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SUPREME COURT

OF THE

PHILIPPINES

FROM

MARCH 18, 2014 TO MARCH 26, 2014

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MANILA
2015

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by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 3405. March 18, 2014]

JULIETA B. NARAG, *complainant, vs.* **ATTY. DOMINADOR M. NARAG,** *respondent.*

SYLLABUS

LEGAL ETHICS; DISCIPLINE OF LAWYERS; DISBARMENT; THE COURT, IN DECIDING WHETHER THE RESPONDENT SHOULD BE READMITTED TO THE PRACTICE OF LAW, MUST BE CONVINCED THAT HE HAD INDEED BEEN REFORMED; NOT SATISFIED IN CASE AT BAR.— The Court, in deciding whether the respondent should indeed be readmitted to the practice of law, must be convinced that he had indeed been reformed; that he had already rid himself of any grossly immoral act which would make him inept for the practice of law. However, it appears that the respondent, while still legally married to Julieta, is still living with his paramour - the woman for whose sake he abandoned his family. This only proves to show that the respondent has not yet learned from his prior misgivings. x x x It is noted that only his son, Dominador, Jr., signed the affidavit which was supposed to evidence the forgiveness bestowed upon the respondent. Thus, with regard to Julieta and the six other children of the respondent, the claim that they had likewise forgiven the respondent is hearsay. In any case, that the family of the respondent had forgiven him does not discount the fact that

he is still committing a grossly immoral conduct; he is still living with a woman other than his wife. Likewise, that the respondent executed a holographic will wherein he bequeaths all his properties to his wife and their children is quite immaterial and would not be demonstrative that he had indeed changed his ways. x x x In fine, the Court is not convinced that the respondent had shown remorse over his transgressions and that he had already changed his ways as would merit his reinstatement to the legal, profession. Time and again the Court has stressed that the practice of law is not a right but a privilege. It is enjoyed only by those who continue to display unassailable character.

LEONEN, *J., dissenting opinion*:

LEGAL ETHICS; DISCIPLINE OF LAWYERS; DISBARMENT; THE SUPREME COURT HAS SHOWED COMPASSION AND REINSTATED MEMBERS OF THE LEGAL PROFESSION IN MANY INSTANCES WHERE THOSE DISBARRED ARE OF OLD AGE AND SUFFERED THE IGNOMINY OF DISBARMENT LONG ENOUGH, SHOWED REMORSE, AND CONDUCTED THEMSELVES BEYOND REPROACH AFTER THEIR DISBARMENT; APPLICATION IN CASE AT BAR.— This case does not deal with the question of whether we can impose disciplinary action on acts of immorality by members of the profession. Had it been at issue, I would think that the forgiveness given by the parties that have been wronged should have great bearing on our determination. After all, there are limits to the government's interference into arrangements of intimacies among couples. I fail to grasp the alleged continuing gross immorality and reprehensiveness committed by a remorseful 80-year-old man who has been forgiven by those he has emotionally wronged. I do not believe that the law should be read as being too callous and inflexible so as to be unable to accommodate the unique realities in this case. What is at issue in this case is whether Dominador M. Narag has suffered enough from his acts. This court showed them compassion and reinstated them as members of the legal profession in many instances where those disbarred are of old age who suffered "the ignominy of disbarment" long enough, showed remorse, and conducted themselves beyond reproach after their disbarment. The legal order has had its pound of flesh from Dominador M. Narag. He has committed

> a transgression, but we have exacted enough retribution. The purpose of the penalty has already been achieved. He is in the twilight of his years when he is at his best to reflect on what his life has been. He is armed by the forgiveness of his family, and he is visited by remorse. In my view, not granting him the mitigation he asks for is a failure of human compassion.

APPEARANCES OF COUNSEL

Burning, Piedad, Oliva and Associates Law Offices for complainant.

Joedel F. Labordo for respondent.

R E S O L U T I O N

PER CURIAM:

Before this Court is a "Petition for Readmission" to the practice of law filed by Dominador M. Narag (Respondent).

On November 13, 1989, Julieta B. Narag (Julieta) filed an administrative complaint for disbarment against her husband, herein respondent, whom she accused of having violated Rule 1.01[1] in relation to Canons 1[2] and 6[3] of the Code of Professional Responsibility. **S**he claimed that the respondent, who was then a college instructor in St. Louis College of Tuguegarao and a member of the *Sangguniang Panlalawigan* of Cagayan, maintained an amorous relationship with a certain Gina Espita (Gina) – a 17-year old first year college student. Julieta further claimed that the respondent had already abandoned her and their children to live with Gina. The respondent denied the charge against him, claiming that the

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

[2] CANON 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.

