tasks such as lifting, pulling, pushing and/or moving equipment and materials on board the ship; that he was constantly exposed to varying temperatures of extreme hot and cold as the ship crossed ocean boundaries; that he was exposed as well to harsh weather conditions; that in most instances, he was required to perform overtime work; and that the work of an Able Seaman is both physically and mentally stressful. It does not require

much imagination to realize or conclude that these tasks could very well cause the illness that respondent, then already 47 years old, suffered from six months into his employment contract with petitioners.

3. ID.; ID.; ID.; TOTAL AND PERMANENT DISABILITY; A SEAFARER SHALL BE DEEMED TOTALLY AND PERMANENTLY DISABLED IF THE COMPANY-DESIGNATED PHYSICIAN FAILS TO ARRIVE AT A DEFINITE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR PERMANENT DISABILITY WITHIN 120 OR 240 DAYS AND THE LATTER'S MEDICAL CONDITION REMAINS UNRESOLVED; CASE AT BAR.— The company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days, pursuant to Article 192 (c)(1) of the Labor Code and Rule X, Section 2 of the AREC. If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled. x x x [T]he period September 18, 2005 to April 19, 2006 is less than the statutory 240-day – or 8-month – period. Nonetheless, it is impossible to expect that by May 19, 2006, or on the last day of the statutory 240-day period, respondent would be declared fit to work when just recently – or on February 24, 2006 – he underwent coronary artery bypass graft surgery; by then, respondent would not have sufficiently recovered. In other words, it became evident as early as April 19, 2006 that respondent was permanently and totally disabled, unfit to return to work as seafarer and earn therefrom, given his delicate post-operative condition; a definitive assessment by Dr. Cruz before May 19, 2006 was unnecessary. Respondent would to all intents and purposes still be unfit for sea-duty. Even then, with Dr. Cruz's failure to issue a definite assessment of respondent's condition on May 19, 2006, or the last day of the statutory 240-day period, respondent was thus deemed totally and permanently disabled pursuant to Article 192 (c)(1) of the Labor Code and Rule X, Section 2 of the AREC.

4. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARDED WHERE AN EMPLOYEE IS FORCED TO LITIGATE AND INCUR EXPENSES TO PROTECT HIS RIGHTS AND INTEREST.— On the issue of attorney's fees, while petitioners have not been shown to act in gross and evident bad faith in

refusing to satisfy respondent's demands, it is nonetheless true as a matter of law and it has been held in the past that where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.

APPEARANCES OF COUNSEL

Sugay Law Office for petitioners.
Valmores and Valmores Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days,[1] pursuant to Article 192 (c)(l) of the Labor Code and Rule X, Section 2 of the Amended Rules on Employees Compensation (AREC). If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled. On the other hand, an employee's disability becomes permanent and total even before the lapse of the statutory 240-day treatment period, when it becomes evident that the employee's disability continues and he is unable to engage in gainful employment during such period because, for instance, he underwent surgery and it evidently appears that he could not recover therefrom within the statutory period.

This Petition for Review on *Certiorari*[2] assails the April 20, 2010 Decision[3] of the Court of Appeals (CA) in CA-G.R. SP

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[1] If further medical treatment is necessary.

[2] *Rollo,* pp. 63-104.

[3] *Id.* at 106-123; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Rebecca R de Guia-Salvador and Amy C. Lazaro-Javier.

No. 107330 and its July 21, 2010 Resolution[4] denying reconsideration thereof.

Factual Antecedents

Respondent Edgar A. Balasta was hired by petitioner Fil-Pride Shipping Company, Inc. (Fil-Pride) for its foreign principal, petitioner Ocean Eagle Ship Management Company, PTE. Ltd. (Ocean Eagle). Respondent was assigned as Able Seaman onboard M/V Eagle Pioneer. His Employment Contract[5] states the following terms and conditions:

Duration of Contract	:	TWELVE MONTHS
Position	:	ABLE SEAMAN
Basic Monthly Salary	:	US$390.00
Hours of Work	:	48 HRS/WEEK
Overtime	:	FIXED US$156.00 (CONTAINER ALLOW US$39.00)
Vacation leave with pay	:	US$52.00
Point of hire	:	MANILA/PHILS

Respondent was declared fit to work after undergoing the mandatory Pre-Employment Medical Examination (PEME). He commenced his duties as Able Seaman aboard M/V Eagle Pioneer on February 23, 2005. Among respondent's duties as Able Seaman are the following:

a. Watch standers and may be required to supervise day work of junior rating;

b. Stands watch at bow or on wing of bridge to look for obstructions in path of vessel;

c. Measures depth of water in shallow or unfamiliar waters, using lead line, and telephones or shouts information to bridge;

d. Steers ship by automatic/remote control or manual control and/or uses emergency steering apparatus to steer vessel as directed by navigating officer, chief mate or the ship captain;

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[4] *Id.* at 125.

[5] *Id.* at 209.

e. Breaks out rigs, overhauls and stows cargo handling gears, stationary rigging, and running gears;

f. Overhauls lifeboats, winch and falls;

g. Paints and chips rust on deck and superstructure of ship;

h. May be concerned only with one phase of duties such as:

1. Maintenance of ships' gears and decks or watch duties;

2. May be known as skilled deckhand on various repairs and maintenance works on deck;

3. Performs other deck works as required by superior officers.[6]

Sometime in August and September 2005, while aboard M/V Eagle Pioneer, respondent experienced chest pains, fatigue, and shortness of breath. He was examined by a physician in Gangyou Hospital in Tianjin, China, and was diagnosed as having myocardial ischemia and coronary heart disease. He was declared unfit for duty and was recommended for repatriation.[7]

Respondent was thus repatriated on September 18, 2005 and was immediately referred to the company-designated physician, Dr. Nicomedes G. Cruz (Dr. Cruz). He was subjected to laboratory, X-ray, 2D echo, and electrocardiogram tests, as well as 24-hour Holter monitoring. In Dr. Cruz's September 18, 2005 medical report,[8] respondent was diagnosed with hypertension and myocardial ischemia.

Respondent was further examined by Dr. Cruz on September 21, 23 and 30, 2005; October 6, 2005; February 2, 13 and 17, 2006; March 6 and 20, 2006; and on April 19, 2006.[9] From the February 2, 2006 medical report onward, it may be seen that respondent was diagnosed with severe 3-vessel coronary artery disease, and was scheduled for coronary artery bypass surgery

[6] *Id.* at 228.

[7] *Id.* at 70, 108, 128, 141.

[8] *Id.* at 261-262.

[9] *Id.* at 263-271.

on February 24, 2006.

On his own initiative, respondent underwent coronary angiogram at the St. Luke's Medical Center (St. Luke's) on October 14, 2005. In a medical report[10] of even date signed by St. Luke's Cardiac Catheterization Laboratory Interventional Cardiologist Paterno F. Dizon, Jr., respondent was diagnosed with coronary artery atherosclerosis and severe three-vessel coronary artery disease.

On February 16, 2006, respondent consulted and was examined by an independent physician, Dr. Efren R. Vicaldo (Dr. Vicaldo), who issued a medical certificate[11] containing the following diagnosis:

February 16, 2006

TO WHOM IT MAY CONCERN:

This is to certify that, Edgar A. Balasta, 48 years of age, of Imus, Cavite was examined and treated as out[-]patient/confined in this hospital on/from February 16, 2006 with the following findings and/or diagnosis/diagnoses:

Hypertensive cardiovascular disease
Coronary artery disease, 3[-]vessel involvement
Stable angina pectoris
Impediment Grade 1 (120%)

(signed)

EFREN R. VICALDO, M.D.

JUSTIFICATION OF IMPEDIMENT GRADE 1 (120%)"FOR SEAMAN EDGAR A. BALASTA

- This patient/seaman presented with a history of chest pain, easy fatigue and shortness of breath noted [in] August 2005 after some strenuous activity while working on board ship. He was seen in consult in Mainland China where he underwent chest Xray and ECG. He was diagnosed as [sic] coronary artery disease.

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[10] *Id.* at 240-241.

[11] *Id.* at 242-243.

- He was repatriated on September 18, 2005 and was admitted for 1 week at Manila Medical Center. He underwent laboratory exams which included Chest Xray, ECG, 2D echo and 24 hour Holter monitoring. He consequently underwent coronary angiography at St. Luke's Medical Center on October 14, 2005 which revealed severe 3 vessel disease involving the proximal LAD, first diagonal and proximal and distal LCx.
- When seen at the clinic, his blood pressure was elevated at 140/90 mmHg; the rest of the PE findings were unremarkable.
- He is now unfit to resume work as seaman in any capacity.
- His illness is considered work aggravated/related.
- He requires maintenance medication to maintain normal blood pressure and low cholesterol to prevent worsening of his coronary artery disease and other cardiovascular complications such as stroke and renal insufficiency.
- He requires immediate coronary artery bypass graft surgery to alleviated (sic) his symptom of angina and prevent the occurrence of possible acute myocardial infarction.
- He has to modify his lifestyle to include low salt, low fat diet, regular exercise and nicotine abstinence.
- He is not expected to land a gainful employment given his medical background.

Thank you.

(signed)
Efren R. Vicaldo, M.D.[12]

Respondent filed a claim for permanent disability benefits with petitioners, but the latter denied the same.

On February 10, 2006, respondent filed against the petitioners a Complaint[13] for the recovery of disability benefits, illness allowance, reimbursement of medical expenses, damages and attorney's fees.

It appears from the record that on February 24, 2006,

[12] *Id.*

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

respondent underwent coronary artery bypass graft surgery. He then continued his treatment with Dr. Cruz, who for his part continued to diagnose respondent with severe coronary artery disease.

In his Position Paper[14] and Reply,[15] respondent stated and argued that in the performance of his duties as Able Seaman, he inhaled, was exposed to, and came into direct contact with various injurious and harmful chemicals, dust, fumes/ emissions, and other irritant agents; that he performed strenuous tasks such as lifting, pulling, pushing and/or moving equipment and materials on board the ship; that he was constantly exposed to varying temperatures of extreme hot and cold as the ship crossed ocean boundaries; that he was exposed as well to harsh weather conditions; that in most instances, he was required to perform overtime work; that the work of an Able Seaman is both physically and mentally stressful; and that as a result, he contracted his illness which required him to undergo bypass surgery. He added that despite being examined by the company-designated physician, he continued to suffer episodes of severe chest pain, difficulty in breathing and other discomforts related to his illness; that his health has not improved, and was instead deteriorating, which thus led him to consult an independent physician (Dr. Vicaldo); that Dr. Vicaldo declared him unfit to work as seaman in any capacity and that his illness was work-related; that despite the lapse of more than six months, the company-designated physician has failed to make a finding regarding his condition, which thus entitles him to permanent total disability benefits; that his just claim for disability benefits was denied by petitioners, which forced him to file the labor complaint; and that he should thus be paid US$60,000.00 disability benefits with interest, 120 days illness allowance based on his salary of US$390.00 or the amount of US$1,560.00 with interest, ₱500,000.00 damages, and attorney's fees of 10% of the recoverable amount.

Petitioners, on the other hand, stated and argued in their

[14] *Id.* at 226-235.

[15] *Id.* at 272-279.

Position Paper[16] and Reply[17] that respondent filed a labor complaint even before the company-designated physician, Dr. Cruz, could complete his examination and treatment of respondent's condition, which thus prompted them to deny his claim for disability benefits; that the independent physician Dr. Vicaldo examined respondent only once on February 16, 2006, and thus could not have arrived at a competent diagnosis of respondent's condition; that in the absence of a competent diagnosis and substantial evidence, respondent's claim for benefits cannot stand; that respondent's illness is not work-related, and that his lifestyle caused, or was a contributing factor to, his illness; that contrary to respondent's claim, the latter has been paid his illness allowance in full; that respondent's medical expenses are being shouldered by them; and that respondent is not entitled to damages and attorney's fees as a result of prematurely filing the labor case. Petitioners thus prayed that the labor case be dismissed.

Ruling of the Labor Arbiter

On April 30, 2007, a Decision[18] was rendered by the Labor Arbiter which decreed as follows:

> WHEREFORE, judgment is hereby rendered ordering respondents to pay, jointly and severally, the complainant the following amount[s]:
>
> (1) US$60,000.00 or its peso equivalent at the time of payment as disability benefit; and (2) US$6,000.00 or its peso equivalent at the time of payment as attorney's fees.
>
> All other claims are Dismissed for lack of merit.
>
> SO ORDERED.[19]

The Labor Arbiter held essentially that respondent contracted his illness while serving out his employment contract with petitioners; that his illness was work-related/aggravated; that

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[16] *Id.* at 244-257.

[17] *Id.* at 280-286.

[18] *Id.* at 126-137; penned by Labor Arbiter Donato G. Quinto, Jr.

[19] *Id.* at 136-137.

while respondent was under the care of Dr. Cruz from September 18, 2005 until April 19, 2006, the latter could have come up with a declaration of fitness or disability, yet he did not; that respondent's illness rendered him unfit for duty and required bypass surgery to treat the same; and that respondent's condition constituted permanent total disability as the same is equivalent to Impediment Grade 1 (120%) as assessed by Dr. Vicaldo, which thus entitles respondent to the maximum disability compensation of US$60,000.00. For lack of basis, however, respondent's claim for damages and reimbursement of medical expenses was denied.

Ruling of the National Labor Relations Commission

Petitioners appealed to the National Labor Relations Commission (NLRC).

On September 22, 2008, the NLRC rendered its Decision[20] granting petitioners' appeal and reversing the Labor Arbiter's April 30, 2007 Decision, thus:

> WHEREFORE, the appeal is GRANTED. The Labor Arbiter's Decision dated April 30, 2007 is hereby SET ASIDE.
>
> SO ORDERED.[21]

Respondent moved for reconsideration, but in a November 27, 2008 Resolution,[22] the motion was denied.

In reversing the Labor Arbiter, the NLRC declared that respondent's illness – atherosclerosis/coronary artery disease – was not work-connected. Thus, it held:

> Medical studies show that atherosclerosis is a disease affecting arterial blood vessels. It is commonly referred to as a "hardening" or "furring" of the arteries. It is caused by the formation of multiple plaques within the arteries. It develops from low-density lipoprotein

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[20] *Id.* at 139-147; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.

[21] *Id.* at 146.

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

cholesterol (LDL), colloquially called "bad cholesterol". It typically begins in early adolescence and is usually found in most major arteries, yet is asymptomatic and not detected by most diagnostic methods during life. Some risk factors for atherosclerosis are: advanced age, having diabetes or impaired glucose tolerance, dysliporproteinemia or unhealthy patterns of serum proteins carrying fats and cholesterol, male sex, tobacco smoking, having high blood pressure, being obese, a sedentary lifestyle, having close relatives who have had some complication[s] of atherosclerosis, elevated serum level of triglycerides, elevated serum insulin levels, stress or symptoms of clinical depression and hyperthyroidism x x x.[23]

Ruling of the Court of Appeals

In a Petition for *Certiorari* filed with the CA, respondent sought a reversal of the NLRC Decision, arguing that the latter committed grave abuse of discretion and gross error in declaring that his illness was not work-related and in subsequently denying his claims.

On April 20, 2010, the CA issued the assailed Decision containing the following decretal portion:

WHEREFORE, the instant petition is GRANTED. The assailed Decision dated September 22, 2008 and Resolution dated November 27, 2008 of public respondent National Labor Relations Commission ("NLRC"), Third Division, in NLRC LAC NO. OFW (M) 08-000086-07, are REVERSED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The decision dated April 30, 2007 of Labor Arbiter Donato G. Quinto, Jr. in NLRC-NCR-OFW 06-02-00543-00 is hereby REINSTATED.

SO ORDERED.[24]

The CA held that respondent suffered permanent disability as a result of Dr. Cruz's failure to make a definite assessment of his condition within the statutory 120-day period prescribed under the labor laws,[25] or from September 18, 2005 – date of

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[23] *Id.* at 146.

[24] *Id.* at 122.

[25] Article 192 (c) (1) of the Labor Code states:

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

repatriation – up to April 19, 2006, or date of last medical intervention, or a total of 213 days. The CA held further that as early as September 2005, respondent was declared unfit for duty by a company-designated physician in Tianjin, China, and later on, after tests were conducted, respondent was diagnosed with coronary artery atherosclerosis and severe three-vessel coronary artery disease; thus, respondent suffered a serious occupational disease that prevented his further deployment as seaman.

The CA added that respondent's illness was work-related, and can be attributed to the conditions he was working under as able seaman; he was exposed and subjected to stress and pressures at work which, after six months, resulted in his experiencing chest pain, fatigue and difficulty in breathing – and eventually, a diagnosis of coronary heart disease.

The CA noted further that even during the pendency of the labor case before the Labor Arbiter, Dr. Cruz did not render a final assessment of respondent's condition; as a result, the diagnosis of the company-designated physician in Gangyou Hospital in Tianjin, China that respondent was unfit for duty

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

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

x x x x x x x x x

Likewise, Rule X, Section 2 of the Amended Rules on Employees Compensation provides:

RULE X

Temporary Total Disability

x x x x x x x x x

Sec. 2. Period of entitlement. – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

has not been overturned. Thus, the CA concluded that since Dr. Cruz failed to make a definite assessment of respondent's fitness or disability within the statutory 240-day period – and even thereafter, there can be no other conclusion than that respondent suffered permanent total disability.

Petitioners filed a Motion for Reconsideration,[26] but the CA denied the same in its July 21, 2010 Resolution. Hence, the present Petition.

Issues

Petitioners submit that –

THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) ORDERING THE DISMISSAL OF THE ABOVE-CAPTIONED LABOR COMPLAINT FINDS AMPLE SUPPORT IN THE EVIDENCE ON RECORD, IN MEDICAL RESEARCH, IN THE PERTINENT PROVISIONS OF THE POEA STANDARD CONTRACT, AND IN APPLICABLE JURISPRUDENCE. THE HONORABLE COURT OF APPEALS, IN ITS QUESTIONED DECISION PROMULGATED ON 20 APRIL 2010 AND RESOLUTION PROMULGATED ON 21 JULY 2010, GRAVELY ERRS [sic] WHEN IT ELECTED TO SET ASIDE AND/OR COMPLETELY IGNORE SUCH FACTUAL AND LEGAL FINDINGS ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) AND WHEN IT THEREAFTER RULED TO REVERSE AND TO SET ASIDE THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION) ORDERING THE DISMISSAL OF THE ABOVE-CAPTIONED LABOR COMPLAINT FOR LACK OF MERIT.[27]

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that a pronouncement be made dismissing respondent's labor complaint, petitioners maintain in their Petition and Reply[28] that contrary to the CA's declarations, respondent's illness is not work-related; that respondent's labor complaint was prematurely

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[26] *Rollo*, pp. 584-596.

[27] *Id.* at 82.

[28] *Id.* at 642-660.

filed, while he was still undergoing treatment for his illness and before the company-designated physician/s could complete treatment and make a definite assessment of his condition; that they may not be blamed for the company-designated physician's failure to arrive at a final assessment of respondent's condition; that it has not been shown that respondent's treatment lasted for the statutory duration of 240 days, since he filed his labor complaint even before the said maximum 240-day treatment period could be reached and a definite assessment of his condition could be made; and that overall, respondent has not shown by substantial evidence that he is entitled to his claims.

Respondent's Arguments

In his Comment,[29] respondent argues that the issues raised in the Petition are factual in nature and no question of law is involved; that his illness is compensable as it is work-connected and constitutes an occupational disease under the POEA Contract Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels; that Dr. Cruz already knew of the gravity and serious nature of his condition, yet he refused to make the required definite assessment of his fitness or disability; and that the award of attorney's fees was proper.

Our Ruling

The Court denies the Petition.

Compensability

Regarding the issue of compensability, it has been the Court's consistent ruling that in disability compensation, "it is not the injury which is compensated, but rather it is the incapacity to work resulting in the impairment of one's earning capacity."[30]

[29] *Id.* at 609-628.

[30] *Valenzona v. Fair Shipping Corporation*, G.R. No. 176884, October 19, 2011, 659 SCRA 642, 652-653, citing *Quitoriano v. Jebsens Maritime, Inc.*, G.R. No. 179868, January 21, 2010, 610 SCRA 529, 536; *Iloreta v. Philippine Transmarine Carriers, Inc.*, G.R. No. 183908, December 4, 2009, 607 SCRA 796, 804, citing *Philimare, Inc./Marlow Navigation Company, Ltd. v. Suganob*, 579 Phil. 706, 715 (2008).

Moreover, "the list of illnesses/diseases in Section 32-A[31] does not preclude other illnesses/diseases not so listed from being compensable. The POEA-SEC cannot be presumed to contain all the possible injuries that render a seafarer unfit for further sea duties."[32]

Just the same, in several cases, cardiovascular disease, coronary artery disease, as well as other heart ailments were held to be compensable.[33] Likewise, petitioners failed to refute respondent's allegations in his Position Paper that in the performance of his duties as Able Seaman, he inhaled, was exposed to, and came into direct contact with various injurious and harmful chemicals, dust, fumes/emissions, and other irritant agents; that he performed strenuous tasks such as lifting, pulling, pushing and/or moving equipment and materials on board the ship; that

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[31] Section 32-A of the POEA Contract Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels states:

SECTION 32-A OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks describe herein;

2. The disease was contracted as a result of the seafarer's exposure to the described risks;

3. The disease was contracted within a period of exposure and under such other factors necessary to contract it;

4. There was no notorious negligence on the part of the seafarer.

The following diseases are considered as occupational when contracted: x x x

[32] *Maersk Filipinas Crewing, Inc. v. Mesina,* G.R. No. 200837, June 5, 2013.

[33] *Jebsens Maritime, Inc. v. Undag,* G.R. No. 191491, December 14, 2011, 662 SCRA 670; *Oriental Shipmanagement Co., Inc. v. Bastol*, G.R. No. 186289, June 29, 2010, 622 SCRA 352; *Iloreta v. Philippine Transmarine Carriers, Inc*., *supra* note 30; *Micronesia Resources v. Cantomayor*, 552 Phil. 130 (2007); *Remigio v. National Labor Relations Commission*, 521 Phil. 330, 347 (2006); and *Heirs of the late Aniban v. National Labor Relations Commission*, 347 Phil. 46 (1997), citing *Tibulan v. Hon. Inciong*, 257 Phil. 324 (1989); *Cortes v. Employees' Compensation Commission*, 175 Phil. 331 (1978); and *Sepulveda v. Employees' Compensation Commission*, 174 Phil. 242 (1978).

he was constantly exposed to varying temperatures of extreme hot and cold as the ship crossed ocean boundaries; that he was exposed as well to harsh weather conditions; that in most instances, he was required to perform overtime work; and that the work of an Able Seaman is both physically and mentally stressful. It does not require much imagination to realize or conclude that these tasks could very well cause the illness that respondent, then already 47 years old, suffered from six months into his employment contract with petitioners. The following pronouncement in a recent case very well applies to respondent:

> x x x His constant exposure to hazards such as chemicals and the varying temperature, like the heat in the kitchen of the vessel and the coldness outside, coupled by stressful tasks in his employment caused, or at least aggravated, his illness. It is already recognized that any kind of work or labor produces stress and strain normally resulting in wear and tear of the human body.[34]

Notably, it is "a matter of judicial notice that an overseas worker, having to ward off homesickness by reason of being physically separated from his family for the entire duration of his contract, bears a great degree of emotional strain while making an effort to perform his work well. The strain is even greater in the case of a seaman who is constantly subjected to the perils of the sea while at work abroad and away from his family."[35]

Assessment by company-designated physician

The company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or permanent disability within the period of 120 or 240 days, pursuant to Article 192 (c)(1) of the Labor Code and Rule X, Section 2 of the AREC.[36] If he fails to do so and the seafarer's medical condition remains unresolved, the latter shall be deemed totally and permanently disabled.

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[34] *Magsaysay Maritime Services v. Laurel*, G.R. No. 195518, March 20, 2013, 694 SCRA 225, 241-242.

[35] *Heirs of the late Aniban v. National Labor Relations Commission*, *supra* note 32 at 54.

[36] See note 25.

Respondent was repatriated on September 18, 2005. He was further examined by the company-designated physician Dr. Cruz on September 21, 23 and 30, 2005; October 6, 2005; February 2, 13 and 17, 2006; March 6 and 20, 2006; and on April 19, 2006. And beginning from the February 2, 2006 medical report, respondent was diagnosed by Dr. Cruz with severe 3-vessel coronary artery disease, and was scheduled for coronary artery bypass surgery on February 24, 2006. After surgery, respondent continued his treatment with Dr. Cruz, who on the other hand continued to diagnose respondent with severe coronary artery disease even on respondent's last consultation on April 19, 2006.

Concededly, the period September 18, 2005 to April 19, 2006 is less than the statutory 240-day – or 8-month – period. Nonetheless, it is impossible to expect that by May 19, 2006, or on the last day of the statutory 240-day period, respondent would be declared fit to work when just recently – or on February 24, 2006 – he underwent coronary artery bypass graft surgery; by then, respondent would not have sufficiently recovered. In other words, it became evident as early as April 19, 2006 that respondent was permanently and totally disabled, unfit to return to work as seafarer and earn therefrom, given his delicate post-operative condition; a definitive assessment by Dr. Cruz before May 19, 2006 was unnecessary. Respondent would to all intents and purposes still be unfit for sea-duty. Even then, with Dr. Cruz's failure to issue a definite assessment of respondent's condition on May 19, 2006, or the last day of the statutory 240-day period, respondent was thus deemed totally and permanently disabled pursuant to Article 192 (c)(1) of the Labor Code and Rule X, Section 2 of the AREC.

Premature labor complaint

Neither may it be argued by the petitioners that respondent's filing of the labor complaint on February 10, 2006 should affect the outcome of the case. It is difficult to blame respondent for deciding to sue, considering that he has been diagnosed by no less than three separate physicians – Drs. Dizon, Vicaldo, and Cruz – with severe three-vessel coronary artery disease which required bypass procedure. Respondent may have been acting

under a sense of extreme urgency given the life-threatening nature of his illness. The filing of the labor complaint may have been designed to pressure petitioners into taking action to address his condition, or to recover expenses should he decide to proceed with the bypass procedure on his own. Either way, the Court cannot subscribe to the view that there was a premature resort to litigation since respondent was still undergoing treatment for his illness and the company-designated physician has not completed treatment and made a definite assessment of his condition.

Indeed, it may even be said that with Dr. Cruz's February 2, 2006 diagnosis that respondent was suffering from severe three-vessel coronary artery disease which required immediate bypass graft procedure or surgery, respondent believed himself permanently and totally disabled which thus led him to demand disability benefits and thereafter file the labor case when petitioners ignored his demand.

Attorney's fees

On the issue of attorney's fees, while petitioners have not been shown to act in gross and evident bad faith in refusing to satisfy respondent's demands, it is nonetheless true as a matter of law and it has been held in the past that where an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.[37]

WHEREFORE, the Petition is **DENIED**. The assailed April 20, 2010 Decision and July 21, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 107330 are **AFFIRMED** *in toto*.

SO ORDERED.

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

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[37] CIVIL CODE OF THE PHILIPPINES, Article 2208; *3rd Alert Security and Detective Services, Inc. v. Navia*, G.R. No. 200653, June 13, 2012, 672 SCRA 649, 654; *Valenzona v. Fair Shipping Corporation*, *supra* note 30 at 657; *Quitoriano v. Jebsens Maritime, Inc.*, *supra* note 30 at 537.

THIRD DIVISION

[G.R. No. 196894. March 3, 2014]

JESUS G. CRISOLOGO and NANETTE B. CRISOLOGO, *petitioners, vs.* **JEWM AGRO-INDUSTRIAL CORPORATION,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; AMENDMENT AND ALTERATION OF CERTIFICATES; PERSONS WHOSE LIENS APPEAR AS ANNOTATIONS ARE CONSIDERED INDISPENSABLE IN AN ACTION FOR CANCELLATION OF MEMORANDUM ANNOTATED AT THE BACK OF A CERTIFICATE OF TITLE.—** In an action for the cancellation of memorandum annotated at the back of a certificate of title, the persons considered as indispensable include those whose liens appear as annotations pursuant to Section 108 of P.D. No. 1529 x x x. In *Southwestern University v. Laurente*, the Court held that the cancellation of the annotation of an encumbrance cannot be ordered without giving notice to the parties annotated in the certificate of title itself. It would, thus, be an error for a judge to contend that no notice is required to be given to all the persons whose liens were annotated at the back of a certificate of title.

2. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; COMPULSORY JOINDER OF INDISPENSABLE PARTIES; ESSENTIAL FOR THE COMPLETE DETERMINATION OF ALL POSSIBLE ISSUES BETWEEN THE PARTIES THEMSELVES AND OTHER PERSONS WHO MAY BE AFFECTED BY THE JUDGMENT.—** As indispensable parties, Spouses Crisologo should have been joined as defendants in the case pursuant to Section 7, Rule 3 of the Rules of Court x x x. The reason behind this compulsory joinder of indispensable parties is the complete determination of all possible issues, not only between the parties themselves but also as regards other persons who may be affected by the judgment.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; THE MANIFEST DISREGARD OF THE MANDATORY IMPORT OF THE RULE ON COMPULSORY JOINDER OF INDISPENSABLE PARTIES CONSTITUTES GRAVE ABUSE OF DISCRETION.— In this case, RTC-Br. 14, despite repeated pleas by Spouses Crisologo to be recognized as indispensable parties, failed to implement the mandatory import of [Section 7, Rule 3 of the Rules of Court] x x x. This manifest disregard of the basic rules and procedures constitutes a grave abuse of discretion. In *State Prosecutors II Comilang and Lagman v. Judge Medel Belen*, the Court held as inexcusable abuse of authority the trial judge's "obstinate disregard of basic and established rule of law or procedure." Such level of ignorance is not a mere error of judgment. It amounts to "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" or in essence, grave abuse of discretion amounting to lack of jurisdiction. Needless to say, judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less.

4. ID.; ID.; ID.; PROPER ONLY IF THERE IS NO APPEAL, OR ANY PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.— The rule is that a petition for *certiorari* under Rule 65 is proper only if there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. In this case, no adequate recourse, at that time, was available to Spouses Crisologo, except resorting to Rule 65.

5. ID.; ID.; ID.; MAY BE AVAILED OF TO ASSAIL AN INTERLOCUTORY ORDER, NOT SUBJECT OF AN APPEAL, WHICH IS RENDERED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION.— [T]he remedy against an interlocutory order, not subject of an appeal, is an appropriate special civil action under Rule 65, provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. Only then is *certiorari* under Rule 65 allowed to be resorted to.

6. ID.; ID.; ID.; MAY BE RESORTED TO BY ONE WHO WAS A PARTY IN THE PROCEEDINGS BEFORE THE COURT *A QUO*; EXCEPTION; PRESENT IN CASE AT BAR.— JEWM cites *DBP v. COA* where the Court held: x x x The 'person aggrieved' under Section 1 of Rule 65 who can avail of the special civil action of *certiorari* pertains only to one who was a party in the proceedings before the court *a quo* x x x. Under normal circumstances, JEWM would be correct in their averment that the lack of legal standing on the part of Spouses Crisologo in the case before RTC-Br. 14 prevents the latter's recourse *via* Rule 65. This case, however, is an exception. In many instances, the Court has ruled that technical rules of procedures should be used to promote, not frustrate the cause of justice. Rules of procedure are tools designed not to thwart but to facilitate the attainment of justice; thus, their strict and rigid application may, for good and deserving reasons, have to give way to, and be subordinated by, the need to aptly dispense substantial justice in the normal cause. Be it noted that the effect of their non-participation as indispensable parties is to preclude the judgment, orders and the proceedings from attaining finality. Time and again, the Court has ruled that the absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present. Consequently, the proceedings before RTC-Br. 14 were null and void including the assailed orders, which may be "*ignored wherever and whenever it exhibits its head*." To turn a blind eye to the said nullity and, in turn, rule as improper the recourse to Rule 65 by the lack of legal standing is to prolong the denial of due process to the persons whose interests are indispensible to the final disposition of the case. It will only result in a protracted litigation as Spouses Crisologo will be forced to rely on a petition for the annulment of judgment before the CA (as the last remaining remedy), which may again reach this Court. To prevent multiplicity of suits and to expedite the swift administration of justice, the CA should have applied liberality by striking down the assailed orders despite the lack of legal standing on the part of Spouses Crisologo to file the Rule 65 petition before it. Besides, this lacking requirement, of which Spouses Crisologo were not even at fault, is precisely the reason why this controversy arose.

APPEARANCES OF COUNSEL

R.A.V. Saguisag & Associates for petitioners.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court challenging the May 6, 2011 Decision[1] of the Court of Appeals *(CA),* in CA-G.R. SP No. 03896-MIN, which affirmed the September 27, 2010,[2] October 7, 2010[3] and November 9, 2010[4] Orders of the Regional Trial Court, Davao City, Branch 14 *(RTC-Br. 14),* in Civil Case No. 33,551-2010, an action for Cancellation of Lien. It is entitled *"JEWM Agro-Industrial Corporation v. The Registry of Deeds for the City of Davao, Sheriff Robert Medialdea, John & Jane Does, and all persons acting under their directions."*

This controversy stemmed from various cases of collection for sum of money filed against So Keng Kok, the owner of various properties including two (2) parcels of land covered by TCT Nos. 292597 and 292600 *(subject properties),* which were attached by various creditors including the petitioners in this case. As a result, the levies were annotated on the back of the said titles.

Petitioners Jesus G. Crisologo and Nannette B. Crisologo *(Spouses Crisologo)* were the plaintiffs in two (2) collection cases before RTC, Branch 15, Davao City *(RTC-Br. 15),* docketed as Civil Case Nos. 26,810-98 and 26,811-98, against

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[1] Rollo, pp. 26-36. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justice Pamela Ann Abella Maxino and Associate Justice Zenaida T. Galapate-Laguilles, concurring.

[2] *Id.* at 133-137.

[3] *Id.* at 141.

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

Robert Limso, So Keng Koc, *et al*. Respondent JEWM Agro-Industrial Corporation *(JEWM)* was the successor-in-interest of one Sy Sen Ben, the plaintiff in another collection case before RTC, Branch 8, Davao City *(RTC-Br. 8)*, docketed as Civil Case No. 26,513-98, against the same defendants.

On October 19, 1998, RTC-Br. 8 rendered its decision based on a compromise agreement, dated October 15, 1998, between the parties wherein the defendants in said case were directed to transfer the subject properties in favor of Sy Sen Ben. The latter subsequently sold the subject properties to one Nilda Lam who, in turn, sold the same to JEWM on June 1, 2000. Thereafter, TCT Nos. 325675 and 325676 were eventually issued in the name of JEWM, both of which still bearing the same annotations as well as the notice of *lis pendens* in connection with the other pending cases filed against So Keng Kok.

A year thereafter, Spouses Crisologo prevailed in the separate collection case filed before RTC-Br. 15 against Robert Lim So and So Keng Koc *(defendants)*. Thus, on July 1, 1999, the said defendants were ordered to solidarily pay the Spouses Crisologo. When this decision attained finality, they moved for execution. On June 15, 2010, a writ was eventually issued. Acting on the same, the Branch Sheriff issued a notice of sale scheduling an auction on August 26, 2010. The notice of sale included, among others, the subject properties covered by TCT Nos. 325675 and 325676, now, in the name of JEWM.

In the same proceedings, JEWM immediately filed its Affidavit of Third Party Claim and the Urgent Motion *Ad Cautelam*. It prayed for the exclusion of the subject properties from the notice of sale. In an order, dated August 26, 2010, however, the motion was denied. In turn, the Spouses Crisologo posted a bond in order to proceed with the execution.

To protect its interest, JEWM filed a separate action for cancellation of lien with prayer for the issuance of a preliminary injunction before RTC-Br. 14, docketed as Civil Case No. 33,551-2010. It prayed for the issuance of a writ of preliminary injunction to prevent the public sale of the subject properties covered in

the writ of execution issued pursuant to the ruling of RTC-Br. 15; the cancellation of all the annotations on the back of the pertinent TCTs; and the issuance of a permanent injunction order after trial on the merits. "*The Register of Deeds of Davao City, Sheriff Robert Medialdea, John and Jane Does and all persons acting under their direction*" were impleaded as defendants.

At the scheduled hearing before RTC-Br. 14 on September 22, 2010, Spouses Crisologo's counsel appeared and filed in open court their Very Urgent Manifestation questioning the authority of the said court to restrain the execution proceedings in RTC-Br. 15. JEWM opposed it on the ground that Spouses Crisologo were not parties in the case.

On September 24, 2010, Spouses Crisologo filed an Omnibus Motion praying for the denial of the application for writ or preliminary injuction filed by JEWM and asking for their recognition as parties. No motion to intervene was, however, filed as the Spouses Crisologo believed that it was unnecessary since they were already the John and Jane Does named in the complaint.

In the Order, dated September 27, 2010, RTC-Br. 14 denied Spouses Crisologo's Omnibus Motion and granted JEWM's application for a writ of preliminary injunction.

On October 1, 2010, Spouses Crisologo filed a Very Urgent Omnibus Motion before RTC-Br. 14 praying for reconsideration and the setting aside of its September 27, 2010 Order. This was denied in the RTC Br.-14's October 7, 2010 Order for lack of legal standing in court considering that their counsel failed to make the written formal notice of appearance. The copy of this order was received by Spouses Crisologo on October 22, 2010. It must be noted, however, that on October 27, 2010, they received another order, likewise dated October 7, 2010, giving JEWM time to comment on their Very Urgent Omnibus Motion filed on October 1, 2010. In its Order, dated November 9, 2010, however, RTC-Br. 14 again denied the Very Urgent Motion previously filed by Spouses Crisologo.

On November 12, 2010, JEWM moved to declare the "defendants" in default which was granted in an order given in open court on November 19, 2010.

Spouses Crisologo then filed their Very Urgent Manifestation, dated November 30, 2010, arguing that they could not be deemed as defaulting parties because they were not referred to in the pertinent motion and order of default.

On November 19, 2010, Spouses Crisologo filed with the CA a petition for *certiorari*[5] under Rule 65 of the Rules of Court assailing the RTC-Br. 14 orders, dated September 27, 2010, October 7, 2010 and November 9, 2010, all of which denied their motion to be recognized as parties. They also prayed for the issuance of a Temporary Restraining Order *(TRO)* and/or a Writ of Preliminary Injunction.

In its Resolution, dated January 6, 2011, the CA denied the application for a TRO, but directed Spouses Crisologo to amend their petition. On January 19, 2011, the Spouses Crisologo filed their Amended Petition[6] with prayers for the issuance of a TRO and/or writ of preliminary injunction, the annulment of the aforementioned orders of RTC Br. 14, and the issuance of an order dissolving the writ of preliminary injunction issued in favor of JEWM.

Pending disposition of the Amended Petition by the CA, JEWM filed a motion on December 6, 2010 before RTC-Br. 14 asking for the resolution of the case on the merits.

On January 10, 2011, RTC-Br. 14 ruled in favor of JEWM, with the dispositive portion of its Decision[7] stating as follows:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiff as follows:

1. the preliminary writ of injunction issued on October 5, 2010 is hereby made permanent;

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[5] Dated November 15, 2010.

[6] *Rollo,* pp. 146-159.

[7] *Id.* at 175-177. Penned by Judge George E. Omelio.

2. directing herein defendant Registry of Deeds of Davao City where the subject lands are located, to cancel all existing liens and encumbrances on TCT No. T-325675 and T-325676 registered in the name of the plaintiff, and pay the

3. cost of suit.

SO ORDERED.[8]

Spouses Crisologo then filed their Omnibus Motion *Ex Abudanti ad Cautelam*, asking RTC- Br. 14 to reconsider the above decision. Because no motion for intervention was filed prior to the rendition of the judgment, a certificate, dated March 17, 2011, was issued declaring the January 10, 2011 decision final and executory.

On May 6, 2011, the CA eventually denied the Amended Petition filed by Spouses Crisologo for lack of merit. It ruled that the writ of preliminary injunction subject of the petition was already *fait accompli* and, as such, the issue of grave abuse of discretion attributed to RTC-Br. 14 in granting the relief had become moot and academic. It further held that the failure of Spouses Crisologo to file their motion to intervene under Rule 19 rendered Rule 65 inapplicable as a vehicle to ventilate their supposed right in the case.[9]

Hence, this petition.

ISSUES

I. The Court of Appeals erred in holding that the action for Cancellation of Annotations may proceed even without notice to and impleading the party/ies who caused the annotations, in clear contravention of the rule on joinder of parties and basic due process.

II. The Court of Appeals erred in applying a very constrictive interpretation of the rules in holding

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[8] *Id.* at 177.

[9] *Id.* at 36.

that a motion to intervene is the only way an otherwise real party in interest could participate.

III. The Court of Appeals erred in denying our application for the issuance of a temporary restraining order and/or a writ of preliminary injunction.

IV. The Court of Appeals erred in holding that the issues raised by petitioners before it [had] been mooted by the January 10, 2011 decision of RTC Branch 14.[10]

Spouses Crisologo submit as error the CA affirmation of the RTC- Br. 14 ruling that the action for cancellation may proceed without them being impleaded. They allege deprivation of their right to due process when they were not impleaded in the case before RTC-Br. 14 despite the claim that they stand, as indispensable parties, to be benefited or injured by the judgment in the action for the cancellation of annotations covering the subject properties. They cite *Gonzales v. Judge Bersamin*,[11] among others, as authority. In that case, the Court ruled that pursuant to Section 108 of Presidential Decree *(P.D.)* No. 1529, notice must be given to all parties in interest before the court may hear and determine the petition for the cancellation of annotations on the certificates of title.

The Spouses Crisologo also question the statement of the CA that their failure to file the motion to intervene under Rule 19 before RTC-Br. 14 barred their participation in the cancellation proceedings. They put emphasis on the court's duty to, at the very least, suspend the proceedings before it and have such indispensable parties impleaded.

As to the ruling on the denial of their application for the issuance of a TRO or writ of preliminary injunction, Spouses Crisologo claim that their adverse interest, evinced by the annotations at the back of the certificates of title, warranted

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[10] *Id.* at 11.

[11] 325 Phil. 120 (1996).

the issuance of a TRO or writ of preliminary injunction against JEWM's attempt to cancel the said annotations in violation of their fundamental right to due process.

Lastly, Spouses Crisologo cast doubt on the CA ruling that the issues presented in their petition were mooted by the RTC-Br. 14 Decision, dated January 10, 2011. Having been rendered without impleading indispensable parties, the said decision was void and could not have mooted their petition.

In their Comment,[12] JEWM asserts that Spouses Crisologo's failure to file a motion to intervene, pleadings-in-intervention, appeal or annulment of judgment, which were plain, speedy and adequate remedies then available to them, rendered recourse to Rule 65 as improper; that Spouses Crisologo lacked the legal standing to file a Rule 65 petition since they were not impleaded in the proceedings before RTC-Br. 14; and that Spouses Crisologo were not indispensable parties since their rights over the properties had been rendered ineffective by the final and executory October 19, 1998 Decision of RTC-Br. 8 which disposed unconditionally and absolutely the subject properties in favor of its predecessor-in-interest. JEWM further argues that, on the assumption that Section 108 of P.D. No. 1529 applies, no notice to Spouses Crisologo was required because they were not real parties-in-interest in the case before RTC-Br. 14, or even if they were, their non-participation in the proceedings was because of their failure to properly intervene pursuant to Rule 19; and, lastly, that the case before RTC-Br. 14 became final and executory because Spouses Crisologos did not perfect an appeal therefrom, thus, rendering the issues in the CA petition moot and academic.

In their Reply,[13] Spouses Crisologo restate the applicability of Section 108 of P.D. No. 1529 to the effect that any cancellation of annotation of certificates of title must be carried out by giving notice to all parties-in- interest. This they forward despite their recognition of the mootness of their assertion over the subject properties, to wit:

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[12] *Rollo*, pp. 241-262.

[13] *Id.* at 335-340.

Again, we respect JAIC's position that "the claims of subsequent attaching creditors (including petitioners') have been rendered moot and academic, and hence the entries in favor of said creditors have no more legal basis and therefore must be cancelled." But we likewise at least ask a modicum of respect by at least being notified and heard.[14]

The Ruling of the Court

The crux of this controversy is whether the CA correctly ruled that RTC-Br. 14 acted without grave abuse of discretion in failing to recognize Spouses Crisologo as indispensable parties in the case for cancellation of lien.

In this respect, the Court agrees with Spouses Crisologo.

In an action for the cancellation of memorandum annotated at the back of a certificate of title, the persons considered as indispensable include those whose liens appear as annotations pursuant to Section 108 of P.D. No. 1529,[15] to wit:

Section 108. *Amendment and alteration of certificates.* -No erasure, alteration or amendment shall be made upon the registration book after the *entry of a certificate of title or of a memorandum thereon* and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance. A registered owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificates have arisen or been created; or that an omission or error was made in entering a certificate or memorandum thereon, or on any duplicate certificate; x x x or upon any other reasonable ground; *and the court may hear and determine the petition after notice to all parties in interest,* and may order the entry or *cancellation of a new certificate,* the entry or *cancellation of a memorandum upon a certificate,* or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper.

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[14] *Id.* at 338.

[15] Entitled as "Amending and Codifying the Laws relative to Registration of Property and for other purposes."

In *Southwestern University v. Laurente*,[16] the Court held that the cancellation of the annotation of an encumbrance cannot be ordered without giving notice to the parties annotated in the certificate of title itself. It would, thus, be an error for a judge to contend that no notice is required to be given to all the persons whose liens were annotated at the back of a certificate of title.

Here, undisputed is the fact that Spouses Crisologo's liens were indeed annotated at the back of TCT Nos. 325675 and 325676. Thus, as persons with their liens annotated, they stand to be benefited or injured by any order relative to the cancellation of annotations in the pertinent TCTs. In other words, they are as indispensable as JEWM itself in the final disposition of the case for cancellation, being one of the many lien holders.

As indispensable parties, Spouses Crisologo should have been joined as defendants in the case pursuant to Section 7, Rule 3 of the Rules of Court, to wit:

> SEC. 7. Compulsory joinder of indispensable parties. – Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.[17]

The reason behind this compulsory joinder of indispensable parties is the complete determination of all possible issues, not only between the parties themselves but also as regards other persons who may be affected by the judgment.[18]

In this case, RTC-Br. 14, despite repeated pleas by Spouses Crisologo to be recognized as indispensable parties, failed to implement the mandatory import of the aforecited rule.

In fact, in *Sps. Crisologo v. Judge George E. Omelio*,[19] a related administrative case, the Court found the trial judge guilty of gross ignorance of the law when it disregarded the

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[16] 135 Phil. 44 (1968).

[17] Rule 3, Rules of Court.

[18] *Moldes v. Villanueva*, 505 Phil. 767 (2005).

[19] A.M. No. RTJ-12-2321, October 3, 2012, 682 SCRA 154.

claims of Spouses Crisologo to participate. In part, the Court stated:

> This is not the first time Judge Omelio has rendered a decision affecting third parties' interests, without even notifying the indispensable parties. In the first disputed case, *JEWM Agro-Industrial Corporation v. Register of Deeds*, Sheriff Medialdea, John & Jane Does and all persons acting under their directions, Judge Omelio failed to cause the service of proper summons upon the John and Jane Does impleaded in the complaint. Even when Sps. Crisologo voluntarily appeared in court to be recognized as the John and Jane Does, Judge Omelio refused to acknowledge their appearance and ordered the striking out of Sps. Crisologos' pleadings. For this reason, the Investigating Justice recommended admonishing Judge Omelio for failing to recognize the Sps.Crisologo as indispensable parties in that case.
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> Clearly, the cancellation of the annotation of the sale without notifying the buyers, Sps. Crisologo, is a violation of the latter's right to due process. Since this is the second time that Judge Omelio has issued an order which fails to notify or summon the indispensable parties, we find Judge Omelio guilty of gross ignorance of the law, with a warning that repetition of the same or similar act will merit a stiffer penalty in the future.
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> **WHEREFORE**, … We find Judge George E. Omelio **GUILTY** of four counts of the serious charge of gross ignorance of the law for the following acts: (a) refusing to recognize Spouses Jesus G. Crisologo and Nannette B. Crisologo as indispensable parties; … in violation of the latter's right to due process. Accordingly, we impose upon Judge George E. Omelio the penalty of fine of Forty Thousand Pesos (₱40,000.00), with a warning that repetition of the same or similar acts will be dealt with more severely.
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> **SO ORDERED**.[20]

The trial court should have exercised prudence in denying Spouses Crisologo's pleas to be recognized as indispensable

[20] A.M. No. RTJ-12-2321, October 3, 2012, 682 SCRA 192-193.

parties. In the words of the Court, "Judge Omelio should be penalized for failing to recognize Sps. Crisologo as indispensable parties and for requiring them to file a motion to intervene, considering that a simple perusal of the certificates of title would show Sps. Crisologo's adverse rights because their liens are annotated at the back of the titles."[21]

This manifest disregard of the basic rules and procedures constitutes a grave abuse of discretion.

In *State Prosecutors II Comilang and Lagman v. Judge Medel Belen*,[22] the Court held as inexcusable abuse of authority the trial judge's "obstinate disregard of basic and established rule of law or procedure." Such level of ignorance is not a mere error of judgment. It amounts to "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,"[23] or in essence, grave abuse of discretion amounting to lack of jurisdiction.

Needless to say, judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less.[24]

Despite the clear existence of grave abuse of discretion on the part of RTC-Br. 14, JEWM asserts technical grounds on why the CA did not err in dismissing the petition via Rule 65. It states that:

> a) The Crisologos could have used other available remedies such as intervention under Rule 19, an appeal of the judgment, or even an annulment of judgment, which are, by all means, plain, speedy and adequate remedies in the ordinary course of law;

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[21] *Crisologo v. Omelio*, *supra* note 19, at 182.

[22] A.M. No. RTJ-10-2216, June 26, 2012, 674 SCRA 477.

[23] *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, 580 Phil. 135, 140 (2008).

[24] *Enriquez v. Judge Caminade*, 519 Phil. 781 (2006), citing *Abbariao v. Beltran*, 505 Phil. 510 (2005).

b) The Crisologos lack legal standing to file the Rule 65 petition since they were not impleaded in the Branch 14 case.

The rule is that a petition for *certiorari* under Rule 65 is proper only if there is no appeal, or any plain speedy, and adequate remedy in the ordinary course of law.

In this case, no adequate recourse, at that time, was available to Spouses Crisologo, except resorting to Rule 65.

Although Intervention under Rule 19 could have been availed of, failing to use this remedy should not prejudice Spouses Crisologo. It is the duty of RTC-Br. 14, following the rule on joinder of indispensable parties, to simply recognize them, with or without any motion to intervene. Through a cursory reading of the titles, the Court would have noticed the adverse rights of Spouses Crisologo over the cancellation of any annotations in the subject TCTs.

Neither will appeal prove adequate as a remedy since only the original parties to an action can appeal.[25] Here, Spouses Crisologo were never impleaded. Hence, they could not have utilized appeal as they never possessed the required legal standing in the first place.

And even if the Court assumes the existence of the legal standing to appeal, it must be remembered that the questioned orders were interlocutory in character and, as such, Spouses Crisologo would have to wait, for the review by appeal, until the rendition of the judgment on the merits, which at that time may not be coming as speedy as practicable. While waiting, Spouses Crisologo would have to endure the denial of their right, as indispensable parties, to participate in a proceeding in which their indispensability was obvious. Indeed, appeal cannot constitute an adequate, speedy and plain remedy.

The same is also true if recourse to Annulment of Judgment under Rule 47 is made since this remedy presupposes a final judgment already rendered by a trial court.

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[25] *Spouses Leynes v. Former Tenth Division of the Court of Appeals, et al.*, G.R. No. 154462, January 19, 2011, 640 SCRA 25, 40.

At any rate, the remedy against an interlocutory order, not subject of an appeal, is an appropriate special civil action under Rule 65, provided that the interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion. Only then is *certiorari* under Rule 65 allowed to be resorted to.[26]

This takes particular relevance in this case where, as previously discussed, RTC-Br. 14 acted with grave abuse of discretion in not recognizing Spouses Crisologo as indispensable parties to the pertinent action.

Based on the above, recourse to the CA via Rule 65 would have already been proper, except for one last issue, that is, Spouses Crisologo's legal standing to file the same. JEWM cites *DBP v. COA*[27] where the Court held:

> The petition for *certiorari* under Rule 65, however, is not available to any person who feels injured by the decision of a tribunal, board or officer exercising judicial or quasi judicial functions. The 'person aggrieved' under Section 1 of Rule 65 who can avail of the special civil action of *certiorari* pertains only to one who was a party in the proceedings before the court *a quo*, or in this case before the COA. To hold otherwise would open the courts to numerous and endless litigations.

Under normal circumstances, JEWM would be correct in their averment that the lack of legal standing on the part of Spouses Crisologo in the case before RTC-Br. 14 prevents the latter's recourse via Rule 65.

This case, however, is an exception. In many instances, the Court has ruled that technical rules of procedures should be used to promote, not frustrate the cause of justice. Rules of procedure are tools designed not to thwart but to facilitate the attainment of justice; thus, their strict and rigid application may, for good and deserving reasons, have to give way to, and be

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[26] *Pahila-Garrido v. Tortogo*, G.R. No. 156358, August 17, 2011, 655 SCRA 553, 567-568, citing 1F Regalado, *Remedial Law Compendium* 540 (8th revised ed.).

[27] 467 Phil. 62 (2004).

subordinated by, the need to aptly dispense substantial justice in the normal cause.[28]

Be it noted that the effect of their non-participation as indispensable parties is to preclude the judgment, orders and the proceedings from attaining finality. Time and again, the Court has ruled that the absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present. Consequently, the proceedings before RTC-Br. 14 were null and void including the assailed orders, which may be "*ignored wherever and whenever it exhibits its head*."[29]

To turn a blind eye to the said nullity and, in turn, rule as improper the recourse to Rule 65 by the lack of legal standing is to prolong the denial of due process to the persons whose interests are indispensible to the final disposition of the case. It will only result in a protracted litigation as Spouses Crisologo will be forced to rely on a petition for the annulment of judgment before the CA (as the last remaining remedy), which may again reach this Court. To prevent multiplicity of suits and to expedite the swift administration of justice, the CA should have applied liberality by striking down the assailed orders despite the lack of legal standing on the part of Spouses Crisologo to file the Rule 65 petition before it. Besides, this lacking requirement, of which Spouses Crisologo were not even at fault, is precisely the reason why this controversy arose.

All told, the CA erred in dismissing the amended petition filed before it and in not finding grave abuse of discretion on the part of RTC-Br. 14.

WHEREFORE, the petition is **GRANTED**. The May 6, 2011 Decision of the Court of Appeals is **NULLIFIED** and

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[28] *Santos v. Litton Mills, Incorporated*, G.R. No. 170646, June 22, 2011, 652 SCRA 510. citing *Fiel v. Kris Security Systems, Inc*., 448 Phil. 657, 662 (2003).

[29] *Buena v. Sapnay*, 116 Phil. 1023 (1962), citing *Banco Español-Filipino v. Palanca*, 37 Phil. 921 (1918); *Lipana v. Court of First Instance of Cavite*, 74 Phil. 18 (1942).

SET ASIDE. The September 27, 2010, October 7, 2010 and November 9, 2010 Orders of the Regional Trial Court, Branch 14, Davao City, are likewise **NULLIFIED** and **SET ASIDE**. Civil Case No. 33,551-2010 is hereby **REMANDED** to the trial court for further proceedings. The respondent is ordered to implead all parties whose annotations appear at the back of Transfer Certificate of Title Nos. 325675 and 325676.

SO ORDERED.

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

EN BANC

[A.C. No. 10179. March 04, 2014]
(Formerly CBD 11-2985)

BENJAMIN Q. ONG, *complainant, vs.* **ATTY. WILLIAM F. DELOS SANTOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; GOOD MORAL CHARACTER IS NOT ONLY A CONDITION PRECEDENT RELATING TO ADMISSION INTO THE PRACTICE OF LAW BUT A CONTINUING IMPOSITION TO MAINTAIN MEMBERSHIP IN THE PHILIPPINE BAR.— Every lawyer is an officer of the Court. He has the duty and responsibility to maintain his good moral character. In this regard, good moral character is not only a condition precedent relating to his admission into the practice of law, but is a continuing imposition in order for him to maintain his membership in the Philippine Bar. The Court unwaveringly demands of him to remain

[*] Designated Acting Member in lieu of Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.

a competent, honorable, and reliable individual in whom the public may repose confidence. Any gross misconduct that puts his moral character in serious doubt renders him unfit to continue in the practice of law.

2. CRIMINAL LAW; VIOLATION OF *BATAS PAMBANSA BLG. 22*; THE GRAVAMEN OF THE OFFENSE IS THE ACT OF MAKING AND ISSUING A WORTHLESS CHECK.— *Batas Pambansa Blg*. 22 has been enacted in order to safeguard the interest of the banking system and the legitimate public checking account users. The gravamen of the offense defined and punished by *Batas Pambansa Blg*. 22, according to *Lozano v. Martinez*, is the act of making and issuing a worthless check, or any check that is dishonored upon its presentment for payment and putting it in circulation; the law is designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient funds, or with no credit, because the practice is deemed a public nuisance, a crime against public order to be abated.

3. LEGAL ETHICS; ATTORNEYS; LAWYERS OATH AND CODE OF PROFESSIONAL RESPONSIBILITY; BREACHED BY THE ISSUANCE OF UNFUNDED CHECK IN VIOLATION OF *BATAS PAMBANSA BLG. 22*; CASE AT BAR.— Being a lawyer, Atty. Delos Santos was well aware of the objectives and coverage of *Batas Pambansa Blg*. 22. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated *Batas Pambansa Blg*. 22, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order. He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws. He also took for granted the express commands of the *Code of Professional Responsibility*, specifically Canon 1, Rule 1.01 and Canon 7, Rule 7.03 x x x. These canons, the Court has said in *Agno v. Cagatan*, required of him as a lawyer an enduring high sense of responsibility and good fidelity in all his dealings x x x.

4. ID.; ID.; MAY BE DISCIPLINED FOR MALPRACTICE IN HIS PROFESSION AND FOR ANY MISCONDUCT COMMITTED OUTSIDE OF HIS PROFESSIONAL CAPACITY.— That his act involved a private dealing with Ong did not matter. His being

a lawyer invested him – whether he was acting as such or in a non-professional capacity – with the obligation to exhibit good faith, fairness and candor in his relationship with others. There is no question that a lawyer could be disciplined not only for a malpractice in his profession, but also for any misconduct committed outside of his professional capacity. His being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others.

5. **ID.; ID.; ANY TRANSGRESSION OF THE LAWYER'S DUTY TO UPHOLD THE LAW AND TO BE CIRCUMSPECT IN ALL HIS DEALINGS WITH THE PUBLIC DIMINISHES NOT ONLY HIS PERSONAL INTEGRITY BUT ALSO THE INTEGRITY OF THE ENTIRE LEGAL PROFESSION.—** [I]n issuing the dishonored check, Atty. Delos Santos put into serious question not only his personal integrity but also the integrity of the entire Integrated Bar. It cannot be denied that Ong acceded to Atty. Delos Santos' request for encashment of the check because of his complete reliance on the nobility of the Legal Profession. x x x Atty. Delos Santos should always be mindful of his duty to uphold the law and to be circumspect in all his dealings with the public. Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the Legal Profession as a whole. His assuring Ong that he was in good financial standing because of his lucrative law practice when the contrary was true manifested his intent to mislead the latter into giving a substantial amount in exchange for his worthless post-dated check. Such actuation did not speak well of him as a member of the Bar.

6. **ID.; ID.; SERIOUS MISCONDUCT; ISSUING A DISHONORED CHECK, A CASE OF; DISMISSAL OF THE CRIMINAL COMPLAINT FOR VIOLATION OF *BATAS PAMBANSA BLG.22* AND REPAYMENT OF THE AMOUNT INVOLVED ARE TREATED AS MITIGATING CIRCUMSTANCES IN CASE AT BAR.—** Atty. Delos Santos was guilty of serious misconduct, warranting appropriate administrative sanction. Noting that the criminal complaint charging him with the violation of *Batas Pambansa Blg*. 22 was already dismissed, and that he already repaid to Ong the full amount of ₱100,000.00, both of which are treated as mitigating circumstances in his favor, we find

the recommendation of the IBP Board of Governors to suspend him from the practice of law for a period of three years harsh. Thus, we reduce the penalty to suspension from the practice of law to six months in order to accord with the ruling in *Philippine Amusement and Gaming Corporation v. Carandang*.

D E C I S I O N

BERSAMIN, *J.*:

A lawyer's issuance of a worthless check renders him in breach of his oath to obey the laws. To accord with the canon of professional responsibility that requires him to uphold the Constitution, obey the laws of the land, and promote respect for the law and legal processes, he thereby becomes administratively liable for gross misconduct.

Antecedents

In January 2008, complainant Benjamin Ong was introduced to respondent Atty. William F. Delos Santos by Sheriff Fernando Mercado of the Metropolitan Trial Court of Manila. After several calls and personal interactions between them, Ong and Atty. Delos Santos became friends.[1] In time, according to Ong, Atty. Delos Santos asked him to encash his postdated check inasmuch as he was in dire need of cash. To reassure Ong that the check would be funded upon maturity, Atty. Delos Santos bragged about his lucrative practice and his good paying clients. Convinced of Atty. Delos Santos' financial stability, Ong handed to Atty. Delos Santos on January 29, 2008 the amount of ₱100,000.00 in exchange for the latter's Metrobank Check No. 0110268 postdated February 29, 2008.[2] However, the check was dishonored upon presentment for the reason that the account was closed.[3] Ong relayed the matter of the dishonor to Atty. Delos Santos, and demanded immediate payment, but the latter

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

[2] *Id.* at 3.

[3] *Id.* at 6.

just ignored him.[4] When efforts to collect remained futile, Ong brought a criminal complaint for *estafa* and for violation of Batas Pambansa Blg. 22 against Atty. Delos Santos.[5] Ong also brought this disbarment complaint against Atty. Delos Santos in the Integrated Bar of the Philippines (IBP), which docketed the complaint as CBD Case No. 11-2985.

Findings and Recommendation of the IBP Bar Commissioner

In his Commissioner's Report,[6] IBP Bar Commissioner Jose I. Dela Rama, Jr. stated that Ong had sufficiently established the existence of the dishonored check; and that Atty. Delos Santos did not file his answer despite notice, and did not also present contrary evidence.[7] He recommended that Atty. Delos Santos be held liable for violating Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the *Code of Professional Responsibility*; and that the penalty of suspension from the practice of law for two years, plus the return of the amount of ₱100,000.00 to the complainant,[8] be meted on Atty. Delos Santos in view of an earlier disbarment case brought against him (*Lucman v. Atty. Delos Santos*, CBD Case No. 09-253).

Resolution No. XX-2013-253

On March 20, 2013, the IBP Board of Governors issued Resolution No. XX-2013-253 adopting and approving the findings of IBP Commissioner Dela Rama, Jr.,[9] to wit:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation

[4] *Id*. at 3.

[5] *Id*. at 4.

[6] *Id*. at 55-60.

[7] *Id*. at 56.

[8] *Id*. at 55-56.

[9] *Id*. at 54.

fully supported by the evidence on record and the applicable laws and rules and considering that Respondent violated Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility, Atty. William F. Delos Santos is hereby SUSPENDED from the practice of law for three (3) years and ORDERED to RETURN the amount of One Hundred Thousand (₱100,000.00) Pesos to complainant with legal interest within thirty days from receipt of notice.

Issue

By issuing the worthless check, did Atty. Delos Santos violate Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the *Code of Professional Responsibility*?

Ruling

We agree with the findings of the IBP but modify the recommended penalty.

Every lawyer is an officer of the Court. He has the duty and responsibility to maintain his good moral character. In this regard, good moral character is not only a condition precedent relating to his admission into the practice of law, but is a continuing imposition in order for him to maintain his membership in the Philippine Bar.[10] The Court unwaveringly demands of him to remain a competent, honorable, and reliable individual in whom the public may repose confidence.[11] Any gross misconduct that puts his moral character in serious doubt renders him unfit to continue in the practice of law.[12]

Batas Pambansa Blg. 22 has been enacted in order to safeguard the interest of the banking system and the legitimate

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[10]*Manaois v. Deciembre*, Adm. Case No. 5364, August 20, 2008, 562 SCRA 359, 363-364; *Rural Bank of Silay, Inc. v. Pilla*, Adm. Case No. 3637, January 24, 2001, 350 SCRA 138, 145; *Narag v. Narag*, A.C. No. 3405, June 29, 1998, 291 SCRA 451, 463.

[11]*Sebastian v. Bajar*, A.C. No. 3731, September 7, 2007, 532 SCRA 435, 448.

[12]*Re: Letter Dated 21 February 2005 of Atty. Noel S. Sorreda*, A.M. No. 05-3-04-SC, July 22, 2005, 464 SCRA 32, 45; *Grande v. De Silva*, A.C. No. 4838, July 29, 2003, 407 SCRA 310, 313.

public checking account users.[13] The gravamen of the offense defined and punished by *Batas Pambansa Blg.* 22, according to *Lozano v. Martinez*,[14] is the act of making and issuing a worthless check, or any check that is dishonored upon its presentment for payment and putting it in circulation; the law is designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient funds, or with no credit, because the practice is deemed a public nuisance, a crime against public order to be abated. The Court has observed in *Lozano v. Martinez*:

> The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest.[15] xxx

Being a lawyer, Atty. Delos Santos was well aware of the objectives and coverage of *Batas Pambansa Blg.* 22. If he did not, he was nonetheless presumed to know them, for the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated *Batas Pambansa Blg.* 22, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order.[16] He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws. He also took for granted the express commands of the *Code of Professional Responsibility*, specifically Canon 1, Rule 1.01 and Canon 7, Rule 7.03, *viz*:

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[13] *Magno v. Court of Appeals*, G.R. No. 96132, June 26, 1992, 210 SCRA 471, 478.

[14] G.R. No. 63419, 18 December 1986, 146 SCRA 323, 338.

[15] *Id.* at 340.

[16] *Santos-Tan v. Robiso*, A.C. No. 6383, March 31, 2009, 582 SCRA 556, 564.

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR THE LAW AND LEGAL PROCESSES.

> Rule 1.01 - A Lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

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

These canons, the Court has said in *Agno v. Cagatan*,[17] required of him as a lawyer an enduring high sense of responsibility and good fidelity in all his dealings, thus:

> The afore-cited canons emphasize the high standard of honesty and fairness expected of a lawyer not only in the practice of the legal profession but in his personal dealings as well. A lawyer must conduct himself with great propriety, and his behavior should be beyond reproach anywhere and at all times. For, as officers of the courts and keepers of the public's faith, they are burdened with the highest degree of social responsibility and are thus mandated to behave at all times in a manner consistent with truth and honor. Likewise, the oath that lawyers swear to impresses upon them the duty of exhibiting the highest degree of good faith, fairness and candor in their relationships with others. Thus, lawyers may be disciplined for any conduct, whether in their professional or in their private capacity, if such conduct renders them unfit to continue to be officers of the court.[18]

That his act involved a private dealing with Ong did not matter. His being a lawyer invested him – whether he was acting as such or in a non-professional capacity – with the obligation to exhibit good faith, fairness and candor in his relationship with

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[17] A.C. No. 4515, July 14, 2008, 558 SCRA 1.