[3] CANON 6 – These canons shall apply to lawyers in government service in the discharge of their official duties.

allegations set forth by Julieta were mere fabrications; that Julieta was just extremely jealous, which made her concoct stories against him.

On June 29, 1998, the Court rendered a Decision, which directed the disbarment of the respondent. The Court opined that the respondent committed an act of gross immorality when he abandoned his family in order to live with Gina. The Court pointed out that the respondent had breached the high and exacting moral standards set for members of the legal profession.

A Motion for the Re-opening of the Administrative Investigation, or in the Alternative, Reconsideration of the Decision was filed by the respondent on August 25, 1998. He averred that he was denied due process of law during the administrative investigation as he was allegedly unjustly disallowed to testify in his behalf and adduce additional vital documentary evidence. Finding no substantial arguments to warrant the reversal of the questioned decision, the Court denied the motion with finality in the Resolution dated September 22, 1998.

On November 29, 2013, the respondent filed the instant petition for reinstatement to the Bar. The respondent alleged that he has expressed extreme repentance and remorse to his wife and their children for his misgivings. He claimed that his wife Julieta and their children had already forgiven him on June 10, 2010 at their residence in Tuguegarao City. The respondent presented an undated affidavit prepared by his son, Dominador, Jr., purportedly attesting to the truth of the respondent's claim.

The respondent averred that he has been disbarred for 15 years already and that he has been punished enough. He alleged that he is already 80 years old, weak and wracked with debilitating osteo-arthritic pains. That he has very limited mobility due to his arthritis and his right knee injury.

He further claimed that he enlisted in the Philippine Air Force Reserve Command where he now holds the rank of Lieutenant Colonel; that as member of the Reserve Command, he enlisted in various rescue, relief and recovery missions. The respondent

likewise submitted the various recommendations, testimonials and affidavits in support of his petition for readmission.[4]

"Whether the applicant shall be reinstated in the Roll of Attorneys rests to a great extent on the sound discretion of the Court. The action will depend on whether or not the Court decides that the public interest in the orderly and impartial administration of justice will continue to be preserved even with the applicant's reentry as a counselor at law. The applicant must, like a candidate for admission to the bar, satisfy the Court that he is a person of good moral character, a fit and proper person to practice law. The Court will take into consideration the applicant's character and standing prior to the disbarment, the nature and character of the charge/s for which he was disbarred, his conduct subsequent to the disbarment, and the time that has elapsed between the disbarment and the application for reinstatement."[5]

The extreme penalty of disbarment was meted on the respondent on account of his having committed a grossly immoral conduct, *i.e.*, abandoning his wife and children to live with his much younger paramour. Indeed, nothing could be more reprehensible than betraying one's own family in order to satisfy an irrational and insatiable desire to be with another woman. The respondent's

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[4] (1) Recommendation of the IBP Cagayan Chapter; (2) Affidavit of Dominador, Jr. with a copy of the holographic will executed by the petitioner leaving all his properties to Julieta and their children; (3) Testimonial of Justice Hilarion L. Aquino; (4) Testimonial of Archbishop Emeritus Diosdado Talamayan of Tuguegarao Archdiocese; (5) Testimonial of Brigadier General Antonio L Tamayo, Chairman of the Board and Chief Executive Officer of University of Perpetual Help System; (6) Testimonial of Major General Lino H.E. Lapinid, Past Commander of the Philippine Air Force Reserve Command; (7) Testimonial of retired Regional Trial Court Judge Antonio Eugenio, former President of the Philippine Judges Association; (8) Joint Testimonial of Dr. Roger Perez (former President of Cagayan State University) and Dr. Victor Perez (President, University of Cagayan Valley); and (9) Testimonial of Fr. Ranhilio Aquino, former Chair of the Department of Jurisprudence and Legal Philosophy of the Philippine Judicial Academy.

[5] *Bernardo v. Atty. Mejia*, 558 Phil. 398, 401 (2007), citing *Cui v. Cui*, 120 Phil. 725, 731 (1964).

act was plainly selfish and clearly evinces his inappropriateness to be part of the noble legal profession.

More than 15 years after being disbarred, the respondent now professes that he had already repented and expressed remorse over the perfidy that he had brought upon his wife and their children. That such repentance and remorse, the respondent asserts, together with the long years that he had endured his penalty, is now sufficient to enable him to be readmitted to the practice of law.

The respondent's pleas, however, are mere words that are hollow and bereft of any substance. The Court, in deciding whether the respondent should indeed be readmitted to the practice of law, must be convinced that he had indeed been reformed; that he had already rid himself of any grossly immoral act which would make him inept for the practice of law. However, it appears that the respondent, while still legally married to Julieta, is still living with his paramour – the woman for whose sake he abandoned his family. This only proves to show that the respondent has not yet learned from his prior misgivings.

That he was supposedly forgiven by his wife and their children would likewise not be sufficient ground to grant respondent's plea. It is noted that only his son, Dominador, Jr., signed the affidavit which was supposed to evidence the forgiveness bestowed upon the respondent. Thus, with regard to Julieta and the six other children of the respondent, the claim that they had likewise forgiven the respondent is hearsay. In any case, that the family of the respondent had forgiven him does not discount the fact that he is still committing a grossly immoral conduct; he is still living with a woman other than his wife.

Likewise, that the respondent executed a holographic will wherein he bequeaths all his properties to his wife and their children is quite immaterial and would not be demonstrative that he had indeed changed his ways. Verily, nothing would stop the respondent from later on executing another last will and testament of a different tenor once he had been readmitted to the legal profession.

In fine, the Court is not convinced that the respondent had shown remorse over his transgressions and that he had already changed his ways as would merit his reinstatement to the legal profession. Time and again the Court has stressed that the practice of law is not a right but a privilege. It is enjoyed only by those who continue to display unassailable character.

WHEREFORE, in view of the foregoing premises, the Petition for Reinstatement to the Bar filed by Dominador M. Narag is hereby **DENIED**.

SO ORDERED.

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

Bersamin and *Abad, JJ.,* join the dissent of *J.* Leonen.

Leonen, J., see dissenting opinion.

Perlas-Bernabe, J., on official leave.

DISSENTING OPINION

LEONEN, *J.*:

> *"But mercy is above this sceptred sway;*
> *It is enthroned in the hearts of kings,*
> *It is an attribute to God himself;*
> *And earthly power doth then show likest God's*
> *When mercy seasons justice."*
>
> – *William Shakespeare, The Merchant of Venice (Act IV, Scene I)*

Mercy tempers justice. It is merely that assures that our institutions are cloaked with humane compassion strengthening courts with a mantle of respect and legitimacy.

I disagree with my esteemed colleagues tha Dominador M. Narag's plea for judicial clemency (in the form of a petition for readmission to the practice of law) should be denied. He has been disbarred and unable to practice his chosen profession for 15 years. He presents an affidavit to support his claim that his wife and children have forgiven him. He alleges that during the time that he was unable to practice, he volunteered his time and services to the community especially those who were affected by disasters.

Dominador M. Narag is also already 80 years old.

He has suffered enough. I vote to grant his petition and, thus, allow him judicial clemency.

Clemency is not unprecedented.

In *Bernardo v. Atty. Mejia*,[1] this court disbarred Atty. Ismael F. Mejia for misappropriating and converting funds, falsifying documents, and issuing insufficiently funded checks. Fifteen years after his disbarment, then 71-year-old Atty. Mejia filed a petition for readmission to the practice of law, "begging for [this court's] forgiveness."[2] According to Atty. Mejia, "he ha[d] long repented and x x x ha[d] suffered enough"[3] and that readmission to the practice of law would "redeem the indignity that [his children had] suffered due to his disbarment."[4]

This court readmitted Atty. Mejia to the practice of law, taking into account Atty. Mejia's rehabilitation and that he was "already of advanced years."[5] This court said:

> x x x While the age of the petitioner and the length of time during which he has endured the ignominy of disbarment are not the sole measure in allowing a petition for reinstatement, the Court takes

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[1] 558 Phil. 398 (2007) [Per J. Nachura, *En Banc*].

[2] *Id.* at 401.

[3] *Id.*

[4] *Id.* at 402.

[5] *Id.*

cognizance of the rehabilitation of Mejia. Since his disbarment in 1992, no other transgression has been attributed to him, and he has shown remorse. Obviously, he has learned his lesson from this experience, and his punishment has lasted long enough. Thus, while the Court is ever mindful of its duty to discipline its erring officers, it also knows how to show compassion when the penalty imposed has already served its purpose. After all, penalties, such as disbarment, are imposed not to punish but to correct offenders.[6]

In *In Re: Quinciano D. Vailoces*,[7] this court disbarred Atty. Vailoces for acknowledging the execution of a forged last will and testament. Twenty-one years after his disbarment, then 69-year-old Atty. Vailoces filed a petition for readmission to the practice of law, "[pledging] wit all his honor x x x [that] he will surely and consistently conduct himself honestly, uprightly and worthily."[8] With favorable endorsements from the Integrated Bar of the Philippines, testimonials from the provincial governor of Negros Oriental, and municipal and barrio officials of Bindoy, Negros Oriental of his "active participation in civic and social undertakings in [his] community,"[9] this court readmitted Atty. Vailoces to the practice of law.

In *In Re: Atty. Tranquilino Rovero*,[10] this court disbarred Atty. Rovero after he had been found guilty of smuggling under Section 2703 of the Revised Administrative Code.[11] Twenty-

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[6] *Id.*

[7] 202 Phil. 322 (1982) [Per J. Escolin, *En Banc*].