[18] *Id*. at 17-18

others. There is no question that a lawyer could be disciplined not only for a malpractice in his profession, but also for any misconduct committed outside of his professional capacity.[19] His being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others.[20]

Moreover, in issuing the dishonored check, Atty. Delos Santos put into serious question not only his personal integrity but also the integrity of the entire Integrated Bar. It cannot be denied that Ong acceded to Atty. Delos Santos' request for encashment of the check because of his complete reliance on the nobility of the Legal Profession. The following excerpts from Ong's testimony bear this out, to wit:

COMM. DELA RAMA: What did you feel when you were issued a bounced check by the respondent?

MR. ONG: Actually, the reason I even loaned him money because actually he was not even my friend. He was just referred to me. **The reason why I felt at ease to loan him money was because the sheriff told me that *abogado eto*. It is his license that would be at stake that's why I lent him the money**.[21]

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COMM. DELA RAMA: In other words, what you are saying is that you felt betrayed when the lawyer issued a bounced check in your favor.

MR. ONG : Yes, Commissioner.

COMM. DELA RAMA: Why, what is your expectation of a lawyer?

MR. ONG : **They uphold the law, they know the law. He should not have issued the check if you know it cannot be funded**

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[19] *Philippine Amusement and Gaming Corporation v. Carandang*, A.C. No. 5700, January 30, 2006, 480 SCRA 512, 518.

[20] *Fernandez v. Cabrera* III, A.C. No. 5623, December 11, 2003, 418 SCRA 1, 5.

[21] *Rollo*, p. 45.

because actually I have many lawyer friend[s] and I have always high regard for lawyers.[22]

Atty. Delos Santos should always be mindful of his duty to uphold the law and to be circumspect in all his dealings with the public. Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the Legal Profession as a whole. His assuring Ong that he was in good financial standing because of his lucrative law practice when the contrary was true manifested his intent to mislead the latter into giving a substantial amount in exchange for his worthless post-dated check. Such actuation did not speak well of him as a member of the Bar.

Accordingly, Atty. Delos Santos was guilty of serious misconduct, warranting appropriate administrative sanction. Noting that the criminal complaint charging him with the violation of *Batas Pambansa Blg*. 22 was already dismissed, and that he already repaid to Ong the full amount of ₱100,000.00,[23] both of which are treated as mitigating circumstances in his favor, we find the recommendation of the IBP Board of Governors to suspend him from the practice of law for a period of three years harsh. Thus, we reduce the penalty to suspension from the practice of law to six months in order to accord with the ruling in *Philippine Amusement and Gaming Corporation v. Carandang*.[24]

ACCORDINGLY, the Court **PRONOUNCES** respondent **ATTY. WILLIAM F. DELOS SANTOS GUILTY** of violating the Lawyer's Oath, and Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the *Code of Professional Responsibility*, and, accordingly, **SUSPENDS HIM FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX MONTHS EFFECTIVE FROM NOTICE**, with a stern warning that any similar infraction in the future will be dealt with more severely.

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[22] *Id*. at 47.

[23] *Id*. at 39-43.

[24] *Supra* note 19, at 519.

Let copies of this decision be furnished to the Office of the Bar Confidant to be appended to Atty. Delos Santos' personal record as an attorney; to the Integrated Bar of the Philippines; and to all courts in the country for their information and guidance.

SO ORDERED.

Carpio,[*] *Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe,* and *Leonen, JJ.,* concur

Sereno, C.J., on leave.

THIRD DIVISION

[A.M. No. RTJ-14-2376. March 5, 2014]
(Formerly OCA I.P.I. No. 11-3625-RTJ)

MA. LIZA M. JORDA, City Prosecutor's Office, Tacloban City, *complainant, vs.* **JUDGE CRISOLOGO S. BITAS, Regional Trial Court, Branch 7, Tacloban City,** *respondent.*

[A.M. No. RTJ-14-2377. March 5, 2014]
(Formerly OCA I.P.I. No. 11-3645-RTJ)

PROSECUTOR LEO C. TABAO, *complainant, vs.* **JUDGE CRISOLOGO S. BITAS, Regional Trial Court, Branch 7, Tacloban City,** *respondent.*

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[*] Acting Chief Justice per Special Order No. 1644 dated February 25, 2014.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; MAY NOT BE DISCIPLINED FOR ERRONEOUS ACTS COMMITTED IN THEIR OFFICIAL CAPACITY, IN THE ABSENCE OF FRAUD, DISHONESTY OR CORRUPTION.—** As a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct although the same acts may be erroneous. True, a judge may not be disciplined for error of judgment, absent proof that such error was made with a conscious and deliberate intent to cause an injustice. This does not mean, however, that a judge need not observe propriety, discreetness and due care in the performance of his official functions.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; IN CAPITAL OFFENSES, THE HEARING OF THE APPLICATION FOR BAIL IS INDISPENSABLE BEFORE A JUDGE CAN PROPERLY DETERMINE WHETHER THE PROSECUTION'S EVIDENCE IS WEAK OR STRONG.—** In the instant case, Miralles was charged with Qualified Trafficking, which under Section 10 (C) of R.A. No. 9208 is punishable by life imprisonment and a fine of not less than Two Million Pesos (₱2,000,000.00) but not more than Five Million Pesos (₱5,000,000.00). Thus, by reason of the penalty prescribed by law, the grant of bail is a matter of discretion which can be exercised only by respondent judge after the evidence is submitted in a hearing. The hearing of the application for bail in capital offenses is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is weak or strong. x x x [W]ith life imprisonment as one of the penalties prescribed for the offense charged against Miralles, he cannot be admitted to bail when evidence of guilt is strong, in accordance with Section 7, Rule 114 of the Revised Rules of Criminal Procedure.

3. **ID.; ID.; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; THE DETERMINATION OF THE EXISTENCE OF PROBABLE CAUSE TAKES PLACE BEFORE THE COURT CAN ENTERTAIN A PETITION FOR BAIL.—** The hearing for bail is different from the determination of the existence of probable

cause. The latter takes place prior to all proceedings, so that if the court is not satisfied with the existence of a probable cause, it may either dismiss the case or deny the issuance of the warrant of arrest or conduct a hearing to satisfy itself of the existence of probable cause. If the court finds the existence of probable cause, the court is mandated to issue a warrant of arrest or commitment order if the accused is already under custody, as when he was validly arrested without a warrant. It is only after this proceeding that the court can entertain a petition for bail where a subsequent hearing is conducted to determine if the evidence of guilt is weak or not.

4. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; THE JUDGE'S ACT OF GRANTING AND FIXING BAIL *MOTU PROPRIO* FOR AN OFFENSE WITH LIFE IMPRISONMENT AS ONE OF THE PRESCRIBED PENALTIES, WITHOUT GIVING THE PROSECUTION THE OPPORTUNITY TO PROVE THAT THE EVIDENCE OF GUILT IS STRONG, A CASE OF.— I]n granting bail and fixing it at ₱20,000.00 *motu proprio*, without allowing the prosecution to present its evidence, respondent judge denied the prosecution of due process. This Court had said so in many cases and had imposed sanctions on judges who granted applications for bail in capital offenses and in offenses punishable by *reclusion perpetua, or life imprisonment*, without giving the prosecution the opportunity to prove that the evidence of guilt is strong. Clearly, in the instant case, respondent judge's act of fixing the accused's bail and reducing the same *motu proprio* is not mere deficiency in prudence, discretion and judgment on the part of respondent judge, but a patent disregard of well-known rules. When an error is so gross and patent, such error produces an inference of bad faith, making the judge liable for gross ignorance of the law.

5. ID.; ID.; ABUSE OF AUTHORITY AND MANIFEST PARTIALITY; COMMITTED IN CASE AT BAR.— [W]e are convinced that respondent judge's actuations in the court premises during the hearing of the petition for commitment to the DSWD constitute abuse of authority and manifest partiality to the accused. Indeed, respondent judge's utterance of: *"I don't want to see your face!"; "You better transfer to another court!; You are being influenced by politicians"* was improper and does not speak well his stature as an officer of the Court. We note the improper

language of respondent judge directed towards complainants in his Answers and Comments where he criticized them for their incompetence in handling the subject case. Respondent Bitas' use of abusive and insulting words, tending to project complainant's ignorance of the laws and procedure, prompted by his belief that the latter mishandled the cause of his client is obviously and clearly insensitive, distasteful, and inexcusable. Complainants, likewise, cannot be blamed for being suspicious of respondent's bias to the accused considering that the former can be associated with the accused following his admission that his sister was a classmate of one Nora Miralles. Considering the apprehension and reservation of the complainants, prudence dictates that respondent should have inhibited himself from hearing the case. Such abuse of power and authority could only invite disrespect from counsels and from the public.

6. **ID.; ID.; A JUDGE MUST POSSESS PROFICIENCY IN LAW AND MUST BEHAVE IN SUCH MANNER THAT WOULD ASSURE LITIGANTS AND THEIR COUNSEL OF THE JUDGE'S COMPETENCE, INTEGRITY AND INDEPENDENCE.—** In pending or prospective litigations before them, judges should be scrupulously careful to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity. Not only must judges possess proficiency in law, they must also act and behave in such manner that would assure litigants and their counsel of the judges' competence, integrity and independence. Even on the face of boorish behavior from those he deals with, he ought to conduct himself in a manner befitting a gentleman and a high officer of the court.

7. **ID.; ID.; SHOULD EXERCISE JUDICIAL TEMPERAMENT AT ALL TIMES, AVOIDING VULGAR AND INSULTING LANGUAGE.—** The use of intemperate language is included in the proscription provided by Section 1, Canon 4 of the New Code of Judicial Conduct, thus: "Judges shall avoid impropriety and the appearance of impropriety **in all the activities** of a judge." It bears stressing that as a dispenser of justice, respondent should exercise judicial temperament at all times, avoiding vulgar and insulting language. He must maintain composure and equanimity. This Court has long held that court officials and employees are placed with a heavy burden and responsibility of keeping the faith of the public. Any impression

of impropriety, misdeed or negligence in the performance of official functions must be avoided. This Court shall not 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 the faith of the people in the Judiciary.

8. ID.; ID.; GROSS IGNORANCE OF THE LAW; CLASSIFIED AS A SERIOUS CHARGE; PENALTY.— Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge. Under Section 11 (A) of the same Rule, as amended, if respondent judge is found guilty of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations; Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

APPEARANCES OF COUNSEL

Alvarez Nuez Galang Espina & Lopez for Ma. Liza M. Jorda.

D E C I S I O N

PERALTA, *J.*:

Before this Court are Consolidated Complaints dated March 29, 2011[1] and March 25, 2011[2] filed by Prosecutor Leo C. Tabao, Office of the City Prosecutor, Tacloban City and Ma. Liza M. Jorda, Associate City Prosecutor, Tacloban City, respectively, against respondent Judge Crisologo S. Bitas (*respondent judge*), Presiding Judge, Regional Trial Court (*RTC*),

[1] *Rollo* (A.M. No. RTJ-14-2377), pp. 1-5.

[2] *Rollo* (A.M. No. RTJ-14-2376), pp. 2-11.

Branch 7, Tacloban City, for Grave Abuse of Authority, Irregularity in the Performance of Official Duties, Bias and Partiality, relative to Criminal Case Nos. 2009-11-537,[3] 2009-11-538, 2009-11-539 entitled *People v. Danilo Miralles, et al*.

The antecedent facts of the case, as culled from the records, are as follows:

A.M. OCA I.P.I. No. 11-3645-RTJ

City Prosecutor Leo C. Tabao, Tacloban City v. Judge Crisologo S. Bitas, RTC, Branch 7, Tacloban City

The complaint stemmed from Criminal Case Nos. 2009-11-537; 2009-11-538 and 2009-11-539[4] for Qualified Trafficking and Violation of Article VI, Section 10 of Republic Act (R.A.) No. 7610, which were filed against Danilo Miralles (*Miralles*), *et al.* before the Regional Trial Court, Branch 7, Tacloban City where respondent Judge Bitas presides.

Complainant alleged that on January 15, 2010, accused Miralles, through counsel, filed a Motion for Judicial Determination of Probable Cause with Motion to Hold in Abeyance the Issuance of a Warrant of Arrest. On the same day, respondent Judge issued an order taking cognizance of the same and directed Prosecutor Anthea G. Macalalag to file her comment on the motion. The prosecution then filed its comment/opposition and moved for the issuance of the required warrant for the arrest of Miralles. No warrant of arrest was issued against Miralles.

On February 2, 2011, respondent judge issued an Order which states:

After the prosecution presented their witnesses, the Court finds that there is probable cause to hold the accused for trial for Violation of 4 (a & e) of R.A. 9208 and, therefore, the court orders Lynna Brito *y* Obligar to file a bail bond of Forty Thousand Pesos (PhpP40,000.00)

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

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

for her temporary liberty. Danilo Miralles is, likewise, ordered to put up a bail bond of Forty Thousand Pesos (₱40,000.00) for each of the three (3) cases.

Subsequently, on February 4, 2011, Sheriff Jose Cabcabin of the Office of the RTC Clerk of Court issued a certification that Miralles surrendered to him to avail of his right to bail. The cash bail bond in the amount of ₱120,000.00 was approved by respondent judge on the same day.

Complainant lamented that respondent judge disregarded his duties and violated mandatory provisions of the Rules of Court when he did not issue a warrant of arrest against the accused Miralles, who was charged with two (2) non-bailable criminal offenses. As early as November 19, 2009, criminal complaints against Miralles for Qualified Trafficking were already filed, yet respondent judge never issued a warrant of arrest for Miralles despite accused's presence during the court hearings.

Moreover, respondent judge granted a reduced bail of ₱40,000.00 for accused Miralles even without any petition for the fixing of bail. In fact, complainant reiterated that even after respondent judge found probable cause to hold accused Miralles for trial, he did not order the arrest of the accused. Instead, respondent judge summarily granted a reduced bail in the absence of a motion to fix bail and the prosecution was not given the opportunity to interpose its objections. Complainant claimed that such acts of respondent judge were evident of his bias towards accused Miralles.

In his Answer, respondent judge reasoned that it was wrong to arrest Miralles, because the court was still in the process of determining whether there is sufficient evidence to hold the accused for trial. He explained that Miralles had always made himself available during the hearings for the determination of probable cause; thus, the court already acquired jurisdiction over the person of the accused.

After the hearing for the determination of probable cause, the court ruled that there is no strong evidence presented by the prosecution. On February 4, 2011, accused Danilo Miralles

surrendered to Sheriff Jose Cabcabin and posted ₱40,000.00 bail for each of the three (3) cases, or a total of ₱120,000.00.

Respondent judge claimed that there was no more need for a petition for bail, because in the judicial determination of probable cause the court found that the evidence against accused was weak.[5]

Respondent judge further averred that complainant did not know the facts of the case and whether the evidence for the prosecution is strong, yet he was faulted for granting bail and for not issuing a warrant of arrest. He stressed that when the court has acquired jurisdiction over the person of the accused, there is no more need to issue a warrant of arrest. Respondent judge pointed out that Miralles always made himself available, hence, he believed that the ends of justice had not been frustrated. He insisted that there is no anomaly in the procedure because a warrant of arrest will be issued only upon the finding of probable cause. In this case, however, he was able to post his bail bond before a warrant of arrest can be issued against him. Thus, the warrant of arrest had become *fait accompli.*

A.M. OCA IPI No. 11-3625-RTJ

Ma. Liza M. Jorda, Associate City Prosecutor, Tacloban City v. Judge Crisologo S. Bitas, RTC, Branch 7, Tacloban City

This complaint, borne from the same criminal cases, has substantially the same facts involving accused Danilo Miralles referred to in A.M. OCA I.P.I. No. 11-3645-RTJ.

Complainant, Prosecutor Liza M. Jorda, Associate City Prosecutor, alleged that during the hearing on the Petition for Involuntary Commitment of the minor victim Margie Baldoza, to the Department of Social Welfare and Development (*DSWD*), respondent judge propounded a series of questions which appeared to mitigate Miralles' role in the crime charged. The pertinent portion of which is quoted as follows:

[5] *Rollo* (A.M. No. RTJ-14-2377), p. 50.

Q. Did you see Danny shouting at you and get angry as what you have stated in the record of the court?
A. No.

x x x x x x x x x

Q. In other words, you are only for a presumption that it is Danny who is getting angry where in fact you have seen him at anytime?
A. It was Lynna whom he was [scolding] because the women under her are stubborn.

Q. You have seen him scolding to (sic) your nanay Lynna?
A. She would be called to the room in the Office and there she would be scolded.

Q. You have not seen nanay Lynna and Danny Miralles in the office, you have not seen them?
A. No.

Q. Never have you (s*ic*) seen them?
A. No.

Q. So did you come to the conclusion that she [was] being scolded by Danny Miralles?
A. Yes.[6]

Complainant pointed out that respondent judge's line of questions went beyond judicial authority and discretion. Upon investigation, complainant claimed to have discovered that the family members of respondent judge are close associates of Miralles.

Prompted by said events, complainant filed a motion for inhibition on December 14, 2009 against respondent judge. Respondent judge denied the motion. During the hearing on December 15, 2009, complainant alleged that respondent judge publicly humiliated her and exhibited his anger and animosity towards her for filing the motion for inhibition.[7] Respondent judge was quoted saying, among others things, that:

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[6] TSN, December 2, 2010, p. 31; *rollo* (A.M. No. RTJ-14-2376), p. 259.

[7] *Id.* at 5.

"I don't want to see your face! Why did you file the motion for inhibition when it should have been Attorney Sionne Gaspay who should have filed the same[?]"

"You better transfer to another court! You are being influenced by politicians. I am not a close family friend of the Miralles(es), it is my sister who is now in the United States who was close to the Miralles(es)."

"So you are questioning the integrity of this court, you better transfer to another court."

"I don't want to see your face."[8]

Complainant added that when she was supposed to conduct the cross-examination, respondent judge stated off-the-record: "*I don't want you to participate anymore*," and refused to allow her to do the cross-examination.

In support of her allegation, complainant presented the Joint Affidavit[9] of Carmela D. Bastes and Marilou S. Nacilla, social workers who were present during the December 15, 2009 hearing of the subject case, and corroborated that indeed respondent judge uttered the abovementioned statements to complainant in open court in the presence of court personnel and the lawyers of the parties.

Due to the continued hostility of respondent judge towards complainant during the subsequent hearings of the case, complainant opted to transfer to another court, pursuant to an office order issued by City Prosecutor Ruperto Golong.

In a Supplemental Complaint-Affidavit[10] dated April 8, 2011, complainant raised the possibility of "misrepresentation." She alleged that it was made to appear that a hearing on the subject case was conducted on February 2, 2011, when in fact there was none. She claimed that the Order dated February 2, 2011 appeared to have been inserted in the records of the case, when in fact no hearing transpired that day.

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[8] *Id.* at 6.

[9] *Id.* at 30-32.

[10] *Id.* at 41-43.

On April 7, 2011, the Office of the Court Administrator (*OCA*) directed respondent judge to comment on the complaint against him.[11]

In his Answer and Comment[12] dated May 10, 2011, respondent judge denied the allegations in the complaint and contended that complainant was piqued when he blamed her for making baseless assumptions. He claimed that complainant was incompetent as showed by the lack of evidence against Miralles.

Respondent judge further averred that, contrary to complainant's allegation that it was her option to transfer to another court, it was he who caused her transfer. He accused complainant of lacking in knowledge of the law and that she appeared for politicians and not for the Republic of the Philippines.

Regarding complainant's accusation that he was close to the Miralleses, respondent judge explained that it was his sister who was a classmate of one Nora Miralles. He claimed that he is unaware of any personal relation between Nora Miralles and the accused Danilo Miralles. He insisted that complainant merely assumed things even if she has no evidence that he knew Danilo Miralles.

Respondent judge also admitted that he indeed stopped complainant from conducting a cross-examination on the witness during the hearing for involuntary commitment, because the lawyer for petitioner DSWD should be the one actively participating in the case, and not the prosecutors. He, however, added that the court had already ordered that minor Margie Baldoza be committed to the DSWD Home for Girls pending resolution of the criminal cases.

As to the other allegations in the Complaint, respondent judge commented that these were mere rehash of the complaint filed in A.M. OCA I.P.I. No. 11-3645-RTJ and reiterated that the evidence found against accused Miralles during the judicial determination of the existence of probable cause in the trafficking

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[11] *Id.* at 110.

[12] *Id.* at 60-63.

case was weak. Therefore, he ordered the posting of ₱40,000.00 bail by the accused. Respondent judge claimed that he merely acted upon the evidence presented and made a resolution on what was right for the case.

In her Reply[13] dated May 21, 2011, complainant refuted respondent judge's allegation of incompetence against her and insisted on respondent's apparent bias in favor of Miralles. She argued that respondent judge granted bail to the accused even when there was no motion to fix bail and no hearing was conducted thereon. Despite the finding of probable cause, respondent judge did not issue a warrant of arrest against the accused. Complainant also reiterated the controversy surrounding the appearance of an Order dated February 2, 2011, when in fact no hearing transpired that day.

In his 2nd Indorsement[14] dated June 14, 2011, respondent judge denied that he falsified any document. He explained that his stenographer made a mistake in placing the date as February 2, 2011 instead of February 3, 2011, the date when the hearing was conducted. He attached the affidavits[15] of his court stenographer and court interpreter in support of his explanation.

On May 11, 2001, the OCA directed Judge Bitas to file his Comment on the instant complaint.

In a Resolution[16] dated September 12, 2011, upon the recommendation of the OCA, the Court referred A.M. OCA I.P.I. No. 11-3625-RTJ to an Associate Justice of the Court of Appeals, Cebu City, for investigation, report and recommendation.

On October 12, 2011, the Court, in a Resolution,[17] resolved to consolidate A.M. OCA I.P.I. No. 11-3645-RTJ (*Prosecutor Leo C. Tabao v. Judge Crisologo S. Bitas, RTC, Branch 7,*

[13] *Id.* at 113-118.

[14] *Id.* at 134.

[15] *Id.* at 135-137.

[16] *Id.* at 195.

[17] *Id.* at 275-276.

Tacloban City) with A.M. OCA I.P.I. No. 11-3625-RTJ (*Ma. Liza M. Jorda v. Judge Crisologo S. Bitas, Regional Trial Court, Branch 7, Tacloban City*).

In its Report and Recommendation[18] dated February 14, 2013, Associate Justice Carmelita Salandanan-Manahan, Court of Appeals, Cebu City, found respondent judge guilty of grave abuse of authority and gross ignorance of the law, and recommended that respondent judge be fined in the amount of ₱20,000.00 for A.M. OCA I.P.I. No. 11-3645-RTJ and fined anew in the amount of ₱20,000.00 for A.M. OCA I.P.I. No. 11-3625-RTJ.

RULING

We adopt the findings of the Investigating Justice, except as to the recommended penalty.

As a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct although the same acts may be erroneous. True, a judge may not be disciplined for error of judgment, absent proof that such error was made with a conscious and deliberate intent to cause an injustice. This does not mean, however, that a judge need not observe propriety, discreetness and due care in the performance of his official functions.

In the instant case, Miralles was charged with Qualified Trafficking, which under Section 10 (C) of R.A. No. 9208 is punishable by life imprisonment and a fine of not less than Two Million Pesos (₱2,000,000.00) but not more than Five Million Pesos (₱5,000,000.00). Thus, by reason of the penalty prescribed by law, the grant of bail is a matter of discretion which can be exercised only by respondent judge after the evidence is submitted in a hearing. The hearing of the application for bail in capital offenses is absolutely indispensable before a judge can properly determine whether the prosecution's evidence is weak or strong.[19]

[18] *Id.* at 315-332.

[19] *People v. Dacudao*, 252 Phil. 507 (1989).

As correctly found by the Investigating Justice, with life imprisonment as one of the penalties prescribed for the offense charged against Miralles, he cannot be admitted to bail when evidence of guilt is strong, in accordance with Section 7, Rule 114 of the Revised Rules of Criminal Procedure.[20]

Here, what is appalling is not only did respondent judge deviate from the requirement of a hearing where there is an application for bail, respondent judge granted bail to Miralles without neither conducting a hearing nor a motion for application for bail. Respondent judge's justification that he granted bail, because he found the evidence of the prosecution weak, cannot be sustained because the records show that no such hearing for that purpose transpired. What the records show is a hearing to determine the existence of probable cause, not a hearing for a petition for bail. The hearing for bail is different from the determination of the existence of probable cause. The latter takes place prior to all proceedings, so that if the court is not satisfied with the existence of a probable cause, it may either dismiss the case or deny the issuance of the warrant of arrest or conduct a hearing to satisfy itself of the existence of probable cause. If the court finds the existence of probable cause, the court is mandated to issue a warrant of arrest or commitment order if the accused is already under custody, as when he was validly arrested without a warrant. It is only after this proceeding that the court can entertain a petition for bail where a subsequent hearing is conducted to determine if the evidence of guilt is weak or not. Hence, in granting bail and fixing it at ₱20,000.00 *motu proprio*, without allowing the prosecution to present its evidence, respondent judge denied the prosecution of due process. This Court had said so in many cases and had imposed sanctions on judges who granted applications for bail in capital offenses and in offenses punishable by *reclusion perpetua, or life*

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[20] Sec. 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment,not bailable.* - No person charged with a capital offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when the evidence of guilt is strong, regardless of the stage of the criminal prosecution.

imprisonment, without giving the prosecution the opportunity to prove that the evidence of guilt is strong.[21]

Clearly, in the instant case, respondent judge's act of fixing the accused's bail and reducing the same *motu proprio* is not mere deficiency in prudence, discretion and judgment on the part of respondent judge, but a patent disregard of well-known rules. When an error is so gross and patent, such error produces an inference of bad faith, making the judge liable for gross ignorance of the law.[22]

Likewise, we are convinced that respondent judge's actuations in the court premises during the hearing of the petition for commitment to the DSWD constitute abuse of authority and manifest partiality to the accused. Indeed, respondent judge's utterance of: *"I don't want to see your face!"; "You better transfer to another court!; You are being influenced by politicians"* was improper and does not speak well his stature as an officer of the Court. We note the improper language of respondent judge directed towards complainants in his Answers and Comments where he criticized them for their incompetence in handling the subject case. Respondent Bitas' use of abusive and insulting words, tending to project complainant's ignorance of the laws and procedure, prompted by his belief that the latter mishandled the cause of his client is obviously and clearly insensitive, distasteful, and inexcusable. Complainants, likewise, cannot be blamed for being suspicious of respondent's bias to the accused considering that the former can be associated with the accused following his admission that his sister was a classmate of one Nora Miralles. Considering the apprehension and reservation of the complainants, prudence dictates that respondent should have inhibited himself

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[21] *Libarios v. Dabalos*, 276 Phil. 53 (1991); *Carpio v. Maglalang*, 273 Phil. 240 (1991); *People v. Calo*, 264 Phil. 1007 (1990); *People v. Dacudao*, *supra* note 19; *People v. Sola*, G.R. Nos. 56158-64, March 17, 1981, 103 SCRA 393; *Mendoza v. CFI of Quezon*, G.R. Nos. L-35612-14, June 27, 1973, 51 SCRA 369; *People v. Bocar*, 137 Phil. 336 (1969); *People v. San Diego*, 135 Phil. 514 (1968); also *Pico v. Combong*, A.M. No. RTJ-91-264, November 6, 1992, 215 SCRA 421.

[22] *Id.*

from hearing the case. Such abuse of power and authority could only invite disrespect from counsels and from the public.[23]

In pending or prospective litigations before them, judges should be scrupulously careful to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity. Not only must judges possess proficiency in law, they must also act and behave in such manner that would assure litigants and their counsel of the judges' competence, integrity and independence.[24] Even on the face of boorish behavior from those he deals with, he ought to conduct himself in a manner befitting a gentleman and a high officer of the court.[25]

The use of intemperate language is included in the proscription provided by Section 1, Canon 4 of the New Code of Judicial Conduct, thus: "Judges shall avoid impropriety and the appearance of impropriety **in all the activities** of a judge." It bears stressing that as a dispenser of justice, respondent should exercise judicial temperament at all times, avoiding vulgar and insulting language. He must maintain composure and equanimity.

This Court has long held that court officials and employees are placed with a heavy burden and responsibility of keeping the faith of the public. Any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. This Court shall not 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 the faith of the people in the Judiciary.

We come to the imposable penalty.

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[23] See *Correa v. Judge Belen*, A.M. No. RTJ-10-2242 (Formerly OCA I.P.I No. 97-291-RTJ), August 6, 2010, 627 SCRA 13, 18.

[24] *Molina v. Paz*, A.M. No. RTJ-01-1638 (Formerly OCA I.P.I. No. 09-3149-RTJ), December 8, 2003, 417 SCRA 174, 181.

[25] *Re: Anonymous Complaint dated February 18, 2005 of a "Court Personnel" Against Judge Francisco C. Gedorio, Jr., RTC, Branch 12, Ormoc City*, 551 Phil. 174, 180 (2007).

Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge. Under Section 11 (A) of the same Rule, as amended, if respondent judge is found guilty of a serious charge, any of the following sanctions may be imposed:

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

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

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

This is not the first time that respondent judge was found guilty of the offense charged. In the case of *Valmores-Salinas v. Judge Crisologo Bitas*,[26] the Court had previously imposed a fine of ₱10,000.00 on respondent judge for disregarding the basic procedural requirements in instituting an indirect contempt charge, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

The provisions of the Revised Penal Code in bail are so clear and unmistakable that there can be no room for doubt or even interpretation. There can, therefore, be no excuse for respondent judge's error of law. It hardly speaks well of the legal background of respondent judge, considering his length of service when he failed to observe procedural requirements before granting bail. To top it all, the actuations of respondent judge towards the complainants, as shown by his use of abusive and insulting words against complainants in open court, and his correspondence with the Court, are evident of his partiality to the accused. All these taken into consideration, respondent judge deserves a penalty of suspension of three (3) months

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[26] A.M. No. RTJ-12-2335 (Formerly OCA I.P.I. No. 12-3829-RTJ), March 18, 2013.

and one (1) day for the two (2) cases, instead of ₱20,000.00 fine for each of the cases, as recommended by the Investigating Justice.

WHEREFORE, respondent **JUDGE CRISOLOGO BITAS,** Presiding Judge of the Regional Trial Court, Branch 7, Tacloban City, is hereby **SUSPENDED** from service for a period of **THREE** (3) **MONTHS** and **ONE** (1) **DAY** without pay, and **WARNED** that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172909. March 5, 2014]

SPOUSES SILVESTRE O. PLAZA AND ELENA Y. PLAZA, *petitioners, vs.* **GUILLERMO LUSTIVA, ELEODORA *VDA. DE* MARTINEZ and VICKY SAMSON GOLOSENO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; FACTUAL ISSUES MAY NOT BE RAISED THEREIN.— [F]actual contests are not appropriate for a petition for review on *certiorari* under Rule 45. The Court is not a trier of facts. The Court will not revisit, re-examine, and re-evaluate the evidence and the factual conclusions arrived at by the lower courts. In the absence of compelling reasons, the Court will not disturb the rule that factual findings of the lower tribunals are final and binding on this Court.

2. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE OF 1991; LOCAL TAXATION AND FISCAL MATTERS; CIVIL REMEDIES FOR COLLECTION OF REVENUES; A LOCAL GOVERNMENT UNIT IS AUTHORIZED BY LAW TO PURCHASE THE AUCTIONED PROPERTY ONLY IN INSTANCES WHERE THERE IS NO BIDDER OR THE HIGHEST BID IS INSUFFICIENT AND NOT WHEN THE BIDDER IS DISQUALIFIED.— The petitioners may not invoke Section 181 of the Local Government Code of 1991 to validate their alleged title. The law authorizes the local government unit to purchase the auctioned property only in instances where *"there is no bidder"* or *"the highest bid is xxx insufficient."* A disqualified bidder is not among the authorized grounds. The local government also never undertook steps to purchase the property under Section 181 of the Local Government Code of 1991, presumably because it knew the invoked provision does not apply.

3. ID.; ID.; ID.; REAL PROPERTY TAXATION; COLLECTION OF REAL PROPERTY TAX; ACTIONS ASSAILING THE VALIDITY OF TAX SALES; THE DEPOSIT REQUIREMENT IS JURISDICTIONAL AND APPLIES ONLY TO ACTIONS FOR ANNULMENT OF TAX SALES.— Neither can the Court agree with the petitioners' stance that the respondents' defense — the petitioners' defective title — must fail for want of deposit to the court the amount required by Section 267 of the Local Government Code. x x x A simple reading of the title readily reveals that the provision relates to actions for annulment of tax sales. The section likewise makes use of terms "entertain" and "institution" to mean that the deposit requirement applies only to initiatory actions assailing the validity of tax sales. The intent of the provision to limit the deposit requirement to actions for annulment of tax sales led to the Court's ruling in *National Housing Authority v. Iloilo City, et al.* that the deposit requirement is jurisdictional — a condition necessary for the court to entertain the action x x x. The Court would later reiterate the jurisdictional nature of the deposit in *Wong v. City of Iloilo* x x x. These rulings clearly render inapplicable the petitioners' insistence that the respondents should have made a deposit to the court. The suit filed by the petitioners was an action for injunction and damages; the issue of nullity of the auction was raised by the respondents themselves merely as a defense and

in no way converted the action to an action for annulment of a tax sale.

4. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; THE ISSUANCE OF INJUNCTIVE RELIEF IS PROPER WHEN THERE IS A SHOWING OF AN ACTUAL EXISTING RIGHT TO BE PROTECTED DURING THE PENDENCY OF THE PRINCIPAL ACTION.— "[T]o be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. When the complainant's right or title is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is not proper."

5. ID.; ID.; ID.; A WRIT OF PRELIMINARY INJUNCTION IS A PROVISIONAL REMEDY, SUBJECT TO THE DETERMINATION OF THE MAIN ACTION.— [U]pon the dismissal of the main case by the RTC on August 8, 2013, the question of issuance of the writ of preliminary injunction has become moot and academic. In *Arevalo v. Planters Development Bank*, the Court ruled that a case becomes moot and academic when there is no more issue between the parties or object that can be served in deciding the merits of the case. Upon the dismissal of the main action, the question of the non-issuance of a writ of preliminary injunction automatically died with it. A writ of preliminary injunction is a provisional remedy; it is auxiliary, an adjunct of, and subject to the determination of the main action. It is deemed lifted upon the dismissal of the main case, any appeal therefrom notwithstanding.

6. ID.; ACTIONS; FORUM SHOPPING; TYPES.— In the recent case of *Heirs of Marcelo Sotto, etc., et al. v. Matilde S. Palicte*, the Court laid down the **three ways forum shopping may be committed:** 1) through *litis pendentia* — filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) through *res judicata* — filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) splitting of causes of action — filing multiple cases based on the same cause of action but with

different prayers — the ground to dismiss being either *litis pendentia* or *res judicata*. x x x Noticeable among these three types of forum shopping is **the identity of the cause of action** in the different cases filed. Cause of action is "the act or omission by which a party violates the right of another."

7. ID.; ID.; *LITIS PENDENTIA*; REQUISITES.— "The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other."

APPEARANCES OF COUNSEL

Dollfuss R. Go & Associates Law Offices for petitioners.
Jaime M. Cembrano for respondents.

D E C I S I O N

BRION, *J.*:

Through a petition for review on *certiorari*,[1] filed under Rule 45 of the Rules of Court, the petitioners, spouses Silvestre O. Plaza and Elena Y. Plaza, seek the reversal of the decision[2] dated October 24, 2005 and the resolution[3] dated April 6, 2006 of the Court of Appeals *(CA)* in CA-G.R. SP No. 59859.

THE FACTS

On August 28,1997, the CA[4] ruled that among the Plaza siblings, namely: Aureliano, Emiliana, **Vidal**, Marciano, and **Barbara**, Barbara was the owner of the subject agricultural

[1] *Rollo,* pp. 3-28.

[2] Penned by Associate Justice Teresita Dy-Liacco Flores, and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ramon R. Garcia; *id.* at 36-58.

[3] *Id.* at 33.

[4] CA-G.R. CV No. 37715. CA *rollo,* pp. 50-55.

land. The decision became final and executory and Barbara's successors, respondents Guillermo Lustiva, Eleodora *Vda. de* Martinez and Vicky Sayson Goloseno, have continued occupying the property.

On September 14, 1999, Vidal's son and daughter-in-law, the petitioners, filed a *Complaint for Injunction, Damages, Attorney's Fees with Prayer for the Issuance of the Writ of Preliminary Injunction and/or Temporary Restraining Order* against the respondents and the City Government of Butuan. They prayed that the respondents be enjoined from unlawfully and illegally threatening to take possession of the subject property. According to the petitioners, they acquired the land from Virginia Tuazon in 1997; Tuazon was the sole bidder and winner in a tax delinquency sale conducted by the City of Butuan on December 27, 1996.

In their answer, the respondents pointed out that they were never delinquent in paying the land taxes and were in fact not aware that their property had been offered for public auction. Moreover, Tuazon, being a government employee, was disqualified to bid in the public auction, as stated in Section 89 of the Local Government Code of 1991.[5] As Tuazon's

[5] Section 89. *Prohibited Business and Pecuniary Interest.* – (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:

(1) Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;

(2) Hold such interests in any cockpit or other games licensed by a local government unit;

(3) Purchase any real estate or other property forfeited in favor of such local government unit for unpaid taxes or assessment, or by virtue of a legal process at the instance of the said local government unit;

(4) Be a surety for any person contracting or doing business with the local government unit for which a surety is required; and

(5) Possess or use any public property of the local government unit for private purposes.

participation in the sale was void, she could have not transferred ownership to the petitioners. Equally important, the petitioners merely falsified the property tax declaration by inserting the name of the petitioners' father, making him appear as a co-owner of the auctioned land. Armed with the falsified tax declaration, the petitioners, as heirs of their father, fraudulently redeemed the land from Tuazon. Nonetheless, there was nothing to redeem as the land was not sold. For these irregularities, the petitioners had no right to the Writ of Preliminary Injunction and/or Temporary Restraining Order prayed for against them.

THE RTC'S RULING

In its December 14, 1999 order,[6] the Regional Trial Court (*RTC*) of Butuan City, Branch 5, reconsidered its earlier order,[7] **denied the prayer for a Writ of Preliminary Injunction, and ordered that the possession and occupation of the land be returned to the respondents.** The RTC found that the auction sale was tainted with irregularity as the bidder was a government employee disqualified in accordance with Section 89 of the Local Government Code of 1991. The petitioners are not buyers in good faith either. On the contrary, they were in bad faith for having falsified the tax declaration they redeemed the property with.

THE CA'S RULING

Through a petition for *certiorari* under Rule 65, the petitioners challenged the RTC's order before the CA.

While the petition for *certiorari* was pending before the CA, the petitioners filed an action for specific performance[8] against the City Government of Butuan. According to the petitioners, they acquired possession and ownership over the auctioned property when they redeemed it from Tuazon. The

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[6] *Rollo*, pp. 119-123; penned by Judge Caldino B. Jardin, Jr.

[7] The RTC granted the prayer for issuance of a preliminary injunction on October 28, 1999; *id.* at 106.

[8] Filed before Branch 3 of the RTC of Butuan City, docketed as Civil Case No. 5071.

City Government of Butuan must therefore issue them a certificate of sale.[9]

In its October 24, 2005 decision,[10] **the CA affirmed the RTC's ruling, found the petitioners guilty of forum shopping, dismissed the case, and referred** the case to the Court and to the Integrated Bar of the Philippines for **investigation and institution of the appropriate administrative action.**[11] The CA, after legal analysis, similarly concluded that for being disqualified to bid under Section 89 of the Local Government Code of 1991, Tuazon never obtained ownership over the property; much less transmit any proprietary rights to the petitioners. **Clearly, the petitioners failed to establish any clear and unmistakable right enforceable by the injunctive relief.**

On April 6, 2006, the CA rejected the petitioners' motion for reconsideration.

THE PARTIES' ARGUMENTS

The petitioners filed the present petition for review on *certiorari* with this Court to challenge the CA rulings. The petitioners maintain that they did not falsify the tax declaration in acquiring the auctioned property. Moreover, assuming that Tuazon, the sole bidder, was indeed disqualified from participating in the public auction, Section 181[12] of the Local Government

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[9] *Rollo,* p. 51.

[10] *Supra* note 2.

[11] There is a pending administrative case before the Court, entitled *Court of Appeals v. Atty. Agustin C. Tarroza, Administrative Case No. 7037.* Atty. Tarroza's Answer to the complaint is annexed in the present appeal. *Rollo*, pp. 143-159.

[12] Erroneously cited by the petitioners as Article 269. Section 181. Purchase of Property By the Local Government Units for Want of Bidder. — In case there is no bidder for the real property advertised for sale as provided herein, or if the highest bid is for an amount insufficient to pay the taxes, fees, or charges, related surcharges, interests, penalties and costs, the local treasurer conducting the sale shall purchase the property in behalf of the local government unit concerned to satisfy the claim and within two (2) days thereafter shall make a report of his proceedings which

Code of 1991 finds application. Applying the law, it is as if there was no bidder, for which the City Government of Butuan was to be considered the purchaser of the land in auction. **Therefore, when the petitioners bought the land, they bought it directly from the purchaser - City Government of Butuan - and not from Tuazon, as redeemers.**

Also, the respondents may not question the validity of the public auction for failing to deposit with the court the amount required by Section 267[13] of the Local Government Code of 1991.

Finally, the petitioners argue that they did not commit forum shopping, as the reliefs prayed for in the present case and in the specific performance case are not the same. In the present case, they merely impleaded the City Government of Butuan as a nominal party to pay for the value of the land only if

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shall be reflected upon the records of his office. It shall be the duty of the Registrar of Deeds concerned upon registration with his office of any such declaration of forfeiture to transfer the title of the forfeited property to the local government unit concerned without the necessity of an order from a competent court.

Within one (1) year from the date of such forfeiture, the taxpayer or any of his representative, may redeem the property by paying to the local treasurer the full amount of the taxes, fees, charges, and related surcharges, interests, or penalties, and the costs of sale. If the property is not redeemed as provided herein, the ownership thereof shall be fully vested on the local government unit concerned.

[13] Section 267. Action Assailing Validity of Tax Sale. - No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason or irregularities or informalities in the proceedings unless the substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired.

possession of the land was awarded to the respondents. On the other hand, the complaint for specific performance prayed that the City Government of Butuan execute the necessary certificate of sale and other relevant documents pertaining to the auction.

The respondents, for their part, reiterate the lower courts' findings that there could have been no legal redemption in favor of the petitioners as the highest bidder was disqualified from bidding. Moreover, the CA correctly applied the law in finding the petitioners guilty of forum shopping. Most importantly, the grant of preliminary injunction lies in the sound discretion of the court and the petitioners failed to show proof that they are entitled to it.

Meanwhile, on August 8, 2013, the RTC **dismissed the main action** and ordered the petitioners to pay the respondents attorney's fees and litigation expenses.[14]

THE COURT'S RULING

We resolve to deny the petition for lack of merit.

The petitioners may not raise factual issues

The petitioners maintain that they did not falsify the tax declaration they reimbursed the property with. According to them, the document already existed in 1987, way before they acquired the land in 1997. Contrary likewise to the lower courts' finding, they did not purchase the land from Tuazon as redemptioners; they directly bought the property from the City Government of Butuan.

These factual contests are not appropriate for a petition for review on *certiorari* under Rule 45. The Court is not a trier of facts.[15] The Court will not revisit, re-examine, and re-evaluate

[14] RTC *rollo*, pp. 470-481.

[15] *Co v. Vargas*, G.R. No. 195167, November 16, 2011, 660 SCRA 451, 458, citing *Aliño v. Heirs of Angelica A. Lorenzo*, G.R. No. 159550, June 27, 2008, 556 SCRA 139; and *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, G.R. Nos. 154885 and 154937, March 24, 2008, 549 SCRA 12.

the evidence and the factual conclusions arrived at by the lower courts.[16] In the absence of compelling reasons, the Court will not disturb the rule that factual findings of the lower tribunals are final and binding on this Court.[17]

Sections 181 and 267 of the Local Government Code of 1991 are inapplicable; these provisions do not apply to the present case

The petitioners may not invoke Section 181[18] of the Local Government Code of 1991 to validate their alleged title. The law authorizes the local government unit to purchase the auctioned property only in instances where *"there is no bidder"* or *"the highest bid is xxx insufficient."* A disqualified bidder is not among the authorized grounds. The local government also never undertook steps to purchase the property under Section 181 of the Local Government Code of 1991, presumably because it knew the invoked provision does not apply.

Neither can the Court agree with the petitioners' stance that the respondents' defense — the petitioners' defective title — must fail for want of deposit to the court the amount required by Section 267 of the Local Government Code. The provision states:

Section 267. *Action Assailing Validity of Tax Sale.* - No court shall entertain any action assailing the validity or any sale at public auction of real property or rights therein under this Title until the taxpayer shall have deposited with the court the amount for which the real property was sold, together with interest of two percent (2%) per month from the date of sale to the time of the institution of the action. The amount so deposited shall be paid to the purchaser at the auction sale if the deed is declared invalid but it shall be returned to the depositor if the action fails.

Neither shall any court declare a sale at public auction invalid by reason or irregularities or informalities in the proceedings unless the

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

[17] *Cerila J. Calanasan, etc. v. Spouses Virgilio Dolorito and Evelyn C. Dolorito*, G.R. No. 171937, November 25, 2013, citations omitted.

[18] See note 12.

substantive rights of the delinquent owner of the real property or the person having legal interest therein have been impaired. [underscores ours; italics supplied]

A simple reading of the title readily reveals that the provision relates to actions for annulment of tax sales. The section likewise makes use of terms "entertain" and "institution" to mean that the deposit requirement applies only to initiatory actions assailing the validity of tax sales. The intent of the provision to limit the deposit requirement to actions for annulment of tax sales led to the Court's ruling in *National Housing Authority v. Iloilo City, et al.*[19] that the deposit requirement is jurisdictional — a condition necessary for the court to entertain the action:

As is apparent from a reading of the foregoing provision, a deposit equivalent to the amount of the sale at public auction plus two percent (2%) interest per month from the date of the sale to the time the court action is instituted is a condition — a "prerequisite," to borrow the term used by the acknowledged father of the Local Government Code — which must be satisfied before the court can entertain any action assailing the validity of the public auction sale. The law, in plain and unequivocal language, prevents the court from entertaining a suit unless a deposit is made. xxx. Otherwise stated, the deposit is a jurisdictional requirement the nonpayment of which warrants the failure of the action.

xxx x x x xxx

Clearly, the deposit precondition is an ingenious legal device to guarantee the satisfaction of the tax delinquency, with the local government unit keeping the payment on the bid price no matter the final outcome of the suit to nullify the tax sale.[20]

The Court would later reiterate the jurisdictional nature of the deposit in *Wong v. City of Iloilo*,[21] and pronounce:

In this regard, *National Housing Authority v. Iloilo City* holds that the deposit required under Section 267 of the Local Government

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[19] 584 Phil. 604 (2008).

[20] *Id.* at 610-611.

[21] G.R. No. 161748, July 3, 2009, 591 SCRA 523.

Code is a **jurisdictional requirement**, the nonpayment of which warrants the dismissal of the action. Because petitioners in this case did not make such deposit, the RTC never acquired jurisdiction over the complaints.[22]

These rulings clearly render inapplicable the petitioners' insistence that the respondents should have made a deposit to the court. The suit filed by the petitioners was an action for injunction and damages; the issue of nullity of the auction was raised by the respondents themselves merely as a defense and in no way converted the action to an action for annulment of a tax sale.

The petitioners failed to show clear and unmistakable rights to be protected by the writ; the present action has been rendered moot and academic by the dismissal of the main action

As the lower courts correctly found, Tuazon had no ownership to confer to the petitioners despite the latter's reimbursement of Tuazon's purchase expenses. Because they were never owners of the property, the petitioners failed to establish entitlement to the writ of preliminary injunction. "[T]o be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. When the complainant's right or title is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is not proper."[23]

Likewise, upon the dismissal of the main case by the RTC on August 8, 2013, the question of issuance of the writ of preliminary injunction has become moot and academic. In *Arevalo v. Planters*

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[22] *Id.* at 529-530; citation omitted.

[23] *The Incorporators of Mindanao Institute, Inc. v. The United Church of Christ in the Philippines*, G.R. No. 171765, March 21, 2012, 668 SCRA 637, 649; citations omitted.

Development Bank,[24] the Court ruled that a case becomes moot and academic when there is no more issue between the parties or object that can be served in deciding the merits of the case. Upon the dismissal of the main action, the question of the non-issuance of a writ of preliminary injunction automatically died with it. A writ of preliminary injunction is a provisional remedy; it is auxiliary, an adjunct of, and subject to the determination of the main action. It is deemed lifted upon the dismissal of the main case, any appeal therefrom notwithstanding.[25]

The petitioners are guilty of forum shopping

We agree with the CA that the petitioners committed forum shopping when they filed the specific performance case despite the pendency of the present case before the CA. In the recent case of *Heirs of Marcelo Sotto, etc., et al. v. Matilde S. Palicte*,[26] the Court laid down the **three ways forum shopping may be committed:** 1) through *litis pendentia* — filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) through *res judicata* — filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) splitting of causes of action — filing multiple cases based on the same cause of action but with different prayers — the ground to dismiss being either *litis pendentia* or *res judicata*. "The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other."[27]

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[24] G.R. No. 193415, April 18, 2012, 670 SCRA 252.

[25] *Id.* at 260.

[26] G.R. No. 159691, June 13, 2013.

[27] *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 429; citation omitted, italics supplied.

Noticeable among these three types of forum shopping is **the identity of the cause of action** in the different cases filed. Cause of action is "the act or omission by which a party violates the right of another."[28]

The cause of action in the present case (and the main case) is the petitioners' claim of ownership of the land when they bought it, either from the City Government of Butuan or from Tuazon. This ownership is the petitioners' basis in enjoining the respondents from dispossessing them of the property. On the other hand, the specific performance case prayed that the City Government of Butuan be ordered to issue the petitioners the certificate of sale grounded on the petitioners' ownership of the land when they had bought it, either from the City Government of Butuan or from Tuazon. While it may appear that the main relief prayed for in the present injunction case is different from what was prayed for in the specific performance case, the cause of action which serves as the basis for the reliefs remains the same — the petitioners' alleged ownership of the property after its purchase in a public auction.

Thus, the petitioners' subsequent filing of the specific performance action is forum shopping of the third kind-splitting causes of action or filing multiple cases based on the same cause of action, but with different prayers. As the Court has held in the past, "there is still forum shopping even if the reliefs prayed for in the two cases are different, so long as both cases raise substantially the same issues."[29]

Similarly, the CA correctly found that the petitioners and their counsel were guilty of forum shopping based on *litis pendentia*. Not only were the parties in both cases the same insofar as the City Government of Butuan is concerned, there was also identity of rights asserted and identity of facts alleged. The cause of action in the specific performance case

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[28] *Asia United Bank v. Goodland Company, Inc.*, G.R. No. 191388, March 9, 2011, 645 SCRA 205, 215; citation omitted.

[29] *Id.* at 216. See also *Prubankers Association v. Prudential Bank & Trust Co.*, 361 Phil. 744, 756 (1999).

had already been ruled upon in the present case, although it was still pending appeal before the CA. Likewise, the prayer sought in the specific performance case — for the City Government of Butuan to execute a deed of sale in favor of the petitioners — had been indirectly ruled upon in the present case when the RTC declared that no certificate of sale could be issued because there had been no valid sale.

WHEREFORE, premises considered, the Court **DENIES** the petition for review on *certiorari.* The decision dated October 24, 2005 and the resolution dated April 6, 2006 of the Court of Appeals in CA-G.R. SP No. 59859 are hereby **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173423. March 5, 2014]

SPS. ANTONIO FORTUNA and ERLINDA FORTUNA, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; COMMONWEALTH ACT NO. 141 (THE PUBLIC LAND ACT), AS AMENDED; GRANT AND DISPOSITION OF ALIENABLE PUBLIC LANDS; THE APPLICANT FOR REGISTRATION OF TITLE TO LAND DERIVED THROUGH A PUBLIC GRANT MUST ESTABLISH FOREMOST THE ALIENABLE AND DISPOSABLE NATURE OF THE LAND.— The Constitution declares that all lands of the public domain

are owned by the State. Of the four classes of public land, *i.e.*, agricultural lands, forest or timber lands, mineral lands, and national parks, only agricultural lands may be alienated. Public land that has not been classified as alienable agricultural land remains part of the inalienable public domain. Thus, **it is essential for any applicant for registration of title to land derived through a public grant to establish foremost the alienable and disposable nature of the land**. The PLA provisions on the grant and disposition of alienable public lands, specifically, Sections 11 and 48(b), will find application only from the time that a public land has been classified as agricultural and declared as alienable and disposable.

2. ID.; ID.; ID.; AN APPLICANT FOR REGISTRATION OF TITLE ACQUIRED THROUGH A PUBLIC LAND GRANT MUST PRESENT INCONTROVERTIBLE EVIDENCE THAT THE LAND SUBJECT OF THE APPLICATION IS ALIENABLE AND DISPOSABLE BY ESTABLISHING THE EXISTENCE OF A POSITIVE ACT OF THE GOVERNMENT.— Under Section 6 of the PLA, the classification and the reclassification of public lands are the prerogative of the Executive Department. The President, through a presidential proclamation or executive order, can classify or reclassify a land to be included or excluded from the public domain. The Department of Environment and Natural Resources (*DENR*) Secretary is likewise empowered by law to approve a land classification and declare such land as alienable and disposable. Accordingly, jurisprudence has required that an applicant for registration of title acquired through a public land grant must present *incontrovertible evidence* that the land subject of the application is alienable or disposable by establishing the existence of a *positive act of the government*, such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.

3. ID.; ID.; ID.; NOTATIONS IN THE SURVEY PLAN AND THE CERTIFICATION FROM THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES-COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE ARE INADEQUATE PROOF OF THE ALIENABLE AND DISPOSABLE CHARACTER OF THE LAND SUBJECT OF THE APPLICATION FOR REGISTRATION.— Mere notations

appearing in survey plans are inadequate proof of the covered properties' alienable and disposable character. These notations, at the very least, only establish that the land subject of the application for registration falls within the approved alienable and disposable area per verification through survey by the proper government office. **The applicant, however, must also present a copy of the original classification of the land into alienable and disposable land, as declared by the DENR Secretary or as proclaimed by the President.** x x x The survey plan and the DENR-CENRO certification are not proof that the President or the DENR Secretary has reclassified and released the public land as alienable and disposable. The offices that prepared these documents are ***not the official repositories or legal custodian*** of the issuances of the President or the DENR Secretary declaring the public land as alienable and disposable.

4. ID.; ID.; ID.; JUDICIAL CONFIRMATION OF IMPERFECT OR INCOMPLETE TITLE; APPLICANTS MUST PROVE THAT THEY HAVE BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF AGRICULTURAL LANDS OF THE PUBLIC DOMAIN, UNDER *BONA FIDE* CLAIM OF ACQUISITION OF OWNERSHIP, FOR AT LEAST 30 YEARS, OR AT LEAST SINCE MAY 8, 1947.— [T]he PLA is the law that governs the grant and disposition of alienable agricultural lands. Under Section 11 of the PLA, alienable lands of the public domain may be disposed of, among others, by **judicial confirmation of imperfect or incomplete title**. This mode of acquisition of title is governed by Section 48(b) of the PLA x x x. On June 22, 1957, the cut-off date of July 26, 1894 was replaced by a 30-year period of possession under RA No. 1942. x x x On January 25, 1977, PD No. 1073 replaced the 30-year period of possession by requiring possession since June 12, 1945. x x x Under the PD No. 1073 amendment, possession of at least ***32 years*** – from 1945 up to its enactment in 1977 – is required. This effectively impairs the vested rights of applicants who had complied with the 30-year possession required under the RA No. 1942 amendment, but whose possession commenced only after the cut-off date of June 12, 1945 was established by the PD No. 1073 amendment. To remedy this, the Court ruled in *Abejaron v. Nabasa* that "Filipino citizens who by themselves or their predecessors-in-interest have been, ***prior to the effectivity of***

P.D. 1073 on January 25, 1977, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, **for at least 30 years, or at least since January 24, 1947** may apply for judicial confirmation of their imperfect or incomplete title under Sec. 48(b) of the [PLA]." **January 24, 1947 was considered as the cut-off date as this was exactly 30 years counted backward from January 25, 1977 – the effectivity date of PD No. 1073.** It appears, however, that **January 25, 1977 was the date PD No. 1073 was *enacted;*** based on the certification from the National Printing Office, **PD No. 1073 was *published* in Vol. 73, No. 19 of the Official Gazette**, months later than its enactment or on **May 9, 1977**. This uncontroverted fact materially affects the cut-off date for applications for judicial confirmation of incomplete title under Section 48(b) of the PLA. Although Section 6 of PD No. 1073 states that "[the] Decree shall take effect upon its promulgation," the Court has declared in *Tañada, et al. v. Hon. Tuvera, etc., et al.* that the publication of laws is an indispensable requirement for its effectivity. "[A]ll statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature." Accordingly, Section 6 of PD No. 1073 should be understood to mean that the decree took effect only upon its publication, or on May 9, 1977. This, therefore, moves **the cut-off date for applications for judicial confirmation of imperfect or incomplete title under Section 48(b) of the PLA to May 8, 1947.** In other words, ***applicants must prove that they have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, for at least 30 years, or at least since May 8, 1947.***

5. ID.; ID.; ID.; ID.; ACTS OF POSSESSION AND OCCUPATION, NOT DULY ESTABLISHED IN CASE AT BAR.— Tax Declaration No. 8366 contains a sworn statement of the owner that was subscribed on October 23, **1947.** While these circumstances may indeed indicate possession *as of 1947*, none proves that it commenced *as of the cut-off date of May 8, 1947*. Even if the tax declaration indicates possession since 1947, it does not show the nature of Pastora's possession. Notably,

> Section 48(b) of the PLA speaks of possession ***and*** occupation. "Since these words are separated by the conjunction *and*, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction." Nothing in Tax Declaration No. 8366 shows that Pastora exercised acts of possession and occupation such as cultivation of or fencing off the land.

APPEARANCES OF COUNSEL

Gancayco Balasbas and Associates Law Offices for petitioners.

The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by the petitioners, spouses Antonio and Erlinda Fortuna, assailing the decision dated May 16, 2005[2] and the resolution dated June 27, 2006[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 71143. The CA reversed and set aside the decision dated May 7, 2001[4] of the Regional Trial Court (*RTC*) of San Fernando, La Union, Branch 66, in Land Registration Case (*LRC*) No. 2372.

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[1] Filed under Rule 45 of the Rules of Court; *rollo*, pp. 11-A - 31.

[2] *Id.* at 36-44. Penned by Associate Justice Rebecca de Guia-Salvador, and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman.

[3] *Id.* at 46-48.

[4] *Id.* at 49-53; penned by Judge Adolfo F. Alagar

THE BACKGROUND FACTS

In December 1994, the spouses Fortuna filed an **application for registration** of a 2,597-square meter land identified as **Lot No. 4457**, situated in Bo. Canaoay, San Fernando, La Union. The application was filed with the RTC and docketed as **LRC No. 2372**.

The spouses Fortuna stated that Lot No. 4457 was originally owned by **Pastora Vendiola**, upon whose death was succeeded by her children, Clemente and Emeteria Nones. Through an affidavit of adjudication dated August 3, 1972, Emeteria renounced all her interest in Lot No. 4457 in favor of Clemente. Clemente later sold the lot in favor of Rodolfo Cuenca on May 23, 1975. Rodolfo sold the same lot to the spouses Fortuna through a deed of absolute sale dated May 4, 1984.

The spouses Fortuna claimed that they, through themselves and their predecessors-in-interest, have been **in quiet, peaceful, adverse and uninterrupted possession of Lot No. 4457 for more than 50 years**, and submitted as evidence the lot's survey plan, technical description, and certificate of assessment.

Although the respondent, Republic of the Philippines (*Republic*), opposed the application,[5] it did not present any evidence in support of its opposition. Since no private opposition to the registration was filed, the RTC issued an order of general default on November 11, 1996 against the whole world, except the Republic.[6]

In its Decision dated May 7, 2001,[7] **the RTC granted the application for registration in favor of the spouses Fortuna.** The RTC declared that "[the spouses Fortuna] have established [their] possession, including that of their predecessors-in-interest of the land sought to be registered, has been open, continuous, peaceful, adverse against the whole world and in

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[5] The Government's opposition was filed on December 1, 1995, *id.* at 38.

[6] *Id.* at 49, 53.

[7] *Supra* note 4.

the concept of an owner **since 1948**, or **for a period of over fifty (50) years**."[8]

The Republic appealed the RTC decision with the CA, arguing that the spouses Fortuna did not present an official proclamation from the government that the lot has been classified as alienable and disposable agricultural land. It also claimed that the spouses Fortuna's evidence – **Tax Declaration No. 8366** – showed that possession over the lot dates back only to 1948, thus, failing to meet the June 12, 1945 cut-off period provided under Section 14(1) of Presidential Decree (*PD*) No. 1529 or the *Property Registration Decree (PRD)*.

In its decision dated May 16, 2005,[9] **the CA reversed and set aside the RTC decision.** Although it found that the spouses Fortuna were able to establish the alienable and disposable nature of the land,[10] they failed to show that they complied with the length of possession that the law requires, *i.e.*, since June 12, 1945. It agreed with the Republic's argument that Tax Declaration No. 8366 only showed that the spouses Fortuna's predecessor-in-interest, Pastora, proved that she had been in possession of the land only since 1948.

The CA denied the spouses Fortuna's motion for reconsideration of its decision in its resolution dated June 27, 2006.[11]

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[8] *Rollo*, p. 53; emphases ours.

[9] *Supra* note 2.

[10] The CA relied on the statement in the tracing cloth plan and the blue print copy thereof which stated that "[t]his survey is inside alienable and disposable area as per Project No. 13 L.C. Map No. 1395 certified August 7, 1940. It is outside any civil or military reservation." The tracing cloth plan has been approved by the Chief of the Survey Division and the Regional Director of the Region I Office of the Bureau of Lands. It also relied on the DENR-CENRO certificate dated July 19, 1999, which states that "there is, per record, neither any public land application filed nor title previously issued for the subject parcel[.]" (*Rollo*, p. 41.)

[11] *Supra* note 3.

THE PARTIES' ARGUMENTS

Through the present petition, the spouses Fortuna seek a review of the CA rulings.

They contend that the applicable law is Section 48(b) of Commonwealth Act No. 141 or the *Public Land Act* (*PLA*), as amended by Republic Act (*RA*) No. 1942. **RA No. 1942 amended the PLA by requiring *30 years*** of open, continuous, exclusive, and notorious possession to acquire imperfect title over an agricultural land of the public domain. **This 30-year period, however, was removed by PD No. 1073** and instead **required that the possession should be *since June 12, 1945***. The amendment introduced by PD No. 1073 was carried in Section 14(1) of the PRD.[12]

The spouses Fortuna point out that **PD No. 1073 was issued on January 25, 1977 and published on May 9, 1977**; and the PRD was issued on June 11, 1978 and published on January 2, 1979. On the basis of the Court's ruling in *Tañada, et al. v. Hon. Tuvera, etc., et al.*,[13] they allege that PD No. 1073 and the PRD should be deemed effective only on May 24, 1977 and January 17, 1979, respectively. By these dates, they claim to have already satisfied the 30-year requirement under the RA No. 1942 amendment because Pastora's possession dates back, at the latest, to 1947.

They allege that although Tax Declaration No. 8366 was made in 1948, this does not contradict that fact that Pastora possessed Lot No. 4457 *before 1948*. The failure to present documentary evidence proving possession earlier than 1948 was explained by Filma Salazar, Records Officer of the Provincial Assessor's Office, who testified that the records were lost beyond recovery due to the outbreak of World War II.

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[12] Section 14. Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership **since June 12, 1945, or earlier**. [emphasis ours]

[13] 220 Phil. 422 (1985).

Notwithstanding the absence of documents executed earlier than 1948, the spouses Fortuna contend that evidence exists indicating that Pastora possessed the lot even before 1948. *First*, Tax Declaration No. 8366 does not contain a statement that it is a *new* tax declaration. *Second*, the annotation found at the back of Tax Declaration No. 8366 states that "this declaration cancels Tax Nos. 10543[.]"[14] Since Tax Declaration No. 8366 was issued in 1948, the cancelled Tax Declaration No. 10543 was issued, at the latest, in 1947, indicating that there was already an owner and possessor of the lot before 1948. *Third*, they rely on the testimony of one Macaria Flores in **LRC No. 2373**. LRC No. 2373 was also commenced by the spouses Fortuna to register **Lot Nos. 4462, 27066, and 27098**,[15] which were also originally owned by Pastora and are adjacent to the subject Lot No. 4457. Macaria testified that she was born in 1926 and resided in a place a few meters from the three lots. She stated that she regularly passed by these lots on her way to school since 1938. She knew the property was owned by Pastora because the latter's family had constructed a house and planted fruit-bearing trees thereon; they also cleaned the area. On the basis of Macaria's testimony and the other evidence presented in LRC No. 2373, the RTC granted the spouses Fortuna's application for registration of Lot Nos. 4462, 27066, and 27098 in its decision of January 3, 2005.[16] The RTC's decision has lapsed into finality unappealed.

The spouses Fortuna claim that Macaria's testimony in LRC No. 2373 should be considered to prove Pastora's possession prior to 1948. Although LRC No. 2373 is a separate registration proceeding, it pertained to lots adjacent to the subject property, Lot No. 4457, and belonged to the same predecessor-in-interest. Explaining their failure to present Macaria in the proceedings before the RTC in LRC No. 2372, the spouses Fortuna said "it was only after the reception of evidence x x x that

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[14] *Rollo*, p. 20-A.

[15] The three lots have a total area of 4,006 square meters; *id.* at 59.

[16] *Id.* at 59.

[they] were able to trace and establish the identity and competency of Macaria[.]"[17]

Commenting on the spouses Fortuna's petition, the Republic relied mostly on the CA's ruling which denied the registration of title and prayed for the dismissal of the petition.

THE COURT'S RULING

We **deny** the petition for failure of the spouses Fortuna to sufficiently prove their compliance with the requisites for the acquisition of title to alienable lands of the public domain.

The nature of Lot No. 4457 as alienable and disposable public land has not been sufficiently established

The Constitution declares that all lands of the public domain are owned by the State.[18] Of the four classes of public land, *i.e.*, agricultural lands, forest or timber lands, mineral lands, and national parks, only agricultural lands may be alienated.[19] Public land that has not been classified as alienable agricultural land remains part of the inalienable public domain. Thus, **it is essential for any applicant for registration of title to land derived through a public grant to establish foremost the alienable and disposable nature of the land**. The PLA provisions on the grant and disposition of alienable public lands, specifically, Sections 11 and 48(b), will find application only from the time that a public land has been classified as agricultural and declared as alienable and disposable.

Under Section 6 of the PLA,[20] the classification and the reclassification of public lands are the prerogative of the Executive

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[17] *Id.* at 27.

[18] Constitution, Article XII, Section 2.

[19] Constitution, Article XII, Section 3.

[20] Sec. 6. The President, upon the recommendation of the Secretary of Agriculture and Natural Resources, shall from time to time classify the lands of the public domain into:

(a) Alienable or disposable,

Department. The President, through a presidential proclamation or executive order, can classify or reclassify a land to be included or excluded from the public domain. The Department of Environment and Natural Resources (*DENR*) Secretary is likewise empowered by law to approve a land classification and declare such land as alienable and disposable.[21] Accordingly, jurisprudence has required that an applicant for registration of title acquired through a public land grant must present *incontrovertible evidence* that the land subject of the application is alienable or disposable by establishing the existence of a *positive act of the government*, such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.