[8] *Id.* at 328.

[9] *Id.*

[10] 189 Phil. 605 (1980) [Per J. Concepcion, Jr., *En Banc*].

[11] REVISED ADMINISTRATIVE CODE (1917), Sec. 2703 states:

Sec. 2703. Various fraudulent practices against customs revenues. – Any person who makes or attempts to make any entry of imported or dutiable exported merchandise by means of any false or fraudulent invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice whatever, or shall be guilty of any willful act or ommission by means whereof the Government of the (Philippine Islands) Commonwealth of the Philippines might be deprived of

eight years after his disbarment, the 71-year-old Atty. Rovero filed a petition for readmission to the practice of law, "[asking] humbly and earnestly of the Court to [reinstate him] in the Roll of Attorneys 'before crossing the bar to the great beyond.'"[12] To prove his "moral rehabilitation and reformation,"[13] he involved himself in civic and educational organizations and "held high positions of trust in commercial establishments."[14] With testimonials of his good conduct from members of his community and an absolute and unconditional pardon for his crime granted by President Ramon Magsaysay,[15] this court readmitted Atty. Rovero to the practice of law. According to this court, Atty. Rovero "ha[d] been sufficiently punished and disciplined."[16]

In this case, 80-year-old Dominador M. Narag filed his petition for readmission to the practice of law 15 years after his disbarment. In his petition for readmission, he expressed remorse and asked for complainant Julieta's and their children's forgiveness. He annexed to his petition a copy of an affidavit executed by his son, Dominador, Jr., attesting that complainant Julieta and their children had forgiven him. He also executed a holographic will in favor of complainant Julieta and their children.

Dominador M. Narag enlisted in the Philippine Air Force Reserve Command and joined in its rescue, relief, recovery, and other humanitarian missions. He also submitted to this court favorable recommendations, testimonials, and affidavits attesting to his moral reformation. Among the testimonials given

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the lawful duties, or any portion thereof, accruing from the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or ommission, shall, for each offense, be punished by a fine not exceeding five thousand pesos or by imprisonment for not more than two years or both.

[12] In *Re: Atty. Tranquilino Rovero*, 189 Phil. 605, 606 (1980) [Per J. Concepcion, Jr., *En Banc*].

[13] *Id.* at 607.

[14] *Id.*

[15] *Id.* at 608.

[16] *Id.*

was one from Archbishop Emeritus Diosdado A. Talamayan of Tuguegarao. In his letter dated November 30, 2011, he testified that:

> Due to my closeness to the couple, I had the opportunity to watch closely their married life. They both worked for the education of their children. All were happy. Dr. Narag was a concerned father and a loving husband. He would bring his wife along to all important religious, civic, cultural and social events. He made it a point to go with her, regularly on vacations to other parts of the country.
>
> But an indiscretion on his part led to a broken family. Many times I was called to negotiate, as their spiritual father, in their family disputes. The misdeed of Dr. Narag led Mrs. Julieta Narag to file disbarment from Law Practice. On June 29, 1998, in an administrative case No. 3405, Dr. Narag was disbarred.
>
> For the past thirteen years, I have been a witness to the remorse, repentance of Dr. Narag.
>
> To my joy, on June 10, 2010, acting on the gesture of Dr. Narag to bequeath to Mrs. Julieta Narag and children, all properties personal or real, all belongings and realizing the sincerity of repentance, Mrs. Narag and children totally forgave Dr. Dominador Narag.
>
> I sincerely believe Dr. Narag has paid enough for his indiscretion; meantime, for the past thirteen years of disbarment, he helped the University of Perpetual Help System grow and develop.
>
> As he is in the twilight of his life, now being 78 years and feeling he can still be of service to the people, I fully endorse his humble petition for readmission to the Philippine Bar and the restoration of his name in the Roll of Attorneys with the Supreme Court.[17]

I disagree with the majority that these manifestations are hollow. I also disagree that the affidavit of Dominador M. Narag's son and the holographic will he presents are not sufficient to prove the forgiveness that has been bestowed upon him by his family. They are the parties that have been wronged and in so far as the State is concerned, he has already suffered enough.

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[17] *Rollo*, petition for readmission, Annex "E".

This case does not deal with the question of whether we can impose disciplinary action on acts of immorality by members of the profession. Had it been an issue, I would think that the forgiveness given by the parties that have been wronged should have great bearing on our determination. After all, there are limits to the government's interference into arrangements of intimacies among couples. I fail to grasp the alleged continuing gross imorality and reprehensiveness committed by a remorseful 80-year-old man who has been forgiven by those he has emotionally wronged. I do not believe that the law should be read as being too callous and inflexible so as to be unable to accommodate the unique realities in this case.

What is at issue in this case is whether Dominador M. Narag has suffered enough from his acts. This court showed them compassion and reinstated them as members of the legal profession in many instances where those disbarred are of old age who suffered "the ignominy of disbarment"[18] long enough, showed remorse, and conducted themselves beyond reproach after their disbarment.

The legal order has had its pound of flesh from Dominador M. Narag. He has committed a transgression, but we have exacted enough retribution. The purpose of the penalty has already been achieved. He is in the twilight of his years when he is at his best to reflect on what his life has been. He is armed by the forgiveness of his family, and he is visited by remorse. In my view, not granting him the mitigation he asks for is a failure of human compassion.

For these reasons, I vote to grant him his plea and to reinstate him as a lawyer in good standing.

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[18] *Bernardo v. Atty. Mejia*, 558 Phil. 398, 402 (2007) [Per J. Nachura, *En Banc*].

EN BANC

[A.C. No. 5329. March 18, 2014]

HEINZ R. HECK, *complainant, vs.* **CITY PROSECUTOR CASIANO A. GAMOTIN, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISCIPLINE OF LAWYERS; DISBARMENT; THE POWER TO DISBAR IS ALWAYS EXERCISED WITH GREAT CAUTION; RATIONALE.— Disbarment is the most severe form of disciplinary sanction against a misbehaving member of the Integrated Bar. As such, the power to disbar is always exercised with great caution only for the most imperative reasons and in cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar. x x x A lawyer like the respondent is not to be sanctioned for every perceived misconduct or wrong actuation. He is still to be presumed innocent of wrongdoing until the proof arrayed against him establishes otherwise. It is the burden of the complainant to properly show that the assailed conduct or actuation constituted a breach of the norms of professional conduct and legal ethics. Otherwise, the lawyer merits exoneration.

2. ID.; ID.; LAWYERS MAY BE EXPECTED TO MAINTAIN THEIR COMPOSURE AND DECORUM AT ALL TIMES, BUT THEY ARE STILL HUMAN BEINGS, AND THEIR EMOTIONS ARE LIKE THOSE OF OTHER NORMAL PEOPLE PLACED IN UNEXPECTED SITUATIONS THAT CAN CRACK THEIR VENEER OF SELF-CONTROL; PRESENT IN CASE AT BAR.— We cannot sanction the respondent for having angrily reacted to Heck's unexpected tirade in his presence. The respondent was not then reacting to an attack on his person, but to Heck's disrespectful remark against Philippine authorities in general. Any self-respecting government official like the respondent should feel justly affronted by any expression or show of disrespect in his presence, including harsh words like those uttered by Heck. Whether or not Heck was justified in making the utterance is

of no relevance to us. Lawyers may be expected to maintain their composure and decorum at all times, but they are still human, and their emotions are like those of other normal people placed in unexpected situations that can crack their veneer of self-control. That is how we now view the actuation of the respondent in reacting to Heck's utterance. The Court will not permit the respondent's good record to be tarnished by his having promptly reacted to Heck's remark. Moreover, Heck could have sincerely perceived the respondent's actuations to be arrogant and overbearing, but it is not fair for us to take the respondent to task in the context of the events and occasions in which the actuations occurred in the absence of a credible showing that his actuations had been impelled by any bad motive, or had amounted to any breach of any canon of professional conduct or legal ethics.

3. ID.; ID.; THE DATE OF THE EFFECTIVITY OF SUSPENSION, EXPLAINED; CASE AT BAR.— The Court meted on Atty. Adaza the suspension from the practice of law in its decision promulgated on March 27, 2000 in Adm. Case No. 4083 entitled *Gonato v. Adaza*. When Heck confronted the respondent on September 15, 2000 about his allowing Atty. Adaza to practice law despite his suspension, the respondent asked when Heck had learned of the suspension. The respondent thereby implied that he had been unaware of the suspension until then. We believe that the respondent was not yet aware of the suspension at that time. In *Heck v. Atty. Versoza* (Adm. Case No. 5330, December 5, 2000), the Court clarified that Atty. Adaza's suspension became final and effective only after his receipt on September 5, 2000 of the resolution denying his motion for reconsideration with finality; and explained that he would be denied his right to due process if his suspension were to be made operative on March 27, 2000, the date when the Court ordered his suspension for six months. The Court further clarified in *Heck v. Atty. Versoza* that the courts in the country as well as the public would be informed of the suspension only after the lapse of a reasonable period after September 5, 2000 considering that as a matter of policy the circularization of the order of suspension could be done only after the decision upon the suspension had attained finality. It was possible that at the occasion when Atty. Adaza appeared before the respondent on September 15, 2000, his suspension had not yet attained

finality, or that the order of suspension had not yet been known to the respondent. Accordingly, it will be unjustified to hold the respondent liable for allowing Atty. Adaza to practice law and to represent his client in the OCP of Cagayan de Oro City.