(b) Timber, and

(c) Mineral lands,

and may at any time and in a like manner transfer such lands from one class to another, for the purposes of their administration and disposition.

[21] Section 13 of PD No. 705 or the *Revised Forestry Code of the Philippines*, approved on May 19, 1975, pertaining to the system of land classification, states:

x x x. The Department Head [now DENR Secretary] shall study, devise, determine and prescribe the criteria, guidelines and methods for the proper and accurate classification and survey of all lands of the public domain into agricultural, industrial or commercial, residential, resettlement, mineral, timber or forest, and grazing lands, and into such other classes as now or may hereafter be provided by law, rules and regulations.

In the meantime, the Department Head shall simplify through inter-bureau action the present system of determining which of the unclassified lands of the public domain are needed for forest purposes and declare them as permanent forest to form part of the forest reserves. **He shall decree those classified and determined not to be needed for forest purposes as alienable and disposable lands**, the administrative jurisdiction and management of which shall be transferred to the Bureau of Lands: Provided, That mangrove and other swamps not needed for shore protection and suitable for fishpond purposes shall be released to, and be placed under the administrative jurisdiction and management of, the Bureau of Fisheries and Aquatic Resources. Those still to be classified under the present system shall continue to remain as part of the public forest.

In this case, the CA declared that the alienable nature of the land was established by the **notation in the survey plan,**[22] which states:

> This survey is *inside alienable and disposable area* as per Project No. 13 L.C. Map No. 1395 certified August 7, 1940. It is outside any civil or military reservation.[23]

It also relied on the **Certification dated July 19, 1999** from the DENR Community Environment and Natural Resources Office (*CENRO*) that "there is, per record, neither any public land application filed nor title previously issued for the subject parcel[.]"[24] However, we find that ***neither of the above documents is evidence of a positive act from the government reclassifying the lot as alienable and disposable agricultural land of the public domain.***

Mere notations appearing in survey plans are inadequate proof of the covered properties' alienable and disposable character.[25] These notations, at the very least, only establish that the land subject of the application for registration falls within the approved alienable and disposable area per verification through survey by the proper government office. **The applicant, however, must also present a copy of the original classification of the land into alienable and disposable land, as declared by the DENR Secretary or as proclaimed by the President.**[26] In *Republic v. Heirs of Juan Fabio*,[27] the Court ruled that

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[22] The Survey Plan was approved by the Regional Chief of the Survey Division and the Regional Director of the Region I Office of the Bureau of Lands; *rollo*, p. 41.

[23] *Id.* at 41; italics ours.

[24] *Id.* at 41.

[25] *Republic of the Philippines v. Tri-Plus Corporation*, 534 Phil. 181, 194 (2006); and *Republic v. Medida*, G.R. No. 195097, August 13, 2012, 678 SCRA 317, 326.

[26] *Republic of the Philippines v. T.A.N. Properties, Inc.*, 578 Phil. 441, 452-453 (2008).

[27] G.R. No. 159589, December 23, 2008, 575 SCRA 51, 77; italics and emphases ours.

[t]he applicant for land registration must prove that *the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable,* **and** *that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO*[28] *or CENRO*. In addition, the applicant must present **a copy of the original classification of the land into alienable and disposable, as declared by the DENR Secretary, or as proclaimed by the President.**

The survey plan and the DENR-CENRO certification are not proof that the President or the DENR Secretary has reclassified and released the public land as alienable and disposable. The offices that prepared these documents are ***not the official repositories or legal custodian*** of the issuances of the President or the DENR Secretary declaring the public land as alienable and disposable.[29]

For failure to present incontrovertible evidence that Lot No. 4457 has been reclassified as alienable and disposable land of the public domain though a positive act of the Executive Department, the spouses Fortuna's claim of title through a public land grant under the PLA should be denied.

In judicial confirmation of imperfect or incomplete title, the period of possession should commence, at the latest, as of May 9, 1947

Although the above finding that the spouses Fortuna failed to establish the alienable and disposable character of Lot No. 4457 serves as sufficient ground to deny the petition and terminate the case, we deem it proper to continue to address the other important legal issues raised in the petition.

As mentioned, the PLA is the law that governs the grant and disposition of alienable agricultural lands. Under Section 11 of the PLA, alienable lands of the public domain may be disposed of, among others, by **judicial confirmation of**

[28] Provincial Environment and Natural Resources Offices.

[29] *Rep. of the Philippines v. T.A.N. Properties, Inc., supra* note 26, at 490-491.

imperfect or incomplete title. This mode of acquisition of title is governed by Section 48(b) of the PLA, the *original version* of which states:

> Sec. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
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> x x x x x x x x x
>
> (b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition or ownership, except as against the Government, **since July twenty-sixth, eighteen hundred and ninety-four**, except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter. [emphasis supplied]

On June 22, 1957, the cut-off date of July 26, 1894 was replaced by a 30-year period of possession under RA No. 1942. Section 48(b) of the PLA, as amended by RA No. 1942, read:

> (b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, **for at least thirty years** immediately preceding the filing of the application for confirmation of title, except when prevented by war or force majeure. [emphasis and underscore ours]

On January 25, 1977, PD No. 1073 replaced the 30-year period of possession by requiring possession since June 12, 1945. Section 4 of PD No. 1073 reads:

> SEC. 4. The provisions of Section 48(b) and Section 48(c), Chapter VIII of the Public Land Act are hereby amended in the sense that these provisions shall apply only to alienable and disposable lands of the public domain which have been in open, continuous, exclusive

and notorious possession and occupation by the applicant himself or thru his predecessor-in-interest, under a bona fide claim of acquisition of ownership, **since June 12, 1945**. [emphasis supplied]

Under the PD No. 1073 amendment, possession of at least ***32 years*** – from 1945 up to its enactment in 1977 – is required. This effectively impairs the vested rights of applicants who had complied with the 30-year possession required under the RA No. 1942 amendment, but whose possession commenced only after the cut-off date of June 12, 1945 was established by the PD No. 1073 amendment. To remedy this, the Court ruled in *Abejaron v. Nabasa*[30] that "Filipino citizens who by themselves or their predecessors-in-interest have been, ***prior to the effectivity of P.D. 1073 on January 25, 1977***, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, **for at least 30 years, or at least since January 24, 1947** may apply for judicial confirmation of their imperfect or incomplete title under Sec. 48(b) of the [PLA]." **January 24, 1947 was considered as the cut-off date as this was exactly 30 years counted backward from January 25, 1977 – the effectivity date of PD No. 1073.**

It appears, however, that **January 25, 1977 was the date PD No. 1073 was *enacted;*** based on the certification from the National Printing Office,[31] **PD No. 1073 was *published* in Vol. 73, No. 19 of the Official Gazette**, months later than its enactment or on **May 9, 1977.** This uncontroverted fact materially affects the cut-off date for applications for judicial confirmation of incomplete title under Section 48(b) of the PLA.

Although Section 6 of PD No. 1073 states that "[the] Decree shall take effect upon its promulgation," the Court has declared in *Tañada, et al. v. Hon. Tuvera, etc., et al.*[32] that the publication

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[30] 411 Phil. 552, 570; emphases and italics ours.

[31] *Rollo*, p. 55.

[32] *Supra* note 13, at 434; and *Tañada v. Hon. Tuvera*, 230 Phil. 528, 535 (1986).

of laws is an indispensable requirement for its effectivity. "[A]ll statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature."[33] Accordingly, Section 6 of PD No. 1073 should be understood to mean that the decree took effect only upon its publication, or on May 9, 1977. This, therefore, moves **the cut-off date for applications for judicial confirmation of imperfect or incomplete title under Section 48(b) of the PLA to May 8, 1947.** In other words, ***applicants must prove that they have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, for at least 30 years, or at least since May 8, 1947.***

The spouses Fortuna were unable to prove that they possessed Lot No. 4457 since May 8, 1947

Even if the Court assumes that Lot No. 4457 is an alienable and disposable agricultural land of the public domain, the spouses Fortuna's application for registration of title would still not prosper for failure to sufficiently prove that they possessed the land since May 8, 1947.

The spouses Fortuna's allegation that: (1) the absence of a notation that Tax Declaration No. 8366 was a new tax declaration and (2) the notation stating that Tax Declaration No. 8366 cancels the earlier Tax Declaration No. 10543 both indicate that Pastora possessed the land prior to 1948 or, at the earliest, in 1947. We also observe that Tax Declaration No. 8366 contains a sworn statement of the owner that was subscribed on October 23, **1947**.[34] While these circumstances may indeed indicate possession *as of 1947*, none proves that it commenced *as of the cut-off date of May 8, 1947*. Even if the tax declaration indicates possession since 1947, it does not show the nature of

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[33] *Tañada v. Hon. Tuvera*, *supra,* at 535.

[34] CA Records, p. 94.

Pastora's possession. Notably, Section 48(b) of the PLA speaks of possession ***and*** occupation. "Since these words are separated by the conjunction *and*, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word *occupation*, it seeks to delimit the all encompassing effect of constructive possession. Taken together with the words open, continuous, exclusive and notorious, the word *occupation* serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction."[35] Nothing in Tax Declaration No. 8366 shows that Pastora exercised acts of possession and occupation such as cultivation of or fencing off the land. Indeed, the lot was described as "cogonal."[36]

The spouses Fortuna seeks to remedy the defects of Tax Declaration No. 8366 by relying on Macaria's testimony in a separate land registration proceeding, LRC No. 2373. Macaria alleged that she passed by Pastora's lots on her way to school, and she saw Pastora's family construct a house, plant fruit-bearing trees, and clean the area. However, the Court is not convinced that Macaria's testimony constituted as the "well-nigh incontrovertible evidence" required in cases of this nature.

The records disclose that the spouses Fortuna acquired adjoining parcels of land, all of which are claimed to have previously belonged to Pastora. These parcels of land were covered by three separate applications for registration, to wit:

a. LRC No. N-1278, involving Lot Nos. 1 and 2, with a total area of 2,961 sq. m., commenced by Emeteria;
b. LRC No. 2373, involving Lot Nos. 4462, 27066, and 27098, with a total area of 4,006 sq. m., commenced by the spouses Fortuna; and
c. LRC No. 2372 (the subject case), involving Lot No. 4457, with a total area of 2,597 sq. m.

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[35] *Republic of the Phils. v. Alconaba*, 471 Phil. 607, 620 (2004); italics supplied, citation omitted.

[36] *Rollo*, p. 54.

As these cases involved different but adjoining lots that belonged to the same predecessor-in-interest, the spouses Fortuna alleged that the final rulings in LRC Nos. N-1278 and 2373,[37] upholding Pastora's ownership, be taken into account in resolving the present case.

Notably, the total land area of the adjoining lots that are claimed to have previously belonged to Pastora is 9,564 sq. m. This is too big an area for the Court to consider that Pastora's claimed acts of possession and occupation (as testified to by Macaria) encompassed the entirety of the lots. Given the size of the lots, it is unlikely that Macaria (age 21 in 1947) could competently assess and declare that its entirety belonged to Pastora because she saw acts of possession and occupation in what must have been but a limited area. As mentioned, Tax Declaration No. 8366 described Lot No. 4457 as "cogonal," thus, Macaria could not have also been referring to Lot No. 4457 when she said that Pastora planted fruit-bearing trees on her properties.

The lower courts' final rulings in LRC Nos. N-1278 and 2373, upholding Pastora's possession, do not tie this Court's hands into ruling in favor of the spouses Fortuna. Much to our dismay, the rulings in LRC Nos. N-1278 and 2373 do not even show that the lots have been officially reclassified as alienable lands of the public domain or that the nature and duration of Pastora's occupation met the requirements of the PLA, thus, failing to convince us to either disregard the rules of evidence or consider their merits. In this regard, we reiterate our directive in *Santiago v. De los Santos*:[38]

Both under the 1935 and the present Constitutions, the conservation no less than the utilization of the natural resources is ordained. **There**

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[37] LRC No. N-1278 was granted in favor of Emeteria in a decision dated November 9, 1972 (CA Records, pp. 74-76) and resulted in the issuance of Original Certificate of Title No. 1337 (*id.* at 70). LRC No. 2373 was granted in favor of the spouses Fortuna in a decision dated January 3, 2005 (*rollo*, pp. 56-59).

[38] 158 Phil. 809, 816 (1974); citations omitted, emphasis ours, italics supplied.

would be a failure to abide by its command if the judiciary does not scrutinize with care applications to private ownership of real estate. To be granted, they must be grounded in well-nigh incontrovertible evidence. Where, as in this case, no such proof would be forthcoming, there is no justification for viewing such claim with favor. It is a basic assumption of our polity that lands of whatever classification belong to the state. Unless alienated in accordance with law, it retains its rights over the same as *dominus*.

WHEREFORE, the petition is **DENIED**. The decision dated May 16, 2005 and the resolution dated June 27, 2006 of the Court of Appeals in CA-G.R. CV No. 71143 are **AFFIRMED** insofar as these dismissed the spouses Antonio and Erlinda Fortuna's application of registration of title on the basis of the grounds discussed above. Costs against the spouses Fortuna.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179408. March 5, 2014]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *petitioner, vs.* **ABIGAIL R. RAZON ALVAREZ and VERNON R. RAZON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNLAWFUL SEARCHES AND SEIZURES; PURPOSES.— Section 2, Article III of the 1987 Constitution guarantees the right of persons to be free from unreasonable

searches and seizures. x x x The purposes of the constitutional provision against unlawful searches and seizures are to: (i) prevent the officers of the law from violating private security in person and property and illegally invading the sanctity of the home; and (ii) give remedy against such usurpations when attempted or committed.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; WHEN ISSUED.— The constitutional requirement for the issuance of a search warrant is reiterated under Sections 4 and 5, Rule 126 of the Revised Rules of Criminal Procedure. These sections lay down the following requirements for the issuance of a search warrant: (1) the existence of probable cause; (2) the probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized. Should any of these requisites be absent, the party aggrieved by the issuance and enforcement of the search warrant may file a motion to quash the search warrant with the issuing court or with the court where the action is subsequently instituted.

3. ID.; ID.; ID.; ID.; A SEARCH WARRANT PROCEEDING IS AT MOST INCIDENTAL TO THE MAIN CRIMINAL CASE AND AN ORDER GRANTING OR DENYING A MOTION TO QUASH A SEARCH WARRANT MAY BE QUESTIONED ONLY *VIA* A PETITION FOR *CERTIORARI* UNDER RULE 65.— A search warrant proceeding is a special criminal and judicial process akin to a writ of discovery. It is designed by the Rules of Criminal Procedure to respond only to an incident in the main case, if one has already been instituted, or in anticipation thereof. Since it is at most incidental to the main criminal case, an order granting or denying a motion to quash a search warrant may be questioned only *via* a petition for *certiorari* under Rule 65.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A JUDGE ISSUING A SEARCH WARRANT WITHOUT COMPLYING WITH THE CONSTITUTIONAL AND PROCEDURAL REQUIREMENTS COMMITS GRAVE ABUSE OF

DISCRETION; GRAVE ABUSE OF DISCRETION, DEFINED.— When confronted with x x x [a] petition [for *certiorari* under Rule 65], the higher court must necessarily determine the validity of the lower court's action from the prism of whether it was tainted with grave abuse of discretion. By grave abuse of discretion, jurisprudence refers to the capricious and whimsical exercise of judgment equivalent to lack of jurisdiction, or to the exercise of power in an arbitrary or despotic manner by reason of passion or personal hostility or in a manner so patent and gross as to amount to an invasion of positive duty or to the virtual refusal to perform the duty enjoined or to act at all in contemplation of the law. In a *certiorari* proceeding, the determination translates to an inquiry on whether the requirements and limitations provided under the Constitution and the Rules of Court were properly complied with, from the issuance of the warrant up to its implementation. In view of the constitutional objective of preventing stealthy encroachment upon or the gradual depreciation of the rights secured by the Constitution, strict compliance with the constitutional and procedural requirements is required. A judge who issues a search warrant without complying with these requirements commits grave abuse of discretion.

5. **POLITICAL RIGHTS; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; SEARCH WARRANT; MUST BE ISSUED BASED ON PROBABLE CAUSE WHICH MUST BE IN CONNECTION WITH ONE SPECIFIC OFFENSE; PROBABLE CAUSE IN SEARCH WARRANT PROCEEDINGS, DEFINED.—** One of the constitutional requirements for the validity of a search warrant is that it must be issued based on probable cause which, under the Rules, must be *in connection with one specific offense*. In search warrant proceedings, probable cause is defined as such facts and circumstances that would lead a reasonably discreet and prudent man to believe that ***an offense has been committed*** and that the objects sought in connection with the offense are in the place sought to be searched. In the determination of probable cause, the court must necessarily determine whether an offense exists to justify the issuance or quashal of the search warrant because the personal properties that may be subject of the search warrant are very much intertwined with the "one specific offense" requirement of probable cause. x x x

[T]he only way to determine whether a warrant should issue in connection with one specific offense is to juxtapose the facts and circumstances presented by the applicant with the elements of the offense that are alleged to support the search warrant.

6. CIVIL LAW; EFFECT AND APPLICATION OF LAWS; PRINCIPLE OF *STARE DECISIS*; ENJOINS ADHERENCE TO JUDICIAL PRECEDENTS EMBODIED IN THE DECISION OF THE SUPREME COURT TO SECURE CERTAINTY AND STABILITY OF JUDICIAL DECISIONS.— Under Article 8 of the Civil Code**,** the decisions of this Court form part of the country's legal system. While these decisions are not laws pursuant to the doctrine of separation of powers, they evidence the laws' meaning, breadth, and scope and, therefore, have the same binding force as the laws themselves. Hence, the Court's interpretation of a statute forms part of the law as of the date it was originally passed because the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carries into effect. Article 8 of the Civil Code embodies the basic principle of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle established matters) that enjoins adherence to judicial precedents embodied in the decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis*, in turn, is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. The doctrine of (horizontal) *stare decisis* is one of policy, grounded on the necessity of securing certainty and stability of judicial decisions.

7. ID.; ID.; ID.; APPLIES ONLY ONCE THE SUPREME COURT'S RULING HAS LAPSED TO FINALITY IN ACCORDANCE WITH LAW.— In the field of adjudication, a case cannot yet acquire the status of a "decided" case that is "deemed *settled* and *closed to further argument*" if the Court's decision is still the subject of a motion for reconsideration seasonably filed by the moving party. Under the Rules of Court, a party is expressly allowed to file a motion for reconsideration of the Court's decision within 15 days from notice. Since the doctrine of *stare decisis* is founded on the necessity of securing certainty and stability in law, then these attributes will spring once the Court's ruling has lapsed to finality in accordance with law.

8. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; SEARCH WARRANT; REQUIREMENT OF PARTICULARITY; MEANT TO ENSURE THAT ONLY THOSE CONNECTED WITH THE OFFENSE FOR WHICH THE WARRANT WAS ISSUED SHALL BE SEIZED.— Aside from the requirement of probable cause, the Constitution also requires that the search warrant must particularly describe the place to be searched and things to be seized. This requirement of particularity in the description, especially of the things to be seized, is meant to enable the law enforcers to readily identify the properties to be seized and, thus, prevent the seizure of the wrong items. It seeks to leave the law enforcers with no discretion at all regarding these articles and to give life to the constitutional provision against unreasonable searches and seizures. In other words, the requisite sufficient particularity is aimed at preventing the law enforcer from exercising unlimited discretion as to what things are to be taken under the warrant and ensure that only those connected with the offense for which the warrant was issued shall be seized.

9. ID.; ID.; ID.; ID.; ID.; ID.; COMPLIED WITH WHEN THE THINGS DESCRIBED ARE LIMITED TO THOSE WHICH BEAR DIRECT RELATION TO THE OFFENSE FOR WHICH THE WARRANT IS BEING ISSUED.— The requirement of specificity x x x does not require technical accuracy in the description of the property to be seized. Specificity is satisfied if the personal properties' description is as far as the circumstances will ordinarily allow it to be so described. The nature of the description should vary according to whether the identity of the property or its character is a matter of concern. One of the tests to determine the particularity in the description of objects to be seized under a search warrant is *when the things described are limited to those which bear direct relation to the offense* for which the warrant is being issued.

10. ID.; ID.; ID.; ID.; ID.; ONE-SPECIFIC-OFFENSE REQUIREMENT; A SEARCH WARRANT SHOULD BE ISSUED IN CONNECTION WITH ONE SPECIFIC OFFENSE.— [T]he Rules require that a search warrant should be issued "in connection with one specific offense" to prevent the issuance of a scatter-shot warrant. The one-specific-offense requirement reinforces the constitutional requirement that a search warrant

should issue only on the basis of probable cause. Since the primary objective of applying for a search warrant is to obtain evidence to be used in a subsequent prosecution for an offense for which the search warrant was applied, a judge issuing a particular warrant must satisfy himself that the evidence presented by the applicant establishes the facts and circumstances relating to this specific offense for which the warrant is sought and issued. Accordingly, in a subsequent challenge against the validity of the warrant, the applicant cannot be allowed to maintain its validity based on facts and circumstances that may be related to other search warrants but are extrinsic to the warrant in question.

11. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; MAY BE ISSUED FOR THE SEARCH AND SEIZURE OF PERSONAL PROPERTY SUBJECT OF THE OFFENSE, FRUITS OF THE OFFENSE, OR THOSE USED OR INTENDED TO BE USED AS THE MEANS OF COMMITTING AN OFFENSE.— Under the Rules the following personal property may be subject of search warrant: (i) the subject of the offense; (ii) fruits of the offense; or (iii) those used or intended to be used as the means of committing an offense.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Alexander B. Soriano for respondents.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the decision[2] dated August 11, 2006 and the resolution[3] dated August 22, 2007 of the Court of Appeals (CA) in CA-G.R. SP

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Rebecca de Guia-Salvador, and concurred in by Presiding Justice Ruben T. Reyes (now a retired member of this Court) and Associate Justice Vicente Q. Roxas; *rollo*, pp. 60-81.

[3] *Id*. at 84.

No. 89213 on the validity of the four search warrants issued by the Regional Trial Court (*RTC*) of Pasay City, Branch 115.

The CA rulings (i) quashed the first two search warrants, similarly docketed as Search Warrant No. 03-063, issued for violation of Article 308, in relation to Article 309, of the Revised Penal Code (*RPC*), and (ii) declared void paragraphs 7, 8 and 9 of the other two search warrants, also similarly docketed as Search Warrant No. 03-064, issued for violation of Presidential Decree (*PD*) NO. 401.[4]

FACTUAL ANTECEDENTS

Philippine Long Distance Telephone Company (*PLDT*) is the grantee of a legislative franchise[5] which authorizes it to carry on the business of providing basic and enhanced telecommunications services in and between areas in the Philippines and between the Philippines and other countries and territories,[6] and, accordingly, to establish, operate, manage, lease, maintain and purchase telecommunications system for both domestic and international calls.[7] Pursuant to its franchise, PLDT offers to the public wide range of services duly authorized by the National Telecommunications Commission (*NTC*).

PLDT's network is principally composed of the Public Switch telephone Network, telephone handsets and/or telecommunications equipment used by its subscribers, the wires and cables linking these handsets and/or equipment, antennae, transmission facilities, the international gateway facility (*IGF*) and other telecommunications equipment providing interconnections.[8] To safeguard the integrity of its network,

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[4] Penalizing the Unauthorized Installation of Water, Electrical or Telephone Connections, the Use of Tampered water or Electrical Meters and Other Acts.

[5] Republic Act No. 7082.

[6] Republic Act No. 7082, Section 1.

[7] *Rollo*, p. 90.

[8] *Id*. at 807-808.

PLDT regularly conducts investigations on various prepaid cards marketed and sold abroad to determine alternative calling patterns (ACP)and network fraud that are being perpetrated against it.

To prevent or stop network fraud, PLDT's ACP Detection Division (*ACPDD*) regularly visits foreign countries to conduct market research on various prepaid phone cards offered abroad that allow their users to make overseas calls to PLDT subscribers in the Philippines at a cheaper rate.

The ACPDD bought *The Number One* prepaid card - a card principally marketed to Filipinos residing in the United Kingdom for calls to the Philippines - to make test calls using two telephone lines: **the dialing phone** - an IDD-capable[9] telephone line which makes the call and through which the access number and the PIN number printed at the back of the card are entered; and **the receiving phone** - a caller identification (*caller id*) unit-equipped telephone line which would receive the call and reflect the incoming caller's telephone number.

During a test call placed at the PLDT-ACPDD office, the receiving phone reflected a PLDT telephone number (2-8243285) as the calling number used, ***as if*** the call was originating from a local telephone in Metro Manila. Upon verification with the PLDT's Integrated Customer Management (billing) System, the ACPDD learned that the subscriber of the reflected telephone numebr is Abigail R. Razon Alvarez, with address at 17 Dominic Savio St., Savio Compound, Barangay Don Bosco, Parañaque City. It further learned that several lines are installed at this address with Abigail and Vernon R. Razon (*respondents*), among others, as subscribers.[10]

To validate its findings, the ACPDD conducted the same test calls on November 5, 2003 at the premises of the NTC in Quezon City (and in the presence of an NTC representative[11])

[9] International Direct Dialing. An IDD capable phone enables the caller to access the toll-free number of the prepaid card.

[10] Teresita S. Alcantara, Dante S. Cunanan and Abigail; *rollo*, p. 94.

[11] Engr. Policarpio G. Tolentino, Jr.; *ibid*.

using the same prepaid card (*validation test*). The receiving phone at the NTC premises reflected the telephone numbers registered in the name of Abigail as the calling number from the United Kingdom.[12]

Similar test calls subsequently conducted using the prepaid cards Unity Card and *IDT Supercalling Card* revealed the same results. The caller-id-equipped receiving phone reflected telephone numbers[13] that are in the names of Experto Enterprises and Experto Phils. as subscribers, with a common address at No. 38 Indonesia St., Better Living Subdivision, Barangay Don Bosco, Parañaque City. It turned out that the actual occupant of these premises is also Abigail. Subsequently, a validation test was also conducted, yielding several telephone numbers registered in the name of Experto Phils./Experto Enterprises as the calling numbers supposedly from the United Kingdom.[14]

According to the PLDT, had an ordinary and legitimate call been made, the screen of the caller-id-equipped receiving phone would not reflect a local number or any number at all. In the cards they tested, however, once the caller enters the access and pin numbers, the respondents would route the call *via* the internet to a local telephone number (in this case, a PLDT telephone number) which would connect the call to the receiving phone. Since calls through the internet never pass the toll center of the PLDT's IGF, users of these prepaid cards can place a call to any point in the Philippines (provided the local line is NDD-capable) without the call appearing as coming from abroad.[15]

On November 6, 2003 and November 19, 2003, Mr. Lawrence Narciso of the PLDT's Quality Control Division, together with

[12] The following are the telephone numbers and their subscribers: 2-8222363 - Abigail; 2-8210268 - Vernon; 2-7764922 - Abigail; 2-7764909 - Abigail; 2-8243817 - Abigail; and 2-8243285 - Abigail; *id*. at 95.

[13] 2-8245911 and 2-8245244; *id*. at 95-96.

[14] The following are the telephone numbers and their subscribers: 2-8245056 - Experto Phils.; 2-8224192 - Experto Phils.; 2- 8247704 - Experto Enterprises; 2-8245786 - Experto Enterprises; and 2-8245245 - Experto Enterprises; *id*. at 97.

[15] *Id*. at 98.

the operatives of the Philippine National Police (*PNP*), conducted an ocular inspection at 17 Dominic Savio St., Savio Compound and at No. 38 Indonesia St., Better Living Subdivision - both in barangay Don Bosco, Parañaque City - and discovered that PLDT telephone lines were connected to several pieces of equipment.[16] Mr. Narciso narrated the results of the inspection, thus -

10. During [the] ocular inspection [at 17 Dominic Savio St., Savio Compound], Ms. Abigail Razon Alvarez allowed us to gain entry and check the telephone installations within their premises. First, we checked the location of the telephone protectors that are commonly installed at a concrete wall boundary inside the compound. Some of these protectors are covered with a fabricated wooden cabinet. Other protectors are installed beside the said wooden cabinet. xxx. The inside wiring installations from telephone protectors to connecting block were routed to the said adjacent room passing through the house ceiling.

11. xxx. Upon entering the so-called adjacent room, we immediately noticed that the PLDT telephone lines were connected to the equipment situated at multi-layered rack. The equipment room contains the following:

a. 6 Quintum router;
b. 13 Com router
c. 1 Cisco 800 router;
d. 1 Nokia Modem for PLDT DSL;
e. 1 Meridian Subscriber's Unit [;]
f. 5 personal Computers{;]
g. 1 Computer printer [; and]
h. 1 Flat-bed Scanner[.]

12. We also noticed that these routers are connected to the Meridian's subscriber unit ("SU") that has an outdoor antenna installed on the top of the roof. Meridian's SU and outdoor antenna are service components used to connect with wireless broadband internet access service of Meridian Telekoms.

xxx x x x xxx

18. During the site inspection [at No. 38 Indonesia St. Better Living Subdivision], we noticed that the protector of each telephone line/

[16] *Id*. at 811.

number xxx were enclosed in a fabricated wooden cabinet with safety padlock. Said wooden cabinet was situated on the concrete wall inside the compound near the garage entrance gate. The telephone inside the wiring installations from the protector to the connecting blocks were placed in a plastic electrical conduit routed to the adjacent room at the second floor.[17]

On December 3, 2003, Police Superintendent Gilbert C. Cruz filed a consolidated application for a search warrant[18] before Judge Francisco G. Mendiola of the RTC, for the crimes of theft and violation of PD No. 401. According to PLDT, the respondents are engaged in a form of network fraud known as International Simple Resale (*ISR*) which amounts to theft under the RPC.

ISR is a method of routing and completing international long distance calls using lines, cables, antennae and/or wave frequencies which are connected directly to the domestic exchange facilities of the country where the call is destined (terminating country); and, in the process, bypassing the IGF at the terminating country.[19]

Judge Mendiola found probable cause for the issuance of the search warrants applied for. Accordingly, four search warrants [20] were issued for violations of Article 308, in relation to Article 309, of the RPC (*SW A-1 and SW A-2*) and of PD No. 401, as amended (*SW B-1 and SW B-2*) for the ISR activities being conducted at 17 Dominic Savio St., Savio Compound and at No. 38 Indonesia St., Better Living Subdivision, both in Barangay Don Bosco, Parañaque City. The four search warrants enumerated the objects to be searched and seized as follows:

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[17] *Id*. at 122-124; citation omitted.

[18] *Id*. at 206-214. The application attached the affidavits of Wilfredo Abad, Jr., a Section Supervisor of the PLDT's ACPDD, and of Mr. Narciso, a Revenue Assurance Analyst of the PLDT's ACPDD.

[19] *Rollo*, p. 92.

[20] *Id*. at 358-369; Search Warrant NO. 03-063 covering two different places and Search Warrant No. 03-064 covering, as well, two different places.

1. MERIDIAN SUBSCRIBERS UNIT AND PLDT DSL LINES and/or CABLES AND ANTENNAS and/or similar equipment or device capable of transmitting air waves or frequency, such as a Meridian Subscriber's Unit, Broadband DSL and telephone lines;

2. PERSONAL COMPUTERS or any similar equipment or device capable of accepting information applying the prescribed process of the information and supplying the result of this process;

3. NOKIA MODEM or any similar equipment or device that enables data terminal equipment such as computers to communicate with other data terminal equipment via a telephone line;

4. QUINTUM Equipment or any similar equipment capable of receiving digital signals from the internet and converting those signals to voice;

5. QUINTUM, 3COM AND CISCO Routers or any similar equipment capable of switching packets of data to their assigned destination or addresses;

6. LINKS DSL SWITCH or any similar equipment capable of switching data;

7. COMPUTER PRINTERS AND SCANNERS or any similar equipment or device used for copying and/or printing data and/or information;

8. SOFTWARE, DISKETTES, TAPES or any similar equipment or device used for recording or storing information; and

9. Manuals, phone cards, access codes, billing statements, receipts, contracts, checks, orders, communications and documents, lease and/or subscription agreements or contracts, communications and documents relating to securing and using telephone lines and/or equipment[.][21]

On the same date, the PNP searched the premises indicated in the warrants. On December 10, 2003, a return was made with a complete inventory of the items seized.[22] On January 14, 2004, the PLDT and the PNP filed with the Department of

[21] *Id*. at 360.

[22] *Id*. at 371-375.

Justice a joint complaint-affidavit for theft and for violation of PD No. 401 against the respondents.[23]

On February 18, 2004, the respondents filed with the RTC a motion to quash[24] the search warrants essentially on the following grounds: *first*, the RTC had no authority to issue search warrants which were enforced in Parañaque City; *second*, the enumeration of the itmes to be searched and seized lacked particularity; and *third*, there was no probable cause for the crime of theft.

On March 12, 2004, PLDT opposed the respondents' motion.[25]

In a July 6, 2004,[26] the RTC denied the respondents' motion to quash. Having been rebuffed[27] in their motion for reconsideration, [28] the respondents filed a petition for *certiorari* with the CA.[29]

RULING OF THE CA

On August 11, 2006, the CA rendered the assailed decision and resolution, granting the respondents' petition for *certiorari*. The CA **quashed SW A-1 and SW A-2** (for theft) on the ground that they were issued for "non-existent crimes."[30] According to the CA, inherent in the determination of probable cause for the issuance of search warrant is the accompanying determination that an offense has been committed. Relying on this Court's decision in *Laurel v. Judge Abrogar*,[31] the CA

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[23] *Id*. at 438-446.

[24] Subsequently, the respondents also filed an Amended Motion to Quash Search warrants; *id*. at 391-401.

[25] *Id*. at 405-435.

[26] *Id*. at 455-459.

[27] *Id*. at 479.

[28] *Id*. at 461-464.

[29] *Id*. at481-502.

[30] *Id*. at 66.

[31] 518 Phil. 409 (2006).

ruled that the respondents could not have possibly committed the crime of theft because PLDT's business of providing telecommunication services and these services themselves are not personal properties contemplated under Article 308 of the RPC.

With respect to **SW B-1 and SW B-2** (for vioaltion of PD No. 401), the CA upheld paragraphs one to six of the enumeration of items subject of the search. The CA held that the stock phrase "or similar equipment or device" found in paragraphs one to six of the search warrants did not make it suffer from generality since each paragraph's enumeration of items was sufficiently qualified by the citation of the specific objects to be seized and by its functions which are inherently connected with the crime allegedly committed.

The CA, however, nullified the ensuing paragraphs, 7, 8 and 9, for lack of particularity and ordered the return of the items seized under these provisions. While the same stock phrase appears in paragraphs 7 and 8, the properties described therein - *i.e.*, printer and scanner, software, diskette and tapes - include even those for the respondents' personal use, making the description of the things to be seized too general in nature.

With the denial of its motion for reconsideration,[32] PLDT went to this Court *via* this Rule 45 petition.

THE PETITIONER'S ARGUMENTS

PLDT faults the CA for relying on *Laurel* on three grounds: *first*, *Laurel* cannot be cited yet as an authority under the principle of *stare decisis* because *Laurel* is not yet final and executory; in fact, it is the subject of a pending motion for reconsideration filed by PLDT itself; *second*, even assuming that *Laurel* is already final, the facts in *Laurel* vary from the present case. *Laurel* involves the quashal *of an information* on the ground that the information does not charge any offense; hence, the determination of the existence of the elements of

[32] *Rollo*, pp. 614-637.

the crime of theft is indispensable in resolving the motion to quash. In contrast, the present case involves the quashal *of a search warrant. Third*, accordingly, in resolving the motion, the issuing court only has to be convinced that there is probable cause to hold that: (i) the items to be seized are connected to a criminal activity; and (ii) these items are found in the place to be searched. Since the matter of quashing a search warrant may be rooted on matters "extrinsic of the search warrant,"[33] the issuing court does not need to look into the elements of the crime allegedly committed in the same manner that the CA did in *Laurel*.

PLDT adds that a finding of grave abuse of discretion in the issuance of search warrant may be justified only when there is "disregard of the requirements for the issuance of a search warrant[.]"[34] In the present case, the CA did not find (and could not have found) any grave abuse of discretion on the part of the RTC because at the time the RTC issued the search warrants in 2003, *Laurel* had not yet been promulgated.

In defending the validity of the nullified provision of SW B-1 and SW B-2, PLDT argues that PD NO. 401 also punishes unauthorized installations of telephone connections. Since the enumerated items are connected to the computers that are illegally connected to PLDT telephone lines, then these items bear a direct relation to the offense of violation of PD NO. 401, justifying their seizure.

The enumeration in paragraph 8 is likewise a proper subject of seizure because they are the fruits of the offense as they contain information on PLDT's business profit and other information relating to the commission of violation of PD No. 401. Similarly, paragraph 9 specifies the fruits and evidence of violation of PD No. 401 since it supports PLDT's claim that the respondents have made a business out of their illegal connections to PLDT lines.

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[33] Citing *Abuan v. People*, 536 Phil. 672, 692 (2006).

[34] Citing *Uy v. Bureau of Internal Revenue*, 397 Phil. 892, 903 (2000).

THE RESPONDENTS' ARGUMENTS

The respondents counter that while *Laurel* may not yet be final, at least it has a persuasive effect as the current jurisprudence on the matter. Even without *Laurel*, the CA's nullification of SW A-1 and SW A-2 can withstand scrutiny because of the novelty of the issue presented before it. The nullification of paragraphs 7, 8 and 9 of SW B-1 and SW B-2 must be upheld not only on the ground of broadness but for lack of any relation whatsoever with PD No. 401 which punishes the theft of electricity.

OUR RULING

We **partially grant** the petition.

Laurel and its reversal by the Court En Banc

Before proceeding with the case, a review of *Laurel* is in order as it involves substantially similar facts as in the present case.

Baynet Co., Ltd. (*Baynet*) sells prepaid cards, "Bay Super Orient Card," that allow their users to place a call to the Philippines from Japan. PLDT asserted that Baynet is engaged in ISR activities by using an international private leased line (*IPL*) to course Bayney's incoming international long distance calls. The IPL is linked to a switching equipment, which is then connected to PLDT telephone lines/numbers and equipment, with Baynet as subscriber.

To establish its case, PLDT obtained a search warrant. On the strength of the items seized during the search of Baynet's premises, the prosecutor found probable cause for theft against Luis Marcos Laurel (*Laurel*) and other Baynet officials. Accordingly, an information was filed alleging that the Baynet officials "take, steal and use the international long distance calls belonging to PLDT by [ISR activities] xxx effectively stealing this business from PLDT while using its facilities in the estimated amount of ₱20,370,651.92 to the damage and prejudice of PLDT [.]"[35]

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[35] *Laurel vs. Judge Abrogar, supra* note 31, at 422.

Laurel moved to quash the information on the bold assertion that ISR activities do not constitute a crime under Philippine law. Laurel argued that an ISR activity cannot entail taking of personal property because the international long distance telephone calls using PLDT telephone lines belong to the caller himself; the amount stated in the information, if at all represents the rentals due PLDT for the caller's usage of its facilities. Laurel urged that the business of providing international long distance calls, *i.e.*, PLDT's service, and the revenue derived therefrom are not personal property that can be appropriated.

Laurel went to the Court after failing to secure the desired relief from the trial and appellate courts,[36] raising the core issue of whether PLDT's business of providing telecommunication services for international long distance calls is a proper subject of theft under Article 308 of the RPC. The Court's First Division granted Laurel's petition and ordered the quashal of the information.

Taking off from the basic rule that penal laws are construed strictly against the State, the Court ruled that international long distance calls and the business of providing telecommunication or telephone services by PLDT are not personal properties that can be the subject of theft.

> One is apt to include that "personal property" standing alone, covers both tangible and intangible properties and are subject of theft under the revised penal Code. But the words "Personal property" under the revised penal Code must be considered in tandem with the word "take" in the law. The statutory definition of "taking" and movable property indicates that, clearly, not all personal properties may be the proper subjects of theft. The general rule is that, only movable properties which have physical or material existence and susceptible of occupation by another are proper objects of theft. xxx.
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> x x x x x x x x x.
>
> xxx. Business, like services in business, although are properties, are not proper subjects of theft under the Revised Penal Code because

[36] Under Rule 45 of the Rules of Court.

the same cannot be "taken" or "occupied." If it were otherwise, xxx there would be no juridical difference between the taking of the business of a person or the services provided by him for gain, *vis-a-vis*, the taking of goods, wares or merchandise, or equipment comprising his business. If it was its intention to include "business" as personal property under Article 308 of the Revised Penal Code, the Philippine Legislature should have spoken in language that is clear and definite: that business is personal property under Article 308 of the Revised Penal Code.

x x x x x x x x x.

The petitioner is not charged, under the Amended Information, for theft of telecommunication or telephone services offered by PLDT. Even if he is, the term "personal property under Article 308 of the Revised Penal Code cannot be interpreted beyond its seams so as to include "telecommunication or telephone services" or computer services for that matter. xxx. Even at common law, neither time nor services may be taken and occupied or appropriated. A service is generally not considered property and a theft of service would not, therefore, constitute theft since there can be no caption or asportation. Neither is the unauthorized use of the equipment and facilities of PLDT by [Laurel] theft under [Article 308].

If it was the intent of the Philippine Legislature, in 1930, to include services to be the subject of theft, it should have incorporated the same in Article 308 of the Revised Penal Code. The Legislature did not. In fact, the Revised Penal Code does not even contain a definition of services.[37]

PLDT[38] moved for reconsideration and referral of the case to the Court *En Banc*. The Court's First Division granted the referral.

On **January 13, 2009** (or while the present petition was pending in court, the Court *En Banc* unanimously granted PLDT's motion for reconsideration.[39] The Court ruled that even prior

[37] *Laurel v. Judge Abrogar, supra* note 31, at 434-441; citation omitted, underscore ours.

[38] *Rollo*, pp. 640-717. Joined by the Office of the Solicitor General.

[39] In its Urgent Manifestation and Motion with Leave of Court, PLDT called the Court's attention of this recent ruling; *id*. at 872-875.

to the passage of the RPC, jurisprudence is settled that "any personal property, tangible or intangible, corporeal or incorporeal, capable of appropriation can be the object of theft."[40] This jurisprudence, in turn, applied the prevailing legal meaning of the term "personal property" under the old Civil Code as "anything susceptible of appropriation and not included in the foregoing chapter (not real property)."[41] PLDT's telephone service or its business of providing this was appropriate personal property and was, in fact, the subject of appropriation in an ISR operation, facilitated by means of the unlawful use of PLDT's facilities.

> In this regard, the Amended Information inaccurately describes the offense by making it appear that what [Laurel] took were the International long distance telephone calls, rather than respondent PLDT's business.
>
> xxx xxx xxx
>
> Indeed, while it may be conceded that "international long distance calls," the matter alleged to be stolen xxx, take the form of electrical energy, it cannot be said that such international long distance calls were personal properties belonging to PLDT since the latter could not have acquired ownership over such calls. PLDT merely encodes, augments, enhances, decodes and transmits said calls using its complex communications infrastructure and facilities. PLDT not being the owner of said telephone calls, then it could not validly claim that such telephone calls were taken without its consent. It is the use of these communications facilities without the consent of PLDT that constitutes the crime of theft, which is the unlawful taking of the telephone services and business.
>
> Therefore, the business of providing telecommunication and the telephone service are personal property under Article 308 of the Revised Penal Code, and the act of engaging in ISR is an act of "subtraction" penalized under said article.[42]

The Court *En Banc*'s reversal of its *Laurel* Division ruling during the pendency of this petition significantly impacts on

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[40] *Laurel v. Abrogar*, G.R. No. 155076, January 13, 2009, 576 SCRA 41, 50-51.

[41] *Id*. at 51, Article 335 of the Civil Code of Spain.

[42] *Id*. at 55-57; underscores ours.

how the Court should resolve the present case for two reasons:

First, the *Laurel En Banc* ruling categorically equated an ISR activity to theft under the RPC. In so doing, whatever alleged factual variance there may be between *Laurel* and the present case cannot render *Laurel* inapplicable.

Second, and more importantly, in a Rule 45 petition, the Court basically determines whether the CA was legally correct in determining whether the RTC committed grave abuse of discretion. Under this premise, the CA ordinarily gauges the grave abuse of discretion at the time the RTC rendered its assailed resolution. In quashing SW A-1 and SW A-2, note that the CA relied on the *Laurel* Division ruling at the time when it was still subject of a pending motion for reconsideration. The CA, in fact, did not expressly impute grave abuse of discretion on the RTC when the RTC issued the search warrants and later refused to quash these. Understandably, the CA could not have really found the presence of grave abuse of discretion for there was no *Laurel* ruling to speak of at the time the RTC issued the search warrants.

These peculiar facts require us to more carefully analyze our prism of review under Rule 45.

Requisites for the issuance of search warrant; probable cause requires the probable existence of an offense

Section 2, Article III of the 1987 Constitution guarantees the right of persons to be free from unreasonable searches and seizures.

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

The purposes of the constitutional provision against unlawful searches and seizures are to: (i) prevent the officers of the law from violating private security in person and property and illegally invading the sanctity of the home; and (ii) give remedy against such usurpations when attempted or committed.[43]

The constitutional requirement for the issuance of a search warrant is reiterated under Sections 4 and 5, Rule 126 of the Revised Rules of Criminal Procedure. These sections lay down the following requirements for the issuance of a search warrant: (1) the existence of probable cause; (2) the probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[44] Should any of these requisites be absent, the party aggrieved by the issuance and enforcement of the search warrant may file a motion to quash the search warrant with the issuing court or with the court where the action is subsequently instituted.[45]

A search warrant proceeding is a special criminal and judicial process akin to a writ of discovery. It is designed by the Rules of Criminal Procedure to respond only to an incident in the main case, if one has already been instituted, or in anticipation thereof. Since it is at most incidental to the main criminal case, an order granting or denying a motion to quash a search warrant may be questioned only *via* a petition for *certiorari* under Rule 65.[46]

When confronted with this petition, the higher court must necessarily determine the validity of the lower court's action

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[43] *Silva v. Presiding Judge, RTC of Negros Oriental, Br. XXXIII,* G.R. No. 81756, October 21, 1991, 203 SCRA 140, 144.

[44] *Abuan v. People*, G. R. No. 168773, October 27, 2006, 505 SCRA 799, 822.

[45] Rules of Court, Rule 126, Section 14.

[46] *Vallejo v. Court of Appeals*, 471 Phil. 670 (2004).

from the prism of whether it was tainted with grave abuse of discretion. By grave abuse of discretion, jurisprudence refers to the capricious and whimsical exercise of judgment equivalent to lack of jurisdiction, or to exercise of power in an arbitrary or despotic manner by reason of passion or personal hostility or in a manner so patent and gross as to amount to an invasion of positive duty or to the virtual refusal to perform the duty enjoined or to act at all in contemplation of the law.[47]

In a *certiorari* proceeding, the determination translates to an inquiry on whether the requirements and limitations provided under the Constitution and the Rules of Court were properly complied with, from the issuance of the warrant up to its implementation. In view of the constitutional objective of preventing stealthy encroachment upon or the gradual depreciation of the rights secured ny the Constitution, strict compliance with the constitutional and procedural requirements is required. A judge who issues a search warrant without complying with these requirements commits grave abuse of discretion.[48]

One of the constitutional requirements for the validity of a search warrant is that it must be issued based on probable cause which, under the Rules, must be *in connection with one specific offense.* In search warrant proceedings, probable cause is defined as such facts and circumstances that would lead a reasonably discreet and prudent man to believe that ***an offense has been committed*** and that the objects sought in connection with the offense are in the place sought to be searched.[49]

In the determination of probable cause, the court must necessarily determine whether an offense exists to justify the issuance or quashal of the search warrant[50] because the personal

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[47] *Dra. Nepomuceno v. Court of Appeals,* 363 Phil. 304, 307-308 (1999).

[48] *Vallejo v. Court of Appeals, supra* note 46, at 686; and *Uy v. Bureau of Internal Revenue, supra* note 34, at 906.

[49] *Del Castillo v. People,* G.R. No. 185128, January 30, 2012, 664 SCRA 430, 438-439.

[50] *Solid Triangle Sales Corp. v. Sheriff, RTC, Q.C., Br.. 93,* 422 Phil. 72 (2001); and *Manly Sportswear Mfg., Inc. v. Dadodette Enterprises, and/or Hermes Sports Center,* 507 Phil. 375 (2005).

properties that may be subject of the search warrant are very much intertwined with the "one specific offense" requirement of probable cause.[51] Contrary to PLDT's claim, the only way to determine whether a warrant should issue in connection with one specific offense is to juxtapose the facts and circumstances presented by the applicant with the elements of the offense that are alleged to support the search warrant.

Reviewing the RTC's denial of the motion to quash SW A-1 and SW A-2

a. From the prism of Rule 65

The facts of the present case easily call to mind the case of *Columbia Pictures, Inc. v. CA*[52] involving copyright infringement. In that case, the CA likewise voided the search warrant issued by the trial court by applying a doctrine that added a new requirement (*i.e.*, the production of the master tape for comparison with the allegedly pirate copies) in determining the existence of probable cause for the issuance of search warrant in *20th Century Fox Film Corporation v. Court of Appeals. 20th Century Fox*, however, was promulgated more than eight months *after* the search warrants were issued by the RTC. In reversing the CA, the Court ruled:

> Mindful as we are of the ramifications of the doctrine of *stare decisis* and the rudiments of fair play, it is our considered view that the *20th Century Fox* ruling cannot be retroactively applied to the instant case to justify the quashal of Search Warrant No. 87-053. [The] petitioners' consistent position that the order of the lower court[,] xxx [which denied the respondents'] motion to lift the order of search warrant[,] was properly issued, [because there was] satisfactory compliance with the then prevailing standards under the law for determination of probable cause, is indeed well taken. The lower court could not possibly have expected more evidence from petitioners in their application for a search warrant other than what

[51] Under Section 3, Rule 126 of the Revised Rules of Criminal Procedure, the personal properties that may be subject of seizure under a search warrant are the subject, the fruits and/or the means of committing the offense.

[52] 329 Phil. 875 (1996).

the law and jurisprudence, then existing and judicially accepted, required with respect to the finding of probable cause.[53]

Columbia could easily be cited in favor of PLDT to sustain the RTC's refusal to quash the search warrant. Indeed, in quashing SW A-1 and SW A-2, the CA never intimidated that the RTC disregarded any of the requisites for the issuance of a serach warrant as these requirements were interpreted and observed under the ***then prevailing*** jurisprudence. The CA could not have done so because precisely the issue of whether telephone services or the business of providing these services could not be the subject of theft under the RPC had not yet reached the Court when the search warrants were applied for and issued.

However, what distinguishes *Columbia* from the present case is the focus of *Columbia's* legal rationale. *Columbia's* **focus** was not on whether the facts and circumstances would reasonably lead to the conclusion that an offense has been or is being committed and that the objects sought in connection with the offense were in the place to be searched - the primary points of focus of the present case. *Columbia's* focus was on **whether the *evidence* presented *at the time* the search warrant was applied for was sufficient** to establish the facts and circumstances required for establishing probable cause to issue a search warrant.

Nonetheless, *Columbia* serves as a neat guide for the CA to decide the respondents' *certiorari* petition. In *Columbia*, the Court applied the principle of non-retroactivity of its ruling in *20th Century Fox*, <u>*whose finality was not an issue*</u>, in reversing a CA ruling. The Court's attitude in that case should have been adopted by the CA in the present case *a fortiori* since the ruling that the CA relied upon was not yet final at the time the CA resolved to quash the search warrants.

b. Supervening events justifying a broader review under Rule 65

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[53] *Id*. at 905; italics supplied.

Ordinarily, the CA's determination under Rule 65 is limited to whether the RTC gravely abused its discretion in granting or denying the motion to quash *based on facts then existing.* Nonetheless, the Court recognizes that supervening facts may transpire after the issuance and implementation of the search warrant that may provide justification for the quashal of the search warrant *via* a petition for *certiorari*.

For one, if the offense for which the warrant is issued is subsequently decriminalized during the pendency of the petition for *certiorari*, then the warrant may be quashed.[54] For another, a subsequent ruling from the Court that a similar set of facts and circumstances does not constitute an offense, as alleged in the search warrant application, may be used as a ground to quash a warrant.[55] In both instances, the underlying reason for quashing the search warrant is the absence of probable cause which can only possibly exist when the combination of facts and circumstances points to the possible commission of an offense that may be evidenced by the personal properties sought to be seized. To the CA, the second instance mentioned justified the quashal of the search warrants.

We would have readily agreed with the CA *if* the *Laurel* Division ruling had not been subsequently reversed. As things turned out, however, the Court granted PLDT's motion for reconsideration of the Court First Division's ruling in Laurel and ruled that "the act of engaging in ISR is xxx penalized under [308 of the RPC]."[56] As the RTC itself found PLDT successfully established in its application for a search warrant a probable cause for theft by evidence that Laurel's ISR activities *deprived* PLDT of its telephone services and of its business of providing these services without its consent.

b1. the stare decisis aspect

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[54] See *Savage v. Judge Taypin*, 387 Phil. 718, 728 (2000).

[55] CIVIL CODE, Article 8.

[56] *Laurel v. Abrogar*, *supra* note 40, at 57.

With the Court *En Banc*'s reversal of the earlier *Laurel* ruling, then the CA's quashal of these warrants would have no leg to stand on. This is the dire consequence of failing to appreciate the full import of the doctrine of *stare decisis* that the CA ignored.

Under Article 8 of the Civil Code, the decisions of this Court form part of the country's legal system. While these decisions are not laws pursuant to the doctrine of separation of powers, they evidence the laws' meaning, breadth, and scope and, therefore, have the same binding force as the laws themselves.[57] Hence, the Court's interpretation of a statute forms part of the law as of the date it was originally passed because the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carries into effect.[58]

Article 8 of the Civil Code embodies the basic principle of *stare decisis et non quieta movere* (to adhere to precedents and not to unsettle established matters) that enjoins adherence to judicial precedents embodied in the decision of the supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land. The doctrine of *stare decisis*, in turn, is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.[59] The doctrine of (horizontal) *stare decisis* is one of policy, grounded on the necessity of securing certainty and stability of judicial decisions.[60]

In the field of adjudication, a case cannot yet acquire the status of a "decided" case that is "deemed *settled* and *closed*

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[57] *People v. Jabinal*, 154 Phil. 565, 571 (1974), cited in *Columbia Pictures, Inc. v. CA, supra* note 52, at 906-908.

[58] *Civil Code of the Philippines, Commentaries and Jurisprudence*, Volume I, Arturo M. Tolentino, p. 37.

[59] *Philippine Guardians Brotherhood, Inc. (PGBI) v. Commission on Elections*, G.R. No. 190529, April 29, 2010, 619 SCRA 585, 594-595.

[60] *Chinese Young Men's Christian Association of the Philippine Islands vs. Remington Steel Corporation*, G.R. No. 159422, March 28, 2008, 550 SCRA 180, 197-198.

to further argument" if the Court's decision is still the subject of a motion for reconsideration seasonably filed by the moving party. Under the Rules of Court, a party is expressly allowed to file a motion for reconsideration of the Court's decision within 15 days from notice.[61] Since the doctrine of *stare decisis* is founded on the necessity of securing certainty and stability in law, then these attributes will spring only once the Court's ruling has lapsed to finality in accordance with law. In *Ting vs. Velez-Ting*,[62] we ruled that:

> The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its **final** decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument.

In applying *Laurel* despite PLDT's statement that the case is still subject of a pending motion for reconsideration,[63] the CA legally erred in refusing to reconsider its ruling that largely relied on a non-final ruling of the Court. While the CA's dutiful desire to apply the latest pronouncement of the Court in *Laurel* is expected, it should have acted with caution, instead of excitement, on being informed by PLDT of its pending motion for reconsideration; it should have then followed the principle of *stare decisis*. The appellate court's application of an exceptional circumstances when it may order the quashal of the search warrant on grounds not existing at the time the warrant was issued or implemented must still rest on prudential grounds if only to maintain the limitation of the scope of the remedy of *certiorari* as a writ to correct errors of jurisdiction and not mere errors of judgment.

Still, the respondents attempt to justify the CA's action by arguing that the CA would still rule in the way it did[64] even

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[61] RULES OF COURT, Rule 52, Section 1, in relation to Rule 56, Section 1.

[62] G.R. No. 166562, March 31, 2009, 582 SCRA 694, 704; citation omitted, italics supplied, emphasis ours.

[63] See PLDT's motion for reconsideration before the CA; *rollo*, p. 616.

[64] Memorandum of Respondents; *id*. at 865.

without *Laurel*. As PLDT correctly pointed out, there is simply nothing in the CA's decision that would support its quashal of the search warrant independently of *Laurel*. We must bear in mind that the CA's quashal of SW A-1 and SW A-2 operated under the strictures of a *certiorari* petition, where the presence of grave abuse of discretion is necessary for the corrective writ to issue since the appellate court exercises its supervisory jurisdiction in this case. We simply cannot second-guess what the CA's action could have been.

Lastly, the CA's reliance on *Savage v. Judge Taypin*[65] can neither sustain the quashal of SW A-1 and SW A-2. In *Savage*, the Court granted the *certiorari* petition and quashed the search warrant because the alleged crime (unfair competition involving design patents) that supported the search warrant had already been repealed, and the act complained of, if at all, gave rise only to civil liability (for patent infringement). Having been decriminalized, probable cause for the crime alleged could not possibly exist.

In the present case, the issue is whether the commission of an ISR activity, in the manner that PLDT's evidence shows, sufficiently establishes probable cause for **the issuance of search warrants** for the crime of theft. Unlike in *Savage*, the Court in *Laurel* was not confronted with the issue of decriminalization (which is a legislative prerogative) but whether the commission of an ISR activity meets the elements of the offense of theft for purposes of quashing an information. Since the Court, in *Laurel*, ultimately ruled then an ISR activity justifies the elements of theft that must necessarily be alleged in the information *a fortiori*, the RTC's determination should be sustained on *certiorari*.

The requirement of particularity in SW B-1 and SW B-2

On the issue of particularity in SW B-1 and SW B-2, we note that the respondents have not appealed to us the CA ruling

[65] *Supra* note 54.

that sustained patagraphs 1 to 6 of the search warrants. Hence, we shall limit our discussion to the question of whether the CA correctly ruled that the RTC gravely abused its discretion insofar as it refused to quash paragraphs 7 to 9 of SW B-1 and SW B-2.

Aside from the requirement of probable cause, the Constitution also requires that the search warrant must particularly describe the place to be searched and the things to be seized. This requirement of particularity in the description, especially of the things to be seized, is meant to enable the law enforcers to readily identify the properties to be seized and, thus, prevent the seizure of the wrong items. It seeks to leave the law enforcers with no discretion at all regarding these articles and to give life to the constitutional provision against unreasonable searches and seizures.[66] In other words, the requisite sufficient particularity is aimed at preventing the law enforcer from exercising unlimited discretion as to what things are to be taken under the warrant and ensure that only those connected with the offense for which the warrant was issued shall be seized.[67]

The requirement of specificity, however, does not require technical accuracy in the description of the property to be seized. Specificity is satisfied if the personal propeties' description is as far as the circumstances will ordinarily allow it to be so described. The nature of the description should vary according to whether the identity of the property or its character is a matter of concern.[68] One of the tests to determine the particularity in the description of objects to be seized under a search warrant is *when the things described are limited to those which bear direct relation to the offense* for which the warrant is being issued.[69]

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

[67] *Vallejo v. Court of Appeals, supra* note 46, at 686-687.

[68] *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 568-571 (2004).

[69] *Bache and Co. (Phil.), Inc. v. Ruiz,* No. L-32409, February 27, 1971, 37 SCRA 823, 835, cited in *Al-Ghoul v. Court of Appeals,* 416 Phil. 759, 771 (2001).

Additionally, the Rules require that a search warrant should be issued "in connection with one specific offense" to prevent the issuance of a scatter-shot warrant.[70] The one-specific-offense requirement reinforces the constitutional requirement that a search warrant should issue only on the basis of probable cause.[71] Since the primary objective of applying for a search warrant is to obtain evidence to be used in a subsequent prosecution for an offense for which the search warrant was applied, a judge issuing a particular warrant must satisfy that the evidence presented by the applicant establishes the facts and circumstances relating to this specific offense for which the warrant is sought and issued.[72] Accordingly, in a subsequent challenge against the validity of the warrant, the applicant cannot be allowed to maintain its validity based on facts and circumstances that may be related to other search warrants but are extrinsic to the warrant in question.

Under the Rules, the following personal property may be subject of search warrant: (i) the subject of the offense; (ii) fruits of the offense; or (iii) those used or intended to be used as the means of committing an offense. In the present case, we sustain the CA's ruling nullifying paragraphs 7, 8 and 9 of SW B-1 and SW B-2 for failing the test of particularity. More specifically, these provisions do not show how the enumerated items could have possibly been connected with the crime for which the warrant was isssued, *i.e.*, P.D. No. 401. For clarity, PD No. 401 punishes:

> Section 1. Any person who **installs** any water, electrical, **telephone** or piped gas **connection without previous authority from** xxx **the Philippine Long Distance telephone Company,** xxx, tampers and/or uses tampered water, electrical or gas meters, jumpers or other devices whereby water, electricity or piped gas is stolen; steals or pilfers water, electric or piped gas meters, or water, electric and/or telephone wires, or piped gas pipes or conduits; knowingly possesses stolen

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[70] *Tambasen v. People,* 316 Phil. 237, 244 (1995).

[71] See *Stonehill v. Diokno*, No. L-19550, June 19, 1967, 20 SCRA 383, 391-392.

[72] See *Tambasen v. People, supra* note 70.

or pilfered water, electrical or gas meters as well as stolen or pilfered water, electrical and/or telephone wires, or piped gas pipes and conduits, shall upon conviction, be punished with *prision correccional* in its minimum period or a fine ranging from two thousand to six thousand pesos, or both.[73]

Paragraphs 7 to 8 of SW B-1 and SW B-2 read as follows:

7. COMPUTER PRINTERS AND SCANNERS or any similar equipment or device used for copying and/or printing data and/or information;

8. SOFTWARE, DISKETTES, TAPES or any similar equipment or device used for recording or storing information; and

9. Manuals, phone cards, access codes, billing statements, receipts, contracts, checks, orders, communications and documents, lease and/or subscription agreements or contracts, communications and documents relating to securing and using telephone lines and/or equipment[.][74]

According to PLDT, the items in paragraph 7 have a direct relation to violation of PD No. 401 because the items are connected to computers that, in turn, are linked to the unauthorized connections to PLDT telephone lines. With regard to the software, diskette and tapes in paragraph 8, and the items in paragraph 9, PLDT argues that these items are "fruits of the offense" and that the information it contains "constitutes the business profit" of PLDT. According to PLDT, it corroborates the fact that the respondents have made a business out of their illegal connections to its telephone lines.

We disagree with PLDT. The fact that the printers and scanners are or may be connected to the other illegal connections to the PLDT telephone lines does not make them the subject of the offense or fruits of the offense, much less could they become a means of committing an offense.

It is clear from PLDT's submission that it confuses the crime for which ***SW B-1 and SW B-2*** were issued with the crime for

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[73] Emphases and underscores ours.

[74] *Supra* note 21.

which ***SW A-1 and SW A-2*** were issued: SW B-1 and SW B-2 were issued for violation of PD No. 401, to be enforced in two different places as identified in the warrants. The crime for which these search warrants were issued does ***not*** pertain to the crime of theft - where matters of personal property and the taking thereof with intent to gain become significant — but to PD No. 401.

These items could not be the subject of a violation of PD No. 401 since PLDT itself does not claim that these items themselves comprise the unauthorized installations. For emphasis, what PD No. 401 punishes is the unauthorized installation of telephone connection without the previous consent of PLDT. In the present case, PLDT has not shown that connecting printers, scanners, diskettes or tapes to a computer, even if connected to a PLDT telephone line, would or should require its prior authorization.

Neither could these items be a means of committing a violation of PD No. 401 since these copying, printing and storage devices in no way aided the respondents in making the unauthorized connections. While these items may be accessory to the computers and other equipment linked to telephone lines, PD No. 401 does not cover this kind of items within the scope of the prohibition. To allow the seizure of items under the PLDT's interpretation would, as the CA correctly observed, allow the seizure under the warrant of properties for personal use of the respondents.

If PLDT seeks the seizure of these items to prove that these installations contain the respondents' financial gain and the corresponding business loss to PLDT, then that purpose is served by SW A-1 and SW A-2 since this is what PLDT essentially complained of in charging the respondents with theft. However, the same reasoning does not justify its seizure under a warrant for violation of PD NO. 401 since these items are not directly connected to the PLDT telephone lines and PLDT has not even claimed that the installation of these items require prior authorization from it.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED.** The decision and the resolution of the Court of Appeals in CA-G.R. SP No. 89213 are hereby **MODIFIED** in that SW A-1 and SW A-2 are hereby declared valid and constitutional.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 180069. March 5, 2014]

PHILIPPINE COMMERCIAL INTERNATIONAL BANK (now BDO UNIBANK, INC.), *petitioner, vs.* **ARTURO P. FRANCO, substituted by his heirs, namely: MAURICIA P. FRANCO, FLORIBEL P. FRANCO, and ALEXANDER P. FRANCO,**[1] *respondents.*

SYLLABUS

REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; IN CIVIL CASES, ONE WHO PLEADS PAYMENT HAS THE BURDEN OF PROVING IT; WHEN THE CREDITOR IS IN POSSESSION OF THE DOCUMENT OF CREDIT, HE NEED NOT PROVE NON-PAYMENT FOR IT IS PRESUMED; CASE AT BAR.— [I]n civil cases, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden

[1] Respondent Arturo P. Franco died on July 23, 2008. However, his son, Alexander P. Franco, also passed away on September 5, 2012 (*Rollo*, pp. 212, 242).

rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. When the creditor is in possession of the document of credit, he need not prove non-payment for it is presumed. The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment. In this case, respondent's possession of the original copies of the subject TICs strongly supports his claim that petitioner Bank's obligation to return the principal plus interest of the money placement has not been extinguished. The TICs in the hands of respondent is a proof of indebtedness and a *prima facie* evidence that they have not been paid. Petitioner Bank could have easily presented documentary evidence to dispute the claim, but it did not. In its omission, it may be reasonably deduced that no evidence to that effect really exist. Worse, the testimonies of petitioner Bank's own witnesses, reinforce, rather than belie, respondent's allegations of non-payment.

APPEARANCES OF COUNSEL

BDO Unibank, Inc. Legal Services Group for petitioner.
Espinosa Law Offices for respondents.

D E C I S I O N

PERALTA, ***J.*:**

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court are the July 31, 2007 Decision[2] and October 4, 2007 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 82340, which affirmed the October 21, 2003 Decision[4] of the Makati City Regional Trial Court (*RTC*), Branch 61.

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[2] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring; *rollo*, pp. 48-68.

[3] *Rollo*, p. 69.

[4] Penned by Judge (now CA Justice) Romeo F. Barza; *id.* at 70-74.

The pertinent facts, as narrated by the trial court and as adopted both by the CA, as well as petitioner Philippine Commercial International Bank (*Bank*),[5] are as follows:

This is an action for damages filed [on September 5, 2000] by plaintiff Arturo P. Franco against Philippine Commercial International Bank (PCIB), now known as Equitable-PCIBank, and Equitable Banking Corp.