D E C I S I O N

BERSAMIN, *J.*:

This administrative complaint was brought against a City Prosecutor whose manner of dealing with the complainant, a foreigner, had offended the latter. We dismiss the complaint because of the complainant's failure to prove that the respondent thereby breached any canon of professional conduct or legal ethics. Indeed, every lawyer who is administratively charged is presumed innocent of wrongdoing.

In September 2000, complainant Heinz Heck filed a complaint for disbarment against then City Prosecutor Casiano A. Gamotin of Cagayan de Oro City. According to Heck, he was a victim of the "faulty, highly improper, suspicious anomalous and unlawful practice" by the respondent, who had obstructed justice by delaying cases and disregarding proper court procedures, and displayed favor towards Atty. Ce(s)ilo A. Adaza, his business partners and friends.[1]

The controversy arose from the filing in 1999 by Heck of a criminal case for unjust vexation against one Oliver Cabrera in the Office of the City Prosecutor (OCP) in Cagayan de Oro City. After the case against him was dismissed, Cabrera countered with two criminal cases against Heck — one charging the latter with illegal possession of firearms (I.S. No. 2000-1860) and the other with unlawful incrimination of an innocent person (Criminal Case No. 1232). Atty. Adaza represented Cabrera in both cases. The OCP initially dismissed I.S. No. 2000-1860 for insufficiency of evidence, but Atty. Adaza moved for the reconsideration of the dismissal. The respondent granted the

[1] *Rollo,* p. 2.

motion for reconsideration. Heck challenged the order of the respondent. In the meantime, other pending complaints against Cabrera (for unjust vexation and grave threats) were also dismissed because of prescription and insufficiency of evidence. Heck moved for the reconsideration of the dismissals twice, but his motions were denied.[2]

Heck claimed that on September 11, 2000, the respondent scheduled a meeting at his office to be attended by Heck, his lawyer, his wife and Atty. Adaza. However, Atty. Adaza did not attend the meeting. Heck alleged, however, that Atty. Adaza and the respondent held their own separate "private meeting," for which reason Heck questioned the propriety of the private meeting and the possibility of connivance between the respondent and Atty. Adaza.[3]

On September 13, 2000, Heck, accompanied by one Ullrich Coufal, went to the respondent's office to pick up documents supposedly promised to him. But he was denied the documents by certain ladies sitting outside the respondent's office who behaved arrogantly. Upon arriving at his office, the respondent pushed through the people crowding outside the office. The actuations of the respondent at the time were described by Heck thuswise:

> That Prosecutor Gamotin, Jr. entered his office, the door was held open by a chair. Passing the door, Prosecutor Gamotin, Jr. furiously KICKED the chair who [sic] was holding the door to his office open, sending the chair flying onto the other chairs at his conference table. Then he SLAMMED the door, almost hitting the face of Mr. Coufal, who had tried to followed [sic] Prosecutor Gamotin, Jr. Observing such behaviour I asked (sic) Mr. Coufal that we better leave. We left disgusted the office, (sic) leaving smiling faces behind us.[4]

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[2] *Id*. at 194-195.

[3] *Id*. at 6.

[4] *Id*. at 8.

On September 15, 2000, Heck, his wife, child, and counsel went to the respondent's office for another meeting. Atty. Adaza arrived and went straight inside the respondent's office and then called Heck and his group in as if the office was his own. On that occasion, Heck was told that if he agreed, all cases would be settled and withdrawn. Heck then asked why the respondent was still entertaining Atty. Adaza despite his having been already suspended from the practice of law by the Supreme Court. The respondent raised his voice asking how Heck had learned about the suspension, and whether it was a final decision of the Supreme Court.[5] Moreover, Heck recalled:

> That the City Prosecutor x x x now was screaming at me, as no one has ever screamed at me in my sixty (60) years of live [sic]. That he x x x "never received such information and that this Supreme Court decision is not final," he was now repeating himself again and again. Here Adaza came in and remarked (when Gamotin Jr. was catching his breath) that he, Adaza had appealed against this decision[)] Gamotin, Jr. continued screaming at me, (")that he, (Gamotin) is the ["]Authority and the Law."[6]

Heck stated that he tried to explain his situation calmly to the respondent, but the respondent continued screaming at him, saying:

> You foreigner, go home here we the law of the Filipinos, I am the Authority.[7]

Heck then left the office of the respondent upon the prodding of his counsel. He claimed that his wife and child became very scared.

In his response to the charge of Heck, the respondent averred that: (1) he had no personal knowledge of Atty. Adaza's suspension, because such information had not been properly disseminated to the public offices; (2) there were no irregularities

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[5] *Id*. at 9-11.

[6] *Id*. at 11.

[7] *Id*. at 12.

in the filing and resolution of the motion for reconsideration of Atty. Adaza; (3) the September 11, 2000 meeting had not been arranged by him, but by Heck's counsel in order to discuss the possibility of settlement; hence, he did not take part in the meeting; (4) he did not display any act of violence, particularly the kicking of the chair and slamming of the door, aside from such acts being improbable because of his age and build; (5) the September 14, 2000 meeting was between the parties' counsels to discuss ways to settle their cases, and Heck was the one who did not agree to the suggestion of withdrawing the cases; (6) it was Heck who acted arrogantly when he challenged the respondent's authority in allowing Atty. Adaza to appear in court despite his suspension; and (7) he admitted that when Heck uttered the words: *I will not believe the authorities of the Philippines,* he slightly raised his voice to respond: *If you will not believe the authorities of the Philippines, you have no place in this country, you can go home*.[8]

Report and Recommendation of the Office of the Bar Confidant

It appears that Heck had filed administrative complaints against the respondent in the Department of Justice (DOJ); as well as in the Office of the Ombudsman.[9]

On October 12, 2001, the DOJ issued a letter-resolution dismissing the administrative complaint filed by Heck against the respondent, finding no cogent basis for the charge of abuse of authority and corruption; and ruling that in any case the respondent had already retired from government service as of June 6, 2001, rendering the administrative case moot and academic.[10]

Meantime, the administrative cases in the Office of the Ombudsman were referred to the Public Assistance Bureau

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[8] *Id.* at 42-47; Comment of the respondent.

[9] *Id.* at 197.

[10] *Id.* at 72-73.

and the Fact Finding Investigation Bureau (FFIB) of that office. In its Investigation Report, the FFIB recommended that: (1) the investigation of the complaint be considered closed and terminated without prejudice to its reopening should new evidence enough to establish a *prima facie* case against the respondent become available; and (2) the alleged breach by Atty. Adaza of his suspension from the practice of law and the permission given by the RTC of Cagayan de Oro City be referred to the Supreme Court.[11]

The records were first referred to the Office of the Court Administrator, then to the Office of the Bar Confidant (OBC) for evaluation of the merits of the disbarment case against the respondent, and for its report and recommendation.[12]

In its Report and Recommendation filed on June 6, 2011,[13] the OBC observed that although there was no clear, convincing and satisfactory evidence of misconduct as to warrant the penalty of disbarment, the respondent's conduct should be sanctioned; that his act of privately entertaining Atty. Adaza and his brother, as well as allowing his office to be used for a meeting even in his absence raised doubt on his integrity; that the respondent's reaction to Heck's tirade against the country's justice system, particularly the respondent's retort that Heck should go back to his country if he did not believe in the Philippine authorities, constituted decorum that was so unbecoming of a lawyer.[14]

Thus, the OBC recommended:

> WHEREFORE, premises considered, it is respectfully recommended that Respondent's prayer to dismiss the case for lack of merit be DENIED and that he be SEVERELY REPRIMANDED with stern warning that a similar act in the future will be dealt with more seriously.[15]

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[11] *Id.* at 198.

[12] *Id.* at 193.

[13] *Id.* at 194-201.

[14] *Id.* at 200.

[15] *Id.* at 20.

Ruling of the Court

Like the OBC, we consider that the evidence adduced by the complainant insufficient to warrant the disbarment of the respondent. Disbarment is the most severe form of disciplinary sanction against a misbehaving member of the Integrated Bar. As such, the power to disbar is always exercised with great caution only for the most imperative reasons and in cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.[16]

However, unlike the OBC, we do not find any justification to sanction the respondent. A lawyer like the respondent is not to be sanctioned for every perceived misconduct or wrong actuation. He is still to be presumed innocent of wrongdoing until the proof arrayed against him establishes otherwise. It is the burden of the complainant to properly show that the assailed conduct or actuation constituted a breach of the norms of professional conduct and legal ethics. Otherwise, the lawyer merits exoneration.

To begin with, the holding of the meeting between Atty. Babarin, Heck's counsel, and Atty. Adaza in the respondent's office was not suspicious or irregular, contrary to the insinuation of Heck. We are not unmindful of the practice of some legal practitioners to arrange to meet with their opposing counsels and their clients in the premises of the offices of the public prosecutors or in the courthouses primarily because such premises are either a convenient or a neutral ground for both sides. Accordingly, holding the meeting between Heck and his adversary, with their respective counsels, in the respondent's office did not by itself indicate any illegal or corrupt activity. We also note that the respondent was not present in the meeting.