The complaint essentially alleges, among others, that plaintiff secured from defendant PCIB the following Trust Indenture Certificates:

Number	Issued	Maturity	Amount	Interest
094846 (Exh. "B")	Dec. 8, 198[6]	Jan. 7, 1987	₱100,000.00	8.75% p.a.
135928 (Exh. "C")	Jan. 19, 1987	Feb. 18, 1987	₱850,594.54	7.75% p.a.
205007 (Exh. "D")	May 13, 1987	June 15, 1987	₱500,000.00	8.50% p.a.
205146 (Exh. "E")	July 15, 1987	Aug 14, 1987	₱502,958.90	9.25% p.a.

that despite demands, defendants refused and still refuses to return to plaintiff the trust amounts, plus the stipulated interest[;] that in all of the trust transactions that defendant PCIB had entered into with the plaintiff, defendant PCIB represented to plaintiff that[,] in making the trust investment, plaintiff was actually providing for his future since the money invested was going to be managed and administered by their PCIB-Trust Services Group and will be commingled, pooled and automatically rolled- over for better investment return; that believing the representation of the bank, the plaintiff invested his lifetime savings in the hope that the defendant bank will actually provide for their future by reinvesting and rolling-over their investment automatically, without any need for the plaintiff to take any further action; that on the few occasions that plaintiff had visited the defendant bank to request for a status on his investments, bank officers would normally pull out his *(sic)* ledger card and show plaintiff the updated amount due him; that sometime in 1995, plaintiff discovered that one of his children had leukemia

[5] See pp. 2-5 of the CA Decision and pp. 6-10 of the Petition; *rollo*, pp. 15-19; 49-52.

and[,] in the ensuing hospitalization and treatment, plaintiff spent a lot of money; that because his funds were already exhausted, plaintiff then turned to his Trust Indenture Certificates and started inquiring as to how he could liquidate the trust; that in the beginning, defendant bank constantly asked for time to look for his records, at one time [on June 18, 1998], promising to have an answer before July 15, 1998, then writing plaintiff on May 18, 2000 saying that the bank [had] coordinated with their Branch and Trust Department but that it might take [some time] to retrieve their records; [and] that to plaintiff's surprise, on June 22, 2000, he received a letter signed by defendant's counsel, Curato Divina & Partners, in effect denying plaintiff's request for payment by stating that due to the conversion of all outstanding PCIBank trust indenture accounts into common trust certificates, all such PCIBank trust indenture certificates have been rendered "null and void." Plaintiff prays for the payment of the amounts under the Trust Indenture Certificates, plus interest, moral and exemplary damages and attorney's fees.

In their Answer, defendants admit the issuance by defendant PCIB of the Trust Indenture Certificates subject matter of the complaint, but deny the allegation that the investments subject of the Trust Indenture Certificates are automatically rolled-over as such certificates have their own fixed term and maturity date, and that the present action had already prescribed.

As stated in the Pre-Trial Order issued by this court on 15 February 2002, the following issues were defined and agreed upon by the parties, to wit:

1. Whether or not the plaintiff is entitled to the relief he seeks; and

2. Whether or not the cause of action as exerted *(sic)* by the defendant has already prescribed.

Plaintiff presented as its witness plaintiff Arturo P. Franco himself [who] testified, among others[:] that he is the proprietor of Fair Marketing Freight Services[,] which is the investor named in Trust Indenture Certificate 094846; that[,] in 1986, he decided to save up for his retirement and to invest his hard earned money; that he was then 51 years old and his choice was to deposit his funds with defendant PCIB which later on merged with defendant Equitable Banking Corp. and is now known as Equitable PCIBank; that he chose defendant PCIB for the latter's representation that by making such

investment, he was actually providing for his future since his investment would be commingled, pooled and automatically rolled-over for better investment return and which will provide for his needs upon retirement, without need for him to take any further action; that he was a loyal client of the defendants from 1986 up to 1997; that he entered into a trust agreement with defendant PCIB for which the latter issued subject Trust Indenture Certificates ([TICs], for brevity); that sometime in 1997, when he was then 62 years old, he [tried] to encash the trust indenture certificates only to be given a run-around by the defendants; that sometime in 1995, his son, Arthur, was diagnosed to be afflicted with leukemia and eventually died on October 24, 1997; that because of his son's illness, he was forced to go to defendants and try to encash his trust indenture certificates but was denied by defendant bank; that in a letter dated June 22, 2000, defendants, through their counsel, informed plaintiff that the subject [TICs] are "null and void"; that when he received the letter of June 22, 2000, he was at first speechless and totally defeated and at a loss; that he and his wife begun to experience sleepless nights, became anxious because their hope to secure their life in their old age had fallen apart[;] that instead of just enjoying a secured life with his wife and enjoying his grandchildren and spending more time with the Lord, he was now in debt and burdened with the fact that his lifetime savings just disappeared before his very eyes without a trace; [and] that plaintiff was constrained to file this case and [spend] ₱22,117.80 in filing fees, to engage the services of counsel for the amount of ₱50,000.00 with appearance fee of ₱3,000.00 per hearing, and that he suffered moral damages in the amount of ₱200,000.00.

The foregoing facts were not rebutted by defendants. The court finds the witness and his testimony credible as the witness testified in a simple and straightforward manner. Upon admission of plaintiff's exhibits, plaintiff rested his case.

The defendants presented Cecilia P. Soriano and Antonio M. Fortuno as their witnesses.

Cecilia P. Soriano, Operations Officer of defendant Equitable-PCIBank, testified that she came to know plaintiff in 1987 when she was assigned at PCIB Gil Puyat Branch; that plaintiff was one of the bank's valued clients[;] and that plaintiff secured the [TICs] subject matter of the complaint. On cross-examination, the witness admitted that she has seen only the photocopies of plaintiff's [TICs]; that she had no direct dealing with plaintiff regarding the [TICs] and she

had no idea what happened to plaintiff's [TICs] after their respective maturity dates; [and] that valued clients of the bank were given special privileges, such as allowing these clients to withdraw or encash [TICs] or investments over the phone[,] but she did not receive any call from plaintiff withdrawing or encashing the plaintiff's [TICs].

The testimony of their next witness, Antonio Martin S. Fortuno, was offered to prove, among others, that [TICs] expired upon maturity and after which, they were automatically rolled-over.

Antonio Martin S. Fortuno, Operations Officer of defendant Equitable-PCIBank, testified that he is familiar with the Trust Indenture Certificates issued by defendant bank; that when a client would like to secure a Trust Indenture Certificate from the bank, they would ask the client, among others, to sign [roll-over] agreement/rules and regulations; that when a client would like to withdraw his proceeds from the certificate upon maturity, they follow the following steps: (1) they retrieve the old certificates from client, (2) they have [the] client sign on the back portion of the certificate, (3) they prepare mode of payment – MC or credit to other accounts, and (4) they file the paid certificate to paid/roll-over file; that if the holder of a certificate does not withdraw the placement upon maturity, they replace the old certificate with a new one; that if the client is at the branch, the old certificate is replaced with a new certificate, have the client sign at the register copy, then stamp the old certificate as Old Certificate-Stamp rolled-over/replaced; that if the client is not at the branch, they replace the old certificate with a new certificate and stamped with rolled-over; that certificates have fixed maturity dates; that interest rates stated in the certificates vary as they go either up or down depending on the prevailing bank rates as provided by the Trust Department; that[,] in 1992[,] all existing Trust Indenture Certificates were converted into Common Trust Funds; [and] that he is not aware of any Trust Indenture Certificate belonging to plaintiff which were converted into Common Trust Funds in 1992.

On cross-examination, the witness admitted that he is familiar with Trust Indenture Certificates; that Trust Indenture Certificates have been converted into Common Trust Funds; that the change is only in name because they have the same features and that the only difference is that Common Trust Funds are classified into several product types depending on the limit of the amount of investment; that there is nothing in the certificate that says it has a roll-over feature; that, however, if the certificate expires and the client does

not claim or withdraw his funds or surrender the certificate, they roll-over the funds of the client; that if a guest comes with the original Trust Indenture Certificate without any stamp as being taken or cancelled, the bank should verify with the outstanding copy because the bank should have an outstanding copy of that Trust Indenture Certificate; that he is not aware that the Trust Indenture Certificates of the plaintiff were verified with their records; and that he does not know whether plaintiff's Trust Indenture Certificates were actually paid out by the bank to plaintiff.

Defendants did not conduct any re-direct.[6]

On October 21, 2003, the RTC rendered a Decision, the dispositive portion of which reads:

WHEREFORE, all the foregoing premises considered, judgment is hereby rendered in favor of plaintiff and ordering defendant Philippine Commercial International Bank, now known as Equitable-PCIBank, to pay plaintiff the following:

1. On the First Cause of Action, the sum of ₱100,000.00, plus the stipulated interest of 8.75% per annum for the period December 8, 1986 to January 7, 1987, plus interest of 6% per annum from January 8, 1987 until fully paid;
2. On the Second Cause of Action, the sum of ₱840,594.54, plus the stipulated interest of 7.75% per annum for the period January 19, 1987 to February 18, 1987, plus interest of 6% per annum from February 19, 1987 until fully paid;
3. On the Third Cause of Action, the sum of ₱500,000.00, plus the stipulated interest of 8.50% per annum for the period May 13, 1987 to June 15, 1987, plus interest of 6% per annum from June 16, 1987 until fully paid;
4. On the Fourth Cause of Action, the sum of ₱502,958.90, plus the stipulated interest of 9.25% per annum for the period July 15, 1987 to August 14, 1987, plus interest of 6% per annum from August 15, 1987 until fully paid;
5. ₱50,000.00 as moral damages;
6. ₱200,000.00 as exemplary damages;

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[6] *Rollo*, pp. 70-73.

7. Attorney's fees in the amount of ₱50,000.00, plus ₱3,000.00 for every hearing attended; and

8. ₱22,117.80 as reimbursement for filing fees.

The case against Equitable Banking Corporation is dismissed for insufficiency of evidence.

SO ORDERED.[7]

Considering that the four TICs have not been replaced or cancelled, the RTC held that the relationship of express trust between petitioner Bank and respondent still subsists at the time the latter demanded the withdrawal of his funds under them. While the TICs contain a maturity date, the court opined that the same refers only to the gross income expectation or the applicable interest rate because the funds are automatically rolled-over with varying interest rates depending on the prevailing interest rates as determined by petitioner's Trust Department. With respect, however, to the interest rate applicable after the stipulated maturity dates, the court deemed it fair and reasonable to impose the legal rate of interest for want of evidence on the prevailing rate at the time of roll-over. Finally, the court found that petitioner Bank is in bad faith in its dealings with respondent when it unilaterally declared – despite claiming that respondent was one of its valued clients – the TICs as null and void by reason of their conversion to Common Trust Funds in 1991. The absence of good faith was made more manifest when Fortuno testified that the trust indenture certificate and common trust fund have the same features and the only difference is in the name and classification of the amount of investment.

On appeal, the CA affirmed the RTC ruling. According to the appellate court, Soriano could not have possibly known if respondent indeed withdrew any or all of his participation in the subject TICS, because by her very own admission during the cross-examination, she did not have any direct dealing with him with respect to the TICs at the time they matured or even thereafter. Likewise, petitioner Bank failed to adduce any documentary evidence to establish the alleged fact that the

[7] *Id.* at 74.

four TICs were already paid or cancelled, or that respondent's participation therein was already withdrawn. Further, respondent's testimony that he gave verbal instructions to petitioner Bank to roll-over his investment upon their maturity was bolstered by Fortuno's admission in open court that it has been petitioner Bank's practice to roll-over investments which remain unclaimed after their maturity even without instruction from their owners. With all these findings, the CA concluded that the claim of respondent is not yet barred by prescription, since the maturity dates of the four TICs did not terminate the express trust created between the parties.

A motion for reconsideration was filed by petitioner, but the CA acted unfavorably; hence, this petition.

We deny.

Upon perusal of the entire case records, the Court finds no reversible error committed by the CA in sustaining the RTC Decision. Considering the evidence at hand, both courts have applied the law in accordance with the facts of the case.

A quick point, however, on the issue of alleged payment by petitioner Bank on the subject trust certificate indentures.

Jurisprudence abounds that, in civil cases, one who pleads payment has the burden of proving it.[8] Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment.[9] When the creditor is in possession of the document of credit, he need not prove non-payment for it is presumed.[10] The creditor's possession of the evidence of debt is proof that the debt has not been discharged by payment.[11]

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[8] *Agner v. BPI Family Savings Bank, Inc.*, G.R. No. 182963, June 3, 2013, 697 SCRA 89, 96.

[9] *Halley v. Printwell, Inc.*, G.R. No. 157549, May 30, 2011, 649 SCRA 116, 136.

[10] *Tai Tong Chuache & Co. v. Insurance Commission*, G.R. No. 55397, February 29, 1988, 158 SCRA 366, 373.

[11] *Bank of the Philippine Islands v. Spouses Royeca*, 581 Phil. 188, 197 (2008).

In this case, respondent's possession of the original copies of the subject TICs strongly supports his claim that petitioner Bank's obligation to return the principal plus interest of the money placement has not been extinguished. The TICs in the hands of respondent is a proof of indebtedness and a *prima facie* evidence that they have not been paid. Petitioner Bank could have easily presented documentary evidence to dispute the claim, but it did not. In its omission, it may be reasonably deduced that no evidence to that effect really exist. Worse, the testimonies of petitioner Bank's own witnesses, reinforce, rather than belie, respondent's allegations of non-payment.

WHEREFORE, premises considered, the instant Petition is **DENIED**. The July 31, 2007 Decision and October 4, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 82340, which affirmed the October 21, 2003 Decision of the Makati City Regional Trial Court, Branch 61, are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 180134. March 5, 2014]

RAFAEL VALES, CECILIA VALES-VASQUEZ, and YASMIN VALES-JACINTO, *petitioners, vs.* **MA. LUZ CHORESCA GALINATO, ERNESTO CHORESCA, TEOFILO AMADO, LORNA PARIAN MEDIANERO, REBECCA PORCAL, and VIVENCIO ORDOYO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; PRESIDENTIAL DECREE NO. 27; OPERATION LAND TRANSFER PROGRAM; REQUISITES FOR COVERAGE.—** PD 27, which implemented the OLT Program of the government, covers tenanted rice or corn lands. The requisites for coverage under the OLT Program are the following: (*a*) the land must be devoted to rice or corn crops; and (*b*) there must be a system of share-crop or lease-tenancy obtaining therein. If either requisite is absent, a landowner may apply for **exemption** since the land would not be considered as covered under the OLT Program. Accordingly, **a landowner need not apply for retention where his ownership over the entire landholding is intact and undisturbed**.

2. **ID.; ID.; OPERATION LAND TRANSFER PROGRAM; RETENTION LIMITS.—** If the land is covered by the OLT Program, which, hence, renders the right of retention operable, the landowner who cultivates or intends to cultivate an area of his tenanted rice or corn land has the right to retain an area of not more than seven (7) has. thereof, on the condition that his aggregate landholdings **do not exceed 24 has**. as of October 21, 1972. **Otherwise, his entire landholdings are covered by the OLT Program without him being entitled to any retention right**. Similarly, by virtue of **LOI 474**, if the landowner, as of October 21 1976, owned **less than 24 has**. of tenanted rice or corn lands, but additionally owned (*a*) other agricultural lands of more than 7 has., whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom, or (*b*) lands used for residential, commercial, industrial or other urban purposes, from which he derives adequate income to support himself and his family, his entire landholdings shall be similarly placed under OLT Program coverage, **without any right of retention**. x x x Subsequently, or on June 10, 1998, Congress passed RA 6657 which modified the retention limits under PD 27. In particular, Section 6 of RA 6657 states that covered landowners are allowed to retain a portion of their tenanted agricultural land not exceeding an area of five (5) has. and, further thereto, provides that an additional three (3) has. may be awarded to each child of the landowner subject to certain qualifications. While landowners who have not yet exercised

their rights of retention under PD 27 are entitled to the new retention rights provided by RA 6657, a landowner who filed an application under RA 6657 shall be subject to the limitations stated under LOI 474 as above stated.

3. ID.; ID.; ID.; MAY 7, 1982 DEPARTMENT OF AGRARIAN REFORM MEMORANDUM; REQUIREMENTS; NON-COMPLIANCE THEREWITH PLACES THE SUBJECT PROPERTY UNDER THE OPERATION LAND TRANSFER PROGRAM, WARRANTING THE DENIAL OF THE PETITION FOR EXEMPTION; CASE AT BAR.— Petitioners sought exemption of the subject lands from the OLT Program of the government by claiming ownership thereof on the basis of a sale thereof by the registered owners, *i.e.*, Sps. Vales, executed on **March 3, 1972**. However, said transaction, in order to be valid and equally deemed as binding against the tenants concerned, should be examined in line with the provisions of the May 7, 1982 DAR Memorandum x x x. [T]he May 7, 1982 DAR Memorandum provides that tenants should (*a*) have actual knowledge of unregistered transfers of ownership of lands covered by Torrens Certificate of Titles prior to October 21, 1972, (*b*) have recognized the persons of the new owners, and (*c*)have been paying rentals/amortization to such new owners **in order to validate the transfer and bind the tenants to the same**. In the case at bar, it is undisputed that the subject sale was not registered or even annotated on the certificates of title covering the subject lands. More importantly, the CA, which upheld the final rulings of the DAR Secretary and the OP, found that the tenants categorically belied having actual knowledge of the said sale, and that the tenants still recognized Sps. Vales as the landowners. In this regard, petitioners failed to show any justifiable reason to warrant a contrary finding. Thus, keeping in mind that the factual findings of the CA are generally accorded with finality absent any sufficient countervailing reason therefor, it may be concluded that petitioners failed to comply with the requirements stated under the May 7, 1982 DAR Memorandum. As a result, the subject sale could not be considered as valid, especially as against the tenants and/or their relatives – particularly, herein respondents. The subject lands were therefore correctly placed under the OLT Program of the government, which thereby warranted the denial of the petition for exemption.

4. ID.; ID.; DEPARTMENT OF AGRARIAN REFORM SECRETARY; HAS JURISDICTION OVER ISSUES OF RETENTION AND NON-COVERAGE OF A LAND UNDER AGRARIAN REFORM AND HE SHOULD BE GIVEN AN OPPORTUNITY, EVEN ON A SECOND MOTION FOR RECONSIDERATION, TO RECTIFY THE ERRORS HE MAY HAVE COMMITTED.— Settled is the rule that issues of retention and non-coverage of a land under agrarian reform are within the domain of the DAR Secretary. By virtue of such special competence, he should be given an opportunity, even on a second motion for reconsideration, to rectify the errors he may have committed. The time-honored rule is that if a remedy within the administrative machinery can still be had by giving the administrative officer concerned every opportunity to decide on the matter that comes within his jurisdiction, then such remedy should be priorly exhausted. Besides, rules of procedure are construed liberally in administrative proceedings as administrative bodies are not bound by the technicalities applicable to courts of law, hence, should not be used to override substantial justice, as in this case.

APPEARANCES OF COUNSEL

Dasal Laurel Llasos and Associates for petitioners.
Traviña Law Office 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 July 25, 2007 and the Resolution[3] dated September 27, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 01130 which affirmed the Order dated September 5, 2005[4] issued by the Office of the President (OP) in O.P. Case

[1] *Rollo*, pp. 29-67.

[2] *Id.* at 8-19. Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio P. Abarintos and Stephen C. Cruz concurring.

[3] *Id.* at 21-22.

[4] *Id.* at 257-261.

No. 03-J-607, and declared that petitioners Rafael Vales, Cecilia Vales-Vasquez, and Yasmin Vales-Jacinto (petitioners) have no right of retention over the landholding subject of this case.

The Facts

On **March 3, 1972**, Spouses Perfecto[5] and Marietta Vales (Sps. Vales) executed a Deed of Sale[6] conveying **five (5) parcels of registered agricultural land**, identified as Lot Nos. 2116, 2045, 2213, 2157, and 2119 with an **aggregate area of 20.3168 hectares** (has.) all situated in Barrio Manguna, Cabatuan, Iloilo (subject lands), to their three (3) children, herein petitioners (subject sale). However, the subject sale was not registered, hence, title to the subject lands remained in the names of Sps. Vales. At the time of the sale, the subject lands were tenanted.[7]

Several months later, or on October 21, 1972, Presidential Decree No. (PD) 27[8] was passed decreeing the emancipation of tenants. As required under Letter of Instruction No. (LOI) 41 issued on November 21, 1972, petitioner Rafael Vales executed a sworn declaration,[9] asserting that he and his sisters are co-owners of the subject lands. This notwithstanding, the subject lands were placed under the coverage of the government's Operation Land Transfer (OLT) Program as properties belonging to Sps. Vales, not to petitioners.[10]

Invoking the landowner's retention rights provided under PD 27,[11] petitioners filed, on December 23, 1975, a letter-

[5] Died on September 8, 1985. (See Certificate of Death; *id.* at 124.)

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

[7] *Id.* at 384-385.

[8] Entitled "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR."

[9] *Rollo*, p. 97.

[10] *Id.* at 383.

[11] PD 27 pertinently reads as follows:

x x x x x x x x x

request[12] for the retention of the subject lands with the Office of the Agrarian Reform Team No. 06-24-185, which, however, was not acted upon.[13] On March 31, 1980, they filed a petition[14] before the then Ministry of Agrarian Reform-Region VI, praying that they be certified as owners of the subject lands which they have declared in their names for tax purposes as early as November 29, 1972.[15] They further prayed that they be allowed to partition the subject lands with the end in view of obtaining titles for their respective shares. The petition, however, remained unresolved[16] for nearly two (2) decades.

Meanwhile, during the period July to August 1987, petitioners entered into several Agricultural Leasehold Contracts[17] with the following tenants: Milagros Allaga, Wenceslao Perez, Dalmacio Parian, Francisco Choresca, Teofilo Amado, Vivencio Ordoyo, Melchor Choresca, Ricardo Paniza, and Rodolfo Porcal. These contracts were duly registered with the Office of the Municipal Treasurer of Cabatuan.[18] **The following year, 1988, Emancipation Patents[19] (EPs) were issued to certain tenants of the subject lands**. Petitioners claimed, however,

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The tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated;

In all cases, the landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it; (Emphasis supplied)

x x x x x x x x x

[12] *Rollo*, p. 120.

[13] *Id.* at 173.

[14] *Id.* at 121-123.

[15] *Id.* at 156. See also the tax declarations covering the subject landholding; *id.* at 75-79.

[16] *Id.* at 173.

[17] *Id.* at 125-133.

[18] *Id.* (see dorsal portion). See also *id.* at 35.

[19] *Id.* at 135-154.

that such issuances were made "without [their] knowledge and despite their vehement protest and opposition."[20]

On January 12, 1998, petitioners filed a petition[21] before the Regional Office of the Department of Agrarian Reform (DAR), docketed as Administrative Case No. A-0604-0014-98, asking for: (*a*) the resolution of the earlier petition dated March 31, 1980; (*b*) the exemption of the subject lands from the coverage of the OLT Program; and (*c*) the affirmation of petitioners' right to retain seven (7) has. as provided under PD 27, which they requested way back in December 1975, but to no avail. Significantly, petitioners admitted in their petition that the subject sale was not registered and thus, the titles to the subject lands were not transferred to their names. This was supposedly due to the fact that the lands were tenanted, and that the Minister of Agrarian Reform refused to issue the required certification for purposes of registration.

The DAR Regional Director Ruling

In an Order[22] dated August 16, 1999, the DAR Regional Director declared that ownership over the subject lands remained with Sps. Vales due to petitioners' failure to effect the registration or even the annotation of the subject sale before October 21, 1972 as required under DAR Memorandum[23] dated May 7, 1982 (May 7, 1982 DAR Memorandum). Hence, the sale did

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[20] *Id.* at 36.

[21] *Id.* at 155-159.

[22] *Id.* at 382-387. Issued by DAR OIC Regional Director Othelo C. Clement. CESO IV.

[23] The May 7, 1982 DAR Memorandum pertinently reads as follows:

With respect to **transfers of ownership of lands covered by P.D. 27 executed prior to October 21, 1972**, you shall be guided by the following:

Transfers of ownership of lands covered by a Torrens Certificate of Title duly executed prior to October 21, 1972 but **not registered with the Register of Deeds concerned before said date** in accordance with the Land Registration Act (Act No. 496) shall not be considered a valid transfer of ownership insofar as the tenant-farmers are concerned and therefore the land shall be placed under Operation Land Transfer. (Emphases supplied; *id.* at 384-385.)

not bind the tenants concerned, and no retention rights were transferred to petitioners. Accordingly, the DAR Regional Director denied the petitions for exemption and retention, and affirmed the placing of the subject lands under the OLT Program of the government pursuant to PD 27, as well as the issuance of EPs in favor of the tenants.

Petitioners moved for reconsideration which was, however, denied in an Order[24] dated December 6, 1999, prompting their appeal before the DAR Secretary, docketed as Adm. Case No. A-9999-06-E-247-00.

The DAR Secretary Ruling

In an Order[25] dated December 11, 2002 (December 11, 2002 Order), the DAR Secretary reversed and set aside the orders of the DAR Regional Director, and thereby granted the petitions for exemption and retention, subject, however, to the provisions of LOI 474 dated October 21, 1976.[26] The DAR Secretary ruled that petitioners were able to prove by substantial evidence that the tenants had knowledge of the subject sale in their favor and had even recognized petitioners as the new owners of the subject lands as they paid rentals to them.[27] Hence, the sale was valid and binding on the tenants pursuant to the May 7, 1982 DAR Memorandum,[28] thus removing the

[24] *Rollo*, pp. 167-170.

[25] *Id.* at 172-179. Penned by then DAR Secretary Hernani A. Braganza.

[26] As will be explained in greater detail below, under LOI 474, all tenanted rice/corn lands with areas of seven (7) has. or less belonging to landowners who own other agricultural lands of more than seven (7) has. in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families were placed under the OLT Program of the government.

[27] *Rollo*, p. 177.

[28] The May 7, 1982 DAR Memorandum pertinently reads as follows:

In order that the foregoing transfers of ownership mentioned in the preceding two paragraphs **may be binding upon the tenants, such tenants should have knowledge of such transfers prior to October 21, 1972, have recognized the persons of the new owners, and have been paying rentals/ amortizations to such new owners**. (Emphasis supplied; *id.* at 176.)

subject lands from the OLT Program coverage. However, in line with LOI 474, the DAR Secretary directed the Municipal Agrarian Reform Officer to determine if petitioners own other agricultural lands of more than seven (7) has. or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

Some of the tenants and/or their relatives – namely, herein respondents Ma. Luz Choresca Galinato, Ernesto Choresca, Teofilo Amado, Lorna Parian Medianero, Rebecca Porcal and Vivencio Ordoyo (respondents) – filed a motion for reconsideration[29] which was initially denied[30] but subsequently granted by the DAR Secretary in an Order[31] dated September 25, 2003 (September 25, 2003 Order).

In granting the motion and reversing his earlier decision, the DAR Secretary held that the tenants must be shown to have acquired actual knowledge of the subject sale prior to October 21, 1972 in order to grant validity thereto. **However, it appears from the date of the earliest receipts evidencing the rental payments to petitioners that the tenants knew of the said sale only in 1977**. As such, petitioners never became valid owners of the subject lands,[32] thus warranting the denial of their petitions for exemption and retention.

Dissatisfied, petitioners elevated the matter to the OP.

The Proceedings Before the OP

In a Decision[33] dated December 30, 2003 (December 30, 2003 Decision), the OP affirmed the findings and conclusions of the DAR Secretary which thereby prompted petitioners to

[29] *Id.* at 180-183.

[30] See Order dated May 26, 2003, penned by DAR Secretary Roberto M. Pagdanganan; *id.* at 184-186.

[31] *Id.* at 191-198.

[32] See *id.* at 194-196.

[33] *Id.* at 207-215. Issued by then Assistant Executive Secretary Edwin R. Enrile.

file a motion for reconsideration,[34] wherein they proffered a new argument, particularly, that when their father, Perfecto Vales (Perfecto), died on September 8, 1985, they acquired ownership of the subject lands by intestate succession, including the right of retention as owners.[35]

Finding merit in the argument, the OP, in a Resolution[36] dated April 6, 2004 (April 6, 2004 Resolution), reversed its earlier ruling, holding that upon the demise of Perfecto, his heirs, including herein petitioners, became co-owners of the subject lands by intestate succession with the inherent right to apply for exemption/retention. Considering, however, that the subject lands were conjugal in nature, Perfecto's half of the entire 20.3168 hectare area was transferred by intestacy to petitioners and their mother, giving each heir about 2.5 has., which was within the seven-hectare (7-hectare) retention limit under PD 27.[37] Consequently, the OP exempted the *pro-indiviso* shares of petitioners in the subject lands and ordered the cancellation of the EPs covering the same.

On respondents' motion for reconsideration,[38] the OP modified its April 6, 2004 Resolution in an Order[39] dated August 19, 2004 (August 19, 2004 Order), declaring that petitioners should be considered as only one landowner with respect to their undivided portions and not as separate landowners pursuant to Article 3[40] of DAR Memorandum dated January 9, 1973 (January

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[34] *Id.* at 216-223.

[35] *Id.* at 221.

[36] *Id.* at 226-228. Issued by then Presidential Assistant Manuel C. Domingo.

[37] *Id.* at 227.

[38] *Id.* at 229-233.

[39] *Id.* at 247-249.

[40] The January 9, 1973 DAR Memorandum pertinently reads as follows:

3. Some landowners are now subdividing their farms among their children as heirs after October 21, 1972. There should be no subdivision of property after October 21, 1972. If not yet subdivided among the heirs before October 21, 1972, the property is considered under one ownership. (*Id.* at 248.)

9, 1973 DAR Memorandum). Consequently, it excluded from the coverage of the OLT Program only a 7-hectare portion of the subject lands as petitioners' collective retention area and maintained the OLT Program coverage of the remaining portion.

Both petitioners and respondents filed their respective motions for reconsideration which were denied in an Order[41] dated September 5, 2005. The OP reinstated its initial December 30, 2003 Decision, holding that the non-registration of the subject sale and the tenants' lack of actual knowledge thereof prior to October 21, 1972 rendered the transfer as invalid and non-binding on third persons. The subject lands, thus, remained under the ownership of Sps. Vales for purposes of determining OLT Program coverage. Considering, however, that Sps. Vales' aggregate landholding consists of 58.606 has., which exceeded the 24-hectare landholding limit under PD 27, they were therefore disqualified to avail of any retention rights under the said law, without prejudice to the availment of the retention rights granted under the new law, Republic Act No. (RA) 6657,[42] otherwise known as the "Comprehensive Agrarian Reform Law of 1988."

Feeling aggrieved, petitioners filed an appeal before the CA.

The CA Ruling

In a Decision[43] dated July 25, 2007, the CA denied petitioners' appeal, holding that since their predecessors-in-interest (*i.e.*, Sps. Vales) were not entitled to exemption and retention under PD 27 given that their aggregate landholdings consist of 58.606 has., neither could petitioners avail of said rights under RA 6657. In this relation, the CA noted that while PD 27 allows a covered landowner to retain not more than seven (7) has. of his land, if his aggregate landholdings do not exceed 24 has., on the other hand, under LOI 474, where his aggregate

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[41] *Id.* at 257-261. Issued by then Executive Secretary Eduardo R. Ermita.

[42] Entitled "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES."

[43] *Rollo*, pp. 8-19.

landholdings exceed 24 has., the entire landholding inclusive of the seven (7) has. or less of tenanted rice or corn lands will be covered without any right of retention.[44] Accordingly, the CA pronounced that the new retention rights under RA 6657 are likewise unavailing to petitioners as the same is premised on the existence of such right under PD 27.[45]

Unperturbed, petitioners moved for reconsideration which was, however, denied in a Resolution[46] dated September 27, 2007, hence, this petition.

The Issues Before the Court

The essential issues in this case are whether or not: (*a*) the subject lands are exempt from OLT Program coverage; and (*b*) petitioners are entitled to avail of any retention right under existing agrarian laws.

The Court's Ruling

The petition lacks merit.

A. Legal Parameters of Exemption and Retention in Agrarian Reform

PD 27, which implemented the OLT Program of the government, covers tenanted rice or corn lands. The requisites for coverage under the OLT Program are the following: (*a*) the land must be devoted to rice or corn crops; and (*b*) there must be a system of share-crop or lease-tenancy obtaining therein. If either requisite is absent, a landowner may apply for **exemption** since the land would not be considered as covered under the OLT Program. Accordingly, **a landowner need not apply for retention where his ownership over the entire landholding is intact and undisturbed**.[47]

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[44] *Id.* at 15-16.

[45] *Id.* at 17.

[46] *Id.* at 21-22.

[47] *Daez v. CA*, 382 Phil. 742, 751 (2000).

If the land is covered by the OLT Program, which, hence, renders the right of retention operable, the landowner who cultivates or intends to cultivate an area of his tenanted rice or corn land has the right to retain an area of not more than seven (7) has. thereof,[48] on the condition that his aggregate landholdings **do not exceed 24 has**. as of October 21, 1972. **Otherwise, his entire landholdings are covered by the OLT Program without him being entitled to any retention right**.[49] Similarly, by virtue of **LOI 474**, if the landowner, as of October 21 1976, owned **less than 24 has**. of tenanted rice or corn lands, but additionally owned (*a*) other agricultural lands of more than 7 has., whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom, or (*b*) lands used for residential, commercial, industrial or other urban purposes, from which he derives adequate income to support himself and his family, his entire landholdings shall be similarly placed under OLT Program coverage, **without any right of retention**.[50] As stated in DAR Administrative Order No. 4,

[48] PD 27 pertinently provides:

x x x x x x x x x

The tenant farmer, whether in land classified as landed estate or not, shall be deemed owner of a portion constituting a family-size farm of five (5) hectares if not irrigated and three (3) hectares if irrigated;

In all cases, the landowner may retain an area of not more than seven (7) hectares if such landowner is cultivating such area or will now cultivate it;

x x x x x x x x x

[49] *Id.*

[50] LOI 474 reads in full:

To: The Secretary of Agrarian Reform.

WHEREAS, last year I ordered that small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families;

WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural

series of 1991, or the "Supplemental Guidelines Governing the Exercise of Retention Rights by Landowners Under Presidential Decree No. 27," issued on April 26, 1991:

x x x x x x x x x

B. Policy Statements

1. Landowners covered by PD 27 are entitled to retain seven hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under Operation Land Transfer (OLT). **An owner of tenanted rice and corn lands may not retain these lands under the following cases**:

   a. If he, as of 21 October 1972, owned more than 24 hectares of tenanted rice and corn lands;

   b. By virtue of LOI 474, if he as of 21 October 1976, owned less than 24 hectares of tenanted rice or corn lands, but additionally owned the following:

      - Other agricultural lands of more than seven hectares, whether tenanted or not, whether

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lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;

WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.

NOW, THEREFORE, I, PRESIDENT FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:

1. **You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families**.

2. Landowners who may choose to be paid the cost of their lands by the Land Bank of the Philippines shall be paid in accordance with the mode of payment provided in Letter of Instructions No. 273 dated May 7, 1973.

Done in the City of Manila, this 21th day of October in the year of Our Lord, nineteen hundred and seventy-six. (Emphasis supplied)

cultivated or not, and regardless of the income derived therefrom; or

- Lands used for residential, commercial, industrial or other urban purposes, from which he derives adequate income to support himself and his family. (Emphasis and underscoring supplied)

Subsequently, or on June 10, 1998, Congress passed RA 6657 which modified the retention limits under PD 27. In particular, Section 6[51] of RA 6657 states that covered landowners

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[51] SEC. 6. *Retention Limits.* — Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall the retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: Provided, That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; Provided, further, That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner; provided, however, That in case the area selected for retention by the landowner; is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features.In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

In cases, the security of tenure of the farmers or farm workers on the land prior to the approval of this Act shall be respected.

Upon the effectivity of this Act, any sale, disposition, lease, management contract or transfer of position of private lands executed by the original landowner in violation of this Act shall be null and void: Provided, however, That those executed prior to this Act shall be valid only when registered

are allowed to retain a portion of their tenanted agricultural land not exceeding an area of five (5) has. and, further thereto, provides that an additional three (3) has. may be awarded to each child of the landowner subject to certain qualifications. While landowners who have not yet exercised their rights of retention under PD 27 are entitled to the new retention rights provided by RA 6657, a landowner who filed an application under RA 6657 shall be subject to the limitations stated under LOI 474 as above stated.

B. Propriety of the Denial of the Petition for Exemption

Petitioners sought exemption of the subject lands from the OLT Program of the government by claiming ownership thereof on the basis of a sale thereof by the registered owners, *i.e.*, Sps. Vales, executed on **March 3, 1972**. However, said transaction, in order to be valid and equally deemed as binding against the tenants concerned, should be examined in line with the provisions of the May 7, 1982 DAR Memorandum, to wit:

> Transfers of ownership of lands covered by a Torrens Certificate of Title duly executed prior to October 21, 1972 **but not registered with the Register of Deeds concerned before said date** in accordance with the Land Registration Act (Act No. 496) **shall not be considered a valid transfer of ownership insofar as the tenant-farmers are concerned and therefore the land shall be placed under [the OLT Program]**.
>
> Transfer of ownership of unregistered lands (ownership may be evidenced by tax declaration, deeds of conveyance) executed prior to October 21, 1972, whether registered or not with the Register of Deeds concerned pursuant to Act No. 3344 may be considered a valid transfer/conveyance as between the parties subject to verification of the due execution of the conveyance/transfer in accordance with the formalities prescribed by law.

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with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all registers of Deeds shall inform the DAR within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

In order that the foregoing transfers of ownership mentioned in the preceding two paragraphs **may be binding upon the tenants**, **such tenants should have knowledge of such transfers/conveyance prior to October 21, 1972, have recognized the persons of the new owners, and have been paying rentals/amortization to such new owners**. (Emphases and underscoring supplied)

Tersely put, the May 7, 1982 DAR Memorandum provides that tenants should (*a*) have actual knowledge of unregistered transfers of ownership of lands covered by Torrens Certificate of Titles prior to October 21, 1972, (*b*) have recognized the persons of the new owners, and (*c*) have been paying rentals/ amortization to such new owners **in order to validate the transfer and bind the tenants to the same**.

In the case at bar, it is undisputed that the subject sale was not registered or even annotated on the certificates of title covering the subject lands. More importantly, the CA, which upheld the final rulings of the DAR Secretary and the OP, found that the tenants categorically belied having actual knowledge of the said sale, and that the tenants still recognized Sps. Vales as the landowners.[52] In this regard, petitioners failed to show any justifiable reason to warrant a contrary finding.[53] Thus, keeping in mind that the factual findings of the CA are generally accorded with finality absent any sufficient countervailing reason therefor,[54] it may be concluded that petitioners failed to comply with the requirements stated under the May 7, 1982 DAR Memorandum. As a result, the subject sale could not be considered as valid, especially as against the tenants and/or their relatives – particularly, herein respondents. The subject lands were therefore correctly placed under the OLT Program of the government, which thereby warranted the denial of the petition for exemption.

C. Propriety of the Denial of the Petition for Retention

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[52] *Rollo*, p. 14.

[53] *Id.*

[54] See *Ampo v. CA*, G.R. No. 169091, February 16, 2006, 482 SCRA 562, 570.

Anent the issue on retention, suffice it to state that Sps. Vales had no right to retain the subject lands considering that their aggregate landholdings, consisting of 58.6060 has.,[55] exceeded the 24-hectare landholding limit as above-explained. Consequently, the subject lands would fall under the complete coverage of the OLT Program, without any right of retention on petitioners' part, either under PD 27 or RA 6657, being mere successors-in-interest of Sps. Vales by virtue of intestate succession. In this respect, the denial of the petition for retention was likewise proper.

D. Propriety of the Reconsideration of the DAR Secretary's December 11, 2002 Order

Finally, the Court finds no merit in petitioners' claim that the December 11, 2002 Order of the DAR Secretary granting the petitions for exemption and retention had already attained finality and can no longer be reconsidered, reversed or modified, especially on a second motion for reconsideration which is a prohibited pleading.[56] In his September 25, 2003 Order, the DAR Secretary explained that a "palpable mistake"[57] and "patent error"[58] had been committed in determining the date of the filing of respondents' motion for reconsideration, which upon review, was shown to have been timely filed, warranting reconsideration of his earlier order. Settled is the rule that issues of retention and non-coverage of a land under agrarian reform are within the domain of the DAR Secretary.[59] By virtue of such special competence, he should be given an opportunity, even on a second motion for reconsideration, to rectify the errors he may have committed. The time-honored rule is that if a remedy within the administrative machinery can still be had by giving the administrative officer concerned every

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[55] *Rollo*, pp. 382-383.

[56] *Id.* at 45.

[57] *Id.* at 192.

[58] *Id.* at 193.

[59] *Sta. Ana v. Sps. Carpo*, 593 Phil. 108, 127 (2008).

opportunity to decide on the matter that comes within his jurisdiction, then such remedy should be priorly exhausted.[60] Besides, rules of procedure are construed liberally in administrative proceedings as administrative bodies are not bound by the technicalities applicable to courts of law, hence, should not be used to override substantial justice,[61] as in this case.

All told, the Court finds no cogent reason to reverse the denial of the tribunals *a quo* of the petitions for exemption and retention herein considered.

WHEREFORE, the petition is **DENIED**. The Decision dated July 25, 2007 and the Resolution dated September 27, 2007 of the Court of Appeals in CA-G.R. SP No. 01130 are hereby **AFFIRMED**.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), Brion, del Castillo,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 184371. March 5, 2014]

SPOUSES MARIO AND JULIA CAMPOS, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

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[60] See *DAR v. Uy*, 544 Phil. 308, 328 (2007), citing *Land Car, Inc. v. Bachelor Express, Inc*, 462 Phil. 796, 802 (2003).

[61] *Id.* at 330.

[*] Designate Acting Chief Justice per Special Order No. 1644 dated February 25, 2014.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN ASSIGNMENT OF ERROR IS ESSENTIAL TO APPELLATE REVIEW AND ONLY THOSE ERRORS ASSIGNED WILL BE CONSIDERED; EXCEPTIONS.—** The general rule that an assignment of error is essential to appellate review and only those errors assigned will be considered applies in the absence of certain exceptional circumstances. As exceptions to the rule, the Court has considered grounds not raised or assigned as errors in instances where: (1) grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) matters not assigned as errors on appeal but are evidently plain or clerical errors within the contemplation of the law; (3) matters not assigned as errors on appeal, whose consideration is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) matters not assigned as errors on appeal but are closely related to the assigned error/s; and (6) matters not assigned as errors on appeal, whose determination is necessary to rule on the question/s properly assigned as errors.

2. **CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529; REGISTRATION OF TITLE; REQUISITES.—** Persons applying for registration of title under Section 14(1) of Presidential Decree No. 1529 must prove: (1) that the land sought to be registered forms part of the disposable and alienable lands of the public domain, and (2) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership **since June 12, 1945, or earlier**. x x x We emphasize that since the effectivity of P.D. No. 1073 on January 25, 1977, it must be shown that possession and occupation of the land sought to be registered by the applicant himself or through his predecessors-in-interest, **started on June 12, 1945 or earlier**, which totally conforms to the requirement under Section 14(1)

of P.D. No 1529. A mere showing of possession and occupation for thirty (30) years or more is no longer sufficient.

APPEARANCES OF COUNSEL

Julie Ann G. Dumlao-Tuddao for petitioners.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

Before this Court is a petition for review on *certiorari*[1] assailing the April 30, 2007 decision[2] and August 22, 2008 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 84620. The CA reversed and set aside the December 29, 2004 decision[4] of the Municipal Trial Court (*MTC*) Bauang, La Union in LRC Case No. 80-MTC, BgLU, which approved the application of registration of title of Lot No. 3876, Cad-474-D, Case 17, Bauang Cadastre, filed by the spouses Mario and Julia Campos (*petitioners*).

Facts

On November 17, 2003, the petitioners applied for the registration of a 6,904 square meter-parcel of land situated in Baccuit, Bauang, La Union, particularly described as Lot No. 3876, Cad-474-D, Case 17, Bauang Cadastre. The petitioners bought the subject land from Roberto Laigo, as evidenced by a Deed of Absolute Sale executed by the parties on July 26, 1990.

In support of their application, the petitioners presented, among others, the following evidence: (1) testimony of

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 30-38; Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Fernanda Lampas-Peralta and Normandie B. Pizarro, concurring.

[3] *Id.* at 39-40.

[4] *Id.* at 74-78.

petitioner Mario Campos; (2) testimony of adjoining lot-owner, Leopoldo Subang; (3) Linen cloth of Lot 3876 of AP-1-002221, Cad-474-D; (4) Original technical description of the lot; (5) Certificate of Assessment; (6) Deed of Absolute Sale dated July 26, 1990; (7) Certified true copies of Tax declarations for the years 1948 and 1953 in the name of Margarita Laigo, the mother of Roberto Laigo; (8) Certified true copies of Tax declarations for the years 1970, 1974, 1980, 1985 and 1987 in the name of Roberto Laigo; (9) Certified true copies of Tax declarations for the years 1990, 1994, 1995 and 1998 in the names of the petitioners; (10) Tax receipts for the years 1991-1994, 1999-2000, 2001-2002, 2003 and 2004; and (11) Certification from the DENR-CENRO that Lot 3876 falls within the alienable or disposable land of the public domain.[5]

Only the Republic filed a formal opposition to the petitioners' application, which the MTC later dismissed due to the Republic's failure to present testimonial or documentary evidence to substantiate its grounds for objection.[6]

On December 29, 2004, the MTC rendered a decision granting the petitioners' application for registration, stating that:

> Based on the evidences presented, it is appearing that the applicants have established a satisfactory proof that they have a registrable title over the property subject of these proceedings, they, being qualified to own that land being Filipino citizens, it being established also that their possession and that of their predecessor-in-interest of the parcel of land subject of this application have been open, continuous, exclusive and adverse against the whole world for more than fifty-six (56) years since the oldest documentary evidence, Tax Declaration No. 235 series of 1948 and in the name of Margarita Laigo shows that Margarita Laigo, mother of Roberto Laigo from whom the applicants bought this land subject of this case, has owned it since 1948. Besides, witness Leopoldo Subang, the owner of the land adjacent to this

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

[6] *Id.* at 78.

land subject of this case, confirmed that their possession was probably before 1948 because he knows Roberto Laigo as the present owner of the land when he sold it to the applicants; and that this property was originally owned by Margarita Laigo, mother of Roberto Laigo. Hence, this Court conclusively presumes that Margarita Laigo was the original owner even before the Second World War.[7]

The Republic appealed to the CA on the ground that the MTC erred in granting the petitioners' application for registration because of discrepancies in the area of the subject land as applied for and indicated in the tax declarations and the parties' deed of sale. Also, discrepancies in the description of the subject land appeared in the tax declarations, as the land was sometimes described as "swampy" and, in others, "sandy."

The CA, in its assailed April 30, 2007 decision, reversed and set aside the MTC's decision and dismissed the petitioners' application for registration of title. It ruled that, contrary to the MTC's findings, the evidence failed to prove the nature and duration of the petitioners' possession and that of their predecessors-in-interest; that the petitioners failed to prove that they and their predecessors-in-interest have been in open, continuous, exclusive, notorious and adverse possession of Lot 3876 since June 12, 1945 or earlier.

The CA further held that the petitioners failed to establish when the subject land became alienable; that while the DENR-CENRO La Union certified that "Lot 3876 falls within the Alienable and Disposable land of the Public Domain as per Project No. 9, L.C. Map No. 3330 of Bauang Cadastre as certified on January 21, 1987," such certification (as annotated in the lot's Advance Plan) was inadequate to prove that the subject land was classified as alienable and disposable on said date.

Lastly, the CA noted the discrepancies in the area of the subject land indicated in the tax declarations and deed of

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[7] *Id.*

sale presented by the petitioners, which put in doubt the lot's identity. It held that:

> xxx, insufficient identification of the land claimed in absolute ownership by the applicant cannot ripen into ownership. Lot 3876 consists of 6,904 square meters, as shown in the tax declarations for 1994 and 1996, whereas the tax declarations for 1948, 1953 and 1970 cover a parcel of land consisting of 4,502 square meters. Besides, the Deed of Absolute Sale and tax declarations covering the years 1980 until 1987, inclusive, pertain to a land with an area of 4,512 square meters.[8] (Citation omitted)

The petitioners moved to reconsider the CA' decision but the CA denied their motion in a resolution dated August 22, 2008, hence, the filing of the present petition for review for *certiorari* with this Court.

The Petition

In the present petition, the petitioners argue that the CA erred in ruling on non-issues and on established and undisputed facts that were not raised by the Republic as errors in its appeal; that the sole issue raised by the Republic was merely on the discrepancies on the area and description of the subject land as indicated in the documents and evidence presented, which issue the petitioners already addressed in their appeal brief before the CA.

The petitioners maintain that they have presented sufficient evidence to show the nature and duration of their possession and the fact that they had possessed and cultivated the land sought to be registered.

Our Ruling

We deny the present petition as the CA committed no reversible error in dismissing the petitioners' application for registration of title.

First, we address the procedural issue raised by the petitioners. Section 8, Rule 51 of the 1997 Rules of Civil

[8] *Id.* at 36.

Procedure expressly provides:

SEC. 8. *Questions that may be decided.* – No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court pass upon plain errors and clerical errors.

The general rule that an assignment of error is essential to appellate review and only those errors assigned will be considered applies in the absence of certain exceptional circumstances. As exceptions to the rule, the Court has considered grounds not raised or assigned as errors in instances where: (1) grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) matters not assigned as errors on appeal but are evidently plain or clerical errors within the contemplation of the law; (3) matters not assigned as errors on appeal, whose consideration is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) matters not assigned as errors on appeal but are closely related to the assigned error/s; and (6) matters not assigned as errors on appeal, whose determination is necessary to rule on the question/s properly assigned as errors.[9] The present case falls into the exceptions.

We find no error by the CA in resolving the issues on the nature and duration of the petitioners' possession and on the alienable character of the subject land. These issues were apparently not raised by the Republic in its appeal before the CA, but are **crucial in determining whether the petitioners have registrable title over the subject land**. In *Mendoza*

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[9] *Hi-Tone Marketing v. Baikal Realty*, G.R. No. 149992, August 20, 2004, 437 SCRA 120.

v. Bautista,[10] the Court held that the appellate court reserves the right, resting on its public duty, to take cognizance of palpable error on the face of the record and proceedings, and to notice errors that are obvious upon inspection and are **of a controlling character**, in order to prevent a miscarriage of justice due to oversight.

In deciding on the merits of the present petition, we affirm the CA in dismissing the petitioners' application for registration of title.

Persons applying for registration of title under Section 14(1) of Presidential Decree No. 1529[11] must prove: (1) that the land sought to be registered forms part of the disposable and alienable lands of the public domain, and (2) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership **since June 12, 1945, or earlier**.[12]

As the CA did, we find that the petitioners failed to prove that they and their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the subject land, under a *bona fide* claim of ownership, since June 12, 1945, or earlier. The oldest documentary evidence presented by the petitioners was a **1948** tax declaration over the subject land in the name of Margarita Laigo. The petitioners failed to present evidence of their possession prior to 1948. In fact, **the petitioners, in their application for registration, base their possession of the subject land only from 1948, and not "since June 12, 1945, or earlier"** as required by law.

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[10] G.R. No. 143666, March 18, 2005, 453 SCRA 691, 707.

[11] Known as "AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES," effective June 11, 1978.

[12] *Republic v. Enciso*, G.R. No. 160145, November 11, 2005, 474 SCRA 700, 711.

We emphasize that since the effectivity of P.D. No. 1073[13] on January 25, 1977, it must be shown that possession and occupation of the land sought to be registered by the applicant himself or through his predecessors-in-interest, **started on June 12, 1945 or earlier**, which totally conforms to the requirement under Section 14(1) of P.D. No 1529. A mere showing of possession and occupation for thirty (30) years or more is no longer sufficient.[14]

WHEREFORE, premises considered, we hereby **DENY** the petition and **AFFIRM** the April 30, 2007 decision and August 22, 2008 resolution of the Court of Appeals in CA-G.R. CV No. 84620.

SO ORDERED.

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

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[13] Known as "EXTENDING THE PERIOD OF FILING APPLICATIONS FOR ADMINISTRATIVE LEGALIZATION (FREE PATENT) AND JUDICIAL CONFIRMATION OF IMPERFECT AND INCOMPLETE TITLES TO ALIENABLE AND DISPOSABLE LANDS IN THE PUBLIC DOMAIN UNDER CHAPTER VII AND CHAPTER VIII OF COMMONWEALTH ACT NO. 141, AS AMENDED, FOR ELEVEN (11) YEARS COMMENCING JANUARY 1, 1977."

[14] *Republic v. Doldol*, 356 Phil. 671 (1998).

SECOND DIVISION

[G.R. No. 188828. March 5, 2014]

CO SAY COCO PRODUCTS PHILS., INC., TANAWAN PORT SERVICES, EFREN CO SAY and YVETTE SALAZAR, *petitioners, vs.* **BENJAMIN BALTASAR, MARVIN A. BALTASAR, RAYMUNDO A. BOTALON, NILO B. BORDEOS, JR., CARLO B. BOTALON and GERONIMO B. BAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; IN THE EXERCISE OF THE SUPREME COURT'S POWER OF REVIEW, IT DOES NOT ROUTINELY UNDERTAKE THE RE-EXAMINATION OF THE EVIDENCE PRESENTED BY THE CONTENDING PARTIES DURING THE TRIAL OF THE CASE.— Time and again we reiterate the established rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts and does not routinely undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are generally accorded not only respect, but even finality, and are binding upon this Court, when supported by substantial evidence.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; APPEAL FROM THE LABOR ARBITER'S MONETARY AWARD; MAY BE PERFECTED ONLY UPON PROOF OF PAYMENT OF THE REQUIRED FEE, POSTING OF A CASH OR SURETY BOND BY A REPUTABLE BONDING COMPANY AND FILING OF A MEMORANDUM OF APPEAL.— The crucial issue in the resolution of the instant petition concerns the timely posting of the appeal bond. The pertinent rule on the matter is Article 223 of the Labor Code, as amended, which sets forth the rules on appeal from the Labor Arbiter's monetary award x x x. Implementing the aforestated provisions of the Labor Code are the provisions of Rule VI of

the 2011 NLRC Rules of Procedure on perfection of appeals x x x. These statutory and regulatory provisions explicitly provide that an appeal from the Labor Arbiter to the NLRC must be perfected **within ten calendar days from receipt of such decisions, awards or orders of the Labor Arbiter.** In a judgment involving a monetary award, the appeal shall be perfected only upon; (1) proof of payment of the required appeal fee; **(2) posting of a cash or surety bond issued by a reputable bonding company;** and (3) filing of a memorandum of appeal.

3. ID.; ID.; ID.; RULES OF PERFECTION OF AN APPEAL, PARTICULARLY IN LABOR CASES, MUST BE STRICTLY CONSTRUED.— The Court of Appeals x x x correctly ruled that petitioners failed to perfect their appeal on time. In holding so, the appellate court only applied the appeal bond requirement as already well explained in our previous pronouncements that there is legislative and administrative intent to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention. The clear intent of both statutory and procedural law is to require the employer to post a cash or surety bond securing the full amount of the monetary award within the ten 10-day reglementary period. Rules on perfection of an appeal, particularly in labor cases, must be strictly construed because to extend the period of the appeal is to delay the case, a circumstance which would give the employer a chance to wear out the efforts and meager resources of the worker to the point that the latter is constrained to give up for less than what is due him. This is to assure the workers that if they finally prevail in the case the monetary award will be given to them both upon dismissal of the employer's appeal. It is further meant to discourage employers from using the appeal to delay or evade payment of their obligations to the employees. The appeal bond requirement precisely aims to prevent empty or inconsequential victories secured by laborers in consonance with the protection of labor clause ensconced and zealously guarded by our Constitution.

4. ID.; ID.; ID.; AN APPEAL IS ONLY A STATUTORY PRIVILEGE AND THE PERFECTION OF AN APPEAL IN A MANNER AND WITHIN THE PERIOD PRESCRIBED BY LAW IS MANDATORY AND JURISDICTIONAL.— [P]erfection of an appeal in a manner and within the period prescribed by law is not only mandatory but jurisdictional, **and failure to perfect**

an appeal has the effect of making judgment final and executory. While dismissal of an appeal on technical grounds is frowned upon, Article 223 of the Labor Code which prescribes the appeal bond requirement, however, is a rule of jurisdiction and not of procedure. Hence, there is a little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities. It is axiomatic that an appeal is only a statutory privilege and it may only be exercised in the manner provided by law. The timely perfection of an appeal is a mandatory requirement, which cannot be trifled with a "mere technicality" to suit the interest of party. We cannot condone the practice of parties who, either by their own or their counsel's inadvertence, have allowed the judgment to become final and executory and, after the same had reached finality, seeks the shield of substantial justice to assail it.

APPEARANCES OF COUNSEL

Salomon & Gonong Law Offices for petitioners.
Bernabe Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review on *Certiorari* pursuant to Rule 45 of the Revised Rules of Court, assailing the 20 April 2009 Decision[1] rendered by the Eighth Division of the Court of Appeals in CA-G.R. SP No. 89128. In its assailed decision, the appellate court: (1) reversed as grave abuse of discretion the Resolution of the National Labor Relations Commission (NLRC) which granted the petition of Co Say Coco Products Phils., Inc. (Co Say), Tanawan Port Services (Tanawan Port), Efren Co Say and Yvette Salazar (Salazar) despite non-perfection of their appeal; and (2) proceeded to affirm the ruling of the Labor Arbiter.

[1] Penned by Associate Justice Romeo F. Barza with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Arcangelita M. Romilla-Lontok, concurring. *Rollo,* pp. 38-55.

In a Resolution[2] dated 8 July 2009, the appellate court refused to reconsider its earlier decision.

The Facts

Petitioner Co Say is a domestic corporation duly organized and existing under Philippine laws and is the owner of a private port located in Bigaa, Legazpi City. Tanawan Port on the other hand, is a single proprietorship owned and managed by Salazar.

On 18 March 2002, Co Say, thru its President, Efren Co Say, entered into a Contract for Cargo Handling Services[3] with petitioner Tanawan Port, wherein the latter was given the authority to manage and operate the *arrastre* and stevedoring services of its port.

To jumpstart the operation of its cargo handling services, Tanawan Port employed respondents Benjamin Baltasar as Manager, Marvin Baltasar as Computer Operator, Raymundo Botalon as Crane Operator, Nilo Bordeos, Jr. as Crane Helper, Carlo Botalon as Crane Operator and Geronimo Bas as Fork Lift Operator.[4]

Due to lack of clientele, the business venture of Tanawan Port failed to gain momentum causing serious alarm to the company. A couple of months after respondents were hired, Tanawan Port decided to cease operation by sending letters[5] to the City Treasurer of Legaspi City and the Revenue District Officer of the Bureau of Internal Revenue informing them of its intention to close its business and to surrender its business registration due to serious business losses. On 30 August 2002, the City Treasurer approved the retirement from business of

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[2] *Id.* at 56-57.

[3] *Id.* at 59-60.

[4] Benjamin Baltasar, Marvin A. Baltasar, Raymundo Botalon, Nilo B. Bordeos, Jr., Carlo B. Botalon and Geronimo Bas were respectively hired on 1 April 2002, 6 May 2002, 15 April 2002, 15 April 2002, 2 May 2002 and 1 July 2002. CA *rollo,* p. 105.

[5] *Rollo,* pp. 68-69.

Tanawan Port.[6] On the same day, Salazar convened respondents to formally inform them of her intention to close Tanawan Port's operation, but she was prevailed upon by the latter to hold it up while Baltasar is looking for new clients that could help boost the company's revenue. Efforts to revive the business, however, proved to be futile constraining the company to finally discontinue its operation and close its business. As a result, respondents were terminated from employment but were accordingly given their corresponding separation pay and 13th month pay in the following amounts:

Name	Separation Pay	13th Month Pay	TOTAL
Carlo Botalon	₱ 18,000.00	₱ 3,750.00	₱ 21,750.00
Raymundo Botalon	18,000.00	4,125.00	22,125.00
Marvin Baltasar	12,000.00	2,500.00	14,500.00
Nilo Bordeos	10,000.00	2,291.69	12,291.69
Geronimo Bas	14,000.00	1,749.99	15,749.99
	₱ 72,000.00	₱ 14,416.68	₱ 86,416.68[7]

Barely a month after they received their separation pay, respondents filed complaints[8] for illegal dismissal and non-payment of labor standard benefits against petitioners Tanawan Port, Salazar, Co Say and Efren Co Say before the Labor Arbiter. In their Position Papers, respondents alleged that Tanawan Port was merely feigning losses in order to ease out employees, pointing out the absence of evidence to prove business reverses. Respondents also punctuated Tanawan Port's failure to comply with the procedural requirement of sending notices to employees concerned and to the Department of Labor and Employment (DOLE) one month before the intended date of closure as required by law.

Tanawan Port, for its part, asserted that respondents' severance from employment was brought about by closure or

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[6] *Id.* at 70.

[7] *Id.* at 71.

[8] *Id.* at 74-85.

cessation of business operation which is an authorized cause for termination of employment under the Labor Code. To dispute the allegation of respondents that the closure was done in bad faith, Tanawan Port insisted that the lack of clientele caused serious financial drain to the company leaving the management with no other option but to shutdown its operations.[9]

On 7 August 2003, the Labor Arbiter rendered a Joint Decision[10] in favor of respondents and held that petitioners are liable for illegal dismissal for failure to comply with the procedural and substantive requirements of terminating employment due to closure of business operations. It was found that while Tanawan Port claimed that it was suffering from serious business losses, it failed to adduce its financial statements to prove that its withdrawal from operation was *bona fide* in character. A similar failure to comply with the notice requirement was likewise observed by the labor officer resulting in the violation of respondents' right to due process of law. Finally, the Labor Arbiter declared that Tanawan Port is engaged in labor-only contracting and is merely an extension of the business personality of Co Say, which is thus, solidarily liable with the former, the labor-only contractor, for the rightful claims of the employees. The decretal portion of the Labor Arbiter Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered declaring the dismissal of complainants as illegal, and directing respondent Co Say [C]oco Products Phil., Inc., and Efren Co Say being their employer, to reinstate them to their former positions without loss of seniority rights and privileges with full backwages from September 21, 2002 with earlier amount paid to the complainants to be deducted therefrom as of August 2003, is computed as follows:
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> | | |
> |---|---|
> | 1. BENJAMIN BALTASAR | |
> | a) From September 2002 to August 2003 | ₱ 768,000.00 |
> | b) 13th month pay for 2002 and 2003 | 128,000.00 |
> | c) Commission | 2,887,182.38 |
> | | ₱ 3,783,182.38 |

[9] CA *rollo*, pp. 105-112.

[10] *Rollo*, pp. 86-96.

2. MARVIN BALTASAR	
a) Backwages from Sept. to August 2003	₱108,000.00
b) 13th month pay for 2003	9,000.00
	₱117,000.00
3. CARLO BOTALON	
a) Backwages from Sept. to August 2003	₱108,000.00
b) 13th month pay for 2003	9,000.00
	₱117,000.00
4. NILO BORDEOS	
a) Backwages from Sept. to August 2003	₱108,000.00
b) 13th month pay for 2003	9,000.00
	₱117,000.00
5. RAYMUNDO BOTALON	
a) Backwages from September to August 2003	₱108,000.00
b) 13th month pay for 2003	9,000.00
	₱117,000.00
6. GERONIMO BAS	
a) Backwages from Sept. to August 2003	₱84,000.00
b) 13th month pay for 2003	7,000.00
	₱91,000.00

or a total of FOUR MILLION THREE HUNDRED FORTY-TWO THOUSAND ONE HUNDRED EIGHTY-TWO AND 38/100 (₱4,342,182.38).

Respondents are ordered jointly and severally to pay attorney's fee equivalent to 10% of the total award.[11]

Contradicting the Labor Arbiter Decision, the NLRC in its Decision[12] dated 31 May 2004, held that respondents' severance from employment was not illegal, as the company where they were working closed due to business losses, and, the closure of business or establishment is one of the authorized causes recognized by law in dismissing an employee. The NLRC further ruled that there was sufficient compliance with the substantive requirement in terminating employment and held that proof of business losses is not necessary since cessation of business

[11] *Id.* at 95-96.

[12] *Id.* at 122-134.

operation is a management prerogative and should not be interfered with by courts or labor tribunals.

Similarly ill-fated was petitioners' Motion for Reconsideration which was denied by the NLRC in a Resolution[13] dated 29 December 2004.

In a Decision[14] dated 20 April 2009, the Court of Appeals reversed the NLRC Decision due to failure of petitioners to perfect their appeal and proceeded to affirm the Labor Arbiter's Decision. Contrary to the ruling of the NLRC, the appellate court ruled that the posting of the appeal bond after the period to perfect the appeal had expired, resulted in the non-perfection of the appeal. Accordingly, the Court of Appeals ruled that the NLRC has no authority to alter, modify or reverse the Labor Arbiter decision after the said decision became final and executory.

In a Resolution[15] dated 8 July 2009, the Court of Appeals refused to reconsider its earlier decision.

Petitioners are now before this Court *via* this instant Petition for Review on *Certiorari*[16] praying that the Court of Appeals Decision be reversed and aside on the following grounds:

I.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT RULED THAT AN AFFIDAVIT OF NON-FORUM SHOPPING WAS NOT NECESSARY IN THE COMPLAINTS FILED BY THE RESPONDENTS;

II.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN

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

[14] *Id.* at 38-55.

[15] *Id.* at 56-57.

[16] *Id.* at 8-36.

IT RULED THAT THE RESPONDENTS FAILED TO PERFECT THEIR APPEAL ON TIME;

III.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DID NOT ADDRESS THE ISSUE OF WHETHER OR NOT THE TERMINATION OF THE EMPLOYER-EMPLOYEE RELATIONSHIP WAS FOR A CAUSE RECOGNIZED BY LAW; [AND]

IV.

THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT DID NOT ADDRESS THE ISSUE OF WHETHER OR NOT THE RESPONDENT BENJAMIN BALTASAR HAS FULLY ESTABLISHED HIS RIGHT TO THIRTY (30) PERCENT OF THE GROSS SALES OF TANAWAN PORT SERVICES.[17]

The Court's Ruling

Petitioners, in assailing the appellate court's decision, invited the attention of this Court to the Certification dated 19 January 2004, issued by the Regional Arbitration Branch (RAB) of the NLRC, stating that petitioners posted a surety bond in the amount of ₱4,342,182.38 on 24 September 2003. They insisted that they have complied with all the requirements for perfecting an appeal, including the posting of the surety bond within the period for perfecting an appeal, thereby imputing error to the ruling of the appellate court that no appeal was perfected on time.

Time and again we reiterate the established rule that in the exercise of the Supreme Court's power of review, the Court is not a trier of facts[18] and does not routinely undertake the re-

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

[18] Exceptions: a) the conclusion is a finding of fact grounded on speculations, surmises and conjectures; b) the inferences made are manifestly mistaken, absurd or impossible; c) there is a grave abuse of discretion; d) there is misappreciation of facts; and e) the court, in arriving in its findings, went beyond the issues of the case and the same are contrary to the admission of the parties or the evidence presented. See *OSM Shipping Phil., Inc. v. Dela Cruz*, 490 Phil. 392, 402 (2005).

examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of labor officials who are deemed to have acquired expertise in matters within their respective jurisdiction are generally accorded not only respect, but even finality, and are binding upon this Court, when supported by substantial evidence.[19]

The NLRC ruled that petitioners were able to post the surety bond and timely perfect their appeal before the expiration of the 10-day reglementary period, while the Court of Appeals oppositely ruled although both findings are based on the same pieces of evidence available on record. According to the appellate court, the First Certification issued by the RAB-NLRC on 2 October 2003 is telling of the petitioners' failure to perfect an appeal. It appeared in the said certification that the appeal bond, which is a mandatory requirement for perfecting an appeal, has not been posted as of 2 October 2003, *viz:*

CERTIFICATION

This is to certify that according to the records of this office, no appeal bond has been posted by the respondents in re: RAB-V Case Nos. 10-00486-02; 10-00513-02, to 10-00517-02, entitled, BENJAMIN BALTASAR, *ET AL*. -versus- COSAY Coco Products Phil., *ET AL*.

Issued this 2nd day of October, 2003, at Legazpi City, Philippines, upon request of Atty. J. Roberto J. Bernabe for whatever legal purpose this may serve.

EDITH C. BUENAAGUA
Administrative Officer III[20]

Three months after the said certification was issued, the RAB-NLRC issued a Second Certification on 19 January 2004, indicating that petitioners posted a surety bond on 24 September 2003 although the said bond was received by the RAB-NLRC only on 28 October 2003, to wit:

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[19] *Bughaw, Jr., v. Treasure Island Industrial Corporation*, 573 Phil. 435, 442 (2008).

[20] CA *rollo*, p. 165.

CERTIFICATION

To Whom It May Concern;

This is to certify that according to the records of this office, Mr. Efren Cosay, respondent in re: RAB-V case no. 10-004860-02 entitled, Benjamin Baltazar vs. Cosay Coco Products Phil. Inc./Tanawan Port Service/Efren O. Cosay and Y[v]ette C. Salazar, posted Surety Bond in the amount of Four Million Three Hundred Forty Two Thousand One Hundred Eighty Two & Thirty Eight Centavos (Php. 4,342,182.38) dated on September 24, 2003. However said bond was received by this Branch only on October 28, 2003, (as per attached photocopy of the logbook).

Issued this 19th day of January 2004 upon request of Atty. Jesus Roberto J. Bernabe, for whatever legal purpose this may serve.

EDITH C. BUENAAGUA
Administrative Officer III[21]

It was on the basis of the Second Certification that the NLRC allowed the appeal. The divergence of the findings of the NLRC on the one hand, and the Court of Appeals on the other, necessitates a review of the records of this case to ascertain which conclusion is supported by substantial evidence and, enough to remove the conclusion away from the issue of grave abuse of discretion. Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[22]

The crucial issue in the resolution of the instant petition concerns the timely posting of the appeal bond. The pertinent rule on the matter is Article 223 of the Labor Code, as amended, which sets forth the rules on appeal from the Labor Arbiter's monetary award:

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

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[21] *Id.* at 64.

[22] *Blue Sky Trading Company, Inc. v. Blas*, G.R. No. 190559, 7 May 2012, 667 SCRA 727, 744.

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. (Emphasis ours).

Implementing the aforestated provisions of the Labor Code are the provisions of Rule VI of the 2011 NLRC Rules of Procedure on perfection of appeals which read:

SECTION 1. PERIODS OF APPEAL. - Decisions, awards, or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.

No motion or request for extension of the period within which to perfect an appeal shall be allowed.

SECTION 2. GROUNDS. - The appeal may be entertained only on any of the following grounds:

a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter or Regional Director;
b) If the decision, award or order was secured through fraud or coercion, including graft and corruption;
c) If made purely on questions of law; and/or
d) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

SECTION 3. WHERE FILED. - The appeal shall be filed with the Regional Arbitration Branch or Regional Office where the case was heard and decided.

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/herself 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, award or order;
(4) in three (3) legibly typewritten or printed copies; and
(5) accompanied by:

i) proof of payment of the required appeal fee and legal research fee;
ii) posting of a cash or surety bond as provided in Section 6 of this Rule;
and
iii) 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 for perfecting an appeal.

c) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his/her answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his/her answer or reply within the said period may be construed as a waiver on his/her part to file the same.

d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

SECTION 5. APPEAL FEE. - The appellant shall pay the prevailing appeal fee and legal research fee to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case.

SECTION 6. BOND. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent

in amount to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by original or certified true copies of the following:

a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.
b) an indemnity agreement between the employer-appellant and bonding company;
c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security;
d) a certificate of authority from the Insurance Commission;
e) certificate of registration from the Securities and Exchange Commission;
f) certificate of accreditation and authority from the Supreme Court; and
g) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

The Commission through the Chairman may on justifiable grounds blacklist a bonding company, notwithstanding its accreditation by the Supreme Court.

A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied.

This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal

of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

These statutory and regulatory provisions explicitly provide that an appeal from the Labor Arbiter to the NLRC must be perfected **within ten calendar days from receipt of such decisions, awards or orders of the Labor Arbiter.** In a judgment involving a monetary award, the appeal shall be perfected only upon; (1) proof of payment of the required appeal fee; **(2) posting of a cash or surety bond issued by a reputable bonding company;** and (3) filing of a memorandum of appeal.[23]

No appeal was perfected by the petitioners within the 10-day period under Article 223 of the Labor Code.

The petitioners received the 7 August 2003 Decision of the Labor Arbiter on 15 September 2003, hence, they had until 25 September 2003 to perfect their appeal. A perusal of the records reveals an apparent contrariety on the date of the posting of the appeal bond, a material fact decisive of the instant controversy. While the First Certification indicated that no appeal bond has been posted as of 2 October 2003, the Second Certification and the Transmittal Letter[24] stated that a surety bond was posted on 24 September 2003.

The conclusion that the First Certification necessarily leads to is the lateness of the perfection of the appeal to the NLRC. Ostensibly, the Second Certification puts the appeal within the

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[23] *Colby Construction and Management Corporation and/or Lo v. NLRC*, 564 Phil. 145, 156 (2007).

[24] *Rollo*, p. 147.

required perfection period of ten days from receipt of the decision of the Labor Arbiter. However, the fact behind what seems to be is that both certifications state, directly by the first while distortedly by the second, that the appeal by petitioners to the NLRC was perfected beyond the provided period. In a seeming attempt to avoid the direct fact of untimeliness in the First Certificate, the Second Certificate mentions two dates, one which is within the 10-day period and the other, the late date of 28 October 2003 which is even beyond the 2 October 2003 issuance of the First Certificate. The first date, 24 September 2003 was depicted in the Second Certificate as the date of posting while the date 28 October 2003 was described as the date of receipt by the DOLE-RAB. Apart from saying that the appeal bond was timely "posted" on 24 September 2003, the Second Certification would also justify why on the date of the First Certification, 2 October 2003, there was yet no posted appeal bond on record, the reason, although unstated being that the "posted" bond was "received" only on 28 October 2003.

The Second Certificate is not a document of timeliness of petitioners' appeal bond. It is even confirmatory of the fact of tardiness that the First Certification stated doubtlessly. The NLRC gravely abused its discretion when it considered as correct the statement in the Second Certificate that "x x x respondent in re: RAB-V Case No. 10-004860-02 x x x posted Surety Bond x x x dated on September 24, 2003." To elaborate:

1. The records pertinent to petitioners' appeal bond do not state, nor do they show, that the bond was posted on 24 September 2003. The Surety Bond, the Affidavit of Justification, and the Joint Declaration all state that the surety bond was issued on 24 September 2003. What petitioners did thereafter to be able to beat the 25 September 2003 deadline is not indicated by the records.

2. Insofar as the appeal bond is concerned, issuance is not equivalent to posting; and even if it so, posting of the surety bond alone would not suffice. This is evident

from the provisions on Bond in the NLRC Rules of Procedure, which we, for emphasis, repeat hereunder.[25]

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[25] 2011 NLRC Rules of Procedure, Rule VI provide:

SECTION 1. PERIODS OF APPEAL. - Decisions, awards, or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.

No motion or request for extension of the period within which to perfect an appeal shall be allowed.

SECTION 2. GROUNDS. - The appeal may be entertained only on any of the following grounds:

a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter or Regional Director;

b) If the decision, award or order was secured through fraud or coercion, including graft and corruption;

c) If made purely on questions of law; and/or

d) If serious errors in the findings of facts are raised which, if not corrected, would cause grave or irreparable damage or injury to the appellant.

SECTION 3. WHERE FILED. - The appeal shall be filed with the Regional Arbitration Branch or Regional Office where the case was heard and decided.

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/herself 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, award or order;

(4) in three (3) legibly typewritten or printed copies; and

(5) accompanied by:

i) proof of payment of the required appeal fee and legal research fee;

ii) posting of a cash or surety bond as provided in Section 6 of this Rule;

and

2.a The rule requires that the bond — the posting of which perfects an appeal "shall either be in the form of cash deposit or surety bond x x x." If the bond is in the form of surety bond, there are two separate requirements: first, the surety bond must be issued by a reputable company duly accredited by the Commission or the Supreme Court and second, the surety bond that was issued by the rule-compliant bonding company must be accompanied by original or certified true copies of no less than seven (7) other documents. Clearly, the issuance of the surety bond, as erroneously considered by the Second Certification, cannot be the posting required by the rule. It is only one of the two requirements of posting.

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iii) 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 for perfecting an appeal.

c) The appellee may file with the Regional Arbitration Branch or Regional Office where the appeal was filed, his/her answer or reply to appellant's memorandum of appeal, not later than ten (10) calendar days from receipt thereof. Failure on the part of the appellee who was properly furnished with a copy of the appeal to file his/her answer or reply within the said period may be construed as a waiver on his/her part to file the same.

d) Subject to the provisions of Article 218 of the Labor Code, once the appeal is perfected in accordance with these Rules, the Commission shall limit itself to reviewing and deciding only the specific issues that were elevated on appeal.

SECTION 5. APPEAL FEE. - The appellant shall pay the prevailing appeal fee and legal research fee to the Regional Arbitration Branch or Regional Office of origin, and the official receipt of such payment shall form part of the records of the case.

SECTION 6. BOND. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by original or certified true copies of the following:

That the posting of the surety bond requires as necessary addition the seven enumerated documents is underscored by the provision that the appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report

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a) a joint declaration under oath by the employer, his/her counsel, and the bonding company, attesting that the bond posted is genuine, and shall be in effect until final disposition of the case.

b) an indemnity agreement between the employer-appellant and bonding company;

c) proof of security deposit or collateral securing the bond: provided, that a check shall not be considered as an acceptable security;

d) a certificate of authority from the Insurance Commission;

e) certificate of registration from the Securities and Exchange Commission;

f) certificate of accreditation and authority from the Supreme Court; and

g) notarized board resolution or secretary's certificate from the bonding company showing its authorized signatories and their specimen signatures.

The Commission through the Chairman may on justifiable grounds blacklist a bonding company, notwithstanding its accreditation by the Supreme Court.

A cash or surety bond shall be valid and effective from the date of deposit or posting, until the case is finally decided, resolved or terminated, or the award satisfied.

This condition shall be deemed incorporated in the terms and conditions of the surety bond, and shall be binding on the appellants and the bonding company.

The appellant shall furnish the appellee with a certified true copy of the said surety bond with all the above-mentioned supporting documents. The appellee shall verify the regularity and genuineness thereof and immediately report any irregularity to the Commission.

Upon verification by the Commission that the bond is irregular or not genuine, the Commission shall cause the immediate dismissal of the appeal, and censure the responsible parties and their counsels, or subject them to reasonable fine or penalty, and the bonding company may be blacklisted.

No motion to reduce bond shall be entertained except on meritorious grounds, and only upon the posting of a bond in a reasonable amount in relation to the monetary award.

The mere filing of a motion to reduce bond without complying with the requisites in the preceding paragraphs shall not stop the running of the period to perfect an appeal.

any irregularity to the Commission.[26]

The rule gives the appellee the authority and opportunity, even the duty, to verify the regularity and genuineness not only of the surety bond but also of the seven attachments. To reiterate, even if the issuance of the surety bond on 24 September 2003 is considered as the posting of the bond, the certification cannot furthermore be considered as the posting of the other seven required documents.

Without a straight statement, the Second Certification seems to consider posting as mailing such that the date 24 September 2003 should be the reckoning date that determines timeliness and not the date 28 October 2003 which was the date of receipt of the surety bond. Even such insinuation, strained and all, is unacceptable considering the absence of proof of mailing, it being the fact that there was no mention at all in any of the pleadings below that the surety bond was mailed.

The Court of Appeals therefore, correctly ruled that petitioners failed to perfect their appeal on time. In holding so, the appellate court only applied the appeal bond requirement as already well explained in our previous pronouncements that there is legislative and administrative intent to strictly apply the appeal bond requirement, and the Court should give utmost regard to this intention.[27] The clear intent of both statutory and procedural law is to require the employer to post a cash or surety bond securing the full amount of the monetary award within the ten 10-day reglementary period.[28] Rules on perfection of an appeal, particularly in labor cases, must be strictly construed because to extend the period of the appeal is to delay the case, a circumstance which would give the employer a chance to wear out the efforts and meager resources of the worker to the point that the latter is constrained to give up for less than what is due him.[29] This

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[26] 2011 NLRC Rules of Procedure, Rule VI, Section 6.

[27] *Computer Innovations Center v. NLRC*, 500 Phil. 573, 580 (2005).

[28] *Id*.

[29] *Colby Construction and Management Corporation and/or Lo v. NLRC*, *supra* note 23 at 157.

is to assure the workers that if they finally prevail in the case the monetary award will be given to them both upon dismissal of the employer's appeal. It is further meant to discourage employers from using the appeal to delay or evade payment of their obligations to the employees.[30] The appeal bond requirement precisely aims to prevent empty or inconsequential victories secured by laborers in consonance with the protection of labor clause ensconced and zealously guarded by our Constitution.[31]

It is entrenched in our jurisprudence that perfection of an appeal in a manner and within the period prescribed by law is not only mandatory but jurisdictional, **and failure to perfect an appeal has the effect of making judgment final and executory**.[32] While dismissal of an appeal on technical grounds is frowned upon, Article 223 of the Labor Code which prescribes the appeal bond requirement, however, is a rule of jurisdiction and not of procedure.[33] Hence, there is a little leeway for condoning a liberal interpretation thereof, and certainly none premised on the ground that its requirements are mere technicalities.[34] It is axiomatic that an appeal is only a statutory privilege and it may only be exercised in the manner provided by law.[35] The timely perfection of an appeal is a mandatory requirement, which cannot be trifled with a "mere technicality" to suit the interest of party.[36] We cannot condone the practice of parties who, either by their own or their counsel's inadvertence, have allowed the judgment to become final and executory and,

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[30] *Coral Point Development Corporation v. NLRC*, 383 Phil. 456, 463-464 (2000).

[31] *Colby Construction and Management Corporation and/or Lo v. NLRC*, *supra* note 23 at 162.

[32] *Banahaw Broadcasting Corporation v. Pacana III*, G.R. No. 171673, 30 May 2011, 649 SCRA 196, 210.

[33] *Computer Innovations Center v. NLRC*, *supra* note 27 at 582.

[34] *Id*.

[35] *Manaban v. Sarphil Corporation/Apokon Fruits, Inc.*, 495 Phil. 222, 235 (2005).

[36] *Id*.

after the same had reached finality, seeks the shield of substantial justice to assail it.

All considered then, the finding of the Labor Arbiter holding the petitioners liable for illegal dismissal is binding on them. Not having been timely appealed, this issue is already beyond our jurisdiction to resolve, and the finding of the Labor Arbiter can no longer be disturbed without violating the fundamental principle that final judgment is immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusion of fact and law.[37]

WHEREFORE, premises considered, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals, reversing the NLRC Resolution and effectively reinstating the Labor Arbiter Decision, are hereby **AFFIRMED**.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), Brion, del Castillo,* and *Perlas-Bernabe, JJ.,* concur.

SECOND DIVISION

[G.R. No. 190837. March 5, 2014]

REPUBLIC OF THE PHILIPPINES, represented by the BUREAU OF FOOD AND DRUGS (now FOOD AND DRUG ADMINISTRATION), *petitioner, vs.* **DRUGMAKER'S LABORATORIES, INC. and TERRAMEDIC, INC.,** *respondents.*

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[37] *Mendoza v. Fil-Homes Development Corporation,* G.R. No. 194653, 8 February 2012, 665 SCRA 628, 634.

[*] Per Special Order No. 1644 dated 25 February 2014.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; QUASI-LEGISLATIVE OR RULE-MAKING POWERS; MAY BE EXERCISED BY ADMINISTRATIVE AGENCIES ONLY IF THERE EXISTS A LAW WHICH DELEGATES THESE POWERS TO THEM.— Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.

2. ID.; ID.; ID.; ID.; ADMINISTRATIVE REGULATION; CLASSIFICATION. — An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof. They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress and effect a change in existing law or policy which affects individual rights and obligations. Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules. Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.

3. ID.; ID.; ID.; ID.; ID.; SHOULD COMPLY WITH THE REQUIREMENTS ON PRIOR NOTICE, HEARING, AND PUBLICATION IN ORDER TO BE VALID AND BINDING, EXCEPT WHEN IT IS MERELY AN INTERPRETATIVE

RULE.— In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the "Administrative Code of 1987," on prior notice, hearing, and publication in order to be valid and binding, except when the same is merely an interpretative rule. This is because "[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law."

4. ID.; ID.; ID.; DEPARTMENT OF HEALTH; ADMINISTRATIVE ORDER 67, S. 1989; CONSIDERED AN ADMINISTRATIVE REGULATION ISSUED BY THE SECRETARY OF HEALTH IN CONSONANCE WITH THE EXPRESS AUTHORITY GRANTED TO HIM BY RA 3720 TO IMPLEMENT THE STATUTORY MANDATE THAT ALL DRUGS AND DEVICES SHOULD FIRST BE REGISTERED WITH THE FOOD AND DRUG ADMINISTRATION PRIOR TO THEIR MANUFACTURE AND SALE; CASE AT BAR.— AO 67, s. 1989 is actually the rule that originally introduced the BA/BE testing requirement as a component of applications for the issuance of CPRs covering certain pharmaceutical products. As such, it is considered an administrative regulation – a legislative rule to be exact – issued by the Secretary of Health in consonance with the express authority granted to him by RA 3720 to implement the statutory mandate that all drugs and devices should first be registered with the FDA prior to their manufacture and sale. Considering that neither party contested the validity of its issuance, the Court deems that AO 67, s. 1989 complied with the requirements of prior hearing, notice, and publication pursuant to the presumption of regularity accorded to the government in the exercise of its official duties.

5. ID.; ID.; ID.; FOOD AND DRUG ADMINISTRATION; CIRCULAR NOS. 1 AND 8, S. 1997; NEED NOT COMPLY WITH THE REQUIREMENTS ON PRIOR HEARING, CONSULTATION,

AND PUBLICATION FOR THEIR VALIDITY AS THEY CANNOT BE CONSIDERED AS ADMINISTRATIVE REGULATIONS FOR THEY WOULD NOT AFFECT THE SUBSTANTIVE RIGHTS OF THE PARTIES THAT THEY SEEK TO GOVERN; CASE AT BAR.— Circular Nos. 1 and 8, s. 1997 cannot be considered as administrative regulations because they do not: (*a*) implement a primary legislation by providing the details thereof; (*b*) interpret, clarify, or explain existing statutory regulations under which the FDA operates; and/or (*c*) ascertain the existence of certain facts or things upon which the enforcement of RA 3720 depends. In fact, the only purpose of these circulars is for the FDA to administer and supervise the implementation of the provisions of AO 67, s. 1989, including those covering the BA/BE testing requirement, consistent with and pursuant to RA 3720. Therefore, the FDA has sufficient authority to issue the said circulars and since they would not affect the substantive rights of the parties that they seek to govern – as they are not, strictly speaking, administrative regulations in the first place – no prior hearing, consultation, and publication are needed for their validity. In sum, the Court holds that Circular Nos. 1 and 8, s. 1997 are valid issuances and binding to all concerned parties, including the respondents in this case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Florentino & Esmaquel Law Office and *Verano Law Firm* for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is a direct recourse to the Court from the Regional Trial Court of Muntinlupa City, Branch 256 (RTC), through a petition for review on *certiorari*,[1] raising a pure question of

[1] *Rollo*, pp. 9-70.

law. In particular, petitioner Republic of the Philippines, represented by the Bureau of Food and Drugs (BFAD), now Food and Drug Administration (FDA), assails the Order[2] dated December 18, 2009 of the RTC in Civil Case No. 08-124 which: (*a*) declared BFAD Circular Nos. 1 and 8, series of 1997 (Circular Nos. 1 and 8, s. 1997) null and void; (*b*) ordered the issuance of writs of permanent injunction and prohibition against the FDA in implementing the aforesaid circulars; and (*c*) directed the FDA to issue Certificates of Product Registration (CPR) in favor of respondents Drugmaker's Laboratories, Inc. and Terramedic, Inc. (respondents).

The Facts

The FDA[3] was created pursuant to Republic Act No. (RA) 3720,[4] otherwise known as the "Food, Drug, and Cosmetic Act," primarily in order "to establish safety or efficacy standards and quality measures for foods, drugs and devices, and cosmetic product[s]."[5] On March 15, 1989, the Department of Health (DOH), thru then-Secretary Alfredo R.A. Bengzon, issued Administrative Order No. (AO) 67, s. 1989, entitled "Revised Rules and Regulations on Registration of Pharmaceutical Products." Among others, it required drug manufacturers to register certain drug and medicine products with the FDA before they may release the same to the market for sale. In this relation, a satisfactory bioavailability[6]/

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[2] *Id.* at 71-98. Penned by Acting Presiding Judge Romulo SG. Villanueva.

[3] Executive Order No. 851 (1982) abolished the FDA and created the BFAD in its stead. However, with the enactment of RA 9711, otherwise known as the "Food and Drug [FDA] Act of 2009," the BFAD was renamed back to the FDA.

[4] Entitled "AN ACT TO ENSURE THE SAFETY AND PURITY OF FOODS, DRUGS, AND COSMETICS BEING MADE AVAILABLE TO THE PUBLIC BY CREATING THE FOOD AND DRUG ADMINISTRATION WHICH SHALL ADMINISTER AND ENFORCE THE LAWS PERTAINING THERETO."

[5] <http://www.fda.gov.ph/about-food-and-drug-administration> (visited January 28, 2014).

[6] "Bioavailability" means the rate and extent to which the active ingredient or therapeutic ingredient is absorbed from a drug and becomes available at the site of drug action. (Section 10[z] of RA 3720, as amended by Section 9 of RA 9711.)

bioequivalence[7] (BA/BE) test is needed for a manufacturer to secure a CPR for these products. However, the implementation of the BA/BE testing requirement was put on hold because there was no local facility capable of conducting the same. The issuance of Circular No. 1, s. 1997[8] resumed the FDA's implementation of the BA/BE testing requirement with the establishment of BA/BE testing facilities in the country. Thereafter, the FDA issued Circular No. 8, s. 1997[9] which provided additional implementation details concerning the BA/BE testing requirement on drug products.[10]

Respondents manufacture and trade a "multisource pharmaceutical product"[11] with the generic name of *rifampicin*[12] – branded as "*Refam 200mg/5mL Suspension*" (*Refam*) –

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[7] "Bioequivalence" means the rate and extent of absorption to which the drugs do not show a significant difference from the rate and extent of the listed drug when administered at the same molar dose of the therapeutic ingredient under similar experimental conditions in either a single dose or multiple doses. Bioequivalence shall also refer to the absence of a significant difference on the rate and extent to which the active ingredient(s) of the sample and reference drug becomes available at the site of drug action when administered under the same molar dose and under similar conditions. (Section 10[aa] of RA 3720, as amended by Section 9 of RA 9711.)

[8] Entitled "ENFORCEMENT OF THE REQUIREMENT FOR BIO-AVAILABILITY STUDIES FOR REGISTRATION OF PRODUCTS INCLUDED IN THE LIST B' (PRIME) UNDER DOH – ADMINISTRATIVE ORDER 67 SERIES OF 1989."

[9] Entitled "IMPLEMENTATION DETAILS OF BFAD CIRCULAR NO. 1 S. 1997."

[10] *Rollo*, pp. 260-267.

[11] "Multisource pharmaceutical products" refers to pharmaceutically equivalent or pharmaceutically alternative products that may or may not be therapeutically equivalent. Multisource pharmaceutical products that are therapeutically equivalent are interchangeable. (Section 4[h] of RA 9502, otherwise known as the "Universally Accessible Cheaper and Quality Medicines Act of 2008.")

[12] *Rifampicin* is a medicine which is used in certain types of bacterial infections and tuberculosis. <http://www.nhs.uk/medicineguides/pages/MedicineOverview.aspx?condition=Tuberculosis&medicine=Rifampicin> (visited January 28, 2014).

for the treatment of adults and children suffering from pulmonary and extra-pulmonary tuberculosis.[13] On November 15, 1996, respondents applied for and were issued a CPR for such drug, valid for five (5) years, or until November 15, 2001.[14] At the time of the CPR's issuance, *Refam* did not undergo BA/BE testing since there was still no facility capable of conducting BA/BE testing. Sometime in 2001, respondents applied for and were granted numerous yearly renewals of their CPR for *Refam*, which lasted until November 15, 2006, albeit with the condition that they submit satisfactory BA/BE test results for said drug.[15]

Accordingly, respondents engaged the services of the University of the Philippines' (Manila) Department of Pharmacology and Toxicology, College of Medicine to conduct BA/BE testing on *Refam*, the results of which were submitted to the FDA.[16] In turn, the FDA sent a letter dated July 31, 2006 to respondents, stating that *Refam* is "not bioequivalent with the reference drug."[17] This notwithstanding, the FDA still revalidated respondents' CPR for *Refam* two (2) more times, effective until November 15, 2008, the second of which came with a warning that no more further revalidations shall be granted until respondents submit satisfactory BA/BE test results for *Refam*.[18]

Instead of submitting satisfactory BA/BE test results for *Refam*, respondents filed a petition for prohibition and annulment of Circular Nos. 1 and 8, s. 1997 before the RTC, alleging that it is the DOH, and not the FDA, which was granted the authority to issue and implement rules concerning RA 3720. As such, the issuance of the aforesaid circulars and the manner of their

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[13] *Rollo*, p. 268.

[14] *Id.* at 268 and 336-337.

[15] *Id.* at 269 and 337-338.

[16] *Id.* at 268-269 and 341-342.

[17] *Id.* at 269-270 and 342.

[18] *Id.* at 270-271, 338, and 344-345.

promulgation contravened the law and the Constitution.[19] They further averred that that the non-renewal of the CPR due to failure to submit satisfactory BA/BE test results would not only affect *Refam*, but their other products as well.[20]

During the pendency of the case, RA 9711,[21] otherwise known as the "Food and Drug Administration [FDA] Act of 2009," was enacted into law.

The RTC Ruling

In an Order[22] dated December 18, 2009, the RTC ruled in favor of respondents, and thereby declared Circular Nos. 1 and 8, s. 1997 null and void, ordered the issuance of writs of permanent injunction and prohibition against the FDA in implementing the aforesaid circulars, and directed the FDA to issue CPRs in favor of respondents' products.

The RTC held that there is nothing in RA 3720 which granted either the FDA the authority to issue and implement the subject circulars, or the Secretary of Health the authority to delegate his powers to the FDA. For these reasons, it concluded that the issuance of Circular Nos. 1 and 8, s. 1997 constituted an illegal exercise of legislative and administrative powers and, hence, must be struck down.[23]

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[19] *Id.* at 71.

[20] Such as: (*a*) *Metoprolol Tartrate* 50mg Tablet; (*b*) *Atenolol (Aloten)* 50mg Tablet; (*c*) *Pyrazinamide (Pyramin)*125mg/5mL Suspension, (*d*) *Metformin Hydrochloride* 500mg Tablet; (*e*) *Nifedipine* 10mg Capsule; (*f*) *Gliclazide* 80mg Tablet; (*g*) *Diltiazem Hydrochloride* 90mg Capsule; and (*h*) *Theophylline* 200mg Tablet. (*Id.* at 335.)

[21] Entitled "AN ACT STRENGTHENING AND RATIONALIZING THE REGULATORY CAPACITY OF THE BUREAU OF FOOD AND DRUGS (BFAD) BY ESTABLISHING ADEQUATE TESTING LABORATORIES AND FIELD OFFICES, UPGRADING ITS EQUIPMENT, AUGMENTING ITS HUMAN RESOURCE COMPLEMENT, GIVING AUTHORITY TO RETAIN ITS INCOME, RENAMING IT THE FOOD AND DRUG ADMINISTRATION (FDA), AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 3720, AS AMENDED, AND APPROPRIATING FUNDS THEREOF."

[22] *Rollo*, pp. 71-98.

[23] *Id.* at 91-98.

Accordingly, the RTC issued a Writ of Permanent Injunction[24] dated January 19, 2010, enjoining the FDA and all persons acting for and under it from enforcing Circular Nos. 1 and 8, s. 1997 and directing them to approve the renewal and revalidation of respondents' products without submitting satisfactory BA/BE test results.

Aggrieved, the FDA sought direct recourse to the Court through the instant petition with an urgent prayer for the immediate issuance of a temporary restraining order and/or a writ of preliminary injunction against the implementation of the RTC's Order dated December 18, 2009 and Writ of Permanent Injunction dated January 19, 2010.[25] The Court granted FDA's application and issued a Temporary Restraining Order[26] dated February 24, 2010, effective immediately and continuing until further orders.

The Issue Before the Court

The primordial issue in this case is whether or not the FDA may validly issue and implement Circular Nos. 1 and 8, s. 1997. In resolving this issue, there is a need to determine whether or not the aforesaid circulars partake of administrative rules and regulations and, as such, must comply with the requirements of the law for its issuance.

The FDA contends that it has the authority to issue Circular Nos. 1 and 8, s. 1997 as it is the agency mandated by law to administer and enforce laws, including rules and regulations issued by the DOH, that pertain to the registration of pharmaceutical products.[27]

For their part, respondents maintain that under RA 3720, the power to make rules to implement the law is lodged with the Secretary of Health, not with the FDA.[28] They also argue

[24] *Id.* at 100.

[25] *Id.* at 9-69.

[26] *Id.* at 103-105.

[27] See FDA's Memorandum dated February 8, 2011; *id.* at 275-291.

[28] See respondents' Memorandum dated March 2, 2011; *id.* at 381-408.

that the assailed circulars are void for lack of prior hearing, consultation, and publication.[29]

The Court's Ruling

The petition is meritorious.

Administrative agencies may exercise quasi-legislative or rule-making powers only if there exists a law which delegates these powers to them. Accordingly, the rules so promulgated must be within the confines of the granting statute and must involve no discretion as to what the law shall be, but merely the authority to fix the details in the execution or enforcement of the policy set out in the law itself, so as to conform with the doctrine of separation of powers and, as an adjunct, the doctrine of non-delegability of legislative power.[30]

An administrative regulation may be classified as a legislative rule, an interpretative rule, or a contingent rule. **Legislative rules** are in the nature of subordinate legislation and designed to implement a primary legislation by providing the details thereof.[31] They usually implement existing law, imposing general, extra-statutory obligations pursuant to authority properly delegated by Congress[32] and effect a change in existing law or policy which affects individual rights and obligations.[33] Meanwhile, **interpretative rules** are intended to interpret, clarify or explain existing statutory regulations under which the administrative body operates. Their purpose or objective is merely to construe

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[29] *Id.* at 408-412.

[30] See *Holy Spirit Homeowners Association v. Sec. Defensor*, 529 Phil. 573, 585 (2006) and Nachura, Antonio E. B., *Outline Reviewer in Political Law* (2009), p. 415.

[31] *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1007 (1996), citing *Misamis Oriental Association of Coco Traders, Inc. v. Department of Finance Secretary*, G.R. No. 108524, November 10, 1994, 238 SCRA 63, 69.

[32] *First National Bank of Lexington, Tennessee v. Sanders*, 946 F. 2d 1185 (1991).

[33] *Animal Legal Defense Fund v. Quigg and Verity*, 932 F. 2d 920, 18 USPQ. 2d 1677 (1991).

the statute being administered and purport to do no more than interpret the statute. Simply, they try to say what the statute means and refer to no single person or party in particular but concern all those belonging to the same class which may be covered by the said rules.[34] Finally, **contingent rules** are those issued by an administrative authority based on the existence of certain facts or things upon which the enforcement of the law depends.[35]

In general, an administrative regulation needs to comply with the requirements laid down by Executive Order No. 292, s. 1987, otherwise known as the "Administrative Code of 1987," on prior notice, hearing, and publication in order to be valid and binding, except when the same is merely an interpretative rule. This is because "[w]hen an administrative rule is merely interpretative in nature, its applicability needs nothing further than its bare issuance, for it gives no real consequence more than what the law itself has already prescribed. When, on the other hand, the administrative rule goes beyond merely providing for the means that can facilitate or render least cumbersome the implementation of the law but substantially increases the burden of those governed, it behooves the agency to accord at least to those directly affected a chance to be heard, and thereafter to be duly informed, before that new issuance is given the force and effect of law."[36]

In the case at bar, it is undisputed that RA 3720, as amended by Executive Order No. 175, s. 1987[37] prohibits, *inter alia*, the

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[34] *Commissioner of Internal Revenue v. CA, supra* note 31, see Separate Opinion of Associate Justice Josue Bellosillo, at 1018.

[35] Nachura, Antonio E. B., *Outline Reviewer in Political Law* (2009), p. 416, citing *Cruz v. Youngberg*, 56 Phil. 234 (1931). See also *ABAKADA GURO Party List (formerly AASJS) v. Hon. Purisima*, 584 Phil. 246, 282-283 (2008).

[36] *Commissioner of Customs v. Hypermix Feeds Corporation*, G.R. No. 179579, February 1, 2012, 664 SCRA 666, 675, citing *Commissioner of Internal Revenue v. Michel J. Lhuiller Pawnshop, Inc.*, 453 Phil. 1043, 1058 (2003).

[37] Entitled "FURTHER AMENDING REPUBLIC ACT NO. 3720, ENTITLED 'AN ACT TO ENSURE THE SAFETY AND PURITY OF FOODS, DRUGS, AND

manufacture and sale of pharmaceutical products without obtaining the proper CPR from the FDA.[38] In this regard, the FDA has been deputized by the same law to accept applications for registration of pharmaceuticals and, after due course, grant or reject such applications.[39] To this end, the said law expressly authorized the Secretary of Health, upon the recommendation

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COSMETICS BEING MADE AVAILABLE TO THE PUBLIC BY CREATING THE FOOD AND DRUG ADMINISTRATION WHICH SHALL ADMINISTER AND ENFORCE THE LAWS PERTAINING THERETO,' AS AMENDED, AND FOR OTHER PURPOSES."

[38] Sections 11(j) and 21-B of RA 3720, as amended, provide:

Section 11. The following acts and the causing thereof are hereby prohibited:

x x x x x x x x x

(j) The manufacture, importation, exportation, sale, offering for sale, distribution, or transfer of any drug or device which is not registered with the Bureau pursuant to this Act.

Section 21-B. No drugs or device shall be manufactured, sold, offered for sale, imported, exported, distributed or transferred, unless registered by the manufacturer, importer or distributor thereof in accordance with rules and regulations promulgated by the Secretary pursuant to this Act. The provisions of Section 21 (b), (d) and (e), to the extent applicable, shall govern the registration of such drugs and devices.

[39] Section 4(a), (c), and (e) of RA 3720, provides:

Section 4. To carry out the provisions of this Act, there is hereby created an office to be called the Food and Drug Administration in the Department of Health. Said Administration shall be under the Office of the Secretary and shall have the following functions, powers, and duties:

(a) To administer and supervise the implementation of this Act and of the rules and regulations issued pursuant to the same.

x x x x x x x x x

(c) To analyze and inspect food, drug and cosmetic in connection with the implementation of this Act.

x x x x x x x x x

(e) To issue certificate of compliance with technical requirements to serve as basis for the issuance of license and spot-check for compliance with regulations regarding operation of food, drug and cosmetic manufacturers and establishments.

Section 21of RA 3720, as amended, provides:

of the FDA Director, to issue rules and regulations that pertain to the registration of pharmaceutical products.[40]

In accordance with his rule-making power under RA 3720, the Secretary of Health issued AO 67, s. 1989 in order to provide

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Section 21. (a) No person shall manufacture, sell, offer for sale, import, export, distribute or transfer any drug or device, unless an application filed pursuant to subsection (b) hereof is effective with respect to such drug or device. (b) Any person may file with the Secretary, through the Bureau, an application under oath with respect to any drug or device subject to the provisions of subsection (a) hereof. Such persons shall submit to the Secretary through the Bureau: (1) full reports of investigations which have been made to show whether or not such drug or device is safe, efficacious and of good quality for use based on clinical studies conducted in the Philippines; (2) a full list of the articles used as components of such drug or device; (3) a full statement of the composition of such drug or device; (4) a full description of the methods used in and the facilities and controls used for the manufacture of such drug or device; (5) such samples of such drug or device and of the articles used as components thereof as the Secretary may require; (6) specimens of the labeling proposed to be used for such drug or device; and (7) such other requirements as may be prescribed by regulations to ensure the safety, efficacy and good quality of such drug or device.

x x x x x x x x x

b. If the Secretary finds, after due notice to the applicant and giving him an opportunity for a hearing, that (1) the reports of the investigations which are required to be submitted to the Secretary pursuant to subsection (b) hereof, do not include adequate tests by all methods reasonably applicable to show whether or not such drug or device is safe, efficacious and of good quality for use under the conditions prescribed, recommended, or suggested in the proposed labelling thereof; x x x he shall issue an order disapproving the application.

c. The effectiveness of an application with respect to any drug or device shall, after due notice and opportunity for hearing to the applicant, by order of the Secretary be suspended if the Secretary finds [*sic*] that clinical experience, tests by new methods, or tests by methods not deemed reasonably applicable when such application became effective show that such drug or device is unsafe or ineffective for use under the conditions used upon the basis of which the application contains any untrue statement of a material fact. The order shall state the findings upon which it is based.

x x x x x x x x x

[40] Section 26(a) of RA 3720, as amended, provides:

Section 26. (a) Except as otherwise provided in this section, the Secretary of Health shall, upon recommendation of the Director, issue rules and regulations as may be necessary to enforce effectively the provisions of

a comprehensive set of guidelines covering the registration of pharmaceutical products. **AO 67, s. 1989**, required, among others, that certain pharmaceutical products undergo BA/BE testing prior to the issuance of CPR, contrary to respondents' assertion that it was Circular Nos. 1 and 8, s. 1997 that required such tests.[41]

Despite the fact that the BA/BE testing requirement was already in place as early as the date of effectivity of AO 67, s. 1989, its implementation was indefinitely shelved due to lack of facilities capable of conducting the same. It was only sometime in 1997 when technological advances in the country paved the way for the establishment of BA/BE testing facilities, thus allowing the rule's enforcement. Owing to these developments, the FDA (then, the BFAD) issued Circular No. 1, s. 1997, the full text of which reads:

> In Annex 1 of A.O. 67 s. 1989 which is entitled Requirement for Registration provides that "Bioavailability/Bioequivalence study for certain drugs as determined by BFAD" is required for [(i)] Tried and Tested Drug, (ii) Established Drug, and (iii) Pharmaceutical Innovation of Tried and Tested or Established Drug.
>
> Drugs requiring strict precaution in prescribing and dispensing contained in the List-B (Prime) were the drugs identified by BFAD in the process of registration that will be required "Bioavailability/ Bioequivalence" studies. **However, due to the supervening factor that there had yet been no bioavailability testing unit in the country when the A.O. 67 s. 1989 became effective, the Bureau did not strictly enforce the said requirement.**
>
> **The supervening factor no longer exist** [*sic*] **as of date.** As a matter of fact, one of the registered products tested by the Bioavailability Testing Unit at the University of Sto. Tomas under the NDP Cooperation Project of the Philippines and Australia failed to meet

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this Act. The rules and regulations shall provide for, among others, the banning, recalling or withdrawing from the market drugs and devices which are not registered, unsafe, inefficacious or of doubtful therapeutic value, the adoption of an official National Drug Formulary, and the use of generic names in the labeling of drugs.

[41] See Annex I, Specific Requirements 3.2 and 5.2, and Annex II of AO 67 (1989).

the standard of bioavailability. This finding brings forth the fact that there may be registered products which do not or may no longer meet bioavailability standard.

Wherefore, all drugs manufacturers, traders, distributor-importers of products contained or identified in the list b' (prime) provided for by BFAD, a copy of which is made part of this circular, are advised that all pending initial and renewal registration of the products aforementioned, as well as all applications for initial and renewal registration of the same, shall henceforth be required to submit bioavailability test with satisfactory results on the products sought to be registered or renewed conducted by any bioavailability testing units here or abroad, duly recognized by the BFAD under the Dept. of Health. (Emphases and underscoring supplied)

The FDA then issued Circular No. 8, s. 1997 to supplement Circular No. 1, s. 1997 in that it reiterates the importance of the BA/BE testing requirement originally provided for by AO 67, s. 1989.

A careful scrutiny of the foregoing issuances would reveal that AO 67, s. 1989 is actually the rule that originally introduced the BA/BE testing requirement as a component of applications for the issuance of CPRs covering certain pharmaceutical products. As such, it is considered an administrative regulation – a legislative rule to be exact – issued by the Secretary of Health in consonance with the express authority granted to him by RA 3720 to implement the statutory mandate that all drugs and devices should first be registered with the FDA prior to their manufacture and sale. Considering that neither party contested the validity of its issuance, the Court deems that AO 67, s. 1989 complied with the requirements of prior hearing, notice, and publication pursuant to the presumption of regularity accorded to the government in the exercise of its official duties.[42]

On the other hand, Circular Nos. 1 and 8, s. 1997 cannot be considered as administrative regulations because they do not: (*a*) implement a primary legislation by providing the details thereof; (*b*) interpret, clarify, or explain existing statutory

[42] See Section 3(m), Rule 131 of the Rules of Court.

regulations under which the FDA operates; and/or (*c*) ascertain the existence of certain facts or things upon which the enforcement of RA 3720 depends. In fact, the only purpose of these circulars is for the FDA to administer and supervise the implementation of the provisions of AO 67, s. 1989, including those covering the BA/BE testing requirement, consistent with and pursuant to RA 3720.[43] Therefore, the FDA has sufficient authority to issue the said circulars and since they would not affect the substantive rights of the parties that they seek to govern – as they are not, strictly speaking, administrative regulations in the first place – no prior hearing, consultation, and publication are needed for their validity.

In sum, the Court holds that Circular Nos. 1 and 8, s. 1997 are valid issuances and binding to all concerned parties, including the respondents in this case.

As a final note, while the proliferation of generic drugs and medicines is indeed a welcome development as it effectively ensures access to affordable quality drugs and medicines for all through their lower prices, the State, through the FDA, which is the government instrumentality tasked on this matter, must nevertheless be vigilant in ensuring that the generic drugs and medicines released to the market are safe and effective for use.

WHEREFORE, the petition is **GRANTED**. The Order dated December 18, 2009 and the Writ of Permanent Injunction dated January 19, 2010 of the Regional Trial Court of Muntinlupa City, Branch 256 in Civil Case No. 08-124 are hereby **SET ASIDE**. BFAD Circular Nos. 1 and 8, series of 1997 are declared **VALID**. Accordingly, the Court's Temporary Restraining Order dated February 24, 2010 is hereby made **PERMANENT**.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), Brion, del Castillo,* and *Perez, JJ.,* concur.

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[43] See Section 4 of RA 3720.

[*] Designated Acting Chief Justice per Special Order No. 1644 dated February 25, 2014.

SECOND DIVISION

[G.R. No. 193684. March 5, 2014]

ONE NETWORK RURAL BANK, INC.,* *petitioner, vs.* **DANILO G. BARIC,** *respondent.*

SYLLABUS

1. **CIVIL LAW; DAMAGES; NOMINAL DAMAGES; AWARDED FOR THE VINDICATION OR RECOGNITION OF A RIGHT VIOLATED OR INVADED AND NOT FOR INDEMNIFICATION OF LOSS.—** "Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown. Under Article 2221 of the Civil Code, nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered." "Nominal damages are not for indemnification of loss suffered but for the vindication or recognition of a right violated or invaded."

2. **ID.; ID.; ID.; A THIRD PARTY WHO DID NOT VIOLATE OR INVADE THE AGGRIEVED PARTY'S RIGHTS CANNOT BE HELD LIABLE FOR NOMINAL DAMAGES; CASE AT BAR.—** Network Bank did not violate any of Baric's rights; it was merely a purchaser or transferee of the property. Surely, it is not prohibited from acquiring the property even while the forcible entry case was pending, because as the registered owner of the subject property, Palado may transfer his title at any time and the lease merely follows the property as a lien or encumbrance. Any invasion or violation of Baric's rights as lessee was committed solely by Palado, and Network Bank may not be implicated or found guilty unless it actually took part in the commission of illegal acts, which does not appear to be so from the evidence on record. On the contrary, it appears that Baric was ousted through Palado's acts even before

* Formerly known as Network Rural Bank, Inc., see CA *rollo*, p. 118.

Network Bank acquired the subject property or came into the picture. Thus, it was error to hold the bank liable for nominal damages.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PARTY WHO HAS NOT APPEALED FROM A DECISION MAY NOT OBTAIN FROM THE APPELLATE COURT ANY AFFIRMATIVE RELIEF OTHER THAN WHAT IS GRANTED IN THE JUDGMENT APPEALED FROM.— With regard to Baric's argument that he should be reinstated to the premises and awarded damages, this may not be allowed. He did not question the CA ruling in an appropriate Petition before this Court. "It is well-settled that a party who has not appealed from a decision cannot seek any relief other than what is provided in the judgment appealed from. An appellee who has himself not appealed may not obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below."

APPEARANCES OF COUNSEL

Madison Gabayan for petitioner.
Eduardo Estores for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A third party who did not commit a violation or invasion of the plaintiff or aggrieved party's rights may not be held liable for nominal damages.

This Petition for Review on *Certiorari*[1] seeks to set aside the January 29, 2009 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 73713, entitled "*Danilo G. Baric, Petitioner, versus James S. Palado and Network Rural Bank, Inc.*,

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[1] *Rollo,* pp. 3-24.

[2] *Id.* at 157-170; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Mario V. Lopez and Elihu A. Ybañez.

Respondents," as well as its August 23, 2010 Resolution[3] denying reconsideration of the assailed judgment.

Factual Antecedents

Jaime Palado (Palado) was the registered owner of real property with a building containing commercial spaces for lease (subject property), located in Barangay Piapi, Davao City and covered by Transfer Certificate of Title No. 231531 (TCT 231531). Respondent Danilo G. Baric (Baric) was a lessee therein, operating a barber shop on one of the commercial spaces. The lease was governed by a written agreement, or "*Kasabutan*."[4]

In December 2000, Baric received a written notice[5] from Palado demanding the return of the leased commercial space within 40 days from December 15, 2000.

Baric took the matter to the office of the *barangay Lupong Tagapamayapa (Lupon)*. However, on the scheduled dates of conciliation/mediation hearing held on January 19 and 24, 2001, Baric failed to attend, which prompted the *Barangay* Chairman to issue a Certificate to Bar Action.

In the meantime, it appears that the building was demolished.

In February 2001, Baric filed a case for forcible entry with prayer for injunctive relief against Palado and herein petitioner One Network Rural Bank, Inc. (Network Bank), which was docketed as Civil Case No. 9955-F-2001 and ultimately assigned to Branch 6[6] of the Municipal Trial Court in Cities (MTCC), 11th Judicial Region, Davao City. In his Amended Complaint,[7] Baric alleged that he had been occupying the leased space

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[3] *Id.* at 179-181; penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Edgardo T. Lloren and Ramon Paul L. Hernando.

[4] CA *rollo*, p. 47.

[5] *Id.* at 49.

[6] On account of a motion to inhibit filed by Baric, the case was re-raffled to Branch 5 of the MTCC.

[7] *Rollo*, pp. 25-30.

since 1994; that in 2000, he renovated the leased space with Palado's consent and knowledge, and the renovation cost him ₱27,000.00; that in December 2000, Palado sent him a notice to vacate the premises; that he filed a Complaint with the *Barangay* Chairman of Piapi; that on January 29, 2001, Palado enclosed and fenced the premises and thus prevented him from entering and using the same; that he reported the incident to the police and caused the same to be recorded in the police blotter;[8] that he was thus excluded from the leased premises by means of strategy, violence, force and threat. Baric thus prayed that injunctive relief be granted to restrain Palado and Network Bank from depriving him of possession; that he be restored in his possession of the commercial space, and that any structure built thereon in the meantime be demolished; that he be indemnified attorney's fees in the amount of ₱30,000.00, and appearance fees, as well as litigation costs.

Baric's Amended Complaint was prompted by Network Bank's subsequent purchase on April 25, 2001 of the subject property from Palado, whereupon TCT 231531 was cancelled and TCT T-338511 was issued in the bank's name. It then constructed a new building on the lot.

In its Answer (With Counterclaim and Crossclaim),[9] Network Bank essentially claimed that as a buyer in good faith and new owner of the subject property, it should not be made liable; that Baric resorted to forum shopping in filing the Amended Complaint; and that it had no participation in the dispute between Baric and Palado. It prayed that the Amended Complaint be dismissed for lack of merit; that the prayer for injunctive relief be denied; that Baric be ordered to pay the bank exemplary damages and attorney's fees; and that its co-defendant Palado be ordered to reimburse the bank for such liabilities as may be adjudged against it.

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[8] *Id.* at 31; Record of Event prepared and issued by the Davao City Police Office, Sta. Ana Police Station on January 29, 2001.

[9] *Id.* at 34-41.

Palado, on the other hand, claimed in his Answer with Counterclaim[10] that Baric had no cause of action against him; that Baric's lease was merely on a month-to-month basis; that Baric voluntarily vacated the leased premises and posted a signboard informing the public that his barber shop had transferred to the Agdao Public Market; that the premises were fenced and enclosed for security and safety reasons after Baric had left; that Baric and the other lessees were given until January 25, 2001 to vacate the premises; that on January 18, 2001, Baric complained before the *Lupon*, but on the scheduled January 19 and 24, 2001 conciliation hearings, he failed to attend; that the *Lupon* thus issued a certification barring Baric from filing a court action; and that after Baric voluntarily vacated the premises, he demolished the barber shop. Palado sought damages and attorney's fees, and likewise moved to cancel a notice of *lis pendens* which Baric previously caused to be annotated on TCT 231531.

On April 20, 2001, the MTCC issued an Order[11] cancelling the notice of *lis pendens* annotated on TCT 231531.

Ruling of the Municipal Trial Court in Cities

On February 8, 2002, the MTCC rendered its Decision[12] dismissing Baric's Complaint for forcible entry, thus:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of defendant and against the plaintiff by ordering the dismissal of the complaint.
>
> SO ORDERED.[13]

The MTCC held that Baric's voluntary departure from the premises, and his subsequent posting of a signboard informing the public that his barber shop had transferred to a new address within the Agdao Public Market, constituted clear and categorical

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[10] Records, pp. 20-25.

[11] *Id.* at 64; penned by Judge Antonio P. Laolao, Sr.

[12] *Rollo*, pp. 58-62; penned by Presiding Judge Daydews D. Villamor.

[13] *Id.* at 62.

evidence of his intention to voluntarily vacate the premises. For this reason, it cannot be said that Palado forcibly evicted Baric. It held further that although the *Barangay* Chairman of Agdao District certified in writing that Baric did not operate his barber shop within the Agdao Public Market after he vacated Palado's building, the evidence would suggest that Baric nonetheless withdrew seven of his 12 barber's chairs from the vacated premises. Finally, the MTCC decried Baric's abandonment of his complaint in the *barangay* level and his undue resort to court action; it held that Baric's pretense of including a prayer for injunctive relief in his Amended Complaint for forcible entry in order to skirt Sections 408 and 412 of Republic Act No. 7160[14] cannot be tolerated.

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[14] The Local Government Code of 1991, which provides –

SECTION 408. *Subject Matter for Amicable Settlement; Exception Thereto.* – The *lupon* of each *barangay* shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

(a) Where one party is the government, or any subdivision or instrumentality thereof;

(b) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;

(c) Offenses punishable by imprisonment exceeding one (1) year or a fine exceeding Five thousand pesos (₱5,000.00);

(d) Offenses where there is no private offended party;

(e) Where the dispute involves real properties located in different cities or municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;

(f) Disputes involving parties who actually reside in *barangays* of different cities or municipalities, except where such *barangay* units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate lupon;

(g) Such other classes of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.

The court in which non-criminal cases not falling within the authority of the l*upon* under this Code are filed may, at any time before trial, *motu proprio* refer the case to the *lupon* concerned for amicable settlement.

Ruling of the Regional Trial Court

Baric filed an appeal with the Regional Trial Court (RTC) of Davao City which, in a June 28, 2002 Decision,[15] sustained the MTCC Decision in its totality, as follows:

> WHEREFORE, finding no serious irreversible error committed by the court-*a-quo* in its decision, dated February 8, 2002, said decision is AFFIRMED-*IN-TOTO*, for lack of sufficient evidence of defendant for an award of his prayer for attorney's fees and litigation expenses, are denied but this case is ordered dismissed.
>
> SO ORDERED.[16]

Apart from echoing the MTCC's findings, the RTC added that Palado had the right, as owner, to dispose of the subject property even while Baric's lease was outstanding; Baric's

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SECTION 412. *Conciliation*. – (a) Pre-condition to filing of complaint in court. – No complaint, petition, action, or proceeding involving any matter within the authority of the *lupon* shall be filed or instituted directly in court or any other government office for adjudication, unless there has been a confrontation between the parties before the *lupon* chairman or the *pangkat*, and that no conciliation or settlement has been reached as certified by the *lupon* secretary or *pangkat* secretary as attested to by the *lupon* chairman or *pangkat* chairman or unless the settlement has been repudiated by the parties thereto.

(b) Where parties may go directly to court. – The parties may go directly to court in the following instances:

(1) Where the accused is under detention;

(2) Where a person has otherwise been deprived of personal liberty calling for *habeas corpus* proceedings;

(3) Where actions are coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property, and support pendente lite; and

(4) Where the action may otherwise be barred by the statute of limitations.

(c) Conciliation among members of indigenous cultural communities. – The customs and traditions of indigenous cultural communities shall be applied in settling disputes between members of the cultural communities.

[15] *Rollo*, pp. 70-75; penned by Judge Renato A. Fuentes of Branch 17 of the Regional Trial Court of Davao City.

[16] *Id.* at 75.

lease is irrelevant to the subsequent sale to Network Bank by Palado.

Baric moved to reconsider, but the RTC stood its ground. Thus, he filed a Petition for Review with the CA.

Ruling of the Court of Appeals

On January 29, 2009, the CA issued the assailed Decision which contains the following decretal portion:

> WHEREFORE, the appeal is granted and the challenged decision is hereby reversed. Petitioner is hereby awarded ₱50,000.00 in nominal damages for which respondents are solidarily liable.
>
> SO ORDERED.[17]

Reversing the lower courts, the CA held that Palado was guilty of forcible entry in that while Palado's notice to vacate required Baric to vacate the premises within 40 days, the latter was granted, under the "*Kasabutan*," the right to at least four months advance notice. It held further that there was no basis to believe that Baric voluntarily vacated the premises and posted a signboard notifying the public that he has transferred to the Agdao Public Market. On the contrary, Baric complained to the police on January 29, 2001 as evidenced by the written entry in the police blotter, to the effect that Palado was destroying the leased premises without his consent as the occupant thereof. Besides, it cannot be said that Baric had transferred to another business address when his equipment – consisting of five barber's chairs, seven fluorescent light sets, one ceiling fan, one airconditioning unit, a typewriting table, and four plastic stools – remained in the leased premises, as shown by photographs taken of the premises while the old building was being demolished.[18] Moreover, it held that the Agdao District *Barangay* Chairman's certification in writing to the effect that Baric did not transfer his barber shop to the Agdao Public Market – which remained uncontroverted – suggested that it was Palado, and not Baric, who posted the signboard in order to make it

[17] *Id.* at 169.

[18] *Id.* at 166.

appear that Baric "voluntarily" vacated the premises. The CA added that it is inconceivable that Baric should renovate the premises and simply vacate the premises without insisting on his right to four months advance notice under the "*Kasabutan*"; besides, it can be said that the four months advance notice granted by Palado to Baric was in consideration of the latter's renovations introduced on the premises.

On Baric's failure to exhaust his remedies at the *barangay* level, the CA held that the inclusion of a prayer for injunctive relief in Baric's Complaint did away with the need to refer the case to the *Lupon*; the lower courts' respective findings that Baric's inclusion of injunctive relief in his Complaint was a mere ploy to circumvent the Local Government Code could not find support from the record. And regarding Network Bank, the CA declared that the issue of its being a purchaser in good or bad faith was not material, since Network Bank's purchase of the property was subject to all liens and encumbrances found thereon, and the bank merely stepped into the shoes of the former owner.

Finally, the CA concluded that since ownership has been transferred to Network Bank and a new building built on the property, it has become impracticable to restore Baric in his possession. Instead, his case has become one for vindication of right; thus, the CA opted to award Baric nominal damages in the amount of ₱50,000.00.

Network Bank filed its Motion for Reconsideration,[19] but in an August 23, 2010 Resolution, the CA stood its ground. Hence, Network Bank filed the present Petition.

Issues

Network Bank raises the following issues in its Petition:

A. WHETHER X X X A BUYER OF X X X REAL PROPERTY AFTER THE CANCELLATION OF NOTICE OF *LIS PENDENS* IS CONSIDERED A TRANSFEREE *PENDENTE LITE*;

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[19] *Id.* at 171-178.

B. WHETHER X X X IN THE INSTANT FORCIBLE ENTRY CASE, THE DETERMINATION OF GOOD FAITH ON THE PART OF THE HEREIN PETITIONER IS MATERIAL, WHICH THE APPELLATE COURT HAS RELEGATED AND DISREGARDED THE FINDINGS OF FACT OF THE LOWER COURTS WHICH BOTH RENDERED CONGRUENT RULINGS IN FAVOUR OF THE HEREIN PETITIONER.[20]

Petitioner's Arguments

In its Petition and Reply[21] seeking to be absolved from liability on the award of ₱50,000.00 nominal damages in favor of Baric, Network Bank substantially argues that because it is not privy to the transaction between Palado and Baric, and since it acquired the property in good faith on April 25, 2001 – or after the respondent's eviction from the premises and the cancellation of the notice of *lis pendens* via the April 20, 2001 Order of the MTCC – and it acquired merely the existing rights and obligations of the previous owner Palado as are reflected on the latter's title, it may not be held liable together with Palado under the CA judgment. It adds that it was error for the CA to hold it liable for forcible entry when it entered the fray only when the notice of *lis pendens* was already cancelled.

Respondent's Arguments

On the other hand, Baric in his Comment[22] merely echoes the CA's pronouncements and maintains that Network Bank should be held liable for "surreptitiously transferring" title in its name. He nonetheless disapproved of the CA's failure to restore him in his possession and award damages in his favor; presumably, he implores the Court to grant him continued possession of the premises and damages.

Our Ruling

The Court grants the Petition.

While the Petition does not squarely address the true issue involved, it is nonetheless evident that the CA gravely erred in

[20] *Id.* at 15.

[21] *Id.* at 201-206.

[22] *Id.* at 191-198.

holding Network Bank solidarily liable with Palado for the payment of nominal damages.

"Nominal damages are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind or where there has been a breach of contract and no substantial injury or actual damages whatsoever have been or can be shown.

Under Article 2221 of the Civil Code, nominal damages may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, not for indemnifying the plaintiff for any loss suffered."[23] "Nominal damages are not for indemnification of loss suffered but for the vindication or recognition of a right violated or invaded."[24]

Network Bank did not violate any of Baric's rights; it was merely a purchaser or transferee of the property. Surely, it is not prohibited from acquiring the property even while the forcible entry case was pending, because as the registered owner of the subject property, Palado may transfer his title at any time and the lease merely follows the property as a lien or encumbrance. Any invasion or violation of Baric's rights as lessee was committed solely by Palado, and Network Bank may not be implicated or found guilty unless it actually took part in the commission of illegal acts, which does not appear to be so from the evidence on record. On the contrary, it appears that Baric was ousted through Palado's acts even before Network Bank acquired the subject property or came into the picture. Thus, it was error to hold the bank liable for nominal damages.

With regard to Baric's argument that he should be reinstated to the premises and awarded damages, this may not be allowed. He did not question the CA ruling in an appropriate Petition before this Court. "It is well-settled that a party who has not appealed from a decision cannot seek any relief other than

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[23] *Cathay Pacific Airways v. Reyes*, G.R. No. 185891, June 26, 2013.

[24] *Ventanilla v. Centeno*, 110 Phil. 811, 817 (1961).

what is provided in the judgment appealed from. An appellee who has himself not appealed may not obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below."[25]

WHEREFORE, the Petition is **GRANTED**. The January 29, 2009 Decision and August 23, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 73713 are **MODIFIED** in that petitioner One Network Rural Bank, Inc. is **ABSOLVED** from liability.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193768. March 5, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee vs.* **JERRY CARANTO *y* PROPETA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; BUY-BUST OPERATION; A FORM OF ENTRAPMENT EMPLOYED BY POLICE OFFICERS TO APPREHEND DRUG LAW VIOLATORS AND IT IS ESSENTIALLY GOVERNED BY SPECIFIC PROCEDURES ON THE SEIZURE AND CUSTODY OF DRUGS DUE TO ITS SUSCEPTIBILITY TO ABUSE.— A buy-bust operation is a form of entrapment employed by peace officers to apprehend prohibited drug law violators in the act of committing a drug-

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[25] *Coca-Cola Bottlers Philippines, Inc. v. Garcia,* 567 Phil. 342, 350 (2008).

related offense. x x x The built-in danger for abuse that a buy-bust operation carries cannot be denied. It is essential therefore, that these operations be governed by specific procedures on the seizure and custody of drugs. We had occasion to express this concern in *People v. Tan,* when we recognized that "by the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which illegal drugs can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses." Moreover, we have time and again recognized that a buy-bust operation resulting from the tip of an anonymous confidential informant, although an effective means of eliminating illegal drug related activities, is "susceptible to police abuse." Worse, it is usually used as a means for extortion. It is for this reason, that the Court must ensure that the enactment of R.A. No. 9165 providing specific procedures to counter these abuses is not put to naught.

2. ID.; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SEIZURE AND CUSTODY OF DRUGS; NON-COMPLIANCE WITH THE REQUIREMENTS THEREOF IS NOT FATAL TO THE PROSECUTION'S CASE PROVIDED THE LAPSES CAN BE EXPLAINED IN TERMS OF THEIR JUSTIFIABLE GROUNDS AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE EVIDENCE SEIZED CAN BE SHOWN TO HAVE BEEN PRESERVED.— The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165 x x x. This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165 x x x. This Court recognizes that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions, many of them far from ideal. For this reason, the Implementing Rules provide that non-compliance with the strict directive of Section 21 is not necessarily fatal to the prosecution's case because courts recognize the possible occurrence of procedural lapses. However, we emphasize that these lapses 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. In the present case, the prosecution did not bother to present any explanation to justify the non-observance of the prescribed procedures. Therefore, the non-observance by the police of the required procedure cannot be excused. It likewise failed to prove that the integrity and evidentiary value of the items adduced were not tainted.

3. ID.; ILLEGAL SALE OF *SHABU*; ELEMENTS.— To secure a conviction for the illegal sale of *shabu*, the following elements must be present: (a) the identities of the buyer and seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. It is material to establish that the transaction actually took place, and to bring to the court the *corpus delicti* as evidence.

4. ID.; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SEIZURE AND CUSTODY OF DRUGS; CHAIN OF CUSTODY RULE; A METHOD OF AUTHENTICATING EVIDENCE WHICH 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 TO BE.— In the prosecution of a drug case, the primary consideration is to ensure that the identity and integrity of the seized drugs and other related articles have been preserved from the time they were confiscated from the accused until their presentation as evidence in court. The chain of custody requirement ensures that doubts concerning the identity of the evidence are removed. In a long line of cases, we have considered it fatal for the prosecution when they fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused. The case of *Malillin v. People* is particularly instructive on how we expect the chain of custody to be maintained. 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 to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every

person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. An unbroken chain of custody becomes indispensable and essential when the item of real evidence is susceptible to alteration, tampering, contamination and even substitution and exchange.

5. **ID.; ID.; ID.; ID.; REQUIRES THAT THE MARKING OF THE SEIZED ITEMS SHOULD BE DONE IN THE PRESENCE OF THE APPREHENDED VIOLATOR IMMEDIATELY UPON CONFISCATION.—** The "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches. "Marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized.

6. **ID.; ID.; ID.; ID.; LINKS TO BE ESTABLISHED IN THE CHAIN OF CUSTODY IN A BUY-BUST OPERATION.—** This Court previously held that the following links must be established in the chain of custody in a buy-bust operation: 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.

7. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY; PROCEDURAL LAPSES IN THE HANDLING OF CONFISCATED DRUGS NEGATE THE PRESUMPTION THAT OFFICIAL DUTIES HAVE BEEN REGULARLY PERFORMED BY THE POLICE OFFICERS.—** The lower courts erred in giving weight to the presumption of

regularity in the performance that a police officer enjoys in the absence of any taint of irregularity and of ill motive that would induce him to falsify his testimony. The regularity of the performance of the police officers' duties leaves much to be desired in this case given the lapses in their handling of the allegedly confiscated *shabu*. The totality of all the x x x procedural lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. We have previously held that these lapses negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. In *People v. Santos, Jr.*, we held that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. It should be noted that the presumption is precisely just that – a presumption. Once challenged by evidence, as in this case, it cannot be regarded as binding truth.

8. ID.; ID.; DENIAL OR FRAME-UP; THE WEAKNESS OF THE DEFENSE OF DENIAL OR FRAME-UP DOES NOT ADD ANY STRENGTH TO THE PROSECUTION'S CAUSE AS THE EVIDENCE FOR THE PROSECUTION MUST STAND OR FALL ON ITS OWN WEIGHT AND CANNOT DRAW STRENGTH FROM THE WEAKNESS OF THE DEFENSE.— In our jurisdiction, the defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act. It should be emphasized, however, that these weaknesses do not add any strength to the prosecution's cause. Thus, however weak the defense evidence might be, the prosecution's whole case still falls. As the well-entrenched dictum goes, the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

On appeal is the 28 July 2010 Decision[1] of the Court of Appeals (CA) in CA-G.R. C.R.-H.C. No. 01680. The CA affirmed the 7 October 2005 Decision of the Regional Trial Court (RTC), Branch 267, Pasig City, that found Jerry Caranto *y* Propeta (Jerry) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165 (The Comprehensive Dangerous Drugs Act of 2002) and imposed upon him the penalty of life imprisonment.

Jerry was charged under the criminal information,[2] which reads:

> That, on or about the 24th day of July 2002, in the Municipality of Taguig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to another one (1) heat sealed transparent sachet containing 0.39 gram of white crystalline substance, which was found positive to the test of Methylamphetamine (sic) Hydrochloride also known as "*shabu*", a dangerous drug, in consideration of the amount of PhP 500.00, in violation of [Section 5, Article II, Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002].

The Facts

The antecedent facts were culled from the records of the case, particularly the Appellee's Brief [3] for the version of the prosecution and the Appellant's Brief [4] for the version of the defense.

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[1] CA *rollo*, pp. 104-122; Penned by Associate Justice Aurora C. Lantion with Presiding Justice Andres B. Reyes and Associate Justice Japar B. Dimaampao concurring.

[2] Records, pp. 1-2.

[3] CA *rollo*, pp. 78-81.

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

Version of the Prosecution

On 24 July 2002, PO2 Danilo Arago (PO2 Arago) was inside the office of the Drug Enforcement Unit (DEU) of the Philippine National Police (PNP) in Taguig City when his informant approached him and reported that there was widespread selling of methamphetamine hydrochloride (*shabu*) by a certain Jojo at the latter's residence at No. 13 Santos Street, *Barangay* Calzada, Tipas, Taguig City.

PO2 Arago immediately reported the information to his superior, P/Supt. Ramon Ramirez (P/Supt. Ramirez), who in turn organized a "buy-bust" operation to apprehend Jerry.

Inside P/Supt. Ramirez' office, PO2 Arago, along with the informant, PO3 Angelito Galang, SPO3 Arnuldo Vicuna, PO3 Santiago Cordova, PO2 Archie Baltijero and PO1 Alexander Saez, discussed the conduct of the "buy-bust" operation.

The team agreed that the informant would accompany the team to Jerry's residence where PO2 Arago would act as the *poseur buyer* while the rest of the team would serve as his back up. P/Supt. Ramirez thereafter provided the "buy-bust" money of five hundred pesos (₱500.00), which PO2 Arago marked with his initials, "DBA."

At around 12:00 in the afternoon of the same day, the team proceeded to Jerry's residence. Upon nearing the area, the informant and PO2 Arago separated from the rest of the team. They walked ahead of their companions and proceeded towards Jerry's residence while the rest of the team hid in a corner some six to seven meters away from the two.

When they were about 10 to 20 meters when they got near him, from the house, the informant pointed PO2 Arago to Jerry and the informant introduced PO2 Arago to Jerry as a *balikbayan* who was looking for some *shabu*.

Jerry then asked them how much worth of *shabu* they planned to buy, to which informant answered Five Hundred Pesos (₱500.00) worth. PO2 Arago then handed Jerry the marked money.

Upon receiving the money, Jerry went inside his house and after around thirty (30) seconds to one (1) minute, he returned and handed PO2 Arago a plastic sachet, which PO2 Arago suspected to be *shabu*.

After the completion of the transaction, Jerry noticed the informant and PO2 Arago's companions moving in from behind the two. Jerry immediately tried to flee but was stopped by PO2 Arago.

Seeing the scuffle between PO2 Arago and Jerry, the rest of the "buy-bust" team rushed towards them. After Jerry was subdued, PO2 Arago recovered the marked money inside Jerry's right pocket. Thereafter, the team introduced themselves as police officers, informed Jerry of his constitutional rights in Filipino and then returned to their station in Taguig City where Jerry was duly investigated.

Version of the Defense

Recalling what transpired on 24 July 2002, Jerry said that he went through his route as a tricycle driver from 6:00 a.m. until he went home around 12:00 in the afternoon to have lunch. He was at the rooftop of their house feeding the dog when policemen arrived looking for his father Cesar Caranto. The policemen kicked the door and forced it open. They held Jerry and told him that they would have to bring him in unless they get his father. Jerry told the policemen that he was not aware of his father's whereabouts because his father did not live with them anymore. The policemen frisked him and took his wallet. He was brought to the DEU and was thereafter hit by P/Supt. Ramirez on the chest. He denied that he sold any *shabu*.

The mother of Jerry, Teresita Propeta Caranto (Teresita), testified that on that date, she was at the Baclaran church attending mass when her daughter called and told her that her son Jerry was taken from their house and invited by policemen. She hurriedly went to the police station and cried when her son told her that the policemen mauled him. The policemen also asked money from her, but she did not give them anything as her son is innocent. Upon learning that her son's case was

non-bailable, she went back to the police station and uttered invectives against the policemen who arrested her son.

More than a month after the incident or on 28 August 2002, Teresita, together with her son Christopher Caranto, her daughter Cynthia Caranto, and a housemaid, were arrested in Baclaran. A drug related case was also filed against them. They were incarcerated for about two years but they were eventually acquitted. Teresita filed a case against the policemen who arrested them and is also planning to file a case against the law officers who arrested her son Jerry.

At the pre-trial, the parties stipulated:[5] 1) that a request has been made by the arresting officers for examination of the specimens confiscated; 2) that the forensic chemist P/Insp. Lourdeliza Gural (P/Insp. Gural) examined the specimens submitted and thereafter issued her initial and final laboratory report; 3) that P/Insp. Gural has no personal knowledge from whom the alleged specimens were taken and that the test conducted on the alleged specimen yielded positive to metamphetamine hydrochloride. After stipulations were made, the public prosecutor dispensed with the testimony of P/Insp. Gural. Thereafter, trial on the merits ensued.

The RTC Decision

On 7 October 2005, the RTC found Jerry guilty of the offense charged and imposed upon him the penalty of life imprisonment. The dispositive portion of the RTC decision is as follows:

> WHEREFORE, in view of the foregoing considerations, the prosecution having proven the guilt of the accused beyond reasonable doubt, this Court acting as a Special Drug Court in the above-captioned case hereby finds JERRY CARANTO *y* PROPETA *a.k.a.* 'Jojo', accused in Criminal Case No. 11539-D, GUILTY as charged and is hereby sentenced to suffer **LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND PESOS (PhP 500,000.00).**
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> x x x x x x x x x

[5] Records, p. 47.

Moreover, the *shabu* contained in one (1) heat sealed transparent plastic sachet containing 0.39 gram of shabu which is the subject matter of the above-captioned case is ordered to be immediately transmitted and/or submitted to the custody of the Philippine Drug Enforcement Agency (PDEA) for its proper disposition.[6]

The CA Decision

The CA, in its assailed decision, affirmed the judgement of conviction by the RTC. The appellate court ruled that Jerry's guilt was proven beyond reasonable doubt. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant appeal is hereby DISMISSED. The assailed Decision of the Regional Trial Court of Pasig City, Branch 267, subject of the appeal is AFFIRMED *in toto*.[7]

In a Resolution[8] dated 22 November 2010, we required the parties to file their respective supplemental briefs. The prosecution manifested that it was no longer filing any supplemental brief.[9] The issues raised in appellant's supplemental brief[10] were similar to those previously raised to the appellate court. The appellant raises the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S SEARCH AND ARREST AS ILLEGAL.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[11]

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[6] CA *rollo*, p. 26.

[7] *Rollo*, p. 20.

[8] *Id.* at 26.

[9] *Id.* at 32-33.

[10] *Id.* at 45-52.

[11] CA *rollo*, p. 43.

Ruling of this Court

It should be noted that the significant issues, as discussed below, were initially raised by Jerry in his Memorandum[12] filed with the RTC. Unfortunately, the RTC failed to discuss the issues raised when it rendered its 7 October 2005 decision. On the other hand, the Brief for Jerry filed with the CA was wanting of said pertinent issues. In effect, the CA, likewise, failed to include in its discussion said issues. Upon appeal, the Supplemental Brief for Jerry filed with this Court once again raised and expounded on said issues. Given the foregoing circumstances and in the interest of justice, this Court gives due consideration to the issues raised in Jerry's Supplemental Brief. The Court refuses to turn a blind eye on the importance of the rights of the accused. For this reason, we consider the required procedure for the timely raising of issues, substantially complied with.

Jerry was arrested during a buy-bust operation conducted on 24 July 2002 by the members of the DEU of the Taguig PNP. A buy-bust operation is a form of entrapment employed by peace officers to apprehend prohibited drug law violators in the act of committing a drug-related offense.[13] We agree with the appellate court when it opined that:

> x x x [T]here is no rigid or textbook method of conducting buy-bust operations. The choice of effective ways to apprehend drug dealers is within the ambit of police authority. Police officers have the expertise to determine which specific approaches are necessary to enforce their entrapment operations.[14]

The built-in danger for abuse that a buy-bust operation carries cannot be denied. It is essential therefore, that these operations be governed by specific procedures on the seizure and custody of drugs. We had occasion to express this concern in *People*

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[12] Records, pp. 170-186.

[13] *People v. Jocson*, 565 Phil. 303, 309 (2007).

[14] *Rollo*, p. 16.

v. Tan,[15] when we recognized that "by the very nature of anti-narcotic operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which illegal drugs can be planted in the pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses."[16]

Moreover, we have time and again recognized that a buy-bust operation resulting from the tip of an anonymous confidential informant, although an effective means of eliminating illegal drug related activities, is "susceptible to police abuse." Worse, it is usually used as a means for extortion.[17] It is for this reason, that the Court must ensure that the enactment of R.A. No. 9165 providing specific procedures to counter these abuses is not put to naught.[18]

Non-compliance with the requirements of Section 21, par. 1 of Article II of R.A. No. 9165

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A. No. 9165, which states:

> 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**

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[15] 401 Phil. 259, 273 (2000) citing *People v. Gireng* G.R. No. 97949, 1 February 1995, 241 SCRA 11, 19 and *People v. Pagaura*, G.R. No. 95352, 28 January 1997, 267 SCRA 17, 24.

[16] *People v. Sanchez* G.R. No. 175832, 15 October 2008, 569 SCRA 194, 209.

[17] *People v. Garcia*, G.R. No. 173480, 25 February 2009, 580 SCRA 259, 266-267.

[18] *People v. Secreto*, G.R. No. 198115, 22 February 2013.

> **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. (Emphasis supplied)

This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165, which reads:

> (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: x x x *Provided, further,* that non-compliance with these requirements under **justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis supplied)

This Court recognizes that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions, many of them far from ideal. For this reason, the Implementing Rules provide that non-compliance with the strict directive of Section 21 is not necessarily fatal to the prosecution's case because courts recognize the possible occurrence of procedural lapses. However, we emphasize that these lapses 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.[19] In the present case, the prosecution did not bother to present any explanation to justify the non-observance of the prescribed procedures. Therefore, the non-observance by the police of the required procedure cannot be excused. It likewise

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[19] *People v. Sanchez, supra* note 16 at 210-211.

failed to prove that the integrity and evidentiary value of the items adduced were not tainted.

Chain of Custody

To secure a conviction for the illegal sale of *shabu*, the following elements must be present: (a) the identities of the buyer and seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. It is material to establish that the transaction actually took place, and to bring to the court the *corpus delicti* as evidence.[20] In the prosecution of a drug case, the primary consideration is to ensure that the identity and integrity of the seized drugs and other related articles have been preserved from the time they were confiscated from the accused until their presentation as evidence in court.[21]

The chain of custody requirement ensures that doubts concerning the identity of the evidence are removed. In a long line of cases, we have considered it fatal for the prosecution when they fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused. The case of *Mallillin v. People*[22] is particularly instructive on how we expect the chain of custody to be maintained. 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 to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change

[20] *People v. Secreto, supra* note 18.

[21] *Reyes v. CA*, G.R. No. 180177, 18 April 2012, 670 SCRA 148, 159.

[22] 576 Phil. 576, 587 (2008).

in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[23] An unbroken chain of custody becomes indispensable and essential when the item of real evidence is susceptible to alteration, tampering, contamination and even substitution and exchange.[24]

The "chain of custody" rule requires that the "marking" of the seized items – to truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence – should be done (1) in the presence of the apprehended violator (2) immediately upon confiscation. This step initiates the process of protecting innocent persons from dubious and concocted searches.[25] "Marking" means the placing by the apprehending officer or the *poseur-buyer* of his/her initials and signature on the item/s seized.

This Court previously held[26] that the following links must be established in the chain of custody in a buy-bust operation: 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.

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[23] *People v. Sanchez, supra* note 16 at 216.

[24] *Supra.*

[25] *Id.* at 219 citing Oaminal, C.P., *Textbook on the Comprehensive Dangerous Act of 2002 (Republic Act No. 9165)*, 2005, p. 65. See: *People v. Laxa*, G.R. No. 138501, 20 July 2001, 361 SCRA 622, 635; *People v. Kimura*, G.R. No. 130805, 27 April 2004, 428 SCRA 51; *People v. Nazareno*, G.R. No. 174771, 11 September 2007, 532 SCRA 630; and *People v. Santos, Jr.*, G.R. No. 175593, 17 October 2007, 536 SCRA 489.

[26] *People v. Kamad*, G.R. No. 174198, 610 SCRA 295, 307 citing *People v. Garcia*, *supra* note 16; *People v. Gum-Oyen*, G.R. No. 182231, 16 April 2009, 585 SCRA 668; *People v. Denoman*, G.R. No. 171732, 14 August 2009, 596 SCRA 257; *People v. Coreche*, G.R. No. 182528, 14 August 2009, 596 SCRA 350.

A perusal of the records will show that the procedure of preserving the chain of custody as laid down by jurisprudence[27] was not observed. This is evident from the testimonies of the witnesses for the prosecution. Prosecution witness PO3 Angelito Galang testified on how the seized item was handled, to wit:

PROSEC. BAUTISTA:	At the time you proceeded to the area, what did you observe?
A:	I saw the buy-bust money recovered by PO3 Arago and the plastic sachet he bought was placed in his wallet, sir.[28]

PO3 Santiago Cordova, on the other hand, testified in this wise:

PROSEC. BAUTISTA:	So you assisted Arago in arresting this accused?
A:	Yes sir.
PROSEC. BAUTISTA:	What did Arago did with the stuff, which was taken?
A:	He kept it and brought to the office.
PROSEC. BAUTISTA:	Before keeping, did Arago do something with the stuff?
A:	I saw him holding the specimen and he put the specimen inside his pocket.
PROSEC. BAUTISTA:	He did not do anything with the stuff?
A:	I did not notice other things he did with the specimen.
PROSEC.BAUTISTA:	You did not see what happened afterwards?

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[27] *Mallillin v. People*, *supra* note 22 at 591.

[28] TSN, 6 September 2004, p. 7.

A:	I did not notice because I am busy holding *alias* Jojo, because he is resisting.
PROSEC. BAUTISTA:	And what did Arago do with the stuff?
ATTY. HERRERA:	Your Honor, the question has been repeatedly asked, your Honor.
PROSEC. BAUTISTA:	You saw the stuff?
A:	Yes sir.
PROSEC. BAUTISTA:	And that's all what you saw?
A:	Yes sir.[29]

It is clear from the aforecited testimonies that the evidence was not "marked" in front of the accused or his representative. Evidently, there was an irregularity in the first link of the chain of custody.

Even assuming that the physical inventory contemplated in R.A. No. 9165 subsumes the marking of the items itself, the belated marking of the seized items at the police station sans the required presence of the accused and the witnesses enumerated under Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165, and absent a justifiable ground to stand on, cannot be considered a minor deviation from the procedures prescribed by the law. We note that other than the allegation that a marking was done at the police station, there was no proof that such marking was actually undertaken at all. From the time it was placed inside the pocket or wallet of PO2 Arago, it surfaced again only at the marking of exhibits. In fact, there was no statement from any of the witnesses that markings were made on the seized item in the presence of any of the persons mentioned in Section 21 (a) of the Implementing Rules and Regulations of R.A. No. 9165. Moreover, the prosecution even failed to present an accomplished Certificate of Inventory.[30]

[29] TSN, 10 March 2004, pp. 8-9.

[30] TSN, 25 March 2003, pp. 13-14.

Another gap in the chain of custody is apparent from the lack of evidence presented by the prosecution to prove that the sachet of *shabu*, which was entrusted by PO2 Arago to the investigator, is the same sachet that was delivered to the forensic chemist. The records are wanting of testimonies showing the manner of handling of the evidence, precautions taken and other significant circumstances surrounding this essential transfer of custody. The prosecution did not take the testimony of the investigator, nor did they adduce evidence on what the investigator did with the seized *shabu*, how these got to the forensic chemist, and how they were kept before being adduced in evidence at trial. In fact, the identity of such investigator was not even mentioned nor was there any mention of a marking made on the seized item.

Upon further examination, we find that another gap in the chain of custody is apparent. There was no information on what happened to the drugs after P/Insp. Gural examined it. This Court recognizes that the chemist's testimony was stipulated upon.[31] However, the stipulations did not cover the manner on how the specimens were handled after her examination. Without this testimony, there is no way for this Court to be assured that the substances produced in court are the same specimens the forensic chemist found positive for *shabu*.[32] Furthermore, most glaring is the fact that the prosecution even stipulated that the forensic chemist had no knowledge from whom the alleged specimens were taken.[33]

Ultimately, when the prosecution evidence is wanting, deficient to the point of doubt that the dangerous drug recovered from the accused is the same drug presented to the forensic chemist for review and examination, or the same drug presented to the court, an essential element in cases of illegal sale and illegal possession of dangerous drugs, the *corpus delicti*, is absent.

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[31] Records, p. 47.

[32] *People v. Nicart*, G.R. No. 182059, 4 July 2012, 675 SCRA 688, 705.

[33] Records, p. 47.

Negation of Presumption of Regularity

The lower courts erred in giving weight to the presumption of regularity in the performance that a police officer enjoys in the absence of any taint of irregularity and of ill motive that would induce him to falsify his testimony. The regularity of the performance of the police officers' duties leaves much to be desired in this case given the lapses in their handling of the allegedly confiscated *shabu*. The totality of all the aforementioned procedural lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up.[34] We have previously held[35] that these lapses negate the presumption that official duties have been regularly performed by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable.

In *People v. Santos, Jr.*,[36] we held that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.[37] It should be noted that the presumption is precisely just that – a presumption. Once challenged by evidence, as in this case, it cannot be regarded as binding truth.[38]

We recognize that the evidence proffered by the defense is far from strong; the appellant merely denied the occurrence of a buy-bust operation and failed to present impartial witnesses who were not interested in the case. In our jurisdiction, the defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense

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[34] *People v. Secreto, supra* note 18.

[35] *Mallillin v. People, supra* note 22 at 593.

[36] G.R. No. 175593, 17 October 2007, 536 SCRA 489, 503.

[37] See also *People v. Ambrosio*, 471 Phil. 241, 250 (2004); *People v. Chua*, 444 Phil. 757, 776 (2003); *People v. Tan*, *supra* note 15.

[38] *People vs. Sanchez, supra* note 16 at 221 citing *People v. Cañete*, G.R. No. 138400, 11 July 2002, 384 SCRA 411.

ploy in most prosecutions for violation of the Dangerous Drugs Act.[39] It should be emphasized, however, that these weaknesses do not add any strength to the prosecution's cause. Thus, however weak the defense evidence might be, the prosecution's whole case still falls. As the well-entrenched dictum goes, the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[40]

We therefore resolve to acquit the accused for failure of the prosecution – due to the gap-induced weakness of the case – to prove the appellant's guilt beyond reasonable doubt.

WHEREFORE, in light of all the foregoing, the 28 July 2010 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01680 affirming the judgement of conviction of the Regional Trial Court, Branch 267, Pasig City is hereby **REVERSED** and **SET ASIDE**. Appellant Jerry Caranto *y* Propeta is **ACQUITTED** on reasonable doubt and is ordered immediately **RELEASED** from detention, unless he is confined for any 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.

Carpio,[*] *Acting C.J. (Chairperson), Brion, del Castillo,* and *Perlas-Bernabe, JJ.,* concur.

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[39] *Id.* at 221-222 citing *Suson v. People*, G.R. No. 152848, 12 July 2006, 494 SCRA 691.

[40] *Id.* at 222.

[*] Per Special Order No. 1644 dated 26 February 2014.

THIRD DIVISION

[G.R. No. 199344. March 5, 2014]

VETYARD TERMINALS & SHIPPING SERVICES, INC./ MIGUEL S. PEREZ, SEAFIX, INC., *petitioners, vs.* **BERNARDINO D. SUAREZ,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT; DISABILITY BENEFITS; INJURY OR ILLNESS, WHEN COMPENSABLE.— The contractual liability of an employer to pay disability benefits to a seafarer who suffers illness or injury during the term of his contract is governed by Section 20(B)(6) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC). x x x [A]n injury or illness is compensable when, first, it is work-related and, second, the injury or illness existed during the term of the seafarer's employment contract. Section 32(A) of the 2000 POEA Amended Standard Terms and Condition further provides that for an occupational disease and the resulting disability to be compensable, the following need to be satisfied: (1) the seafarer's work must involve the risks described; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer.

2. ID.; ID.; ID.; ID.; ID.; FOR A DISEASE TO BE REGARDED AS AN OCCUPATIONAL DISEASE, THE SEAFARER MUST PROVE BY REAL AND SUBSTANTIAL EVIDENCE THAT THE RISK OF CONTRACTING THE DISEASE WAS INCREASED BY THE CONDITIONS UNDER WHICH HE WORKED.— *Suarez* had been diagnosed to suffer from *posterior subscapsular cataract* on his right eye and *pseudophakia, and posterior capsule opacification* on his left eye. For these to be regarded as occupational diseases, Suarez had to prove that the risk of

contracting the disease was increased by the conditions under which he worked. The evidence must be real and substantial, and not merely apparent. It must constitute a reasonable basis for arriving at a conclusion that the conditions of his employment caused the disease or that such conditions aggravated the risk of contracting the illness. Here, Suarez did not present substantial proof that his eye ailment was work-related. Other than his bare claim that paint droppings accidentally splashed on an eye causing blurred vision, he adduced no note or recording of the supposed accident. Nor did he present any record of some medical check-up, consultation, or treatment that he had undergone. Besides, while paint droppings can cause eye irritation, such fact alone does not *ipso facto* establish compensable disability. Awards of compensation cannot rest on speculations or presumptions; Suarez must prove that the paint droppings caused his blindness.

3. ID.; ID.; ID.; ID.; ID.; *POSTERIOR SUBSCAPSULAR CATARACT,* PSEUDOPHAKIA AND *POSTERIOR CAPSULE OPACIFICATION*; REFER TO AILMENTS WHICH ARE MORE THE RESULT OF EYE DISEASE THAN OF ONE'S KIND OF WORK.— *[P]osterior subscapsular cataract* is the most common abnormality affecting the lens epithelium. Such illness may be age-related or occur as a complication of other conditions such as intraocular inflammation, steroid administration, vitreoretinal surgery, and trauma and may also be related to irradiation and systemic conditions such as diabetes mellitus. *Pseudophakia* indicates presence of artificial intraocular lens (IOL) replacing normal human lens and *posterior capsule opacification* is the most frequent complication of cataract surgery. By their nature, these ailments are more the result of eye disease than of one's kind of work.

4. ID.; ID.; ID.; ID.; A SEAFARER'S WILLFUL CONCEALMENT OF PAST MEDICAL CONDITION, DISABILITY AND HISTORY IN THE PRE-EMPLOYMENT MEDICAL EXAMINATION DISQUALIFIES HIM FROM CLAIMING DISABILITY BENEFITS.— [E]ven if the Court were to assume that Suarez's eye ailment was work-related, he still cannot claim disability benefits since he concealed his true medical condition. The records show that when Suarez underwent pre-employment medical examination (PEME), he represented that he was merely

wearing corrective lens. He concealed the fact that he had a cataract operation in 2005. He told the truth only when he was being examined at the Medical City on May 18, 2007. This willful concealment of a vital information in his PEME disqualifies him from claiming disability benefits pursuant to Section 20(E) of the POEA-SEC which provides that "a seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits."

5. ID.; ID.; ID.; PRE-EMPLOYMENT MEDICAL EXAMINATION; GENERALLY NOT EXPLORATORY IN NATURE, NOR IS IT A TOTALLY IN-DEPTH AND THOROUGH EXAMINATION OF AN APPLICANT'S MEDICAL CONDITION AS IT DOES NOT REVEAL HIS REAL STATE OF HEALTH.— The CA has no basis in holding that Suarez's PEME is sufficiently exhaustive as to excuse his non-disclosure of a previous cataract operation. The fact that he was physically and psychologically ascertained to be fit for sea duties does not rule out misrepresentation. A PEME is generally not exploratory in nature, nor is it a totally in-depth and thorough examination of an applicant's medical condition. It does not reveal the real state of health of an applicant. Since it is not exploratory, its failure to reveal or uncover Suarez's eye disability cannot shield him from the consequences of his willful concealment.

APPEARANCES OF COUNSEL

Marilyn B. Cacho & Associates for petitioners.

Linsangan Linsangan & Linsangan Law Office for respondent.

D E C I S I O N

ABAD, *J.*:

Petitioners Vetyard Terminals and Shipping Services, Inc., Miguel S. Perez, and Seafix, Inc. (collectively referred to here as the Company) hired respondent Bernardino D. Suarez to work as Welder/Fitter for 12 months on board MV

"1st Lt. Baldomero Lopez"[1] at US$392 per month.[2] Suarez began to work on January 9, 2007 but was repatriated home four months later in May 2007.

When examined at the Medical City, respondent Suarez was found to be suffering from *posterior cataract* and *pseudophakia*.[3] On the next day, Dr. Victor Caparas examined him anew and gave a more specific diagnosis: "*right eye- posterior subscapsular cataract*" and "*left eye- pseudophakia, posterior capsule opacification*."[4] Dr. Caparas issued a certification that Suarez's ailment, which commonly occurs after cataract operation, is not associated with his claim that paint injured an eye while he was working on board the vessel.[5] On June 20, 2007, he signed after a debriefing a release and quitclaim in favor of the Company.[6]

On August 23, 2007 Suarez filed against the Company a complaint for total and permanent disability benefits, sickness allowance, and reimbursement of medical expenses, alleging that he was painting the vessel's ceiling in February 2007 when paint accidentally hit his eye for which he suffered pain. He claimed that he afterwards experienced blurred vision, yet the Company refused to give him medical and financial assistance.

The Company countered that Suarez was not entitled to disability benefits since his illness was not work-related and he deliberately concealed a prior cataract operation. Still the Company paid for his emergency and consultation fees.

On January 8, 2008 the Labor Arbiter dismissed Suarez's claim, holding that cataract was the primary cause of his ailment, not paint droppings. Suarez failed to prove that his illness was work-related.

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[1] See Employment Contract, *rollo*, p. 76.

[2] *Id.*

[3] See Medical Certificate dated May 18, 2007, *rollo*, pp. 78-79.

[4] See Medical Certificate dated May 19, 2007, *id.* at 80.

[5] See Medical Certificate dated May 21, 2007, records, p. 61.

[6] *Rollo*, p. 87.

On November 28, 2008 the National Labor Relations Commission (NLRC) affirmed the Labor Arbiter's ruling. It also ruled that Suarez's alleged incapacity for work for more than 120 days did not render his illness work-related and that he was not entitled to reimbursement for medical expenses since it was the Company that paid for them. Suarez elevated his case to the Court of Appeals (CA).

On April 26, 2010 the CA rendered a Decision setting aside the ruling of the NLRC and ordering the Company to pay Suarez US$60,000.00 as permanent and total disability compensation and US$1,568.00 corresponding to four months salary. On October 12, 2011 it denied petitioners' motion for reconsideration and awarded Suarez attorney's fees.

The sole issue in this case is whether or not the CA erred in failing to hold that the NLRC gravely abused its discretion when it found that Suarez's eye ailment is compensable.

The CA found that Suarez's work as welder/fitter exposed him to dangers and hazards. He was doing repair works on the vessel when paint drops hit his left eye, injuring it independent of his cataract. Consequently, the ailment was work-related, hence, compensable. The CA added that, since Suarez's disability lasted for more than 120 days, he was entitled to permanent and total disability benefits.

The contractual liability of an employer to pay disability benefits to a seafarer who suffers illness or injury during the term of his contract is governed by Section 20(B)(6) of the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC). It reads:

SECTION 20. COMPENSATION AND BENEFITS

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and rules of compensation applicable at the time the illness or disease was contracted.

Based on the above, an injury or illness is compensable when, first, it is work-related and, second, the injury or illness existed during the term of the seafarer's employment contract. Section 32(A) of the 2000 POEA Amended Standard Terms and Condition further provides that for an occupational disease and the resulting disability to be compensable, the following need to be satisfied: (1) the seafarer's work must involve the risks described; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer.

Suarez had been diagnosed to suffer from *posterior subscapsular cataract* on his right eye and *pseudophakia, and posterior capsule opacification* on his left eye.[7] For these to be regarded as occupational diseases, Suarez had to prove that the risk of contracting the disease was increased by the conditions under which he worked. The evidence must be real and substantial, and not merely apparent.[8] It must constitute a reasonable basis for arriving at a conclusion that the conditions of his employment caused the disease or that such conditions aggravated the risk of contracting the illness.

Here, Suarez did not present substantial proof that his eye ailment was work-related. Other than his bare claim that paint droppings accidentally splashed on an eye causing blurred vision, he adduced no note or recording of the supposed accident.

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[7] *Supra* note 4.

[8] *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 662 SCRA 670, 679, citing *Panganiban v. Tara Trading Shipmanagement, Inc.*, G.R. No. 187032, October 18, 2010, 633 SCRA 353, 365.

Nor did he present any record of some medical check-up, consultation, or treatment that he had undergone. Besides, while paint droppings can cause eye irritation, such fact alone does not *ipso facto* establish compensable disability. Awards of compensation cannot rest on speculations or presumptions; Suarez must prove that the paint droppings caused his blindness.[9]

The Court is inclined to accept the findings of Dr. Caparas, the company-designated physician, that it was cataract extraction, not paint droppings that caused Suarez's ailment. The definitions of the imputed medical conditions plainly do not indicate work-relatedness.

Thus, *posterior subscapsular cataract* is the most common abnormality affecting the lens epithelium.[10] Such illness may be age-related or occur as a complication of other conditions such as intraocular inflammation, steroid administration, vitreoretinal surgery, and trauma and may also be related to irradiation and systemic conditions such as diabetes mellitus.[11] *Pseudophakia* indicates presence of artificial intraocular lens (IOL) replacing normal human lens[12] and *posterior capsule opacification* is the most frequent complication of cataract surgery.[13] By their nature, these ailments are more the result of eye disease than of one's kind of work.

Besides, even if the Court were to assume that Suarez's eye ailment was work-related, he still cannot claim disability benefits since he concealed his true medical condition. The records show that when Suarez underwent pre-employment

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[9] *Kirit, Sr. v. Government Service Insurance System*, G.R. No. L-48580, July 6, 1990, 187 SCRA 224, 227.

[10] http://www.images.missionforvisionusa.org/anatomy/2007/07/posterior-subcapsular-cataract.html (visited on December 2, 2013).

[11] http://dro.hs.columbia.edu/psc.htm (visited on December 2, 2013).

[12] http://dro.hs.columbia.edu/pseudophakia.htm (visited on December 2, 2013).

[13] http://archopht.jamanetwork.com/article.aspx?articleid=422987 (visited on December 2, 2013).

medical examination (PEME), he represented that he was merely wearing corrective lens.[14] He concealed the fact that he had a cataract operation in 2005. He told the truth only when he was being examined at the Medical City on May 18, 2007. This willful concealment of a vital information in his PEME disqualifies him from claiming disability benefits pursuant to Section 20(E) of the POEA-SEC which provides that "a seafarer who knowingly conceals and does not disclose past medical condition, disability and history in the pre-employment medical examination constitutes fraudulent misrepresentation and shall disqualify him from any compensation and benefits."

The CA has no basis in holding that Suarez's PEME is sufficiently exhaustive as to excuse his non-disclosure of a previous cataract operation.[15] The fact that he was physically and psychologically ascertained to be fit for sea duties does not rule out misrepresentation. A PEME is generally not exploratory in nature, nor is it a totally in-depth and thorough examination of an applicant's medical condition.[16] It does not reveal the real state of health of an applicant. Since it is not exploratory, its failure to reveal or uncover Suarez's eye disability cannot shield him from the consequences of his willful concealment.

WHEREFORE, the Court **GRANTS** the petition, **REVERSES and SETS ASIDE** the April 26, 2010 Decision and October 12, 2011 Resolution of the Court of Appeals in CA-G.R. SP 108665 and **REINSTATES** the November 28, 2008 Decision and February 27, 2009 Resolution of the National Labor Relations Commission in favor of petitioners Vetyard Terminals & Shipping Services, Inc., Miguel S. Perez, and Seafix, Inc.

SO ORDERED.

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

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[14] Records, p. 48.

[15] See *Philman Marine Agency, Inc. v. Cabanban,* G.R. No. 186509, July 29, 2013.

[16] *Escarcha v. Leonis Navigation Co., Inc.*, G.R. No. 182740, July 5, 2010, 623 SCRA 423, 442.

SECOND DIVISION

[G.R. No. 208660. March 5, 2014]

PEÑAFRANCIA SUGAR MILL, INC., *petitioner, vs.* **SUGAR REGULATORY ADMINISTRATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC CASES; A CASE OR ISSUE IS CONSIDERED MOOT AND ACADEMIC WHEN IT CEASES TO PRESENT A JUSTICIABLE CONTROVERSY BY VIRTUE OF SUPERVENING EVENTS SO THAT A JUDGMENT ON THE CASE WILL NOT SERVE ANY USEFUL PURPOSE OR HAVE ANY PRACTICAL LEGAL EFFECT; CASE AT BAR.— A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced. In this case, the supervening issuance of Sugar Order No. 5, s. 2013-2014 which revoked the effectivity of the Assailed Sugar Orders has mooted the main issue in the case *a quo*– that is the validity of the Assailed Sugar Orders. Thus, in view of this circumstance, resolving the procedural issue on forum-shopping as herein raised would not afford the parties any substantial relief or have any practical legal effect on the case.

APPEARANCES OF COUNSEL

SEDA Law for petitioner.
Jerry Dela Cruz for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 19, 2013 and the Resolution[3] dated July 31, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 124158 which nullified and set aside the Orders[4] dated November 14, 2011 and February 28, 2012 of the Regional Trial Court (RTC) of Naga City, Branch 24 (Naga City-RTC), ordered the dismissal of the case *a quo* on the ground of forum-shopping, and enjoined the Naga City-RTC from further proceeding with the trial thereof.

The Facts

Petitioner Peñafrancia Sugar Mill, Inc. (PENSUMIL), a corporation duly established and existing under Philippine laws, is engaged in the business of milling sugar,[5] while respondent Sugar Regulatory Administration (SRA) is a government entity created pursuant to Executive Order No. 18, series of 1986[6] (EO 18, s. 1986) which is tasked to uphold the policy of the State "to promote the growth and development of the sugar industry through greater and significant participation of the private sector, and to improve the working condition of laborers."[7]

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[1] *Rollo*, pp. 19-37.

[2] *Id.* at 43-49. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia and Danton Q. Bueser, concurring.

[3] *Id.* at 51-52. Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia and Socorro B. Inting, concurring.

[4] *Id.* at 84-87 and 82-83, respectively. Penned by Presiding Judge Bernhard B. Beltran.

[5] *Id.* at 21.

[6] Entitled "CREATING A SUGAR REGULATORY ADMINISTRATION." (See *id.* at 22.)

[7] Executive Order No. 18 (1986), Section 1.

On September 14, 1995, the SRA issued Sugar Order No. 2, s. 1995-1996.[8] The said Sugar Order provided, *inter alia*, that from September 11, 1995 until August 31, 2005, a lien of ₱2.00 per LKG-Bag shall be imposed on all raw sugar *quedan*-permits, as well as on any other form of sugar, such as Improved Raw, Washed, *Blanco Directo*, Plantation White, or Refined, in order to fund the Philippine Sugar Research Institute, Inc. (PHILSURIN).[9] It also provided that "[t]he said lien shall be paid by way of Manager's Checks in the name of PHILSURIN to be collected by the mill company concerned upon withdrawal of the physical sugar and remitted to PHILSURIN not later than fifteen (15) days from receipt thereof."[10] Thereafter, the SRA released two (2) issuances extending the effects of the aforesaid Sugar Order, namely: (*a*) Sugar Order No. 8, s. 2004-2005[11] which extended the imposition of the lien until August 31, 2010; and (*b*) Sugar Order No. 11, s. 2009-2010[12] which extended such imposition until August 31, 2015 (Assailed Sugar Orders).

Questioning the validity of the Assailed Sugar Orders, PENSUMIL filed a petition for prohibition and injunction dated May 20, 2011 against the SRA and PHILSURIN before the Naga City-RTC docketed as Special Civil Case 2011-0061 (Naga Case).[13] PENSUMIL alleged that the Assailed Sugar Orders

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[8] Entitled "ESTABLISHMENT OF A LIEN OF ₱2.00 PER LKG.-BAG ON ALL SUGAR PRODUCTION TO FUND THE PHILIPPINE SUGAR RESEARCH INSTITUTE FOUNDATION, INC. (PHILSURIN)." (See *rollo*, pp. 112-113.)

[9] Sugar Order No. 2 (1995-1996), Section 1. (See *id.* at 112.)

[10] Sugar Order No. 2 (1995-1996), Section 2. (See *id.* at 113.)

[11] Entitled "EXTENSION OF THE EFFECTIVITY OF SUGAR ORDER NO. 2, SERIES OF 1995-1996, PROVIDING FOR THE ESTABLISHMENT OF A LIEN OF PHP 2.00 PER LKG-BAGS ON ALL SUGAR PRODUCTION TO FUND THE PHILIPPINE SUGAR RESEARCH INSTITUTE FOUNDATION, INC.-(PHILSURIN)." (See *id.* at 118-119.)

[12] Entitled "EXTENSION OF EFFECTIVITY OF SUGAR ORDER NO. 8, SERIES OF 2004-2005, PROVIDING FOR THE ESTABLISHMENT OF A LIEN OF PHP 2.00 PER LKG-BAGS ON ALL SUGAR PRODUCTION TO FUND THE PHILIPPINE SUGAR RESEARCH INSTITUTE FOUNDATION, INC.-(PHILSURIN)." (See *id.* at 120-121.)

[13] *Id.* at 88-109.

are unconstitutional in that: (*a*) they were issued beyond the powers and authority granted to the SRA by EO 18, s. 1986; and (*b*) the amount levied by virtue of the Assailed Sugar Orders constitutes public funds and thus, cannot be legally channelled to a private corporation such as PHILSURIN.[14]

In response, the SRA and PHILSURIN filed their respective motions to dismiss on the ground of forum-shopping. The SRA alleged that there is a pending case for declaratory relief in the Quezon City-RTC docketed as Civil Case Q95-25171 (QC Case) and that the main issue raised in both the Naga and QC Cases is the validity of the Assailed Sugar Orders. For its part, PHILSURIN noted the existence of a pending collection case that it filed against PENSUMIL before the Makati City-RTC docketed as Civil Case 04-239 (Makati Case). It contended that the rights asserted and the reliefs prayed for in the Naga and Makati Cases are founded on the same facts such that a final judgment in one will constitute *res judicata* on the other.[15]

The Naga City-RTC Ruling

In an Order[16] dated November 14, 2011, the Naga City-RTC denied SRA and PHILSURIN's motions to dismiss. The Naga City-RTC held that it was PHILSURIN and not PENSUMIL that initiated the Makati Case and that the latter only raised the validity of the Assailed Sugar Orders as a defense.[17] The Naga City-RTC found that although the Naga and Makati Cases would require the appreciation of related facts, their respective resolutions would nevertheless result in different outcomes, considering that the former is a petition for prohibition and injunction while the latter is a simple collection case.[18]

Both the SRA and PHILSURIN moved for reconsideration but the same were denied by the Naga City-RTC in an

[14] *Id.* at 94.

[15] *Id.* at 84.

[16] *Id.* at 84-87.

[17] *Id.* at 85.

[18] *Id.* at 86.

Order[19] dated February 28, 2012. The Naga City-RTC reiterated its finding that PENSUMIL did not commit forum-shopping. It also held that there is no identity of parties between the Naga and QC Cases since PENSUMIL is not a party in the latter case. It explained that the fact that the QC Case involves the validity of the Assailed Sugar Orders does not preclude PENSUMIL's right to institute an action to protect its own interests against the same.[20]

Aggrieved, the SRA filed a petition for *certiorari* before the CA. Records are bereft of any showing that PHILSURIN elevated the matter to the CA.

The CA Ruling

In a Decision[21] dated April 19, 2013, the CA nullified and set aside the Orders of the Naga City-RTC and ordered the dismissal of the case *a quo* on the ground of forum-shopping. Accordingly, it enjoined the Naga City-RTC from further proceeding with the trial of the case.[22] Contrary to the Naga City-RTC's findings, the CA found that while PENSUMIL is indeed not a party in the QC Case, the determination of the validity of the Assailed Sugar Orders therein would nevertheless amount to *res judicata* in this case.[23]

Dissatisfied, PENSUMIL moved for reconsideration which was, however, denied by the CA in a Resolution[24] dated July 31, 2013. Hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not PENSUMIL committed forum-shopping in filing the case *a quo*.

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[19] *Id.* at 82-83.

[20] *Id.* at 83.

[21] *Id.* at 43-49.

[22] *Id.* at 48.

[23] See *id.* at 47-48.

[24] *Id.* at 51-52.

At this point, the Court deems it worthy to note that on November 4, 2013, and during the pendency of the instant petition, the SRA has issued Sugar Order No. 5, s. 2013-2014,[25] which revoked the Assailed Sugar Orders. As a result thereof, all mill companies were directed to cease from collecting the lien of ₱2.00 per LKG-Bag from all sugar production, effective immediately.[26]

The Court's Ruling

The case at bar should be dismissed for having become moot and academic.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness.[27] This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.[28]

In this case, the supervening issuance of Sugar Order No. 5, s. 2013-2014 which revoked the effectivity of the Assailed Sugar Orders has mooted the main issue in the case *a quo* – that is

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[25] Entitled "REVOCATION OF SUGAR ORDER NO. 2, SERIES OF 1995-1996, SUGAR ORDER NO. 8, SERIES OF 2004-2005 AND SUGAR ORDER NO. 11, SERIES OF 2009-2010 RE: ESTABLISHMENT AND EXTENSION OF A LIEN OF ₱2.00 PER LKG-BAG ON ALL SUGAR PRODUCTION TO FUND THE PHILIPPINE SUGAR RESEARCH INSTITUTE FOUNDATION, INC. (PHILSURIN)." (See *id.* at 312.)

[26] See Sections 2 and 3, Sugar Order No. 5 (2013-2014); *id.*

[27] *Carpio v. CA*, G.R. No. 183102, February 27, 2013, 692 SCRA 162, 174, citing *Osmeña III v. Social Security System of the Philippines*, 559 Phil. 723, 735 (2007).

[28] *Philippine Savings Bank (PSBANK) v. Senate Impeachment Court*, G.R. No. 200238, November 20, 2012, 686 SCRA 35, 37-38, citing *Sales v. Commission on Elections*, 559 Phil. 593, 596-597 (2007).

the validity of the Assailed Sugar Orders. Thus, in view of this circumstance, resolving the procedural issue on forum-shopping as herein raised would not afford the parties any substantial relief or have any practical legal effect on the case.

On the basis of the foregoing, the Court finds it appropriate to abstain from passing upon the merits of this case where legal relief is no longer needed nor called for.

WHEREFORE, the petition is **DISMISSED** for being moot and academic.

SO ORDERED.

Carpio,[*] *Acting C.J. (Chairperson), Brion, del Castillo,* and *Perez, JJ.,* concur.

THIRD DIVISION

[A.C. No. 5359. March 10, 2014]

ERMELINDA LAD *VDA. DE* DOMINGUEZ, represented by her Attorney-in-Fact, VICENTE A. PICHON, *complainant, vs.* **ATTY. ARNULFO M. AGLERON, SR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; WHEN A LAWYER TAKES UP THE CAUSE OF HIS CLIENT, HE IS DUTY BOUND TO SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE REGARDLESS WHETHER HE ACCEPTS IT OR FOR A FEE OR FOR FREE.— Atty. Agleron violated Rule 18.03 of the Code of

[*] Designated Acting Chief Justice per Special Order No. 1644 dated February 25, 2014.

Professional Responsibility x x x . Once a lawyer takes up the cause of his client, he is duty bound to serve his client with competence, and to attend to his client's cause with diligence, care and devotion regardless of whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed on him.

2. ID.; ID.; ID.; A LAWYER MAY BE HELD LIABLE FOR DISCIPLINARY ACTION FOR NEGLECT OF A LEGAL MATTER ENTRUSTED TO HIM; CASE AT BAR.— In the present case, Atty. Agleron admitted his failure to file the complaint against the Municipality of Caraga, Davao Oriental, despite the fact that it was already prepared and signed. He attributed his non-filing of the appropriate charges on the failure of complainant to remit the full payment of the filing fee and pay the 30% of the attorney's fee. Such justification, however, is not a valid excuse that would exonerate him from liability. x x x [E]very case that is entrusted to a lawyer deserves his full attention whether he accepts this for a fee or free. Even assuming that complainant had not remitted the full payment of the filing fee, he should have found a way to speak to his client and inform him about the insufficiency of the filing fee so he could file the complaint. Atty. Agleron obviously lacked professionalism in dealing with complainant and showed incompetence when he failed to file the appropriate charges. In a number of cases, the Court held that a lawyer should never neglect a legal matter entrusted to him, otherwise his negligence renders him liable for disciplinary action such as suspension ranging from three months to two years. In this case, the Court finds the suspension of Atty. Agleron from the practice of law for a period of three *(3)* months sufficient.

R E S O L U T I O N

MENDOZA, *J.*:

Complainant Ermelinda Lad *Vda. De* Dominguez *(complainant)* was the widow of the late Felipe Dominguez who died in a vehicular accident in Caraga, Davao Oriental, on October 18, 1995, involving a dump truck owned by the

Municipality of Caraga. Aggrieved, complainant decided to file charges against the Municipality of Caraga and engaged the services of respondent Atty. Arnulfo M. Agleron, Sr. *(Atty. Agleron)*. On three *(3)* occasions, Atty. Agleron requested and received from complainant the following amounts for the payment of filing fees and sheriff's fees, to wit: (1) June 3, 1996 – ₱3,000.00; (2) June 7, 1996 – ₱1,800.00; and September 2, 1996 – ₱5,250.00 or a total of ₱10,050.00. After the lapse of four *(4)* years, however, no complaint was filed by Atty. Agleron against the Municipality of Caraga.[1]

Atty. Agleron admitted that complainant engaged his professional service and received the amount of ₱10,050.00. He, however, explained that their agreement was that complainant would pay the filing fees and other incidental expenses and as soon as the complaint was prepared and ready for filing, complainant would pay 30% of the agreed attorney's fees of ₱100,000.00. On June 7, 1996, after the signing of the complaint, he advised complainant to pay in full the amount of the filing fee and sheriff's fees and the 30% of the attorney's fee, but complainant failed to do so. Atty. Agleron averred that since the complaint could not be filed in court, the amount of ₱10,050.00 was deposited in a bank while awaiting the payment of the balance of the filing fee and attorney's fee.[2]

In reply,[3] complainant denied that she did not give the full payment of the filing fee and asserted that the filing fee at that time amounted only to ₱7,836.60.

In the Report and Recommendation,[4] dated January 12, 2012, the Investigating Commissioner found Atty. Agleron to have violated the Code of Professional Responsibility when he neglected a legal matter entrusted to him, and recommended that he be suspended from the practice of law for a period of four (4) months.

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

[2] *Id.* at 15-17.

[3] *Id.* at 26-27.

[4] *Id.* at 64-66.

In its April 16, 2013 Resolution,[5] the Integrated Bar of the Philippines *(IBP)* Board of Governors adopted and approved the report and recommendation of the Investigating Commissioner with modification that Atty. Agleron be suspended from the practice of law for a period of only one *(1)* month.

The Court agrees with the recommendation of the IBP Board of Governors except as to the penalty imposed.

Atty. Agleron violated Rule 18.03 of the Code of Professional Responsibility, which provides that:

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

Once a lawyer takes up the cause of his client, he is duty bound to serve his client with competence, and to attend to his client's cause with diligence, care and devotion regardless of whether he accepts it for a fee or for free.[6] He owes fidelity to such cause and must always be mindful of the trust and confidence reposed on him.[7]

In the present case, Atty. Agleron admitted his failure to file the complaint against the Municipality of Caraga, Davao Oriental, despite the fact that it was already prepared and signed. He attributed his non-filing of the appropriate charges on the failure of complainant to remit the full payment of the filing fee and pay the 30% of the attorney's fee. Such justification, however, is not a valid excuse that would exonerate him from liability. As stated, every case that is entrusted to a lawyer deserves his full attention whether he accepts this for a fee or free. Even assuming that complainant had not remitted the full payment of the filing fee, he should have found a way to speak to his client and inform him about the insufficiency of the filing

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[5] *Id.* at 63.

[6] *Uy v. Tansinsin,* A.C. No. 8252, July 21, 2009, 593 SCRA 296.

[7] *Cariño v. De los Reyes,* 414 Phil. 667 (2001), citing *Santiago v. Fojas,* AM No. 4103, 248 SCRA 68.

fee so he could file the complaint. Atty. Agleron obviously lacked professionalism in dealing with complainant and showed incompetence when he failed to file the appropriate charges.

In a number of cases,[8] the Court held that a lawyer should never neglect a legal matter entrusted to him, otherwise his negligence renders him liable for disciplinary action such as suspension ranging from three months to two years. In this case, the Court finds the suspension of Atty. Agleron from the practice of law for a period of three *(3)* months sufficient.

WHEREFORE, the resolution of the IBP Board of Governors is hereby **AFFIRMED with MODIFICATION**. Accordingly, respondent **ATTY. ARNULFO M. AGLERON, SR.** is hereby **SUSPENDED** from the practice of law for a period of **THREE *(3)* MONTHS**, with a stern warning that a repetition of the same or similar wrongdoing will be dealt with more severely.

Let a copy of this resolution be furnished the Bar Confidant to be included in the records of the respondent; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

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

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[8] *Fernandez v. Cabrera III,* 463 Phil. 352 (2003); *Uy v. Tansinsin,* A.C. No. 8252, July 21, 2009, 593 SCRA 296.

THIRD DIVISION

[A.C. No. 10164. March 10, 2014]

STEPHAN BRUNET and VIRGINIA ROMANILLOS BRUNET, *complainants, vs.* **ATTY. RONALD L. GUAREN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; A PROFESSION IN WHICH DUTY TO PUBLIC SERVICE IS THE PRIMARY CONSIDERATION.— The practice of law is not a business. It is a profession in which duty to public service, not money, is the primary consideration. Lawyering is not primarily meant to be a money-making venture, and law advocacy is not a capital that necessarily yields profits. The gaining of a livelihood should be a secondary consideration. The duty to public service and to the administration of justice should be the primary consideration of lawyers, who must subordinate their personal interests or what they owe to themselves.

2. ID.; ID.; DUTY TO SERVE THE CLIENT WITH COMPETENCE AND DILIGENCE; VIOLATED WHEN A LAWYER NEGLECTED A LEGAL MATTER ENTRUSTED TO HIM; CASE AT BAR.— In the present case, Atty. Guaren admitted that he accepted the amount of ₱7,000.00 as partial payment of his acceptance fee. He, however, failed to perform his obligation to file the case for the titling of complainants' lot despite the lapse of 5 years. Atty. Guaren breached his duty to serve his client with competence and diligence when he neglected a legal matter entrusted to him.

APPEARANCES OF COUNSEL

Jaynes C. Abarrientos for complainants.

R E S O L U T I O N

MENDOZA, *J.*:

On August 9, 2002, complainant spouses Stephan and Virginia Brunet *(complainants)* filed a complaint against respondent Atty. Ronald L. Guaren *(Atty. Guaren)* before the Commission on Bar Discipline *(CBD)*, Integrated Bar of the Philippines *(IBP)*.

Complainants alleged that in February 1997, they engaged the services of Atty. Guaren for the titling of a residential lot they acquired in Bonbon, Nueva Caseres; that Atty. Guaren asked for a fee of Ten Thousand Pesos (₱10,000.00) including expenses relative to its proceeding; that it was agreed that full payment of the fee shall be made after the delivery of the title; that Atty. Guaren asked for an advance fee of One Thousand Pesos (₱1,000.00) which they gave; that Atty. Guaren took all the pertinent documents relative to the titling of their lot-certified true copy of the tax declaration, original copy of the deed of exchange, sketch plan, deed of donation, survey plan, and original copy of the waiver; that on March 10, 1997, Atty. Guaren asked for additional payment of Six Thousand Pesos (₱6,000.00) which they dutifully gave; that from 1997 to 2001, they always reminded Atty. Guaren about the case and each time he would say that the titling was in progress; that they became bothered by the slow progress of the case so they demanded the return of the money they paid; and that respondent agreed to return the same provided that the amount of Five Thousand Pesos (₱5,000.00) be deducted to answer for his professional fees.

Complainants further alleged that despite the existence of an attorney-client relationship between them, Atty. Guaren made a special appearance against them in a case pending before the Metropolitan Circuit Trial Court, Oslob, Cebu *(MCTC)*.

Atty. Guaren admitted that he indeed charged complainants an acceptance fee of ₱10,000.00, but denied that the amount was inclusive of expenses for the titling of the lot. He claimed, however, that he received the payment of ₱1,000.00 and ₱6,000.00; that their agreement was that the case would be

filed in court after the complainants fully paid his acceptance fee; that he did not take the documents relative to the titling of the lot except for the photocopy of the tax declaration; and that he did not commit betrayal of trust and confidence when he participated in a case filed against the complainants in MCTC explaining that his appearance was for and in behalf of Atty. Ervin Estandante, the counsel on record, who failed to appear in the said hearing.

In the Report and Recommendation,[1] dated August 24, 2012, the Investigating Commissioner found Atty. Guaren to have violated the Canon of Professional Responsibility when he accepted the titling of complainants' lot and despite the acceptance of ₱7,000.00, he failed to perform his obligation and allowed 5 long years to elapse without any progress in the titling of the lot. Atty. Guaren should also be disciplined for appearing in a case against complainants without a written consent from the latter. The CBD recommended that he be suspended for six *(6)* months.

In its May 20, 2013 Resolution,[2] the IBP Board of Governors, adopted and approved with modification the Report and Recommendation of the CBD, suspending Atty. Guaren from the practice of law for three (3) months only.

The Court adopts the findings of the IBP Board of Governors on the unethical conduct of Atty. Guaren, except as to the penalty.

The practice of law is not a business. It is a profession in which duty to public service, not money, is the primary consideration. Lawyering is not primarily meant to be a money-making venture, and law advocacy is not a capital that necessarily yields profits. The gaining of a livelihood should be a secondary consideration. The duty to public service and to the administration of justice should be the primary consideration of lawyers, who must subordinate their personal interests or what they owe to themselves.[3]

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[1] *Rollo,* pp. 122-126.

[2] *Id.* at 121.

[3] *Bengco v. Atty. Bernardo,* A.C. No. 6368, June 13, 2012, 672 SCRA 8.

Canons 17 and 18 of the Code of Professional Responsibility provides that:

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

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

In the present case, Atty. Guaren admitted that he accepted the amount of ₱7,000.00 as partial payment of his acceptance fee. He, however, failed to perform his obligation to file the case for the titling of complainants' lot despite the lapse of 5 years. Atty. Guaren breached his duty to serve his client with competence and diligence when he neglected a legal matter entrusted to him.

WHEREFORE, respondent Atty. Ronald L. Guaren is found **GUILTY** of having violated Canons 17 and 18 of the Code of Professional Responsibility and is hereby **SUSPENDED** from the practice of law for a period of **SIX *(6)* MONTHS** effective from receipt of this Resolution, with a warning that a similar infraction in the future shall be dealt with more severely.

Let a copy of this resolution be furnished the Bar Confidant to be included in the records of the respondent; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 163767. March 10, 2014]

REPUBLIC OF THE PHILIPPINES, represented by THE DIRECTOR OF LANDS, *petitioner, vs.* **ROSARIO DE GUZMAN *VDA. DE* JOSON,** *respondent.*

SYLLABUS

1. **CIVIL LAW; LAND TITLES; PROPERTY REGISTRATION DECREE (PD 1529); WHO MAY APPLY.—** Section 14 (1) and (2) of the *Property Registration Decree* state: Section 14. Who may apply. — The following persons may file in the proper [Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives: (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier. (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws. x x x

2. **ID.; ID.; ID.; ID.; THOSE WHO POSSESS AND OCCUPY IN THE CONCEPT OF AN OWNER; REQUISITES.—** Section 14(1) deals with possession and occupation in the concept of an owner while Section 14(2) involves prescription as a mode of acquiring ownership. In *Heirs of Mario Malabanan v. Republic*, the Court set the guidelines concerning land registration proceedings brought under these provisions of the *Property Registration Decree* in order to provide clarity to the application and scope of said provisions. x x x In *Republic vs. Tsai*, the Court summarizes the amendments that have shaped the current phraseology of Section 14(1). x x x Under Section 14(1), therefore, the respondent had to prove that: (1) the land formed part of the alienable and disposable land of the public domain; and (2) she, by herself or through her predecessors-in-interest, had been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of ownership from June 12, 1945, or earlier. It

is the applicant who carries the burden of proving that the two requisites have been met. Failure to do so warrants the dismissal of the application.

3. ID.; ID.; ID.; ID.; ID.; THE LAND FORMED PART OF THE ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN AS DECLARED BY THE PRESIDENT OR THE SECRETARY OF THE DENR BEFORE THE FILING OF THE APPLICATION.— In *Menguito v. Republic*, the Court pronounced that a survey conducted by a geodetic engineer that included a certification on the classification of the land as alienable and disposable was not sufficient to overcome the presumption that the land still formed part of the inalienable public domain. x x x We reiterate the standing doctrine that land of the public domain, to be the subject of appropriation, must be declared alienable and disposable either by the President or the Secretary of the DENR. x x x This doctrine unavoidably means that the mere certification issued by the CENRO or PENRO did not suffice to support the application for registration, because the applicant must also submit a copy of the original classification of the land as alienable and disposable as approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. x x x [E]ven assuming that the DENR-CENRO certification alone would have sufficed, the respondent's application would still be denied considering that the reclassification of the land as alienable or disposable came only after the filing of the application in court in 1976. The certification itself indicated that the land was reclassified as alienable or disposable only on October 15, 1980. The consequence of this is fittingly discussed in *Heirs of Mario Malabanan v. Republic.*

4. ID.; ID.; ID.; ID.; THOSE WHO HAVE ACQUIRED OWNERSHIP OF PRIVATE LANDS BY PRESCRIPTION UNDER THE PROVISION OF EXISTING LAWS; THE PERIOD OF POSSESSION PRIOR TO THE RECLASSIFICATION OF THE LAND AS ALIENABLE AND DISPOSABLE LAND OF THE PUBLIC DOMAIN IS NOT CONSIDERED IN RECKONING THE PRESCRIPTIVE PERIOD IN FAVOR OF THE POSSESSOR.— [U]nder Section 14(2), ownership of *private lands* acquired through prescription may be registered in the owner's name. Did the respondent then acquire the land through

> prescription considering that her possession and occupation of the land by her and her predecessors-in-interest could be traced back to as early as in 1926, and that the nature of their possession and occupation was that of a *bona fide* claim of ownership for over 30 years? Clearly, the respondent did not. Again, *Heirs of Mario Malabanan v. Republic* is enlightening. x x x The period of possession *prior to* the reclassification of the land as alienable and disposable land of the public domain is not considered in reckoning the prescriptive period in favor of the possessor. x x x In other words, the period of possession prior to the reclassification of the land, no matter how long, was irrelevant because prescription did not operate against the State before then.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Manuel P. Punzalan for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This case concerns the discharge of the burden of proof by the applicant in proceedings for the registration of land under Section 14 (1) and (2) of Presidential Decree No. 1529 (*Property Registration Decree*).

The Republic appeals the adverse decision promulgated on January 30, 2004,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on August 10, 1981 by the erstwhile Court of First Instance (CFI) of Bulacan (now the Regional Trial Court) in Registration Case No. 3446-M granting the application of the respondent for the registration of her title covering a parcel of land situated in San Isidro, Paombong, Bulacan.[2]

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[1] *Rollo*, pp. 29-36, penned by Associate Justice Andres B. Reyes, Jr. (later Presiding Justice), with Associate Justice Buenaventura J. Guerrero (retired/deceased) and Associate Justice Regalado E. Maambong (retired/deceased) concurring.

[2] *Rollo*, pp. 50-52.

The respondent filed her application for land registration in the CFI in Bulacan.[3] The jurisdictional requirements were met when the notice of initial hearing was published in the Official Gazette for two successive weeks,[4] as evidenced by a certification of publication.[5] The notice of initial hearing was also posted by the Provincial Sheriff of Bulacan in a conspicuous place in the municipal building of Paombong, Bulacan as well as on the property itself.[6] On June 2, 1977, at the initial hearing of the application, Fiscal Liberato L. Reyes interposed an opposition in behalf of the Director of Lands and the Bureau of Public Works. Upon motion by the respondent and without objection from Fiscal Reyes, the CFI commissioned the Acting Deputy Clerk of Court to receive evidence in the presence of Fiscal Reyes.[7]

The records show that the land subject of the application was a riceland with an area of 12,342 square meters known as Lot 2633, Cad-297, Paombong, Bulacan, and covered by plan Ap-03-001603;[8] that the riceland had been originally owned and possessed by one Mamerto Dionisio since 1907;[9] that on May 13, 1926, Dionisio, by way of a deed of sale,[10] had sold the land to Romualda Jacinto; that upon the death of Romualda Jacinto, her sister Maria Jacinto (mother of the respondent) had inherited the land; that upon the death of Maria Jacinto in 1963, the respondent had herself inherited the land, owning and possessing it openly, publicly, uninterruptedly, adversely against the whole world, and in the concept of owner since then; that the land had been declared in her name for taxation

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[3] Records, pp. 4-6.

[4] Folder of Exhibits, p. 1, Exhibit "A".

[5] *Id.* at 2, Exhibit "B".

[6] *Rollo*, p. 50.

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

[8] Folder of Exhibits, p. 5, "Exhibit "E".

[9] *Id.* at 7-8, Exhibit "G".

[10] *Id.*

purposes; and that the taxes due thereon had been paid, as shown in Official Receipt No. H-7100234.[11]

In their opposition filed by Fiscal Reyes,[12] the Director of Lands and the Director of Forest Development averred that whatever legal and possessory rights the respondent had acquired by reason of any Spanish government grants had been lost, abandoned or forfeited for failure to occupy and possess the land for at least 30 years immediately preceding the filing of the application;[13] and that the land applied for, being actually a portion of the Labangan Channel operated by the Pampanga River Control System, could not be subject of appropriation or land registration.[14]

The Office of the Solicitor General (OSG) also filed in behalf of the Government an opposition to the application,[15] insisting that the land was within the unclassified region of Paombong, Bulacan, as indicated in BF Map LC No. 637 dated March 1, 1927; that areas within the unclassified region were denominated as forest lands and thus fell under the exclusive jurisdiction, control and authority of the Bureau of Forest Development (BFD);[16] and that the CFI did not acquire jurisdiction over the application considering that: (1) the land was beyond the commerce of man; (2) the payment of taxes vested no title or ownership in the declarant or taxpayer.[17]

Ruling of the CFI

On August 10, 1981, the CFI rendered its decision,[18] ordering the registration of the land in favor of the respondent on the

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[11] *Id.* at 10, Exhibit "I".

[12] Records, pp. 7-8.

[13] *Rollo,* pp. 31-32.

[14] *Supra* note 3, at 8.

[15] *Rollo,* pp. 47-49.

[16] *Id.* at 47.

[17] *Id.* at 48.

[18] *Supra* note 2.

ground that she had sufficiently established her open, public, continuous, and adverse possession in the concept of an owner for more than 30 years, to wit:

> Since it has been established that the applicants and her predecessors-in-interest have been in the open, public, continuous, and adverse possession of the said parcel of land in the concept of an owner for more than thirty (30) years, that it, since 1926 up to the present time, applicant therefore is entitled to the registration thereof under the provisions od Act No. 496, in relation to Commonwealth Act No. 141 as amended by Republic Act No. 6236 and other existing laws.
>
> WHEREFORE, confirming the order of general default issued in this case, the Court hereby orders the registration of this parcel of land Lot 2633, Cad 297. Case 5, Paombong Cadastre[)] described in plan Ap-03-001603 (Exhibit D, page 7 of records) and in the technical description (Exhibit F, page 5 of records) in favor of Rosario de Guzman *Vda de* Joson, of legal age, Filipino, widow and resident of Malolos, Bulacan.
>
> After the decision shall have become final, let the corresponding decree be issued,
>
> SO ORDERED.[19]

The Republic, through the OSG, appealed to the CA, contending that the trial court had erred in granting the application for registration despite the land not being the subject of land registration due to its being part of the unclassified region denominated as forest land of Paombong, Bulacan.[20]

Judgment of the CA

On January 30, 2004, the CA promulgated its assailed judgment,[21] affirming the decision of the trial court upon the following ratiocination:

> The foregoing documentary and testimonial evidence stood unrebutted and uncontroverted by the oppositor-appellant and they

[19] *Id.* at 52.

[20] *Rollo*, pp. 32-38.

[21] *Supra* note 1.

should serve as proof of the paucity of the claim of the applicant-appellee over the subject property.

Upon the other hand, oppositor-appellant, in a lackluster fashion, advanced *pro forma* theories and arguments in its Opposition which naturally failed to merit any consideration from the court *a quo* and also from this Court. The indorsement from the Bureau of Forest Development, San Fernando, Pampanga to the effect that the subject area is within the unclassified region of Paombong, Bulacan does not warrant any evidentiary weight since the same had never been formally offered as evidence by the oppositor-appellant. All the other allegations in the Opposition field (sic) by the oppositor-appellant failed to persuade this Court as to the veracity thereof considering that no evidence was ever presented to prove the said allegations.

Such being the case, this Court is not inclined to have the positive proofs of her registrable rights over the subject property adduced by the applicant-appellee be defeated by the bare and unsubstantiated allegations of the oppositor-appellant.

WHEREFORE, PREMISES CONSIDERED, the assailed Decision is hereby AFFIRMED *IN TOTO*.

SO ORDERED.[22]

Hence, the Republic appeals by petition for review on *certiorari*.

Issue

(1) WHETHER OR NOT THE LAND SUBJECT OF THE APPLICATION FOR REGISTRATION IS SUSCEPTIBLE OF PRIVATE ACQUISITION; and

(2) WHETHER OR NOT THE TRIAL COURT, AS WELL AS THE COURT OF APPEALS, ERRED IN GRANTING THE APPLICATION FOR REGISTRATION.[23]

Ruling

The appeal is impressed with merit.

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[22] *Id.* at 36.

[23] *Rollo*, p. 14.

Section 14 (1) and (2) of the *Property Registration Decree* state:

> Section 14. Who may apply. — The following persons may file in the proper [Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> x x x x x x x x x

Section 14(1) deals with possession and occupation in the concept of an owner while Section 14(2) involves prescription as a mode of acquiring ownership. In *Heirs of Mario Malabanan v. Republic*,[24] the Court set the guidelines concerning land registration proceedings brought under these provisions of the *Property Registration Decree* in order to provide clarity to the application and scope of said provisions.

The respondent sought to have the land registered in her name by alleging that she and her predecessors-in-interest had been in open, peaceful, continuous, uninterrupted and adverse possession of the land in the concept of owner since time immemorial. However, the Republic counters that the land was public land; and that it could not be acquired by prescription. The determination of the issue hinges on whether or not the land was public; if so, whether the respondent satisfactorily proved that the land had already been declared as alienable and disposable land of the public domain; and that she and her predecessors-in-interest had been in open, peaceful, continuous, uninterrupted and adverse possession of the land in the concept of owner since June 12, 1945, or earlier.

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[24] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

In *Republic vs. Tsai*,[25] the Court summarizes the amendments that have shaped the current phraseology of Section 14(1), to wit:

> Through the years, Section 48(b) of the CA 141 has been amended several times. The Court of Appeals failed to consider the amendment introduced by PD 1073. In *Republic v. Doldol*, the Court provided a summary of these amendments:
>
> > The original Section 48(b) of C.A. No.141 provided for possession and occupation of lands of the public domain **since July 26, 1894**. This was superseded by R.A. No. 1942, which provided for a **simple thirty-year prescriptive period** of occupation by an applicant for judicial confirmation of imperfect title. The same, however, has already been amended by Presidential Decree No. 1073, approved on January 25, 1977. As amended, Section 48(b) now reads:
> >
> > > (b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the application for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter. (Emphasis supplied)
>
> As the law now stands, a mere showing of possession and occupation for 30 years or more is not sufficient. Therefore, since the effectivity of PD 1073 on 25 January 1977, it must now be shown that possession and occupation of the piece of land by the applicant, by himself or through his predecessors-in-interest, started on **12 June 1945 or earlier**. This provision is in total conformity with Section 14(1) of PD 1529.[26]

Under Section 14(1), therefore, the respondent had to prove that: (1) the land formed part of the alienable and disposable

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[25] G.R. No. 168184, June 22, 2009, 590 SCRA 423.

[26] *Id.* at 432-433.

land of the public domain; and (2) she, by herself or through her predecessors-in-interest, had been in open, continuous, exclusive, and notorious possession and occupation of the subject land under a *bona fide* claim of ownership from June 12, 1945, or earlier.[27] It is the applicant who carries the burden of proving that the two requisites have been met. Failure to do so warrants the dismissal of the application.

The respondent unquestionably complied with the second requisite by virtue of her having been in open, continuous, exclusive and notorious possession and occupation of the land since June 12, 1945, or earlier. She testified on how the land had been passed on to her from her predecessors-in-interest; and tendered documentary evidence like: (1) the Deed of Sale evidencing the transfer of the property from Mamerto Dionisio to Romualda Jacinto in 1926;[28] (2) Tax Declaration No. 4547 showing that she had declared the property for taxation purposes in 1976;[29] and (3) Official Receipt No. H-7100234 indicating that she had been paying taxes on the land since 1977.[30] The CFI found her possession of the land and that of her predecessors-in-interest to have been open, public, continuous, and adverse in the concept of an owner since 1926 until the present time, or for more than 30 years, entitling her to the registration under the provisions of Act No. 496, in relation to Commonwealth Act No. 141, as amended by Republic Act No. 6236 and other existing laws.[31] On its part, the CA ruled that the documentary and testimonial evidence stood unrebutted and uncontroverted by the Republic.[32]

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[27] *Republic v. Dela Paz,* G.R. No. 171631, November 15, 2010, 634 SCRA 610, 619, citing *Mistica v. Republic,* G.R. No. 165141, September 11, 2009, 599 SCRA 401, 408.

[28] Folder of exhibits, pp. 7-8, Exhibit "G".

[29] *Id.* at 9, Exhibit "H".

[30] *Id.* at 10, Exhibit "I".

[31] *Supra* note 2, at 52.

[32] *Supra* note 1, at 36.

Nonetheless, what is left wanting is the fact that the respondent did not discharge her burden to prove the classification of the land as demanded by the first requisite. She did not present evidence of the land, albeit public, having been declared alienable and disposable by the State. During trial, she testified that the land was not within any military or naval reservation, and Frisco Domingo, her other witness, corroborated her. Although the Republic countered that the verification made by the Bureau of Forest Development showed that the land was within the unclassified region of Paombong, Bulacan as per BF Map LC No. 637 dated March 1, 1927,[33] such showing was based on the 1st Indorsement dated July 22, 1977 issued by the Bureau of Forest Development,[34] which the CA did not accord any evidentiary weight to for failure of the Republic to formally offer it in evidence. Still, Fiscal Reyes, in the opposition he filed in behalf of the Government, argued that the land was a portion of the Labangan Channel operated by the Pampanga River Control System, and could not be the subject of appropriation or land registration. Thus, the respondent as the applicant remained burdened with proving her compliance with the first requisite.

Belatedly realizing her failure to prove the alienable and disposable classification of the land, the petitioner attached as Annex A to her appellee's brief[35] the certification dated March 8, 2000 issued by the Department of Environment and Natural Resources–Community Environment and Natural Resources Office (DENR-CENRO),[36] *viz*:

> THIS IS TO CERTIFY that the parcel of land described on lot 2633 located at San Isidro, Paombong, Bulacan as shown in the sketch plan surveyed by Geodetic Engineer Carlos G. Reyes falls within the Alienable or Disposable Land Project No. 19 of Paombong, Bulacan per Land Classification Map No. 2934 certified on October 15, 1980.

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[33] *Rollo,* p. 11.

[34] *Id.* at 38.

[35] CA *Rollo,* pp. 49-58.

[36] *Rollo,* p. 58.

However, in its resolution of July 31, 2000,[37] the CA denied her motion to admit the appellee's brief, and expunged the appellee's brief from the records. Seeing another opportunity to make the certification a part of the records, she attached it as Annex A of her comment here.[38] Yet, that attempt to insert would not do her any good because only evidence that was offered at the trial could be considered by the Court.

Even had the respondent's effort to insert the certification been successful, the same would nonetheless be vain and ineffectual. In *Menguito v. Republic*,[39] the Court pronounced that a survey conducted by a geodetic engineer that included a certification on the classification of the land as alienable and disposable was not sufficient to overcome the presumption that the land still formed part of the inalienable public domain, to wit:

> To prove that the land in question formed part of the alienable and disposable lands of the public domain, petitioners relied on the printed words which read: "This survey plan is inside Alienable and Disposable Land Area, Project No. 27-B as per L.C. Map No. 2623, certified by the Bureau of Forestry on January 3, 1968," appearing on Exhibit "E" (Survey Plan No. Swo-13-000227).
>
> This proof is not sufficient. Section 2, Article XII of the 1987 Constitution, provides: "*All lands of the public domain*, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources *are owned by the State*. x x x." (Emphasis supplied.)
>
> For the original registration of title, the applicant (petitioners in this case) must overcome the presumption that the land sought to be registered forms part of the public domain. Unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. Indeed, "occupation thereof in the concept of owner, no matter how long, cannot ripen into ownership and be registered as a title." To overcome such presumption, incontrovertible evidence must be shown by the

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[37] CA *Rollo*, pp. 69-70.

[38] *Rollo*, pp. 55-57.

[39] G.R. No. 134308, December 14, 2000, 348 SCRA 128.

applicant. Absent such evidence, the land sought to be registered remains inalienable.

In the present case, petitioners cite a surveyor-geodetic engineer's notation in Exhibit "E" indicating that the survey was inside alienable and disposable land. Such notation does not constitute a positive government act validly changing the classification of the land in question. Verily, a mere surveyor has no authority to reclassify lands of the public domain. By relying solely on the said surveyor's assertion, petitioners have not sufficiently proven that the land in question has been declared alienable.[40]

We reiterate the standing doctrine that land of the public domain, to be the subject of appropriation, must be declared alienable and disposable either by the President or the Secretary of the DENR. In *Republic v. T.A.N. Properties, Inc.*,[41] we explicitly ruled:

The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable.[42]

This doctrine unavoidably means that the mere certification issued by the CENRO or PENRO did not suffice to support the application for registration, because the applicant must also submit a copy of the original classification of the land as alienable and disposable as approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. As the Court said in *Republic v. Bantigue Point Development Corporation*:[43]

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[40] *Id.* at 139-140.

[41] G.R. No. 154953, June 26, 2008, 555 SCRA 477.

[42] *Id.* at 489.

[43] G.R. No. 162322, March 14, 2012, 668 SCRA 158.

The Regalian doctrine dictates that all lands of the public domain belong to the State. The applicant for land registration has the burden of overcoming the presumption of State ownership by establishing through incontrovertible evidence that the land sought to be registered is alienable or disposable **based on a positive act of the government.** We held in *Republic v. T.A.N. Properties, Inc.* that a CENRO certification is insufficient to prove the alienable and disposable character of the land sought to be registered. The applicant must also show sufficient proof that the DENR Secretary has approved the land classification and released the land in question as alienable and disposable.

Thus, the present rule is that an application for original registration must be accompanied by (1) a CENRO or PENRO Certification; and (2) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records.

Here, respondent Corporation only presented a CENRO certification in support of its application. Clearly, this falls short of the requirements for original registration.[44]

Yet, even assuming that the DENR-CENRO certification alone would have sufficed, the respondent's application would still be denied considering that the reclassification of the land as alienable or disposable came only after the filing of the application in court in 1976. The certification itself indicated that the land was reclassified as alienable or disposable only on October 15, 1980. The consequence of this is fittingly discussed in *Heirs of Mario Malabanan v. Republic*, to wit:

We noted in *Naguit* that it should be distinguished from *Bracewell v. Court of Appeals* since in the latter, the application for registration had been filed **before** the land was declared alienable or disposable. The dissent though pronounces *Bracewell* as the better rule between the two. Yet two years after *Bracewell*, its *ponente*, the esteemed Justice Consuelo Ynares-Santiago, penned the ruling in *Republic v. Ceniza*, which involved a claim of possession that extended back to 1927 over a public domain land that was declared alienable and disposable only in 1980. *Ceniza* cited *Bracewell*, quoted extensively

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

from it, and following the mindset of the dissent, the attempt at registration in *Ceniza* should have failed. Not so.

> To prove that the land subject of an application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute.
>
> In this case, private respondents presented a certification dated November 25, 1994, issued by Eduardo M. Inting, the Community Environment and Natural Resources Officer in the Department of Environment and Natural Resources Office in Cebu City, stating that the lots involved were "found to be within the alienable and disposable (sic) Block-I, Land Classification Project No. 32-A, per map 2962 4-I555 dated December 9, 1980." This is sufficient evidence to show the real character of the land subject of private respondents' application. Further, the certification enjoys a presumption of regularity in the absence of contradictory evidence, which is true in this case. Worth noting also was the observation of the Court of Appeals stating that:
>
> > [n]o opposition was filed by the Bureaus of Lands and Forestry to contest the application of appellees on the ground that the property still forms part of the public domain. Nor is there any showing that the lots in question are forestal land...."
>
> Thus, while the Court of Appeals erred in ruling that mere possession of public land for the period required by law would entitle its occupant to a confirmation of imperfect title, it did not err in ruling in favor of private respondents as far as the first requirement in Section 48(b) of the Public Land Act is concerned, for they were able to overcome the burden of proving the alienability of the land subject of their application.
>
> As correctly found by the Court of Appeals, private respondents were able to prove their open, continuous, exclusive and notorious possession of the subject land even before the year 1927. As a rule, we are bound by the factual findings of the Court of Appeals. Although there are exceptions, petitioner did not show that this is one of them."

Why did the Court in *Ceniza*, through the same eminent member who authored *Bracewell*, sanction the registration under Section 48(b) of public domain lands declared alienable or disposable thirty-five (35) years and 180 days after 12 June 1945? The telling difference is that in *Ceniza*, the application for registration was filed nearly six (6) years **after** the land had been declared alienable or disposable, while in *Bracewell*, the application was filed nine (9) years **before the land was declared alienable or disposable.** That crucial difference was also stressed in *Naguit* to contradistinguish it from *Bracewell*, a difference which the dissent seeks to belittle.[45] (citations omitted)

On the other hand, under Section 14(2), ownership of *private lands* acquired through prescription may be registered in the owner's name. Did the respondent then acquire the land through prescription considering that her possession and occupation of the land by her and her predecessors-in-interest could be traced back to as early as in 1926, and that the nature of their possession and occupation was that of a *bona fide* claim of ownership for over 30 years?

Clearly, the respondent did not. Again, *Heirs of Mario Malabanan v. Republic* is enlightening, to wit:

It is clear that property of public dominion, which generally includes property belonging to the State, cannot be the object of prescription or, indeed, be subject of the commerce of man. Lands of the public domain, whether declared alienable and disposable or not, are property of public dominion and thus insusceptible to acquisition by prescription.

Let us now explore the effects under the Civil Code of a declaration by the President or any duly authorized government officer of alienability and disposability of lands of the public domain. Would such lands so declared alienable and disposable be converted, under the Civil Code, from property of the public dominion into patrimonial property? After all, by connotative definition, alienable and disposable lands may be the object of the commerce of man; Article 1113 provides that all things within the commerce of man are susceptible to prescription; and the same provision further provides that patrimonial property of the State may be acquired by prescription.

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[45] *Supra* note 24, at 195-196.

Nonetheless, Article 422 of the Civil Code states that "[p]roperty of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State." It is this provision that controls how public dominion property may be converted into patrimonial property susceptible to acquisition by prescription. After all, Article 420 (2) makes clear that those property "which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth" are public dominion property. For as long as the property belongs to the State, although already classified as alienable or disposable, it remains property of the public dominion if when it is "intended for some public service or for the development of the national wealth".

Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2), and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.

It is comprehensible with ease that this reading of Section 14(2) of the Property Registration Decree limits its scope and reach and thus affects the registrability even of lands already declared alienable and disposable to the detriment of the *bona fide* possessors or occupants claiming title to the lands. Yet this interpretation is in accord with the Regalian doctrine and its concomitant assumption that all lands owned by the State, although declared alienable or disposable, remain as such and ought to be used only by the Government.

Recourse does not lie with this Court in the matter. The duty of the Court is to apply the Constitution and the laws in accordance with their language and intent. The remedy is to change the law, which is the province of the legislative branch. Congress can very

well be entreated to amend Section 14(2) of the Property Registration Decree and pertinent provisions of the Civil Code to liberalize the requirements for judicial confirmation of imperfect or incomplete titles.[46]

The period of possession *prior to* the reclassification of the land as alienable and disposable land of the public domain is not considered in reckoning the prescriptive period in favor of the possessor. As pointedly clarified also in *Heirs of Mario Malabanan v. Republic*:[47]

> Should public domain lands become patrimonial because they are declared as such in a duly enacted law or duly promulgated proclamation that they are no longer intended for public service or for the development of the national wealth, would the period of possession prior to the conversion of such public dominion into patrimonial be reckoned in counting the prescriptive period in favor of the possessors? We rule in the negative.
>
> The limitation imposed by Article 1113 dissuades us from ruling that the period of possession before the public domain land becomes patrimonial may be counted for the purpose of completing the prescriptive period. Possession of public dominion property before it becomes patrimonial cannot be the object of prescription according to the Civil Code. As the application for registration under Section 14(2) falls wholly within the framework of prescription under the Civil Code, there is no way that possession during the time that the land was still classified as public dominion property can be counted to meet the requisites of acquisitive prescription and justify registration.[48]

In other words, the period of possession prior to the reclassification of the land, no matter how long, was irrelevant because prescription did not operate against the State before then.

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[46] *Id.* at 202-204.

[47] *Id.* at 205-206.

[48] *Id.* at 205-206.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision of the Court of Appeals promulgated on January 30, 2004; **DISMISSES** the application for land registration of respondent Rosario de Guzman *Vda. De* Joson respecting Lot 2633, Cad-297 with a total area of 12,342 square meters, more or less, situated in San Isidro, Paombong, Bulacan; and **DIRECTS** the respondent 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. 191360. March 10, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SHERWIN BIS *y* AVELLANEDA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES.— "[I]nconsistencies in the testimonies of witnesses, which refer only to minor details and collateral matters, do not affect the veracity and weight of their testimonies where there is consistency in relating the principal occurrence and the positive identification of the accused."

2. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA 9165); CHAIN OF CUSTODY; OF UTMOST IMPORTANCE IS THE PRESERVATION OF THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS WHICH WOULD BE UTILIZED IN DETERMINING THE GUILT OR

INNOCENCE OF THE ACCUSED.— [T]he matter of handling the confiscated illegal drugs after a buy-bust operation, [is provided under] Section 21(1), Article II of RA 9165 [and its implementing Rules and Regulations.] x x x Case law has it that non-compliance with the abovequoted provision of RA 9165 and its Implementing Rules and Regulations is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. "What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused." x x x Under the situation, this Court finds no circumstance whatsoever that would hint any doubt as to the identity, integrity and evidentiary value of the items subject matter of this case. "Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will or proof that the evidence has been tampered with" and in such case, the burden of proof rests on the appellant. Here, appellant miserably failed to discharge this burden. Moreover, and as aptly observed by the CA, appellant did not seasonably question these procedural gaps before the trial court. Suffice it to say that objection to evidence cannot be raised for the first time on appeal.

3. REMEDIAL LAW; EVIDENCE; DENIAL; UNAVAILING AS ACCUSED WAS CAUGHT IN *FLAGRANTE DELICTO* IN A BUY BUST OPERATION.— Appellant's defense hinges principally on denial. But such a defense is unavailing considering that appellant was caught in *flagrante delicto* in a legitimate buy-bust operation. "The defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act."

4. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY.— Section 5, of RA 9165 provides the penalty for the illegal sale of dangerous drugs. Pursuant [thereto,] appellant was properly sentenced by the lower courts to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

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.*:

In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. The prosecution is duty-bound to establish with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same prohibited substance seized from him.

For final review is the September 22, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03348 which affirmed the Regional Trial Court's (RTC) January 31, 2008 Decision[2] in Criminal Case No. 7555 finding appellant Sherwin Bis *y* Avellaneda (appellant) guilty beyond reasonable doubt of violating Section 5,[3] Article II of Republic Act (RA) No. 9165[4] and sentencing him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

Factual Antecedents

Appellant was charged before the San Fernando, La Union RTC, Branch 29 with violation of Section 5, Article II of RA 9165 committed as follows:

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[1] CA *rollo*, pp. 89-105; penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Mario L. Guariña III and Jane Aurora C. Lantion.

[2] Records, pp. 87-98; penned by Judge Robert T. Cawed.

[3] Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

[4] The Comprehensive Dangerous Drugs Act of 2002.

That on or about the 28th day of November 2006, in the City of San Fernando, Province of La Union, and within the jurisdiction of this Honorable Court, the above[-]named accused did then and there, willfully, unlawfully and feloniously distribute, sell and deliver three (3) heat sealed transparent plastic sachet[s] containing methamphetamine hydrochloride otherwise known as "*shabu*", with a corresponding weight of ZERO POINT ZERO FORTY THREE (0.043) gram; ZERO POINT ZERO SIXTEEN (0.016) gram; and ZERO POINT ZERO TEN (0.010) gram with a total weight of ZERO POINT ZERO SIXTY NINE (0.069) gram to PO2 Manuel Espejo who posed as the poseur-buyer thereof and in consideration of said *shabu*, used marked money, a piece of One thousand peso bill (₱1,000.00) with serial number EB 893087, without first securing the necessary permit, license from the proper government agency.

CONTRARY TO LAW.[5]

On January 23, 2007, appellant assisted by his counsel, pleaded not guilty to the crime charged.

Version of the Prosecution

On November 26, 2006, a civilian informant tipped the San Fernando City Police Station about the alleged drug pushing activity of appellant at his residence in Pagdalagan Norte, San Fernando City, La Union. Hence, a team composed of Police Officers Manuel Espejo (Espejo), Jose Arce (Arce) and Joselito Casem (Casem) went to the area on the same day to conduct a surveillance. They stayed at a store about 10 meters away from appellant's house and from there saw people coming in and out. Another surveillance conducted by the same team on the following evening confirmed that drug activities were indeed happening in that place.

The said police officers immediately reported the matter to their superior who ordered them to conduct a buy-bust operation on November 28, 2006. Espejo was designated as poseur-buyer while Arce and Casem were to serve as back-ups. Following the usual procedure, Espejo was provided with a ₱1,000.00 bill bearing the initials "MCE" as marked money.

[5] Records, p. 35.

At about 10:40 p.m., the team proceeded to the target area on a tricycle. Upon arriving at the *locus criminis*, Arce and Casem posted themselves at a store near appellant's house while Espejo approached appellant who was standing in front of his house. He told him, "*Pards pakikuha ng isang bulto*." Appellant looked at Espejo and asked "where is your money?" After Espejo handed the ₱1,000.00 bill to appellant, the latter went inside the house. He emerged after a while and gave Espejo three plastic sachets placed in another plastic container. Convinced that the white crystalline substance inside the plastic sachets is *shabu*, Espejo made the pre-arranged signal by putting his hand on top of his head. At once, Espejo introduced himself together with Arce and Casem who already rushed to assist him, as members of the San Fernando City Police. Forthwith, appellant was placed under arrest and apprised of his constitutional rights. Thereafter, he was brought to the police station wherein a further search on him by Espejo yielded aluminum foils[6] and the marked money.

In the meantime, Espejo marked the three plastic sachets he bought from appellant with the initials "MC-1," "MC-2" and "MC-3."[7] Afterwards, the team brought the Request for Laboratory Examination[8] together with the confiscated items to the Regional Chief of the PNP Crime Laboratory Service. The results of the laboratory examination on the specimen yielded positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.[9]

Version of the Defense

Appellant denied all the allegations against him. He claimed that while he was going out of his house at around 10:00 p.m. of November 28, 2006, Espejo, whom he did not know at the

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[6] Exhibits "G", "G-1" and "G-2"; See Plaintiff-Appellee People of the Philippines' Formal Offer of Exhibits, *id*. at 67-70.

[7] Exhibits "F-1", "F-2" and "F-3", *id*.

[8] Exhibit "C", *id*.; See Also Folder of Documentary Exhibits, p. 4.

[9] Exhibit "B", *id*.; *id*. at 2.

time, suddenly grabbed him. He was then taken to a place near the highway where he was frisked. When nothing was found on his possession, he was taken to the police station at Pagdalagan. From there, he was whisked away to the main police station in San Fernando City on the pretext that he would be asked on something and would be released the following day. Upon reaching the main police station, however, Espejo showed him three aluminum foils and three plastic sachets containing white crystalline substance which were allegedly found on him.

On cross examination, appellant claimed to not know Espejo, Arce and Casem prior to the November 28, 2006 incident. That except for the said incident, there was no other reason for the said police officers to file a case against him.

Ruling of the Regional Trial Court

According full faith and credence to the version of the prosecution, the RTC found that the elements necessary to prove the illegal sale of dangerous drugs have been sufficiently established.[10] It debunked appellant's denial after considering the positive testimonies of the prosecution witnesses in line with the presumption that law enforcement officers have performed their duties in a regular manner. Consequently, the RTC found appellant guilty beyond reasonable doubt of the crime charged in its Decision[11] of January 31, 2008, the dispositive portion of which reads:

> WHEREFORE, the Court finds the accused Sherwin Bis, GUILTY as charged and sentences him to suffer the penalty of Life Imprisonment and to pay a fine of Php500,000.00 and to pay costs.

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[10] Elements to successfully prosecute an offense of illegal sale of dangerous drugs, like *shabu*: "(1) the identity of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor." *People v. Remigio*, G.R. No. 189277, December 5, 2012, 687 SCRA 336, 347.

[11] Records, pp. 87-98.

The three (3) sachets of *shabu* with a total weight of 0.069 gram is hereby confiscated and ordered turned over to PDEA for proper disposition.

SO ORDERED.[12]

Ruling of the Court of Appeals

On appeal, appellant questioned the RTC Decision on the ground that his guilt was not proved beyond reasonable doubt. He also averred that the police officers failed to regularly perform their official functions.

Concurring with the findings and conclusions of the RTC, the CA affirmed the said lower court's judgment in its now assailed Decision[13] of September 22, 2009, disposing thusly:

WHEREFORE, premises considered, the January 31, 2008 Decision of the Regional Trial Court of San Fernando, La Union, Branch 29, in Criminal Case No. 7555, is AFFIRMED.

SO ORDERED.[14]

Unable to accept both lower courts' verdict of conviction, appellant is now before this Court for final determination of the very same issues he submitted before the CA.

Our Ruling

We find no merit in the appeal.

Credibility of witnesses not affected by minor inconsistencies.

Appellant points out inconsistencies in the testimonies of prosecution witnesses Espejo and Arce, to wit: (1) Espejo testified that he found the aluminum foils and the marked money tucked on appellant's waistline while Arce testified that he saw Espejo frisk appellant and found the specimen in the latter's pocket; (2) Espejo stated that appellant was then wearing basketball

[12] *Id.* at 98.

[13] CA *rollo*, pp. 89-105.

[14] *Id.* at 104.

shorts while Arce described him as wearing a six-pocket short pants. Appellant argues that these inconsistent statements render Espejo and Arce incredible witnesses.

The Court is not convinced. While there are indeed minor contradictions in Espejo and Arce's testimonies, the same are nevertheless inconsequential and do not detract from the proven elements of the offense of illegal sale of dangerous drugs. As the CA correctly observed:

> The foregoing inconsistencies, however, relate only to minor matters and do not touch on the essence of the crime. Jurisprudence is replete with pronouncement by the Supreme Court that a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details which do not touch the essence of the crime do not impair their credibility.[15]

It is now too well-settled to require extensive documentation that "inconsistencies in the testimonies of witnesses, which refer only to minor details and collateral matters, do not affect the veracity and weight of their testimonies where there is consistency in relating the principal occurrence and the positive identification of the accused."[16] Significantly, in the case at bench, the testimonies of the said witnesses for the prosecution were in harmony with respect to their positive identification of appellant as the one who sold the illegal drugs to Espejo, the poseur-buyer, in a planned buy-bust operation, as well as to the other surrounding circumstances that transpired during the said operation.

Chain of custody properly established.

Appellant posits that the prosecution did not strictly comply with the procedures laid down in Section 21, Article II of RA 9165 and its Implementing Rules and Regulations regarding the physical inventory and photograph of the seized items. Non-

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[15] *Id.* at 99.

[16] *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 34.

compliance therewith, he argues, casts doubt on the validity of his arrest and the identity of the suspected *shabu* allegedly bought and confiscated from him.

On the matter of handling the confiscated illegal drugs after a buy-bust operation, Section 21(1), Article II of RA 9165 provides:

> (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;

Accordingly, Section 21(a) of the Implementing Rules and Regulations of RA 9165 which implements the afore-quoted provision reads:

> (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;

Case law has it that non-compliance with the abovequoted provision of RA 9165 and its Implementing Rules and Regulations is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. "What is

of utmost importance is the preservation of the integrity and the evidentiary value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused."[17]

In the present case, the totality of the prosecution's evidence shows the integrity of the drugs seized to be intact. The identity of the drugs was proven and the chain of its custody and possession has been duly accounted for and not broken. This can be gleaned from the testimonies of Espejo and Arce who narrated that from the moment the items were seized from appellant, the same were brought to the police station where Espejo marked them with his initials "MC-1," "MC-2" and "MC-3," properly inventoried, and, together with the laboratory request, were immediately delivered by Espejo himself to the PNP Crime Laboratory for examination to determine the presence of dangerous drugs. Police Inspector Melanie Joy Ordoño conducted an examination on the specimens submitted with the corresponding markings and concluded that the three heat sealed transparent plastic sachets contained methamphetamine hydrochloride or *shabu*, a dangerous drug. Incidentally, this conclusion is bolstered by the defense's admission[18] of the existence and due execution of the request for laboratory examination, the Chemistry Report and the specimens submitted. Moreover, Espejo, when confronted during trial, identified the three plastic sachets containing white crystalline substance as the very same items confiscated from the appellant.[19] Under the situation, this Court finds no circumstance whatsoever that would hint any doubt as to the identity, integrity and evidentiary value of the items subject matter of this case. "Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will or proof that the evidence has been tampered with"[20] and in such case, the burden of

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[17] *People v. Del Monte*, 575 Phil. 576, 586 (2008).

[18] CA Decision pp. 5-6, CA *rollo*, pp. 93-94.

[19] TSN, March 7, 2007, p. 13.

[20] *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 647.

proof rests on the appellant.[21] Here, appellant miserably failed to discharge this burden. Moreover, and as aptly observed by the CA, appellant did not seasonably question these procedural gaps before the trial court. Suffice it to say that objection to evidence cannot be raised for the first time on appeal.[22]

In fine, the prosecution's evidence positively identified appellant as the seller of white crystalline substance found to be methamphetamine hydrochloride or *shabu*, a dangerous drug, for ₱1,000.00 to Espejo, a police officer who acted as a poseur-buyer in a buy-bust operation. The plastic sachets containing the said substance presented during the trial as Exhibits "F-1 to F-3" were positively identified by Espejo as the same substance which were sold and delivered to him by appellant during the said operation.

Appellant's defense of denial properly rejected.

Appellant's defense hinges principally on denial. But such a defense is unavailing considering that appellant was caught in *flagrante delicto* in a legitimate buy-bust operation. "The defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act."[23]

Penalty

Section 5 of RA 9165 provides the penalty for the illegal sale of dangerous drugs, *viz*:

Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* —The penalty of life imprisonment to death and a fine ranging from Five hundred

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[21] *Id*.

[22] *People v. Sta. Maria*, 545 Phil. 520, 534 (2007).

[23] *People v. Velasquez*, G.R. No. 177224, April 11, 2012, 669 SCRA 307, 318.

thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Pursuant to the above-quoted provision of the law, appellant was properly sentenced by the lower courts to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

WHEREFORE, the Decision dated September 22, 2009 of the Court of Appeals in CA-G.R. CR-H.C. No. 03348, which affirmed the Decision dated January 31, 2008 of the Regional Trial Court, Branch 29, San Fernando City, La Union in Criminal Case No. 7555 finding accused-appellant SHERWIN BIS *y* AVELLANEDA guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of Life Imprisonment and to pay a fine of ₱500,000.00, is hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192123. March 10, 2014]

DR. FERNANDO P. SOLIDUM, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DOCTRINE OF *RES IPSA LOQUITUR*; ELUCIDATED.— *Res ipsa loquitur* is literally

translated as "the thing or the transaction speaks for itself." The doctrine *res ipsa loquitur* means that "where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care." It is simply "a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the defendant who is charged with negligence. It is grounded in the superior logic of ordinary human experience and on the basis of such experience or common knowledge, negligence may be deduced from the mere occurrence of the accident itself. Hence, *res ipsa loquitur* is applied in conjunction with the doctrine of common knowledge." *Jarcia, Jr. v. People* has underscored that the doctrine is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. The doctrine, when applicable to the facts and circumstances of a given case, is not meant to and does not dispense with the requirement of proof of culpable negligence against the party charged. It merely determines and regulates what shall be *prima facie* evidence thereof, and helps the plaintiff in proving a breach of the duty. The doctrine can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available.

2. ID.; ID.; ID.; APPLICABILITY IN MEDICAL NEGLIGENCE.— The applicability of the doctrine of *res ipsa loquitur* in medical negligence cases was significantly and exhaustively explained in *Ramos v. Court of Appeals.* x x x In order to allow resort to the doctrine, therefore, the following essential requisites must first be satisfied, to wit: (1) the accident was of a kind that does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency that caused the injury was under the exclusive control of the person charged; and (3) the injury suffered must not have been due to any voluntary action or contribution of the person injured.

3. CRIMINAL LAW; NEGLIGENCE AND RECKLESS IMPRUDENCE; DEFINED.— Negligence is defined as the

failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance that the circumstances justly demand, whereby such other person suffers injury. Reckless imprudence, on the other hand, consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an inexcusable lack of precaution on the part of the person performing or failing to perform such act.

4. REMEDIAL LAW; EVIDENCE IN MEDICAL NEGLIGENCE; FOUR ELEMENTS THAT MUST BE PROVED; DISCUSSED.— An action upon medical negligence – whether criminal, civil or administrative – calls for the plaintiff to prove by competent evidence each of the following four elements, namely: (a) the duty owed by the physician to the patient, as created by the physician-patient relationship, to act in accordance with the specific norms or standards established by his profession; (b) the breach of the duty by the physician's failing to act in accordance with the applicable standard of care; (3) the causation, *i.e.*, there must be a reasonably close and causal connection between the negligent act or omission and the resulting injury; and (4) the damages suffered by the patient. In the medical profession, specific norms or standards to protect the patient against unreasonable risk, commonly referred to as *standards of care*, set the duty of the physician to act in respect of the patient. Unfortunately, no clear definition of the duty of a particular physician in a particular case exists. Because most medical malpractice cases are highly technical, witnesses with special medical qualifications must provide guidance by giving the knowledge necessary to render a fair and just verdict. As a result, the standard of medical care of a *prudent physician* must be determined from expert testimony in most cases; and in the case of a specialist (like an anesthesiologist), the standard of care by which the specialist is judged is the care and skill *commonly possessed and exercised by similar specialists under similar circumstances*. The specialty standard of care may be higher than that required of the general practitioner. The standard of care is an objective standard by which the conduct of a physician sued for negligence or malpractice may be measured, and it does not depend, therefore, on any individual physician's own knowledge either. In attempting to fix a standard by which a court may determine whether the physician has

properly performed the requisite duty toward the patient, expert medical testimony from both plaintiff and defense experts is required. The judge, as the trier of fact, ultimately determines the standard of care, after listening to the testimony of all medical experts.

5. ID.; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTIONS; CIVIL ACTION DEEMED INSTITUTED WITH THE CRIMINAL ACTION REFERS ONLY TO THAT ARISING FROM THE OFFENSE CHARGED; NOT APPLICABLE TO A PARTY WHO WAS NOT CHARGED; CASE AT BAR.— In criminal prosecutions, the civil action for the recovery of civil liability that is deemed instituted with the criminal action refers only to that arising from the offense charged. It is puzzling, therefore, how the RTC and the CA could have adjudged Ospital ng Maynila jointly and severally liable with Dr. Solidum for the damages despite the obvious fact that Ospital ng Maynila, being an artificial entity, had not been charged along with Dr. Solidum. The lower courts thereby acted capriciously and whimsically, which rendered their judgment against Ospital ng Maynila void as the product of grave abuse of discretion amounting to lack of jurisdiction.

6. CRIMINAL LAW; PERSONS CIVILLY LIABLE FOR FELONIES; SUBSIDIARY CIVIL LIABILITY OF OTHER PERSONS; CONDITIONS FOR SUBSIDIARY LIABILITY TO ATTACH NOT COMPLIED WITH IN CASE AT BAR.— Ospital ng Maynila could be held civilly liable only when subsidiary liability would be properly enforceable pursuant to Article 103 of the *Revised Penal Code*. But the subsidiary liability seems far-fetched here. The conditions for subsidiary liability to attach to Ospital ng Maynila should first be complied with. Firstly, pursuant to Article 103 of the *Revised Penal Code*, Ospital ng Maynila must be shown to be a corporation "engaged in any kind of industry." The term *industry* means any department or branch of art, occupation or business, especially one that employs labor and capital, and is engaged in industry. However, Ospital ng Maynila, being a public hospital, was not engaged in industry conducted for profit but purely in charitable and humanitarian work. Secondly, assuming that Ospital ng Maynila was engaged in industry for profit, Dr. Solidum must be shown to be an employee of Ospital ng Maynila acting in the discharge of his duties during the operation on Gerald. Yet, he definitely

was not such employee but a consultant of the hospital. And, thirdly, assuming that civil liability was adjudged against Dr. Solidum as an employee (which did not happen here), the execution against him was unsatisfied due to his being insolvent.

APPEARANCES OF COUNSEL

Bienvenido D. Comia for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This appeal is taken by a physician-anesthesiologist who has been pronounced guilty of reckless imprudence resulting in serious physical injuries by the Regional Trial Court (RTC) and the Court of Appeals (CA). He had been part of the team of anesthesiologists during the surgical pull-through operation conducted on a three-year old patient born with an imperforate anus.[1]

The antecedents are as follows:

Gerald Albert Gercayo (Gerald) was born on June 2, 1992[2] with an imperforate anus. Two days after his birth, Gerald underwent colostomy, a surgical procedure to bring one end of the large intestine out through the abdominal wall,[3] enabling him to excrete through a colostomy bag attached to the side of his body.[4]

On May 17, 1995, Gerald, then three years old, was admitted at the Ospital ng Maynila for a pull-through operation.[5]

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[1] Imperforate anus is a defect that is present from birth (congenital) in which the opening to the anus is missing or blocked. The anus is the opening to the rectum through which stools leave the body. *http://www.nlm.nih.gov/medlineplus/ency/article/001147.html.* Visited on March 3, 2014.

[2] *Rollo,* p. 55.

[3] *http://www.nlm.nih.gov/medlineplus/ostomy.html.* Visited on March 3, 2014.

[4] *Rollo,* p. 10.

[5] *Id.* at 53.

Dr. Leandro Resurreccion headed the surgical team, and was assisted by Dr. Joselito Luceño, Dr. Donatella Valeña and Dr. Joseph Tibio. The anesthesiologists included Dr. Marichu Abella, Dr. Arnel Razon and petitioner Dr. Fernando Solidum (Dr. Solidum).[6] During the operation, Gerald experienced bradycardia,[7] and went into a coma.[8] His coma lasted for two weeks,[9] but he regained consciousness only after a month.[10] He could no longer see, hear or move.[11]

Agitated by her son's helpless and unexpected condition, Ma. Luz Gercayo (Luz) lodged a complaint for reckless imprudence resulting in serious physical injuries with the City Prosecutor's Office of Manila against the attending physicians.[12]

Upon a finding of probable cause, the City Prosecutor's Office filed an information solely against Dr. Solidum,[13] alleging: –

That on or about May 17, 1995, in the City of Manila, Philippines, the said accused, being then an anesthesiologist at the Ospital ng Maynila, Malate, this City, and as such was tasked to administer the anesthesia on three-year old baby boy GERALD ALBERT GERCAYO, represented by his mother, MA. LUZ GERCAYO, the former having been born with an imperforate anus [no anal opening] and was to undergo an operation for anal opening [pull through operation], did then and there willfully, unlawfully and feloniously fail and neglect to use the care and diligence as the best of his judgment would dictate under said circumstance, by failing to monitor and regulate properly the levels of anesthesia administered to said

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[6] *Id.* at p. 10.

[7] Bradycardia is an abnormally slow heart rate of less than 60 beats per minute. A normal heartbeat is between 60 and 100 beats per minute. *http://www.intelihealth.com/IH/ihtIH/c/9339/23653.html.* Visited on March 3, 2014.

[8] *Rollo*, p. 55.

[9] *Id.*

[10] *Id.* at 11.

[11] *Id.*

[12] *Id.*

[13] *Id.* at 51A-52.

GERALD ALBERT GERCAYO and using 100% halothane and other anesthetic medications, causing as a consequence of his said carelessness and negligence, said GERALD ALBERT GERCAYO suffered a cardiac arrest and consequently a defect called hypoxic encephalopathy meaning insufficient oxygen supply in the brain, thereby rendering said GERALD ALBERT GERCAYO incapable of moving his body, seeing, speaking or hearing, to his damage and prejudice.

Contrary to law.[14]

The case was initially filed in the Metropolitan Trial Court of Manila, but was transferred to the RTC pursuant to Section 5 of Republic Act No. 8369 (*The Family Courts Act of 1997*),[15] where it was docketed as Criminal Case No. 01-190889.

Judgment of the RTC

On July 19, 2004, the RTC rendered its judgment finding Dr. Solidum guilty beyond reasonable doubt of reckless imprudence resulting to serious physical injuries,[16] decreeing:

WHEREFORE, premises considered, the Court finds accused DR. FERNANDO P. SOLIDUM GUILTY beyond reasonable doubt as principal of the crime charged and is hereby sentenced to suffer the indeterminate penalty of TWO (2) MONTHS and ONE (1) DAY of *arresto mayor* as minimum to ONE (1) YEAR, ONE (1) MONTH and TEN (10) DAYS of *prision correccional* as maximum and to indemnify, jointly and severally with the Ospital ng Maynila, Dr. Anita So and Dr. Marichu Abella, private complainant Luz Gercayo, the amount of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages and to pay the costs.

Accordingly, the bond posted by the accused for his provisional liberty is hereby CANCELLED.

SO ORDERED.[17]

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[14] *Id.* at 51A.

[15] *Id.* at 53.

[16] *Id.* at 53-81.

[17] Records, p. 539.

Upon motion of Dr. Anita So and Dr. Marichu Abella to reconsider their solidary liability,[18] the RTC excluded them from solidary liability as to the damages, modifying its decision as follows:

WHEREFORE, premises considered, the Court finds accused Dr. Fernando Solidum, guilty beyond reasonable doubt as principal of the crime charged and is hereby sentenced to suffer the indeterminate penalty of two (2) months and one (1) day of *arresto mayor* as minimum to one (1) year, one (1) month and ten (10) days of *prision correccional* as maximum and to indemnify jointly and severally with Ospital ng Maynila, private complainant Luz Gercayo the amount of ₱500,000.00 as moral damages and ₱100,000 as exemplary damages and to pay the costs.

Accordingly, the bond posted by the accused for his provisional liberty is hereby cancelled.[19]

Decision of the CA

On January 20, 2010, the CA affirmed the conviction of Dr. Solidum,[20] pertinently stating and ruling:

The case appears to be a textbook example of *res ipsa loquitur*.

x x x x x x x x x

x x x [P]rior to the operation, the child was evaluated and found fit to undergo a major operation. As noted by the OSG, the accused himself testified that pre-operation tests were conducted to ensure that the child could withstand the surgery. Except for his imperforate anus, the child was healthy. The tests and other procedures failed to reveal that he was suffering from any known ailment or disability that could turn into a significant risk. There was not a hint that the nature of the operation itself was a causative factor in the events that finally led to hypoxia.

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[18] *Id.* at 551-554.

[19] *Id.* at 561.

[20] *Rollo,* pp. 10-21; penned by Associate Justice Mario L. Guariña III (retired), with Associate Justice Sesinando E. Villon and Associate Justice Franchito N. Diamante concurring.

In short, the lower court has been left with no reasonable hypothesis except to attribute the accident to a failure in the proper administration of anesthesia, the gravamen of the charge in this case. The High Court elucidates in Ramos vs. Court of Appeals 321 SCRA 584 –

> In cases where the *res ipsa loquitur* is applicable, the court is permitted to find a physician negligent upon proper proof of injury to the patient, without the aid of expert testimony, where the court from its fund of common knowledge can determine the proper standard of care. Where common knowledge and experience teach that a resulting injury would not have occurred to the patient if due care had been exercised, an inference of negligence may be drawn giving rise to an application of the doctrine of *res ipsa loquitur* without medical evidence, which is ordinarily required to show not only what occurred but how and why it occurred. When the doctrine is appropriate, all that the patient must do is prove a nexus between the particular act or omission complained of and the injury sustained while under the custody and management of the defendant without need to produce expert medical testimony to establish the standard of care. Resort to *res ipsa loquitur* is allowed because there is no other way, under usual and ordinary conditions, by which the patient can obtain redress for injury suffered by him.

The lower court has found that such a *nexus* exists between the act complained of and the injury sustained, and in line with the hornbook rules on evidence, we will afford the factual findings of a trial court the respect they deserve in the absence of a showing of arbitrariness or disregard of material facts that might affect the disposition of the case. People *v*. Paraiso, 349 SCRA 335.

The *res ipsa loquitur* test has been known to be applied in criminal cases. Although it creates a presumption of negligence, it need not offend due process, as long as the accused is afforded the opportunity to go forward with his own evidence and prove that he has no criminal intent. It is in this light not inconsistent with the constitutional presumption of innocence of an accused.

IN VIEW OF THE FOREGOING, the modified decision of the lower court is affirmed.

SO ORDERED.[21]

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

Dr. Solidum filed a motion for reconsideration, but the CA denied his motion on May 7, 2010.[22]

Hence, this appeal.

Issues

Dr. Solidum avers that:

I.

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT IN UPHOLDING THE PETITIONER'S CONVICTION FOR THE CRIME CHARGED BASED ON THE TRIAL COURT'S OPINION, AND NOT ON THE BASIS OF THE FACTS ESTABLISHED DURING THE TRIAL. ALSO, THERE IS A CLEAR MISAPPREHENSION OF FACTS WHICH IF CORRECTED, WILL RESULT TO THE ACQUITTAL OF THE PETITIONER. FURTHER, THE HONORABLE COURT ERRED IN AFFIRMING THE SAID DECISION OF THE LOWER COURT, AS THIS BREACHES THE CRIMINAL LAW PRINCIPLE THAT THE PROSECUTION MUST PROVE THE ALLEGATIONS OF THE INFORMATION BEYOND REASONABLE DOUBT, AND NOT ON THE BASIS OF ITS PRESUMPTIVE CONCLUSION.

II.

THE HONORABLE COURT OF APPEALS ERRED IN APPLYING THE PRINCIPLE OF *RES IPSA LOQUITOR* (sic) WHEN THE DEFENSE WAS ABLE TO PROVE THAT THERE IS NO NEGLIGENCE ON THE PART OF THE PETITIONER, AND NO OVERDOSING IN THE APPLICATION OF THE ANESTHETIC AGENT BECAUSE THERE WAS NO 100% HALOTHANE ADMINISTERED TO THE CHILD, BUT ONLY ONE (1%) PERCENT AND THE APPLICATION THEREOF, WAS REGULATED BY AN ANESTHESIA MACHINE. THUS, THE APPLICATION OF THE PRINCIPLE OF *RES IPSA LOQUITOR* (sic) CONTRADICTED THE ESTABLISHED FACTS AND THE LAW APPLICABLE IN THE CASE.

III.

THE AWARD OF MORAL DAMAGES AND EXEMPLARY DAMAGES IS NOT JUSTIFIED THERE BEING NO NEGLIGENCE ON THE PART OF THE PETITIONER. ASSUMING THAT THE CHILD IS ENTITLED TO FINANCIAL CONSIDERATION, IT SHOULD BE

[22] *Id.* at 22.

ONLY AS A FINANCIAL ASSISTANCE, BECAUSE THERE WAS NO NEGLIGENCE, AND NO OVERDOSING OF ANESTHETIC AGENT AND AS SUCH, THE AWARD IS SO EXCESSIVE, AND NO FACTUAL AND LEGAL BASIS.[23]

To simplify, the following are the issues for resolution, namely: (*a*) whether or not the doctrine of *res ipsa loquitur* was applicable herein; and (*b*) whether or not Dr. Solidum was liable for criminal negligence.

Ruling

The appeal is meritorious.

Applicability of the Doctrine of *Res Ipsa Loquitur*

Res ipsa loquitur is literally translated as "the thing or the transaction speaks for itself." The doctrine *res ipsa loquitur* means that "where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care."[24] It is simply "a recognition of the postulate that, as a matter of common knowledge and experience, the very nature of certain types of occurrences may justify an inference of negligence on the part of the person who controls the instrumentality causing the injury in the absence of some explanation by the defendant who is charged with negligence. It is grounded in the superior logic of ordinary human experience and on the basis of such experience or common knowledge, negligence may be deduced from the mere occurrence of the accident itself. Hence, *res ipsa loquitur* is applied in conjunction with the doctrine of common knowledge."[25]

[23] *Id.* at 30-31.

[24] *Jarcia, Jr. v. People*, G.R. No. 187926, February 15, 2012, 666 SCRA 336, 351.

[25] *Ramos v. Court of Appeals*, G.R. No. 124354, December 29, 1999, 321 SCRA 584, 599.

Jarcia, Jr. v. People[26] has underscored that the doctrine is not a rule of substantive law, but merely a mode of proof or a mere procedural convenience. The doctrine, when applicable to the facts and circumstances of a given case, is not meant to and does not dispense with the requirement of proof of culpable negligence against the party charged. It merely determines and regulates what shall be *prima facie* evidence thereof, and helps the plaintiff in proving a breach of the duty. The doctrine can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available.[27]

The applicability of the doctrine of *res ipsa loquitur* in medical negligence cases was significantly and exhaustively explained in *Ramos v. Court of Appeals*,[28] where the Court said –

> Medical malpractice cases do not escape the application of this doctrine. Thus, *res ipsa loquitur* has been applied when the circumstances attendant upon the harm are themselves of such a character as to justify an inference of negligence as the cause of that harm. The application of *res ipsa loquitur* in medical negligence cases presents a question of law since it is a judicial function to determine whether a certain set of circumstances does, as a matter of law, permit a given inference.
>
> Although generally, expert medical testimony is relied upon in malpractice suits to prove that a physician has done a negligent act or that he has deviated from the standard medical procedure, when the doctrine of *res ipsa loquitur* is availed by the plaintiff, the need for expert medical testimony is dispensed with because the injury itself provides the proof of negligence. The reason is that the general rule on the necessity of expert testimony applies only to such matters clearly within the domain of medical science, and not to matters that are within the common knowledge of mankind which may be testified to by anyone familiar with the facts. Ordinarily, only physicians and surgeons of skill and experience are competent to testify as to whether a patient has been treated or operated upon with a reasonable degree of skill and care. However, testimony as to the statements and acts

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[26] *Supra* note 24, at 352.

[27] *Id.*

[28] *Supra* note 25, at 600-603.

of physicians and surgeons, external appearances, and manifest conditions which are observable by any one may be given by non-expert witnesses. Hence, in cases where the *res ipsa loquitur* is applicable, the court is permitted to find a physician negligent upon proper proof of injury to the patient, without the aid of expert testimony, where the court from its fund of common knowledge can determine the proper standard of care. Where common knowledge and experience teach that a resulting injury would not have occurred to the patient if due care had been exercised, an inference of negligence may be drawn giving rise to an application of the doctrine of *res ipsa loquitur* without medical evidence, which is ordinarily required to show not only what occurred but how and why it occurred. When the doctrine is appropriate, all that the patient must do is prove a nexus between the particular act or omission complained of and the injury sustained while under the custody and management of the defendant without need to produce expert medical testimony to establish the standard of care. Resort to *res ipsa loquitur* is allowed because there is no other way, under usual and ordinary conditions, by which the patient can obtain redress for injury suffered by him.

Thus, courts of other jurisdictions have applied the doctrine in the following situations: leaving of a foreign object in the body of the patient after an operation, injuries sustained on a healthy part of the body which was not under, or in the area, of treatment, removal of the wrong part of the body when another part was intended, knocking out a tooth while a patient's jaw was under anesthetic for the removal of his tonsils, and loss of an eye while the patient plaintiff was under the influence of anesthetic, during or following an operation for appendicitis, among others.

Nevertheless, despite the fact that the scope of *res ipsa loquitur* has been measurably enlarged, it does not automatically apply to all cases of medical negligence as to mechanically shift the burden of proof to the defendant to show that he is not guilty of the ascribed negligence. *Res ipsa loquitur* is not a rigid or ordinary doctrine to be perfunctorily used but a rule to be cautiously applied, depending upon the circumstances of each case. It is generally restricted to situations in malpractice cases where a layman is able to say, as a matter of common knowledge and observation, that the consequences of professional care were not as such as would ordinarily have followed if due care had been exercised. A distinction must be made between the failure to secure results, and the occurrence of something more unusual and not ordinarily found if the service or treatment rendered

followed the usual procedure of those skilled in that particular practice. It must be conceded that the doctrine of *res ipsa loquitur* can have no application in a suit against a physician or surgeon which involves the merits of a diagnosis or of a scientific treatment. The physician or surgeon is not required at his peril to explain why any particular diagnosis was not correct, or why any particular scientific treatment did not produce the desired result. Thus, *res ipsa loquitur* is not available in a malpractice suit if the only showing is that the desired result of an operation or treatment was not accomplished. The real question, therefore, is whether or not in the process of the operation any extraordinary incident or unusual event outside of the routine performance occurred which is beyond the regular scope of customary professional activity in such operations, which, if unexplained would themselves reasonably speak to the average man as the negligent cause or causes of the untoward consequence. If there was such extraneous intervention, the doctrine of *res ipsa loquitur* may be utilized and the defendant is called upon to explain the matter, by evidence of exculpation, if he could.

In order to allow resort to the doctrine, therefore, the following essential requisites must first be satisfied, to wit: (1) the accident was of a kind that does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency that caused the injury was under the exclusive control of the person charged; and (3) the injury suffered must not have been due to any voluntary action or contribution of the person injured.[29]

The Court considers the application here of the doctrine of *res ipsa loquitur* inappropriate. Although it should be conceded without difficulty that the second and third elements were present, considering that the anesthetic agent and the instruments were exclusively within the control of Dr. Solidum, and that the patient, being then unconscious during the operation, could not have been guilty of contributory negligence, the first element was undeniably wanting. Luz delivered Gerald to the care, custody and control of his physicians for a pull-through operation. Except for the imperforate anus, Gerald was then of sound body and mind at the time of his submission to the physicians. Yet, he

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[29] *Reyes v. Sisters of Mercy Hospital*, G.R. No. 130547, October 3, 2000, 341 SCRA 760, 771.

experienced bradycardia during the operation, causing loss of his senses and rendering him immobile. Hypoxia, or the insufficiency of oxygen supply to the brain that caused the slowing of the heart rate, scientifically termed as bradycardia, would not ordinarily occur in the process of a pull-through operation, or during the administration of anesthesia to the patient, but such fact alone did not prove that the negligence of any of his attending physicians, including the anesthesiologists, had caused the injury. In fact, the anesthesiologists attending to him had sensed in the course of the operation that the lack of oxygen could have been triggered by the vago-vagal reflex, prompting them to administer atropine to the patient.[30]

This conclusion is not unprecedented. It was similarly reached in *Swanson v. Brigham*,[31] relevant portions of the decision therein being as follows:

> On January 7, 1973, Dr. Brigham admitted 15-year-old Randall Swanson to a hospital for the treatment of infectious mononucleosis. The patient's symptoms had included a swollen throat and some breathing difficulty. Early in the morning of January 9 the patient was restless, and at 1:30 a.m. Dr. Brigham examined the patient. His inspection of the patient's air passage revealed that it was in satisfactory condition. At 4:15 a.m. Dr. Brigham received a telephone call from the hospital, advising him that the patient was having respiratory difficulty. The doctor ordered that oxygen be administered and he prepared to leave for the hospital. Ten minutes later, 4:25 a.m., the hospital called a second time to advise the doctor that the patient was not responding. The doctor ordered that a medicine be administered, and he departed for the hospital. When he arrived, the physician who had been on call at the hospital had begun attempts to revive the patient. Dr. Brigham joined him in the effort, but the patient died.
>
> The doctor who performed the autopsy concluded that the patient died between 4:25 a.m. and 4:30 a.m. of asphyxia, as a result of a sudden, acute closing of the air passage. He also found that the air passage had been adequate to maintain life up to 2 or 3 minutes prior to death. He did not know what caused the air passage to suddenly close.

[30] Records, p. 110.

[31] 571 P.2d 217, 18 Wash. App. 647; Wash. Ct. App. 1917.

x x x x x x x x x

It is a rare occurrence when someone admitted to a hospital for the treatment of infectious mononucleosis dies of asphyxiation. But that is not sufficient to invoke *res ipsa loquitur*. The fact that the injury rarely occurs does not in itself prove that the injury was probably caused by someone's negligence. *Mason v. Ellsworth, 3 Wn. App. 298, 474 P.2d 909 (1970)*. Nor is a bad result by itself enough to warrant the application of the doctrine. *Nelson v. Murphy, 42 Wn.2d 737, 258 P.2d 472 (1953)*. *See* 2 S. Speiser, *The Negligence Case – Res Ipsa Loquitur* § 24:10 (1972). The evidence presented is insufficient to establish the first element necessary for application of *res ipsa loquitur* doctrine. The acute closing of the patient's air passage and his resultant asphyxiation took place over a very short period of time. Under these circumstances it would not be reasonable to infer that the physician was negligent. There was no palpably negligent act. The common experience of mankind does not suggest that death would not be expected without negligence. And there is no expert medical testimony to create an inference that negligence caused the injury.

Negligence of Dr. Solidum

In view of the inapplicability of the doctrine of *res ipsa loquitur*, the Court next determines whether the CA correctly affirmed the conviction of Dr. Solidum for criminal negligence.

Negligence is defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance that the circumstances justly demand, whereby such other person suffers injury.[32] Reckless imprudence, on the other hand, consists of voluntarily doing or failing to do, without malice, an act from which material damage results by reason of an inexcusable lack of precaution on the part of the person performing or failing to perform such act.[33]

Dr. Solidum's conviction by the RTC was primarily based on his failure to monitor and properly regulate the level of anesthetic agent administered on Gerald by overdosing at 100%

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[32] *Gaid v. People*, G.R. No. 171636, April 7, 2009, 584 SCRA 489, 497.

[33] *Id.* at 495.

halothane. In affirming the conviction, the CA observed:

On the witness stand, Dr. Vertido made a significant turnaround. He affirmed the findings and conclusions in his report except for an observation which, to all intents and purposes, has become the storm center of this dispute. He wanted to correct one piece of information regarding the dosage of the anesthetic agent administered to the child. He declared that he made a mistake in reporting a 100% halothane and said that based on the records *it should have been 100% oxygen.*

The records he was relying on, as he explains, are the following:

(a) the *anesthesia record* – A portion of the chart in the record was marked as Exhibit 1-A and 1-B to indicate the administration at intervals of the anesthetic agent.

(b) the *clinical abstract* – A portion of this record that reads as follows was marked Exhibit 3A. 3B – *Approximately 1 hour and 45 minutes through the operation, patient was noted to have bradycardia (CR = 70) and ATSO4 0.2 mg was immediately administered. However, the bradycardia persisted, the inhalational agent was shut off, and the patient was ventilated with 100% oxygen and another dose of ATSO4 0.2 mg was given. However, the patient did not respond until no cardiac rate can be auscultated and the surgeons were immediately told to stop the operation. The patient was put on a supine position and CPR was initiated. Patient was given 1 amp of epinephrine initially while continuously doing cardiac massage – still with no cardiac rate appreciated; another ampule of epinephrine was given and after 45 secs, patient's vital signs returned to normal. The entire resuscitation lasted approximately 3-5 mins. The surgeons were then told to proceed to the closure and the child's vital signs throughout and until the end of surgery were: BP = 110/70; CR = 116/min and RR = 20-22 cycles/min (on assisted ventilation).*

Dr. Vertido points to the crucial passage in the clinical abstract that the patient was ventilated with 100% oxygen and another dose of ATSO4 when the bradycardia persisted, but for one reason or another, he read it as 100% halothane. He was asked to read the anesthesia record on the percentage of the dosage indicated, but he could only sheepishly note *I can't understand the number*. There are no clues in the clinical abstract on the quantity of the anesthetic agent used. It only contains the information that the *anesthetic plan was to put the patient under general anesthesia using a*

nonrebreathing system with halothane as the sole anesthetic agent and that 1 hour and 45 minutes after the operation began, bradycardia occurred after which the inhalational agent was shut off and the patient administered with 100% oxygen. It would be apparent that the 100% oxygen that Dr. Vertido said should be read in lieu of 100% halothane was the pure oxygen introduced after something went amiss in the operation and the halothane itself was reduced or shut off.

The key question remains – *what was the quantity of halothane used before bradycardia set in?*

The implication of Dr. Vertido's admission is that *there was no overdose of the anesthetic agent,* and the accused Dr. Solidum stakes his liberty and reputation on this conclusion. He made the assurance that he gave his patient the utmost medical care, never leaving the operating room except for a few minutes to answer the call of nature but leaving behind the other members of his team Drs. Abella and Razon to monitor the operation. He insisted that he administered only a point 1% *not 100%* halothane, receiving corroboration from Dr. Abella whose initial MA in the record should be enough to show that she assisted in the operation and was therefore conversant of the things that happened. She revealed that they were using a machine that closely monitored the concentration of the agent during the operation.

But most compelling is Dr. Solidum's interpretation of the anesthesia record itself, as he takes the bull by the horns, so to speak. In his affidavit, he says, reading from the record, *that the quantity of halothane used in the operation is one percent (1%) delivered at time intervals of 15 minutes.* He studiedly mentions – *the concentration of halothane as reflected in the anesthesia record (Annex D of the complaint-affidavit) is only one percent (1%) – The numbers indicated in 15 minute increments for halothane is an indication that only 1% halothane is being delivered to the patient Gerard Gercayo for his entire operation; The amount of halothane delivered in this case which is only one percent cannot be summated because halothane is constantly being rapidly eliminated by the body during the entire operation.*

x x x x x x x x x

In finding the accused guilty, despite these explanations, the RTC argued that the volte-face of Dr. Vertido on the question of the dosage

of the anesthetic used on the child would not really validate the non-guilt of the anesthesiologist. Led to agree that the halothane used was not 100% as initially believed, he was nonetheless unaware of the implications of the change in his testimony. The court observed that Dr. Vertido had described the condition of the child as hypoxia which is deprivation of oxygen, a diagnosis supported by the results of the CT Scan. All the symptoms attributed to a failing central nervous system such as stupor, loss of consciousness, decrease in heart rate, loss of usual acuity and abnormal motor function, are manifestations of this condition or syndrome. But why would there be deprivation of oxygen if 100% oxygen to 1% halothane was used? Ultimately, to the court, whether oxygen or halothane was the object of mistake, the detrimental effects of the operation are incontestable, and they can only be led to one conclusion – if the application of anesthesia was really closely monitored, the event could not have happened.[34]

The Prosecution did not prove the elements of reckless imprudence beyond reasonable doubt because the circumstances cited by the CA were insufficient to establish that Dr. Solidum had been guilty of inexcusable lack of precaution in monitoring the administration of the anesthetic agent to Gerald. The Court aptly explained in *Cruz v. Court of Appeals*[35] that:

Whether or not a physician has committed an "inexcusable lack of precaution" in the treatment of his patient is to be determined according to the standard of care observed by other members of the profession in good standing under similar circumstances bearing in mind the advanced state of the profession at the time of treatment or the present state of medical science. In the recent case of *Leonila Garcia-Rueda v. Wilfred L. Pacasio, et al.*, this Court stated that in accepting a case, a doctor in effect represents that, having the needed training and skill possessed by physicians and surgeons practicing in the same field, he will employ such training, care and skill in the treatment of his patients. He therefore has a duty to use at least the same level of care that any other reasonably competent doctor would use to treat a condition under the same circumstances. It is in this aspect of medical malpractice that expert testimony is essential to establish not only the standard of care of the profession but also

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[34] *Rollo*, pp. 87-91.

[35] G.R. No. 122445, November 18, 1997, 282 SCRA 188, 200-202.

that the physician's conduct in the treatment and care falls below such standard. Further, inasmuch as the causes of the injuries involved in malpractice actions are determinable only in the light of scientific knowledge, it has been recognized that expert testimony is usually necessary to support the conclusion as to causation.

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In litigations involving medical negligence, the plaintiff has the burden of establishing appellant's negligence and for a reasonable conclusion of negligence, there must be proof of breach of duty on the part of the surgeon *as well as a causal connection of such breach and the resulting death of his patient.* In *Chan Lugay v. St Luke's Hospital, Inc.*, where the attending physician was absolved of liability for the death of the complainant's wife and newborn baby, this Court held that:

> "In order that there may be a recovery for an injury, however, it must be shown that the 'injury for which recovery is sought must be the legitimate consequence of the wrong done; the connection between the negligence and the injury must be a direct and natural sequence of events, unbroken by intervening efficient causes.' *In other words, the negligence must be the proximate cause of the injury. For, 'negligence, no matter in what it consists, cannot create a right of action unless it is the proximate cause of the injury complained of.'* And 'the proximate cause of an injury is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.'"

An action upon medical negligence – whether criminal, civil or administrative – calls for the plaintiff to prove by competent evidence each of the following four elements, namely: (a) the duty owed by the physician to the patient, as created by the physician-patient relationship, to act in accordance with the specific norms or standards established by his profession; (b) the breach of the duty by the physician's failing to act in accordance with the applicable standard of care; (3) the causation, *i.e.*, there must be a reasonably close and causal connection between the negligent act or omission and the resulting injury;

and (4) the damages suffered by the patient.[36]

In the medical profession, specific norms or standards to protect the patient against unreasonable risk, commonly referred to as *standards of care*, set the duty of the physician to act in respect of the patient. Unfortunately, no clear definition of the duty of a particular physician in a particular case exists. Because most medical malpractice cases are highly technical, witnesses with special medical qualifications must provide guidance by giving the knowledge necessary to render a fair and just verdict. As a result, the standard of medical care of a *prudent physician* must be determined from expert testimony in most cases; and in the case of a specialist (like an anesthesiologist), the standard of care by which the specialist is judged is the care and skill *commonly possessed and exercised by similar specialists under similar circumstances*. The specialty standard of care may be higher than that required of the general practitioner.[37]

The standard of care is an objective standard by which the conduct of a physician sued for negligence or malpractice may be measured, and it does not depend, therefore, on any individual physician's own knowledge either. In attempting to fix a standard by which a court may determine whether the physician has properly performed the requisite duty toward the patient, expert medical testimony from both plaintiff and defense experts is required. The judge, as the trier of fact, ultimately determines the standard of care, after listening to the testimony of all medical experts.[38]

Here, the Prosecution presented no witnesses *with special medical qualifications in anesthesia* to provide guidance to the trial court on what standard of care was applicable. It would consequently be truly difficult, if not impossible, to determine

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[36] Flamm, Martin B., *Medical Malpractice and the Physician Defendant*, Chapter 11, *Legal Medicine*, Fourth Edition (1998), pp. 123-124, American College of Legal Medicine, Mosby, Inc., St. Louis, Missouri.

[37] *Id.* at 123-124.

[38] *Id.* at 124.

whether the first three elements of a negligence and malpractice action were attendant.

Although the Prosecution presented Dr. Benigno Sulit, Jr., an anesthesiologist himself who served as the Chairman of the Committee on Ethics and Malpractice of the Philippine Society of Anesthesiologists that investigated the complaint against Dr. Solidum, his testimony mainly focused on how his Committee had conducted the investigation.[39] Even then, the report of his Committee was favorable to Dr. Solidum,[40] to wit:

> Presented for review by this committee is the case of a 3 year old male who underwent a pull-thru operation and was administered general anesthesia by a team of anesthesia residents. The patient, at the time when the surgeons was manipulating the recto-sigmoid and pulling it down in preparation for the anastomosis, had bradycardia. The anesthesiologists, sensing that the cause thereof was the triggering of the vago-vagal reflex, administered atropine to block it but despite the administration of the drug in two doses, cardiac arrest ensued. As the records show, prompt resuscitative measures were administered and spontaneous cardiac function re-established in less than five (5) minutes and that oxygen was continuously being administered throughout, unfortunately, as later become manifest, patient suffered permanent irreversible brain damage.
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> In view of the actuations of the anaesthesiologists and the administration of anaesthesia, the committee find that the same were all in accordance with the universally accepted standards of medical care and there is no evidence of any fault or negligence on the part of the anaesthesiologists.

Dr. Antonio Vertido, a Senior Medico-Legal Officer of the National Bureau of Investigation, was also presented as a Prosecution witness, but his testimony concentrated on the results of the physical examination he had conducted on Gerald, as borne out by the following portions of his direct examination, to wit:

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[39] TSN of December 1, 1999.

[40] Records, p. 110.

FISCAL CABARON	Doctor, what do you mean by General Anesthetic Agent?
WITNESS	General Anesthetic Agent is a substance used in the conduction of Anesthesia and in this case, halothane was used as a sole anesthetic agent.
x x x	x x x x x x
Q	Now under paragraph two of page 1 of your report you mentioned that after one hour and 45 minutes after the operation, the patient experienced a bradycardia or slowing of heart rate, now as a doctor, would you be able to tell this Honorable Court as to what cause of the slowing of heart rate as to Gerald Gercayo?
WITNESS	Well honestly sir, I cannot give you the reason why there was a bradycardia of time because is some reason one way or another that might caused bradycardia.
FISCAL CABARON	What could be the possible reason?
A	Well bradycardia can be caused by anesthetic agent itself and that is a possibility, we're talking about possibility here.
Q	What other possibility do you have in mind, doctor?
A	Well, because it was an operation, anything can happen within that situation.
FISCAL CABARON	Now, this representation would like to ask you about the slowing of heart rate, now what is the immediate cause of the slowing of the heart rate of a person?
WITNESS	Well, one of the more practical reason why there is slowing of the heart rate

	is when you do a vagal reflex in the neck wherein the vagal receptors are located at the lateral part of the neck, when you press that, you produce the slowing of the heart rate that produce bradycardia.
Q	I am pro[p]ounding to you another question doctor, what about the deficiency in the supply of oxygen by the patient, would that also cause the slowing of the heart rate?
A	Well that is a possibility sir, I mean not as slowing of the heart rate, if there is a hypoxia or there is a low oxygen level in the blood, the normal thing for the heart is to pump or to do not a bradycardia but a … to counter act the Hypoxia that is being experienced by the patient (*sic*).
xxx	x x x xxx
Q	Now, you made mention also doctor that the use of general anesthesia using 100% halothane and other anesthetic medications probably were contributory to the production of hypoxia.
A	Yes, sir in general sir.[41]

On cross-examination, Dr. Vertido expounded more specifically on his interpretation of the anesthesia record and the factors that could have caused Gerald to experience bradycardia, *viz*:

ATTY. COMIA	I noticed in, may I see your report Doctor, page 3, will you kindly read to this Honorable court your last paragraph and if you will affirm that as if it is correct?

[41] TSN of November 11, 1997, pp. 16-31.

A	"The use of General Anesthesia, that is using 100% Halothane probably will be contributory to the production of Hypoxia and - - - -"
ATTY. COMIA	And do you affirm the figure you mentioned in this Court Doctor?
WITNESS	Based on the records, I know the - - -
Q	100%?
A	100% based on the records.
Q	I will show you doctor a clinical record. I am a lawyer I am not a doctor but will you kindly look at this and tell me where is 100%, the word "one hundred" or 1-0-0, will you kindly look at this Doctor, this Xerox copy if you can show to this Honorable Court and even to this representation the word "one hundred" or 1-0-0 and then call me.
x x x	x x x x x x
ATTY. COMIA	Doctor tell this Honorable Court where is that 100, 1-0-0 and if there is, you just call me and even the attention of the Presiding Judge of this Court. Okay, you read one by one.
WITNESS	Well, are you only asking 100%, sir?
ATTY. COMIA	I'm asking you, just answer my question, did you see there 100% and 100 figures, tell me, yes or no?
WITNESS	I'm trying to look at the 100%, there is no 100% there sir.
ATTY. COMIA	Okay, that was good, so you Honor please, may we request also temporarily, because this is just a xerox copy presented by the fiscal, that the percentage here that the Halothane administered by Dr. Solidum to the

	patient is 1% only so may we request that this portion, temporarily your Honor, we are marking this anesthesia record as our Exhibit 1 and then this 1% Halothane also be bracketed and the same be marked as our Exhibit "1-A".
xxx	x x x xxx
ATTY. COMIA	Doctor, my attention was called also when you said that there are so many factors that contributed to Hypoxia is that correct?
WITNESS	Yes, sir.
Q	I remember doctor, according to you there are so many factors that contributed to what you call hypoxia and according to you, when this Gerald suffered hypoxia, there are other factors that might lead to this Hypoxia at the time of this operation is that correct?
WITNESS	The possibility is there, sir.
Q	And according to you, it might also be the result of such other, some or it might be due to operations being conducted by the doctor at the time when the operation is being done might also contribute to that hypoxia is that correct?
A	That is a possibility also.
xxx	x x x xxx
ATTY. COMIA	How will you classify now the operation conducted to this Gerald, Doctor?
WITNESS	Well, that is a major operation sir.
Q	In other words, when you say major operation conducted to this Gerald, there is a possibility that this Gerald might [be] exposed to some risk is that correct?

A	That is a possibility sir.
Q	And which according to you that Gerald suffered hypoxia is that correct?
A	Yes, sir.
Q	And that is one of the risk of that major operation is that correct?
A	That is the risk sir.[42]

At the continuation of his cross-examination, Dr. Vertido maintained that Gerald's operation for his imperforate anus, considered a major operation, had exposed him to the risk of suffering the same condition.[43] He then corrected his earlier finding that 100% halothane had been administered on Gerald by saying that it should be 100% oxygen.[44]

Dr. Solidum was criminally charged for "failing to monitor and regulate properly the levels of anesthesia administered to said Gerald Albert Gercayo and using 100% halothane and other anesthetic medications."[45] However, the foregoing circumstances, taken together, did not prove beyond reasonable doubt that Dr. Solidum had been recklessly imprudent in administering the anesthetic agent to Gerald. Indeed, Dr. Vertido's findings did not preclude the probability that other factors related to Gerald's major operation, which could or could not necessarily be attributed to the administration of the anesthesia, had caused the hypoxia and had then led Gerald to experience bradycardia. Dr. Vertido revealingly concluded in his report, instead, that "although the anesthesiologist followed the normal routine and precautionary procedures, still hypoxia and its corresponding side effects did occur."[46]

The existence of the probability about other factors causing the hypoxia has engendered in the mind of the Court a reasonable

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[42] TSN of November 11, 1997, pp. 44-53.

[43] TSN of December 10, 1997, pp. 2-3.

[44] *Id.* at 5-10.

[45] *Rollo*, p. 51.

[46] TSN of December 10, 1997, p. 13.

doubt as to Dr. Solidum's guilt, and moves us to acquit him of the crime of reckless imprudence resulting to serious physical injuries. "A reasonable doubt of guilt," according to *United States v. Youthsey*:[47]

> x x x is a doubt growing reasonably out of evidence or the lack of it. It is not a captious doubt; not a doubt engendered merely by sympathy for the unfortunate position of the defendant, or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty, to that degree of certainty as would lead you to act on the faith of it in the most important and crucial affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of mistake.

We have to clarify that the acquittal of Dr. Solidum would not immediately exempt him from civil liability. But we cannot now find and declare him civilly liable because the circumstances that have been established here do not present the factual and legal bases for validly doing so. His acquittal did not derive only from reasonable doubt. There was really no firm and competent showing how the injury to Gerard had been caused. That meant that the manner of administration of the anesthesia by Dr. Solidum was not necessarily the cause of the hypoxia that caused the bradycardia experienced by Gerard. Consequently, to adjudge Dr. Solidum civilly liable would be to speculate on the cause of the hypoxia. We are not allowed to do so, for civil liability must not rest on speculation but on competent evidence.

Liability of Ospital ng Maynila

Although the result now reached has resolved the issue of civil liability, we have to address the unusual decree of the RTC, as affirmed by the CA, of expressly holding Ospital ng Maynila civilly liable jointly and severally with Dr. Solidum. The decree was flawed in logic and in law.

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[47] 91 Fed. Rep. 864, 868.

In criminal prosecutions, the civil action for the recovery of civil liability that is deemed instituted with the criminal action refers only to that arising from the offense charged.[48] It is puzzling, therefore, how the RTC and the CA could have adjudged Ospital ng Maynila jointly and severally liable with Dr. Solidum for the damages despite the obvious fact that Ospital ng Maynila, being an artificial entity, had not been charged along with Dr. Solidum. The lower courts thereby acted capriciously and whimsically, which rendered their judgment against Ospital ng Maynila void as the product of grave abuse of discretion amounting to lack of jurisdiction.

Not surprisingly, the flawed decree raises other material concerns that the RTC and the CA overlooked. We deem it important, then, to express the following observations for the instruction of the Bench and Bar.

For one, Ospital ng Maynila was not at all a party in the proceedings. Hence, its fundamental right to be heard was not respected from the outset. The RTC and the CA should have been alert to this fundamental defect. Verily, no person can be prejudiced by a ruling rendered in an action or proceeding in which he was not made a party. Such a rule would enforce the constitutional guarantee of due process of law.

Moreover, Ospital ng Maynila could be held civilly liable only when subsidiary liability would be properly enforceable pursuant to Article 103 of the *Revised Penal Code*. But the subsidiary liability seems far-fetched here. The conditions for subsidiary liability to attach to Ospital ng Maynila should first be complied with. Firstly, pursuant to Article 103 of the *Revised Penal Code*, Ospital ng Maynila must be shown to be a corporation "engaged in any kind of industry." The term *industry* means any department or branch of art, occupation or business, especially one that employs labor and capital, and is engaged in industry.[49] However, Ospital ng Maynila, being a public hospital,

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[48] Section 1, Rule 111, *Rules of Court*.

[49] Regalado, *Criminal Law Conspectus*, First Edition (2000), National Book Store, Inc., p. 263.

was not engaged in industry conducted for profit but purely in charitable and humanitarian work.[50] Secondly, assuming that Ospital ng Maynila was engaged in industry for profit, Dr. Solidum must be shown to be an employee of Ospital ng Maynila acting in the discharge of his duties during the operation on Gerald. Yet, he definitely was not such employee but a consultant of the hospital. And, thirdly, assuming that civil liability was adjudged against Dr. Solidum as an employee (which did not happen here), the execution against him was unsatisfied due to his being insolvent.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES AND SETS ASIDE** the decision promulgated on January 20, 2010; **ACQUITS** Dr. Fernando P. Solidum of the crime of reckless imprudence resulting to serious physical injuries; and **MAKES** no pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 195374. March 10, 2014]

PEDRO LUKANG, *petitioner, vs.* **PAGBILAO DEVELOPMENT CORPORATION and EDUARDO T. RODRIGUEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ELUCIDATED.— A writ of preliminary injunction

[50] *Id.* at 264.

is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the *status quo* of the things subject of the action or the relations between the parties during the pendency of the suit. The purpose of injunction is to prevent threatened or continuous irremediable injury to the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the *status quo* until the merits of the case are fully heard. Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established: x x x Thus, a writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant shows that he has an ostensible right to the final relief prayed for in his complaint.

2. ID.; ID.; ID.; GRANT OR DENIAL THEREOF RESTS UPON THE SOUND DISCRETION OF THE COURT.— The well-entrenched rule is that the grant or denial of the writ of preliminary injunction rests upon the sound discretion of the court. The trial court is given a wide latitude in this regard. Thus, in the absence of a manifest abuse, such discretion must not be interfered with. "Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting 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."

3. CIVIL LAW; LAND TITLES; NOTICE OF *LIS PENDENS*; ELUCIDATED.— The annotation of an adverse claim and notice of *lis pendens* over the subject properties is a notice to third persons that there is a controversy over the ownership of the land and serves to preserve and protect the right of the adverse claimants during the pendency of the controversy. The principle of filing a notice of *lis pendens* is based on public policy and necessity, the purpose of which is to keep the properties in

litigation within the power of the court until the litigation is terminated in order to prevent the defeat of the judgment by subsequent alienation; and in order to bind a purchaser, *bona fide* or otherwise, to the judgment that the court would subsequently promulgate. It serves as an announcement to the whole world that a particular real property is in litigation and as a **warning** that **those who acquire an interest in the property do so at their own risk — they gamble on the result of the litigation over it.**

4. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; FAILURE TO FIX THE AMOUNT OF THE INJUNCTIVE BOND WILL NOT QUASH THE WRIT OF INJUNCTION.— With regard to the issue of the injunctive bond, the Court has time and again ruled that the posting of the bond is a condition *sine qua non* before a writ of preliminary injunction may issue. Its purpose is to secure the person enjoined against any damage that he may sustain in case the court should finally decide that the applicant was not entitled thereto. The rule, does not mean, however, that the injunction maybe disregarded since it becomes effective only after the bond is actually filed in court. In fact, in the case of *Consolidated Workers Union v. Court of Industrial Relations*, the Court declared that it was erroneous for the labor court not to require the party to file a bond. Yet, the Court did not annul the writ of injunction but instead ordered the said court to determine the appropriate amount of bond to be posted by the party. In fine, it is erroneous for the CA to rule that the RTC committed grave abuse of discretion simply because it failed to fix the amount of the bond. This error caused "no substantial prejudice" that would warrant the quashal of the writ of injunction.

APPEARANCES OF COUNSEL

De Castro Naredo & Associates for petitioner.

Jaso Dorillo & Associates for respondents.

Madamba & Apostol Law Offices for intervenor Simeon Lukang.

D E C I S I O N

MENDOZA, *J.*:

This petition for review under Rule 45 of the Rules of Court assails the October 21, 2010 Decision[1] and the January 19, 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 108809, which nullified and set aside the May 13, 2008 Order [3]of the Regional Trial Court *(RTC)*, Branch 53, Lucena City, granting the petitioner's application for a writ of preliminary injunction.

The Facts:

The patriarch of the family, Arsenio Lukang *(Arsenio)*, and Mercedes Dee *(Mercedes)* lived as husband and wife in Calamba, Laguna, from 1922 to 1934 and begot three *(3)* children, namely, Domingo, Rosalina and Olympia.

In 1935, he started cohabiting with Leoncia Martinez *(Leoncia)*, with whom he had ten *(10)* children, namely, Elpidio, Socorro, Manuel, Pedro, Teresita, Simeon, Eugenio, Hilaria, Concepcion, and Carlos.

During their cohabitation in Lucena, Quezon, they acquired several real properties located in Pagbilao, Quezon, to wit:

(a) Transfer Certificate of Title *(TCT)* Nos. T-44547[4] with an area of 257,967 square meters;

(b) TCT No. T-44548[5] with an area of 40,000 square meters;

(c) TCT No. T-44549[6] with an area of 5.0078 hectares; and

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[1] *Rollo*, pp. 18-195. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Florito S. Macalino.

[2] *Id.* at 196-197.

[3] *Id.* at 288-293.

[4] *Id.* at 204.

[5] *Id.* at 205.

[6] *Id.* at 206.

(d) TCT No. T-44550[7] consisting of 5.0803 hectares.

The said properties were then registered in the name of "ARSENIO LUKANG, married to Mercedes Dee, ½ share and Leoncia Martinez, single, ½ share."

Arsenio and Leoncia later acquired four *(4)* more parcels of land covered by TCT No. T-103094, TCT No. T- 101425, TCT No. T-125349, and TCT No. T-125348. It was allegedly agreed that the said properties should be registered in the name of Simeon, one of their children, in trust for the other heirs and should be owned in common by their family.

When Arsenio died in 1976, his 13 children and Mercedes, executed the Extrajudicial Settlement of Estate,[8] in which they agreed to adjudicate and transfer among themselves the rights, interest and ownership of the four (4) parcels of land covered by TCT Nos. T-44547, T-44548, T-44549, and T-44550. There was, however, no agreement to partition the properties as they remained common to all the heirs.

Years later, after the execution of the Extrajudicial Settlement of Estate, Mercedes, together with her three (3) children, Rosalina, Domingo, and Olympia, executed another document, denominated as *Pagbabahaging Labas sa Hukuman Na May Pagtalikod sa Karapatan*,[9] dated December 19, 1987, wherein the parties declared that they were the only heirs of Arsenio and partitioned the half portion of the four (4) parcels of land covered by TCT Nos. T-44547, T-44548, T-44549, and T-44550 among themselves, with Mercedes waiving her supposed share in favor of her three (3) children.

In 1988, Simeon, alleging that the certificates of title of the properties covered by TCT Nos. T-103094, T-101425, T-125349, and T-125348 were lost, filed a petition for the issuance of the owner's duplicate copy before the RTC, Branch 57, Lucena City. As a result, new owner's duplicate copies of the allegedly

[7] *Id.* at 207.

[8] *Id.* at 208-211.

[9] *Id.* at 64-66.

lost titles were issued in his favor. Thereafter, Simeon, in a deed of donation, transferred the said properties in favor of his children, Benedict, Heile and Madeleine. Consequently, TCT Nos. T-103094, T-125348 and T-125349 were cancelled, and TCT No. T-241034 was issued in the name of Benedict; TCT No. 241035 in the name of Heile; and TCT No. 241036 in the name of Madeleine.[10] Furthermore, Simeon purportedly executed the *Bilihang Lampasan and Pagbibilihang Lubusan*, where he sold the land covered by TCT No. 101425 in favor of Mercedes, Rosalina, Leoncia, and Elpidio.

In the meantime, on February 15, 1989, Mercedes, through Rosalina, filed the Petition for the Issuance of the Owner's Duplicate of TCT Nos. T-44547, T-44548, T-44549 and T-44550[11] before the RTC, Branch 58, Lucena City. The RTC, in its Order,[12] dated March 27, 1989, granted the petition and new titles were issued in favor of Mercedes. Unknown to Leoncia, Rosalina caused the segregation of the one-half portion of the said properties in her (Leoncia's) favor and the division of the remaining half among her and her siblings, Domingo and Olympia. Hence, TCT Nos. T-44547, T-44548, T-44549, and T-44550 were cancelled and new titles were issued: TCT Nos. T-247219,[13] T-247221,[14] T-247223,[15] and T-247225[16] in the names of Rosalina, Domingo and Olympia, while TCT Nos. T-247220,[17] T-247222,[18] T-247224,[19] and T-247226[20] were registered in the name of Leoncia.

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[10] Petition, *id.* at 153.

[11] *Id.* at 230-233.

[12] *Id.* at 243-247.

[13] *Id.* at 222.

[14] *Id.* at 223.

[15] *Id.* at 224.

[16] *Id.* at 225.

[17] *Id.* at 226.

[18] *Id.* at 227.

[19] *Id.* at 228.

[20] *Id.* at 229.

On September 26, 1990, Leoncia and her children, claiming that the titles of TCT Nos. T-44547, T-44548, T-44549, and T-44550 were not lost but in her (Leoncia's) possession, filed a complaint[21] for annulment of extrajudicial partition, affidavit of segregation and annulment of the new certificates of title, which was docketed as Civil Case No. 90-124. The said case was consolidated with Civil Case No. 89-79, a case for recovery of four (4) owner's duplicate copy of TCTs filed by Simeon against his brother Pedro. The cases were raffled to RTC, Branch 53, Lucena City.

Subsequently, Leoncia, through Pedro, registered her adverse claim on February 3, 1989 on TCT Nos. T-241034, T-242429, TCT No. T-241036, T-241035, and T-242427 as Entry No. 530545. He further caused the annotation of a *notice of lis pendens* on TCT No. T-247221 as Entry No. 556192 on October 1, 1990, and on TCT Nos. T-241034, T-242429, TCT No. T-241036, T-241035, and T-242427 as Entry No. 538916 on November 6, 1989.

In 1993, while Civil Case No. 89-79 and Civil Case No. 90-124 were still pending, respondent Pagbilao Development Corporation *(PDC)* purchased from Simeon, Mercedes and Rosalina the six (6) properties which were the subject of the two cases. Thus, TCT Nos. T-241034, T-242429, T-241036, T-241035, T-247221, and T-242427 were cancelled and new titles, TCT Nos. T-282100,[22] T-282101,[23] T-282102,[24] T-282103,[25] T-282104,[26] and T-282105[27] were issued in favor of PDC. Accordingly, the annotations were carried over to PDC's titles.

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[21] *Id.* at 198-202.

[22] *Id.* at 248.

[23] *Id.* at 249.

[24] *Id.* at 250.

[25] *Id.* at 251.

[26] *Id.* at 252.

[27] *Id.* at 253.

When Pedro and the other heirs learned of the sale of the subject properties to PDC, they filed a motion to require Simeon and Rosalina to explain why they sold the properties without permission from the RTC.[28] On April 23, 2008, they also filed an application for a writ of preliminary injunction with *ex-parte* prayer for temporary restraining order *(TRO)*.[29] They alleged that they were in actual and physical possession of the subject properties; and that PDC entered into the said premises, destroyed some structures therein and started to construct improvements on the properties without their consent.

In its Order, dated April 23, 2008, the RTC[30] granted the issuance of the TRO effective for a period of twenty (20) days.

On May 13, 2008, after due hearing, the RTC issued the Order[31] granting the application for writ of preliminary injunction by which it restrained PDC from wresting possession of the subject properties and ordering the movant, Pedro, to file a bond.

PDC filed a motion for reconsideration but it was denied in the RTC Order,[32] dated March 18, 2009.

On May 29, 2009, Pedro posted a bond in the amount of One Million Pesos *(₱1,000,000.000)*.[33]

PDC filed a petition for *certiorari* before the CA assailing the issuance of the writ of preliminary injunction. The CA, in its Decision, dated October 21, 2010, granted the petition and set aside the May 13, 2008 and March 18, 2009 Orders of the RTC. The CA explained that Pedro's right over the said properties was not clear as it was contingent on the outcome or result of the cases pending before the RTC; that it was not a present

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[28] *Id.* at 267-270 and 272-275.

[29] *Id.* at 279-281.

[30] *Id.* at 285-286.

[31] *Id.* at 288-292.

[32] *Id.* at 297-300.

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

right but a contingent or future right which was not covered by injunction; and that there was no paramount necessity because there would be no great and irreparable injury. Moreover, PDC, as the registered owner of the said properties, had the right to enjoy the same as provided under Articles 428 and 429 of the Civil Code.

Pedro filed a motion for reconsideration but it was denied in the CA Resolution, dated January 19, 2011. Hence, this petition, anchored on the following

ISSUES

I

THE COURT OF APPEALS ERRED IN CONSISTENTLY TURNING AWAY FROM THE ISSUE OF RESPONDENT PAGBILAO'S STATUS AS A TRANSFEREE *PENDENTE LITE* WHEN THAT IS THE MAIN ISSUE IN THE FIRST PLACE

II

THE COURT OF APPEALS ERRED IN RULING THAT PAGBILAO AS REGISTERED OWNER OF THE SUBJECT PROPERTIES HAVE THE RIGHT TO ENJOY AND EXCLUDE OTHER PERSONS FROM THE ENJOYMENT THEREOF

III

THE COURT OF APPEALS ERRED IN RULING THAT THE TRIAL COURT PRE-JUDGED THE MAIN CASE AND SHIFTED THE BURDEN OF PROOF ON THE HEIRS OF SIMEON LUKANG

IV

THE COURT OF APPEALS ERRED IN RULING THAT NON-ISSUANCE OF THE INJUNCTIVE RELIEF IS NOT OF PARAMOUNT NECESSITY NOR WILL IT CAUSE GREAT AND IRREPARABLE INJURY TO PEDRO LUKANG

V

THE COURT OF APPEALS ERRED IN HOLDING THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN NOT FIXING THE BOND.

Synthesized, the issues boil down to the question of whether or not the RTC committed grave abuse of discretion when it issued the May 13, 2008 Order granting the writ of preliminary injunction.

A writ of preliminary injunction is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the *status quo* of the things subject of the action or the relations between the parties during the pendency of the suit.[34] The purpose of injunction is to prevent threatened or continuous irremediable injury to the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the *status quo* until the merits of the case are fully heard.[35] Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Thus, a writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity

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[34] *Orocio v. Anguluan*, G.R. Nos. 179892-93, January 30, 2009, 577 SCRA 531, 547.

[35] *Bank of the Philippine Islands v. Santiago*, 548 Phil. 314, 329 (2007).

for the writ to prevent serious damage.[36] While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant shows that he has an ostensible right to the final relief prayed for in his complaint.[37]

The well-entrenched rule is that the grant or denial of the writ of preliminary injunction rests upon the sound discretion of the court. The trial court is given a wide latitude in this regard. Thus, in the absence of a manifest abuse, such discretion must not be interfered with.[38] "Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting 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."[39]

In the present case, the Court finds the RTC grant of injunction to be in order. The pertinent parts of its order read:

> It is to be emphasized that the deeds of sale between the vendors of the six parcels of land and the Pagbilao Development Corporation were executed on June 1, 1993. The **Affidavit of Adverse Claim** of Leoncia Martinez *Vda. De* Lukang and the **Notice of *Lis Pendens*** of Pedro Lukang over the six properties were **all inscribed on February 3, 1989**.
>
> There is no question, therefore, that when the **Pagbilao Development Corporation** bought the properties from the vendors, it **had full knowledge that there were questions involving ownership of the parcels of land it bought.**

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[36] *Almeida v. Court of Appeals*, 489 Phil. 648, 662-663 (2005).

[37] *Borromeo v. Court of Appeals*, 573 Phil. 400, 411 (2008).

[38] *Land Bank of the Philippines v. Continental Watchman Agency Incorporated*, 465 Phil. 607, 618 (2004).

[39] *Dela Rosa v. Valdez*, G.R. No. 159101, July 27, 2011, 654 SCRA 467, 480.

Likewise there is no question that **Pagbilao Development Corporation did not take any step to have the annotation or encumbrance in each title cancelled**. [Emphases supplied]

The annotation of an adverse claim and notice of *lis pendens* over the subject properties is a notice to third persons that there is a controversy over the ownership of the land and serves to preserve and protect the right of the adverse claimants during the pendency of the controversy.[40] The principle of filing a notice of *lis pendens* is based on public policy and necessity, the purpose of which is to keep the properties in litigation within the power of the court until the litigation is terminated in order to prevent the defeat of the judgment by subsequent alienation; and in order to bind a purchaser, *bona fide* or otherwise, to the judgment that the court would subsequently promulgate. It serves as an announcement to the whole world that a particular real property is in litigation and as a **warning** that **those who acquire an interest in the property do so at their own risk — they gamble on the result of the litigation over it.**[41]

Here, it must be noted that the annotations of adverse claim and *lis pendens* have been inscribed in the certificates of titles on the following dates February 3, 1989, November 6, 1989 and October 1, 1990, more than three (3) years before PDC bought the subject properties in 1993. It would have been different if the adverse claims and *lis pendens* were not annotated in the titles. With PDC having been officially aware of them, there can be no grave abuse of discretion that can be attributed to the RTC for issuing the writ of preliminary injunction. There is no question that when PDC purchased the property, the petitioner and other intervenors were in **actual possession** of the property and their **claims adverse** to its predecessors-in-interest were **annotated** in the very titles of the properties. In fact, these annotations were **carried over** to PDC's title. **PDC cannot invoke its being the registered owner to dispossess**

[40] *Los Baños Rural Bank, Inc. v. Africa*, 433 Phil. 930, 944 (2002).

[41] *Romero v. Court of Appeals*, 497 Phil. 775, 784-785 (2005); and *J. Casim Construction Supplies, Inc. v. Registrar of Deeds of Las Piñas*, G.R. No. 168655, July 2, 2010, 622 SCRA 715, 723-724.

the present possessors for, precisely, when it brought the properties, it was charged with the knowledge that the ownership and sale of the subject properties by its predecessors-in-interest have been questioned by their co-heirs. Inevitably, PDC is deemed to have obtained the properties subject to the outcome of the litigation among the heirs of Arsenio.

During the hearing, Pedro and the other heirs were able to convince the RTC that they had a right over the properties which should be protected while being litigated. Convinced, the RTC made a preliminary determination that their right should be protected by a writ of preliminary injunction. Their claimed ownership and actual possession were then being violated by PDC which had started entering the premises and preparing the property for the construction of a power plant for liquefied natural gas. Unless legally stopped, such act would indeed cause irreparable damage to the petitioner and other claimants. As claimed co-owners, the petitioner and the other heirs have the right to remain in possession of the subject properties *pendente lite*. The legal or practical remedy of PDC, who gambled its lot in purchasing the properties despite the annotations, is to await the final outcome of the cases or to amicably settle its problems with all the co-owners, co-heirs or claimants.

With regard to the issue of the injunctive bond, the Court has time and again ruled that the posting of the bond is a condition *sine qua non* before a writ of preliminary injunction may issue.[42] Its purpose is to secure the person enjoined against any damage that he may sustain in case the court should finally decide that the applicant was not entitled thereto.[43] The rule, does not mean, however, that the injunction maybe disregarded since it becomes effective only after the bond is actually filed in court.[44] In fact, in the case of *Consolidated Workers Union*

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[42] *San Miguel v. Ilbinias,* L-48210, 212 Phil. 291, 297 (1984).

[43] *Manila Electric Company v. Navarro-Domingo,* 526 Phil. 325, 334 (2006).

[44] *Active Wood Products, Inc. v. Intermediate Appellate Court,* 262 Phil. 732, 739 (1990).

v. Court of Industrial Relations,[45] the Court declared that it was erroneous for the labor court not to require the party to file a bond. Yet, the Court did not annul the writ of injunction but instead ordered the said court to determine the appropriate amount of bond to be posted by the party.

In fine, it is erroneous for the CA to rule that the RTC committed grave abuse of discretion simply because it failed to fix the amount of the bond. This error caused "no substantial prejudice" that would warrant the quashal of the writ of injunction.[46] As a matter of fact, Pedro posted a bond in the amount of One Million Pesos (₱1,000,000.00), the sufficiency or insufficiency of which was never questioned by PDC before the RTC. Hence, the Court will not discuss the sufficiency of the bond not only because the issue was not raised before the RTC but also it involves a question of fact.

WHEREFORE, the petition is **GRANTED**. The assailed October 21, 2010 Decision and the January 19, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 108809 are hereby **REVERSED** and **SET ASIDE**. The May 13, 2008 Order of the Regional Trial Court, Branch 53, Lucena City, in Civil Case No. 89-79 and Civil Case No. 90-124 ordering the issuance of a Writ of Preliminary Injunction, is hereby ordered **REINSTATED.**

SO ORDERED.

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

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[45] 137 Phil. 260, 267 (1969).

[46] *Id.*

THIRD DIVISION

[G.R. No. 204894. March 10, 2014]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NOEL ENOJAS *y* HINGPIT, ARNOLD GOMEZ *y* FABREGAS, FERNANDO SANTOS *y* DELANTAR, and ROGER JALANDONI *y* ARI,** *appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.—** [C]ircumstantial evidence is sufficient for conviction if: 1) there is more than one circumstance; 2) the facts from which the inferences are derived are proven; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

2. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; IN "AID OF ARMED MEN," THE MEN ACT AS ACCOMPLICES ONLY.—** In "aid of armed men," the men act as accomplices only. They must not be acting in the commission of the crime under the same purpose as the principal accused, otherwise they are to be regarded as co-principals or co-conspirators.

3. **ID.; SPECIAL AGGRAVATING CIRCUMSTANCES; USE OF UNLICENSED FIREARM IN KILLING.—** The use of unlicensed firearm, is a special aggravating circumstance that is not among the circumstances mentioned in Article 248 of the Revised Penal Code as qualifying a homicide to murder. Consequently, the accused in this case may be held liable only for homicide, aggravated by the use of unlicensed firearms, a circumstance alleged in the information.

4. **REMEDIAL LAW; RULES OF ELECTRONIC EVIDENCE IN CRIMINAL CASES; TEXT MESSAGES PROVED BY THE TESTIMONY OF A PERSON WHO WAS PARTY TO THE SAME OR HAS PERSONAL KNOWLEDGE OF THEM.—** As to the admissibility of the text messages, the RTC admitted them in conformity with the Court's earlier Resolution applying the Rules on Electronic Evidence to criminal actions. Text messages

are to be proved by the testimony of a person who was a party to the same or has personal knowledge of them. Here, PO3 Cambi, posing as the accused Enojas, exchanged text messages with the other accused in order to identify and entrap them. As the recipient of those messages sent from and to the mobile phone in his possession, PO3 Cambi had personal knowledge of such messages and was competent to testify on them.

5. ID.; CRIMINAL PROCEDURE; WARRANT OF ARREST; ABSENCE THEREOF CANNOT ACQUIT THE GUILTY.— The accused lament that they were arrested without a valid warrant of arrest. But, assuming that this was so, it cannot be a ground for acquitting them of the crime charged but for rejecting any evidence that may have been taken from them after an unauthorized search as an incident of an unlawful arrest, a point that is not in issue here. At any rate, a crime had been committed—the killing of PO2 Pangilinan—and the investigating police officers had personal knowledge of facts indicating that the persons they were to arrest had committed it. The text messages to and from the mobile phone left at the scene by accused Enojas provided strong leads on the participation and identities of the accused. Indeed, the police caught them in an entrapment using this knowledge.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

On September 4, 2006 the City Prosecutor of Las Piñas charged appellants Noel Enojas *y* Hingpit (Enojas), Arnold Gomez *y* Fabregas (Gomez), Fernando Santos *y* Delantar (Santos), and Roger Jalandoni *y* Ari (Jalandoni) with murder before the Las Piñas Regional Trial Court (RTC) in Criminal Case 06-0854.[1]

[1] Records, p. 1.

PO2 Eduardo Gregorio, Jr. (PO2 Gregorio) testified that at around 10:30 in the evening of August 29, 2006, he and PO2 Francisco Pangilinan (PO2 Pangilinan) were patrolling the vicinity of Toyota Alabang and SM Southmall when they spotted a taxi that was suspiciously parked in front of the Aguila Auto Glass shop near the intersection of BF Almanza and Alabang-Zapote Roads. The officers approached the taxi and asked the driver, later identified as accused Enojas, for his documents. The latter complied but, having entertained doubts regarding the veracity of documents shown them, they asked him to come with them to the police station in their mobile car for further questioning.[2]

Accused Enojas voluntarily went with the police officers and left his taxi behind. On reaching the 7-11 convenience store on the Zapote-Alabang Road, however, they stopped and PO2 Pangilinan went down to relieve himself there. As he approached the store's door, however, he came upon two suspected robbers and shot it out with them. PO2 Pangilinan shot one suspect dead and hit the other who still managed to escape. But someone fired at PO2 Pangilinan causing his death.

On hearing the shots, PO2 Gregorio came around and fired at an armed man whom he saw running towards Pilar Village. He saw another man, who came from the Jollibbee outlet, run towards Alabang-Zapote Road while firing his gun at PO2 Gregorio. The latter returned fire but the men were able to take a taxi and escape. PO2 Gregorio radioed for help and for an ambulance. On returning to his mobile car, he realized that accused Enojas, the taxi driver they had with them had fled.

P/Insp. Ferjen Torred (Torred), the Chief of Investigation Division of the Las Piñas Police, testified that he and PO2 Teoson Rosarito (PO2 Rosarito) immediately responded to PO2 Gregorio's urgent call. Suspecting that accused Enojas, the taxi driver who fled, was involved in the attempted robbery, they searched the abandoned taxi and found a mobile phone

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[2] TSN, February 8, 2007, pp. 4-7.

that Enojas apparently left behind. P/Ins. Torred instructed PO3 Joel Cambi (PO3 Cambi) to monitor its incoming messages.[3]

The police later ascertained that the suspect whom PO2 Pangilinan had killed was someone named Reynaldo Mendoza who was armed with a .38 caliber revolver. The police found spent 9 mm and M-16 rifle shells at the crime scene. Follow-up operations at nearby provinces resulted in finding the dead body of one of the suspects, Alex Angeles, at the Metro South Medical Center along Molino, Bacoor, Cavite.[4]

PO3 Cambi and PO2 Rosarito testified that they monitored the messages in accused Enojas' mobile phone and, posing as Enojas, communicated with the other accused. The police then conducted an entrapment operation that resulted in the arrest of accused Santos and Jalandoni. Subsequently, the police were also able to capture accused Enojas and Gomez. The prosecution presented the transcripts of the mobile phone text messages between Enojas and some of his co-accused.[5]

The victim's father, Ricardo Pangilinan, testified that his son was at the time of his death 28 years old, unmarried, and was receiving police pay of ₱8,000.00 to ₱10,000.00 per month. Ricardo spent ₱99,999 for burial expense, ₱16,000.00 for the interment services, and ₱50,000.00 for purchase of the cemetery lot.[6]

Manifesting in open court that they did not want to adduce any evidence or testify in the case,[7] the accused opted to instead file a trial memorandum on March 10, 2008 for their defense. They pointed out that they were entitled to an acquittal since they were all illegally arrested and since the evidence of the text messages were inadmissible, not having been properly identified.

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[3] TSN, May 3, 2007, pp. 10-14.

[4] CA *rollo*, p. 28.

[5] Records, pp. 431-438.

[6] TSN, December 14, 2006, pp. 4-7.

[7] *Rollo*, p. 6.

On June 2, 2008 the RTC rendered judgment,[8] finding all the accused guilty of murder qualified by evident premeditation and use of armed men with the special aggravating circumstance of use of unlicensed firearms. It thus sentenced them to suffer the penalty of *reclusion perpetua*, without the possibility of parole and to indemnify the heirs of PO2 Pangilinan with ₱165,999.00 as actual damages, ₱50,000.00 as moral damages, ₱25,000.00 as exemplary damages, and ₱2,080,000.00 as compensation for loss of earning capacity.

Upon review in CA-G.R. CR-H.C. 03377, on June 14, 2012 the Court of Appeals (CA) dismissed the appeal and affirmed *in toto* the conviction of the accused.[9] The CA, however, found the absence of evident premeditation since the prosecution failed to prove that the several accused planned the crime before committing it. The accused appealed from the CA to this Court.[10]

The defense points out that the prosecution failed to present direct evidence that the accused Enojas, Gomez, Santos, or Jalandoni took part in shooting PO2 Pangilinan dead.[11] This may be true but the prosecution could prove their liability by circumstantial evidence that meets the evidentiary standard of proof beyond reasonable doubt. It has been held that circumstantial evidence is sufficient for conviction if: 1) there is more than one circumstance; 2) the facts from which the inferences are derived are proven; and 3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[12]

Here the totality of the circumstantial evidence the prosecution presented sufficiently provides basis for the conviction of all the accused. Thus:

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[8] *Id.* at 27-34.

[9] *Id.* at 2-17.

[10] *Id.* at 18.

[11] *Bacolod v. People*, G.R. No. 206236, July 15, 2013.

[12] *People v. Garcia*, 577 Phil. 483, 500 (2008).

1. PO2 Gregorio positively identified accused Enojas as the driver of the taxicab suspiciously parked in front of the Aguila Auto Glass shop. The officers were bringing him with them to the police station because of the questionable documents he showed upon query. Subsequent inspection of the taxicab yielded Enojas' mobile phone that contained messages which led to the entrapment and capture of the other accused who were also taxicab drivers.

2. Enojas fled during the commotion rather than remain in the cab to go to the police station where he was about to be taken for questioning, tending to show that he had something to hide. He certainly did not go to the police afterwards to clear up the matter and claim his taxi.

3. PO2 Gregorio positively identified accused Gomez as one of the men he saw running away from the scene of the shooting.

4. The text messages identified "Kua Justin" as one of those who engaged PO2 Pangilinan in the shootout; the messages also referred to "Kua Justin" as the one who was hit in such shootout and later died in a hospital in Bacoor, Cavite. These messages linked the other accused.

5. During the follow-up operations, the police investigators succeeded in entrapping accused Santos, Jalandoni, Enojas, and Gomez, who were all named in the text messages.

6. The text messages sent to the phone recovered from the taxi driven by Enojas clearly made references to the 7-11 shootout and to the wounding of "Kua Justin," one of the gunmen, and his subsequent death.

7. The context of the messages showed that the accused were members of an organized group of taxicab drivers engaged in illegal activities.

8. Upon the arrest of the accused, they were found in possession of mobile phones with call numbers that corresponded to the senders of the messages received on the mobile phone that accused Enojas left in his taxicab.[13]

[13] CA *rollo*, pp. 32-33.

The Court must, however, disagree with the CA's ruling that the aggravating circumstances of a) aid of armed men and b) use of unlicensed firearms qualified the killing of PO2 Pangilinan to murder. In "aid of armed men," the men act as accomplices only. They must not be acting in the commission of the crime under the same purpose as the principal accused, otherwise they are to be regarded as co-principals or co-conspirators. The use of unlicensed firearm, on the other hand, is a special aggravating circumstance that is not among the circumstances mentioned in Article 248 of the Revised Penal Code as qualifying a homicide to murder.[14] Consequently, the accused in this case may be held liable only for homicide, aggravated by the use of unlicensed firearms, a circumstance alleged in the information.

As to the admissibility of the text messages, the RTC admitted them in conformity with the Court's earlier Resolution applying the Rules on Electronic Evidence to criminal actions.[15] Text messages are to be proved by the testimony of a person who was a party to the same or has personal knowledge of them.[16] Here, PO3 Cambi, posing as the accused Enojas, exchanged text messages with the other accused in order to identify and entrap them. As the recipient of those messages sent from and to the mobile phone in his possession, PO3 Cambi had personal knowledge of such messages and was competent to testify on them.

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[14] See *People v. Candado*, 174 Phil. 12, 27-28 (1978).

[15] A.M. No. 01-7-01-SC, Re: Expansion of the Coverage of the Rules on Electronic Evidence, September 24, 2002.

Rule 1, Sec. 2. *Cases covered.* – These Rules shall apply to the criminal and civil actions and proceeding, as well as quasi-judicial and administrative cases.

[16] *Id.*, Rule 11, Section 2:

Section 2. *Ephemeral electronic communications.* – Ephemeral electronic communications shall be proven by the testimony of a person who was a party to the same or has personal knowledge thereof. In the absence or unavailability of such witnesses, other competent evidence may be admitted.

The accused lament that they were arrested without a valid warrant of arrest. But, assuming that this was so, it cannot be a ground for acquitting them of the crime charged but for rejecting any evidence that may have been taken from them after an unauthorized search as an incident of an unlawful arrest, a point that is not in issue here. At any rate, a crime had been committed—the killing of PO2 Pangilinan—and the investigating police officers had personal knowledge of facts indicating that the persons they were to arrest had committed it.[17] The text messages to and from the mobile phone left at the scene by accused Enojas provided strong leads on the participation and identities of the accused. Indeed, the police caught them in an entrapment using this knowledge.

The award of damages by the courts below has to be modified to conform to current jurisprudence.[18]

WHEREFORE, the Court **MODIFIES** the Court of Appeals Decision of June 14, 2012 in CA-G.R. CR-HC 03377. The Court instead **FINDS** accused-appellants Noel Enojas *y* Hingpit, Arnold Gomez *y* Fabregas, Fernando Santos *y* Delantar, and Roger Jalandoni *y* Ari **GUILTY** of the lesser crime of **HOMICIDE** with the special aggravating circumstance of use of unlicensed firearms. Applying the Indeterminate Sentence Law, the Court **SENTENCES** each of them to 12 years of *prision mayor*, as minimum, to 20 years of *reclusion temporal*, as maximum. The Court also **MODIFIES** the award of exemplary damages by increasing it to ₱30,000.00, with an additional ₱50,000.00 for civil indemnity.

SO ORDERED.

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

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[17] RULES OF COURT, Rule 113, Section 5(b).

[18] *People v. Relos, Sr.*, G.R. No. 189326, November 24, 2010, 636 SCRA 258, 264-265.

THIRD DIVISION

[G.R. No. 208232. March 10, 2014]

SURVIVING HEIRS OF ALFREDO R. BAUTISTA, namely: EPIFANIA G. BAUTISTA and ZOEY G. BAUTISTA, *petitioners, vs.* **FRANCISCO LINDO and WELHILMINA LINDO; and HEIRS OF FILIPINA DAQUIGAN, namely: MA. LOURDES DAQUIGAN, IMELDA CATHERINE DAQUIGAN, IMELDA DAQUIGAN and CORSINO DAQUIGAN, REBECCA QUIAMCO and ANDRES QUIAMCO, ROMULO LORICA and DELIA LORICA, GEORGE CAJES and LAURA CAJES, MELIDA BAÑEZ and FRANCISCO BAÑEZ, MELANIE GOFREDO, GERVACIO CAJES and ISABEL CAJES, EGMEDIO SEGOVIA and VERGINIA SEGOVIA, ELSA N. SAM, PEDRO M. SAM and LINA SAM, SANTIAGO MENDEZ and MINA MENDEZ, HELEN M. BURTON and LEONARDO BURTON, JOSE JACINTO and BIENVENIDA JACINTO, IMELDA DAQUIGAN, LEO MATIGA and ALICIA MATIGA, FLORENCIO ACEDO JR., and LYLA VALERIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; REGIONAL TRIAL COURT; CIVIL ACTIONS IN WHICH THE SUBJECT OF LITIGATION IS INCAPABLE OF PECUNIARY ESTIMATION; INCLUDES COMPLAINT TO REDEEM A LAND SUBJECT OF A FREE PATENT WHICH IS AN ACTION FOR SPECIFIC PERFORMANCE; ELABORATED.— Jurisdiction of courts is granted by the Constitution and pertinent laws. Jurisdiction of RTCs, as may be relevant to the instant petition, is provided in Sec. 19 of BP 129, which reads: Sec. 19. *Jurisdiction in civil cases*.— Regional Trial Courts shall exercise exclusive original jurisdiction: 1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation; x x x The course of action embodied in the complaint by the present petitioners'

predecessor, Alfredo R. Bautista, is to enforce his right to repurchase the lots he formerly owned pursuant to the right of a free-patent holder under Sec. 119 of CA 141 or the *Public Land Act*. The Court rules that the complaint to redeem a land subject of a free patent is a civil action incapable of pecuniary estimation. It is a well-settled rule that jurisdiction of the court is determined by the allegations in the complaint and the **character of the relief sought**. In this regard, the Court, in *Russell v. Vestil*, wrote that "in determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of **first ascertaining the nature of the principal action or remedy sought**. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the RTCs would depend on the amount of the claim." But where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and, hence, are incapable of pecuniary estimation. These cases are cognizable exclusively by RTCs. x x x The Court finds that the instant cause of action to redeem the land is one for specific performance.

2. **ID.; ID.; ID.; ID.; ID.; CIVIL ACTIONS INCAPABLE OF PECUNIARY ESTIMATION.—** Settled jurisprudence considers some civil actions as incapable of pecuniary estimation, viz: 1. Actions for specific performance; 2. Actions for support which will require the determination of the civil status; 3. The right to support of the plaintiff; 4. Those for the annulment of decisions of lower courts; 5. Those for the rescission or reformation of contracts; 6. Interpretation of a contractual stipulation.

3. **POLITICAL LAW; PUBLIC LAND ACT (CA NO. 141); SALE OF LOTS COVERED BY FREE PATENT IS SUBJECT TO REPURCHASE BY THE APPLICANT WITHIN FIVE YEARS FROM DATE OF CONVEYANCE, EVEN WITHOUT STIPULATION THEREIN.—** Bautista sold to respondents his lots which were covered by a free patent. While the deeds of sale do not explicitly contain the stipulation that the sale is subject to repurchase by the applicant within a period of

five (5) years from the date of conveyance pursuant to Sec. 119 of CA 141, still, such legal provision is deemed integrated and made part of the deed of sale as prescribed by law. It is basic that the law is deemed written into every contract. Although a contract is the law between the parties, the provisions of positive law which regulate contracts are deemed written therein and shall limit and govern the relations between the parties. Thus, it is a binding prestation in favor of Bautista which he may seek to enforce.

4. ID.; CIVIL PROCEDURE; ACTIONS; PARTY ACTIVELY PARTICIPATING IN THE PROCEEDINGS IS DEEMED ESTOPPED FROM QUESTIONING THE JURISDICTION OF THE COURT.— In *Heirs of Jose Fernando v. De Belen*, it was held that the party raising defenses to the complaint, actively participating in the proceedings by filing pleadings, presenting his evidence, and invoking its authority by asking for an affirmative relief is deemed estopped from questioning the jurisdiction of the court.

APPEARANCES OF COUNSEL

Law Firm of Rodolfo Ta-asan for petitioners.
Largo Bernales-Largo Tumanda Sederiosa & Hernandez for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is a Petition for Review on *Certiorari* under Rule 45 assailing the April 25, 2013 Order of the Regional Trial Court (RTC) in Civil Case No. (1798)-021 as well as its Order of July 3, 2013 denying reconsideration.

The Facts

Alfredo R. Bautista (Bautista), petitioner's predecessor, inherited in 1983 a free-patent land located in Poblacion, Lupon, Davao Oriental and covered by Original Certificate of Title

(OCT) No. (1572) P-6144. A few years later, he subdivided the property and sold it to several vendees, herein respondents, via a notarized deed of absolute sale dated May 30, 1991. Two months later, OCT No. (1572) P-6144 was canceled and Transfer Certificates of Title (TCTs) were issued in favor of the vendees.[1]

Three years after the sale, or on August 5, 1994, Bautista filed a complaint for repurchase against respondents before the RTC, Branch 32, Lupon, Davao Oriental, docketed as Civil Case No. 1798,[2] anchoring his cause of action on Section 119 of Commonwealth Act No. (CA) 141, otherwise known as the "Public Land Act," which reads:

> SECTION 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

Respondents, in their Answer, raised lack of cause of action, estoppel, prescription, and laches, as defenses.

Meanwhile, during the pendency of the case, Bautista died and was substituted by petitioner Epifania G. Bautista (Epifania).

Respondents Francisco and Welhilmina Lindo later entered into a compromise agreement with petitioners, whereby they agreed to cede to Epifania a three thousand two hundred and thirty square meter (3,230 sq.m.)-portion of the property as well as to waive, abandon, surrender, and withdraw all claims and counterclaims against each other. The compromise was

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[1] Namely: Francisco S. Lindo (TCT No. T-14045); Filipina Daquigan (TCT No. T-14050); Lyla D. Valerio (TCT No. T-15372); Rebecca P. Quiamco (TCT No. T-14051); Romulo D. Lorica (TCT No. T-14052); George D. Cajes (TCT No. T-14053); Melida A. Bañez (TCT No. T-14054); Melanie T. Gofredo (TCT No. T-14055); Gervacio Cajes (TCT No. T-14056); Elsa N. Sam (TCT No. T-14058); Pedro M. Sam (TCT No. T-14059); Santiago T. Mendez (TCT No. T-14060); Florencio Acedo Jr. (TCT No. T-14061); Helen M. Burton (TCT No. T-14062); Jose Jacinto (TCT No. T-14063); Imelda L. Daquigan (TCT No. T-14064); Leo Matiga (TCT No. T-14066); and Egmedio C. Segovia (TCT No. T-14057).

[2] "Civil Case No. (1798)-021" in some parts of the records.

approved by the RTC in its Decision dated January 27, 2011, the *fallo* of which reads:

> ***WHEREFORE***, a **DECISION** is hereby rendered based on the above-quoted ***Compromise Agreement*** and the parties are enjoined to strictly comply with the terms and conditions of the same.
>
> **SO ORDERED**.[3]

Other respondents, however, filed a Motion to Dismiss[4] dated February 4, 2013, alleging that the complaint failed to state the value of the property sought to be recovered. Moreover, they asserted that the total selling price of all the properties is only sixteen thousand five hundred pesos (PhP 16,500), and the selling price or market value of a property is always higher than its assessed value. Since *Batas Pambansa Blg.* (BP) 129, as amended, grants jurisdiction to the RTCs over civil actions involving title to or possession of real property or interest therein where the assessed value is more than PhP 20,000, then the RTC has no jurisdiction over the complaint in question since the property which Bautista seeks to repurchase is below the PhP 20,000 jurisdictional ceiling.

RTC Ruling[5]

Acting on the motion, the RTC issued the assailed order dismissing the complaint for lack of jurisdiction. The trial court found that Bautista failed to allege in his complaint that the value of the subject property exceeds 20 thousand pesos. Furthermore, what was only stated therein was that the total and full refund of the purchase price of the property is PhP 16,500. This omission was considered by the RTC as fatal to the case considering that in real actions, jurisdictional amount is determinative of whether it is the municipal trial court or the RTC that has jurisdiction over the case.

With respect to the belated filing of the motion, the RTC, citing *Cosco Philippines Shipping, Inc. v. Kemper Insurance*

[3] *Rollo*, p. 98.

[4] *Id.* at 101-104.

[5] By Presiding Judge Emilio G. Dayanghirang III.

Company,[6] held that a motion to dismiss for lack of jurisdiction may be filed at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. The dispositive portion of the assailed Order reads:

> ***WHEREFORE,*** the complaint for Repurchase, Consignation, with Preliminary Injunction and Damages is hereby ***dismissed*** for lack of jurisdiction.
>
> **SO ORDERED**.[7]

Assignment of Errors

Their motion for reconsideration having been denied, petitioners now seek recourse before this Court with the following assigned errors:

I

THE PUBLIC RESPONDENT RTC ERRED IN ADMITTING THE MOTION TO DISMISS DATED FEBRUARY 4, 2013, BELATEDLY FILED BY THE PRIVATE RESPONDENTS IN THE CASE.

II

THE PUBLIC RESPONDENT RTC ERRED IN HOLDING THAT THE INSTANT CASE FOR REPURCHASE IS A REAL ACTION.[8]

The Issue

Stated differently, the issue for the Court's resolution is: whether or not the RTC erred in granting the motion for the dismissal of the case on the ground of lack of jurisdiction over the subject matter.

Arguments

Petitioners argue that respondents belatedly filed their Motion to Dismiss and are now estopped from seeking the dismissal of the case, it having been filed nine (9) years after the filing of the complaint and after they have actively participated in the

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[6] G.R. No. 179488, April 23, 2012, 670 SCRA 343.

[7] *Rollo*, p. 23.

[8] *Id.* at 12.

proceedings. Additionally, they allege that an action for repurchase is not a real action, but one incapable of pecuniary estimation, it being founded on privity of contract between the parties. According to petitioners, what they seek is the enforcement of their right to repurchase the subject property under Section 119 of CA 141.

Respondents, for their part, maintain that since the land is no longer devoted to agriculture, the right of repurchase under said law can no longer be availed of, citing *Santana v. Mariñas*.[9] Furthermore, they suggest that petitioners intend to resell the property for a higher profit, thus, the attempt to repurchase. This, according to respondents, goes against the policy and is not in keeping with the spirit of CA 141 which is the preservation of the land gratuitously given to patentees by the State as a reward for their labor in cultivating the property. Also, the Deed of Absolute Sale presented in evidence by Bautista was unilaterally executed by him and was not signed by respondents. Lastly, respondents argue that repurchase is a real action capable of pecuniary estimation.

Our Ruling

The petition is meritorious.

Jurisdiction of courts is granted by the Constitution and pertinent laws.

Jurisdiction of RTCs, as may be relevant to the instant petition, is provided in Sec. 19 of BP 129, which reads:

Sec. 19. *Jurisdiction in civil cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:

1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into

[9] No. L-35337, December 27, 1979, 94 SCRA 853.

and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.

On the other hand, jurisdiction of first level courts is prescribed in Sec. 33 of BP 129, which provides:

> Sec. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases*.— Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:
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> x x x x x x x x x
>
> 3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: *Provided*, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots.

The core issue is whether the action filed by petitioners is one involving title to or possession of real property or any interest therein or one incapable of pecuniary estimation.

The course of action embodied in the complaint by the present petitioners' predecessor, Alfredo R. Bautista, is to enforce his right to repurchase the lots he formerly owned pursuant to the right of a free-patent holder under Sec. 119 of CA 141 or the *Public Land Act*.

The Court rules that the complaint to redeem a land subject of a free patent is a civil action incapable of pecuniary estimation.

It is a well-settled rule that jurisdiction of the court is determined by the allegations in the complaint and the **character of the relief sought**.[10] In this regard, the Court, in *Russell*

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[10] *General Milling Corporation v. Uytengsu III*, G.R. No. 160514, June 30, 2006, 494 SCRA 241, 245.

v. Vestil,[11] wrote that "in determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of **first ascertaining the nature of the principal action or remedy sought**. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the RTCs would depend on the amount of the claim." But where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and, hence, are incapable of pecuniary estimation. These cases are cognizable exclusively by RTCs.[12]

Settled jurisprudence considers some civil actions as incapable of pecuniary estimation, *viz*:

1. Actions for specific performance;
2. Actions for support which will require the determination of the civil status;
3. The right to support of the plaintiff;
4. Those for the annulment of decisions of lower courts;
5. Those for the rescission or reformation of contracts;[13]
6. Interpretation of a contractual stipulation.[14]

The Court finds that the instant cause of action to redeem the land is one for specific performance.

The facts are clear that Bautista sold to respondents his lots which were covered by a free patent. While the deeds of sale do not explicitly contain the stipulation that the sale is subject

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[11] G.R. No. 119347, March 17, 1999, 304 SCRA 738, 744; citation omitted.

[12] *Id.*

[13] 1 F. Regalado, *REMEDIAL LAW COMPENDIUM* 44 (9th rev. ed., 2005).

[14] *Id.* at 45; citing *Vda de Murga v. Chan*, No. L-24680, October 7, 1968, 25 SCRA 441.

to repurchase by the applicant within a period of five (5) years from the date of conveyance pursuant to Sec. 119 of CA 141, still, such legal provision is deemed integrated and made part of the deed of sale as prescribed by law. It is basic that the law is deemed written into every contract.[15] Although a contract is the law between the parties, the provisions of positive law which regulate contracts are deemed written therein and shall limit and govern the relations between the parties.[16] Thus, it is a binding prestation in favor of Bautista which he may seek to enforce. That is precisely what he did. He filed a complaint to enforce his right granted by law to recover the lot subject of free patent. Ergo, it is clear that his action is for specific performance, or if not strictly such action, then it is akin or analogous to one of specific performance. Such being the case, his action for specific performance is incapable of pecuniary estimation and cognizable by the RTC.

Respondents argue that Bautista's action is one involving title to or possession of real property or any interests therein and since the selling price is less than PhP 20,000, then jurisdiction is lodged with the MTC. They rely on Sec. 33 of BP 129.

Republic Act No. 7691[17] amended Sec. 33 of BP 129 and gave Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed twenty thousand pesos (PhP 20,000) or, in civil actions in Metro Manila, where such assessed value does not exceed fifty thousand pesos (PhP 50,000) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs.

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[15] *National Steel Corporation v. Regional Trial Court of Lanao del Norte, Br. 2, Iligan City*, G.R. No. 127004, March 11, 1999, 304 SCRA 595, 608.

[16] *Asia World Recruitment, Inc. v. National Labor Relations Commission*, G.R. No. 113363, August 24, 1999, 313 SCRA 1, 14.

[17] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980."

At first blush, it appears that the action filed by Bautista involves title to or possession of the lots he sold to respondents. Since the total selling price is less than PhP 20,000, then the MTC, not the RTC, has jurisdiction over the case. This proposition is incorrect for the re-acquisition of the lots by Bautista or herein successors-in-interests, the present petitioners, is but incidental to and an offshoot of the exercise of the right by the latter to redeem said lots pursuant to Sec. 119 of CA 141. The reconveyance of the title to petitioners is solely dependent on the exercise of such right to repurchase the lots in question and is not the principal or main relief or remedy sought. Thus, the action of petitioners is, in reality, incapable of pecuniary estimation, and the reconveyance of the lot is merely the outcome of the performance of the obligation to return the property conformably to the express provision of CA 141.

Even if we treat the present action as one involving title to real property or an interest therein which falls under the jurisdiction of the first level court under Sec. 33 of BP 129, as the total selling price is only PhP16,000 way below the PhP 20,000 ceiling, still, the postulation of respondents that MTC has jurisdiction will not hold water. This is because respondents have actually participated in the proceedings before the RTC and aggressively defended their position, and by virtue of which they are already barred to question the jurisdiction of the RTC following the principle of jurisdiction by estoppel.

In *Heirs of Jose Fernando v. De Belen*, it was held that the party raising defenses to the complaint, actively participating in the proceedings by filing pleadings, presenting his evidence, and invoking its authority by asking for an affirmative relief is deemed estopped from questioning the jurisdiction of the court.[18]

Here, we note that aside from the belated filing of the motion to dismiss—it having been filed nine (9) years from the filing of the complaint––respondents actively participated in the proceedings through the following acts:

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[18] G.R. No. 186366, July 3, 2013, 700 SCRA 556, 567-568; citations omitted.

1. By filing their *Answer and Opposition to the Prayer for Injunction*[19] dated September 29, 1994 whereby they even interposed counterclaims, specifically: PhP 501,000 for unpaid survey accounts, PhP 100,000 each as litigation expenses, PhP 200,000 and PhP 3,000 per daily appearance by way of attorney's fees, PhP 500,000 as moral damages, PhP 100,000 by way of exemplary damages, and costs of suit;
2. By participating in Pre-trial;
3. By moving for the postponement of their presentation of evidence;[20]
4. By presenting their witness;[21] and
5. By submitting the compromise agreement for approval.[22]

Having fully participated in all stages of the case, and even invoking the RTC's authority by asking for affirmative reliefs, respondents can no longer assail the jurisdiction of the said trial court. Simply put, considering the extent of their participation in the case, they are, as they should be, considered estopped from raising lack of jurisdiction as a ground for the dismissal of the action.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The April 25, 2013 and July 3, 2013 Orders of the Regional Trial Court in Civil Case No. (1798)-021 are hereby **REVERSED** and **SET ASIDE**.

The Regional Trial Court, Branch 32 in Lupon, Davao Oriental is **ORDERED** to proceed with dispatch in resolving Civil Case No. (1798)-021.

No pronouncement as to costs.

SO ORDERED.

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

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[19] *Rollo,* pp. 44-50.

[20] *Id.* at 94.

[21] *Id.* at 145.

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

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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) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (9) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record. (Co Say Coco Products Phils., Inc. *vs*. Baltazar, G.R. No. 188828, Mar. 05, 2014) p. 459

(Sps. Plaza *vs*. Lustiva, G.R. No. 172909, Mar. 05, 2014) p. 359

(Rep. of the Phils. *vs*. Ortigas and Co. Ltd. Partnership, G.R. No. 171496, Mar. 03, 2014) p. 277

— Must contain a certified true copy or duplicate original of the assailed decision, final order or judgment. (Macapagal *vs*. People, G.R. No. 193217, Feb. 26, 2014) p. 182

(Malicdem *vs*. Marulas Industrial Corp., G.R. No. 204406, Feb. 26, 2014) p. 264

— Not a proper mode for assailing the trial court's denial of notice of appeal. (Macapagal *vs*. People, G.R. No. 193217, Feb. 26, 2014) p. 182

Points, issues, theories and arguments — Only errors assigned will be considered, except where: (1) grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) matters not assigned as errors on appeal but are evidently plain or clerical errors within the contemplation of law; (3) matters not assigned as errors on appeal, whose consideration is necessary in arriving at a just decision and complete resolution of the case or to serve

JUDGES

— In failing to notify the borrower before imposing the increased interest rates, creditor-bank violated the stipulation of the very contract it had prepared. *(Id.)*

LOCAL GOVERNMENTS

Local taxation and fiscal matter; civil remedies for collection of revenues — A local government unit is authorized by law to purchase the auctioned property only in instances where there is no bidder or the highest bid is insufficient and not when the bidder is disqualified. (Sps. Plaza *vs.* Lustiva, G.R. No. 172909, Mar. 05, 2014) p. 359

NATIONAL TELECOMMUNICATIONS COMMISSION

Jurisdiction — Insofar as the regulation of the telecommunications industry is concerned, it has exclusive jurisdiction to establish and prescribe rules, regulations, standards and specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same. (GMA Network, Inc. *vs.* National Telecommunications Commission, G.R. No. 196112, Feb. 26, 2014) p. 192

NEGLIGENCE

Concept — Defined as the failure to observe for the protection of the interests of another person that degree of care, precaution, and vigilance that the circumstances justly demand, whereby such other person suffers injury. (Dr. Solidum *vs.* People, G.R. No. 192123, Mar. 10, 2014) p. 579

Medical negligence — An action upon medical negligence – whether criminal, civil or administrative – calls for the plaintiff to prove by competent evidence each of the following four elements, namely: (1) the duty owed by the physician to the patient, as created by the physician-patient relationship, to act in accordance with the specific norms or standards established by his profession; (2) the breach of the duty by the physician failing to act in accordance with the applicable standard of care; (3) the

PENALTIES, EXTINGUISHMENT OF

Death of the accused — Death of the accused pending appeal of the conviction extinguishes criminal and civil liability *ex delicto*. (People *vs*. Soria, G.R. No. 179031, Feb. 24, 2014) p. 39

POEA-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Disability benefits — A seafarer's wilful concealment of past medical condition, disability and history in the pre-employment medical examination disqualifies him from claiming disability benefits. *(Id.)*

— An injury or illness is compensable when: (1) it is work-related; and (2) the injury or illness existed during the term of the seafarer's employment contract. (Vetyard Terminals & Shipping Services, Inc. *vs*. Suarez, G.R. No. 199344, Mar. 05, 2014) p. 527

— For an occupational disease and the resulting disability to be compensable, the following needs to be satisfied: (1) the seafarer's work must involve the risks described; (2) the disease was contracted as a result of the seafarer's exposure to the described risks; (3) the disease was contracted within a period of exposure and under such other factors necessary to contract it; and (4) there was no notorious negligence on the part of the seafarer. *(Id.)*

— For disability to be compensable, the seafarer must establish that there exists a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had. (Ayungo *vs*. Beamko Shipmanagement Corp., G.R. No. 203161, Feb. 26, 2014) p. 244

— It is the incapacity to work resulting in the impairment of one's earning capacity which is compensated. (Fil-Pride Shipping Co., Inc. *vs*. Balasta, G.R. No. 193047, Mar. 03, 2014) p. 297

— In reviewing rape cases, the Court is guided by the following principles: (1) to accuse a man of rape is easy, but to disprove the accusation is difficult, though the accused may be innocent; (2) inasmuch as only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fail on its own merit and should not be allowed to draw strength from the weakness of the evidence for the defense. *(Id.)*

— Medical examination is not indispensable in a rape charge. *(Id.)*

REGIONAL TRIAL COURTS

Jurisdiction — Includes civil actions in which the subject of litigation is incapable of pecuniary estimation and that includes a complaint to redeem a land subject of a free patent which is an action for specific performance. (Surviving Heirs of Alfredo R. Bautista *vs*. Lindo, G.R. No. 208232, Mar. 10, 2014) p. 630

RES IPSA LOQUITUR

Application in medical negligence — In order to allow resort to the doctrine, the following essential requisites must first be satisfied, to wit: (1) the accident was of a kind that does not ordinarily occur unless someone is negligent; (2) the instrumentality or agency that caused the injury was under the exclusive control of the person charged; and (3) the injury suffered must not have been due to any voluntary action or contribution of the person injured. (Dr. Solidum *vs.* People, G.R. No. 192123, Mar. 10, 2014) p. 579

Doctrine of — Means that "where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant,

— A search warrant should be issued in connection with one specific offense. *(Id.)*

— Requirement of particularity in the description of the things to be seized is fulfilled when the items described in the search warrant bear a direct relation to the offense for which the warrant is issued. *(Id.)*

— The following personal property may be subject of a search warrant: (1) subject of the offense; (2) fruits of the offense; or (3) those used or intended to be used as the means of committing an offense. *(Id.)*

STARE DECISIS

Principle of — Means adherence to judicial precedents embodied in the decision of the Supreme Court to secure certainty and stability of judicial decisions. (Phil. Long Distance Telephone Co. *vs.* Alvarez, G.R. N. 179408, Mar. 05, 2014) p. 391

SUPREME COURT

Judicial power — The Supreme Court is not a trier of facts. (Co Say Coco Products Phils., Inc. *vs*. Baltazar, G.R. No. 188828, Mar. 05, 2014) p. 459

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Operation Land Transfer Program — If the land is covered by the Program, which, hence, renders the right of retention operable, the landowner who cultivates or intends to cultivate an area of his tenanted rice or corn land has the right to retain an area of not more than seven (7) has. thereof, on the condition that his aggregate landholdings do not exceed 24 has. as of October 21, 1972. (Vales *vs*. Galinato, G.R. No. 180134, Mar. 05, 2014) p. 432

— Requisites for coverage under the Program are: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease-tenancy obtaining therein. *(Id.)*

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