Secondly, we cannot sanction the respondent for having angrily reacted to Heck's unexpected tirade in his presence. The respondent was not then reacting to an attack on his person, but to Heck's disrespectful remark against Philippine authorities

[16] *Kara-an v. Pineda*, A.C. No. 4306, March 28, 2007, 519 SCRA 143,146.

in general. Any self-respecting government official like the respondent should feel justly affronted by any expression or show of disrespect in his presence, including harsh words like those uttered by Heck. Whether or not Heck was justified in making the utterance is of no relevance to us. Lawyers may be expected to maintain their composure and decorum at all times, but they are still human, and their emotions are like those of other normal people placed in unexpected situations that can crack their veneer of self-control. That is how we now view the actuation of the respondent in reacting to Heck's utterance. The Court will not permit the respondent's good record to be tarnished by his having promptly reacted to Heck's remark.

Moreover, Heck could have sincerely perceived the respondent's actuations to be arrogant and overbearing, but it is not fair for us to take the respondent to task in the context of the events and occasions in which the actuations occurred in the absence of a credible showing that his actuations had been impelled by any bad motive, or had amounted to any breach of any canon of professional conduct or legal ethics.

Lastly, Heck complains that the respondent still entertained Atty. Adaza despite the latter having been already suspended from the practice of law. The respondent explains, however, that he "had no personal knowledge of Atty. Adaza's suspension and that such information was not properly disseminated to the proper offices."

We are inclined to believe the respondent's explanation.

The Court meted on Atty. Adaza the suspension from the practice of law in its decision promulgated on March 27, 2000 in Adm. Case No. 4083 entitled *Gonato v. Adaza*.[17] When Heck confronted the respondent on September 15, 2000 about his allowing Atty. Adaza to practice law despite his suspension, the respondent asked when Heck had learned of the suspension. The respondent thereby implied that he had been unaware of the suspension until then.

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[17] 328 SCRA 694.

We believe that the respondent was not yet aware of the suspension at that time. In *Heck v. Atty. Versoza* (Adm. Case No. 5330, December 5, 2000),[18] the Court clarified that Atty. Adaza's suspension became final and effective only after his receipt on September 5, 2000 of the resolution denying his motion for reconsideration with finality; and explained that he would be denied his right to due process if his suspension were to be made operative on March 27, 2000, the date when the Court ordered his suspension for six months. The Court further clarified in *Heck v. Atty. Versoza* that the courts in the country as well as the public would be informed of the suspension only after the lapse of a reasonable period after September 5, 2000 considering that as a matter of policy the circularization of the order of suspension could be done only after the decision upon the suspension had attained finality.

It was possible that at the occasion when Atty. Adaza appeared before the respondent on September 15, 2000, his suspension had not yet attained finality, or that the order of suspension had not yet been known to the respondent. Accordingly, it will be unjustified to hold the respondent liable for allowing Atty. Adaza to practice law and to represent his client in the OCP of Cagayan de Oro City.

WHEREFORE, the Court **DISMISSES** the complaint for disbarment against respondent **ATTY. CASIANO A. GAMOTIN, JR.**; and **CONSIDERS** this administrative matter closed and terminated.

SO ORDERED.

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

Perlas-Bernabe, J., on leave.

[18] Unpublished resolution.

EN BANC

[A.M. No. 07-9-454-RTC. March 18, 2014]

***RE:* JUDICIAL AUDIT CONDUCTED IN THE REGIONAL TRIAL COURT, BRANCH 20, CAGAYAN DE ORO CITY, MISAMIS ORIENTAL.**

[A.M. No. 05-2-108-RTC. March 18, 2014]

REQUEST OF JUDGE GREGORIO D. PANTANOSAS, JR., REGIONAL TRIAL COURT, BRANCH 20, CAGAYAN DE ORO CITY, FOR EXTENSION OF TIME TO DECIDE CRIMINAL CASES NOS. 92-1935 & 26 OTHERS.

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; A JUDGE IS OBLIGED TO PERFORM ALL JUDICIAL DUTIES, INCLUDING DELIVERY OF RESERVED DECISIONS, EFFICIENTLY, FAIRLY AND WITH REASONABLE PROMPTNESS.— The speedy disposition of cases in our courts is a primary aim of the Judiciary, so that the ends of justice may not be compromised and the Judiciary will be true to its commitment to provide litigants their constitutional right to a speedy trial and a speedy disposition of their cases. The *Code of Judicial Conduct* mandates that a judge administers justice impartially and without delay. Under the *New Code of Judicial Conduct for the Philippine Judiciary*, a judge is obliged to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. To comply with his obligation, he must display such interest in his office which stops not at the minimum of the day's labors fixed by law, and which ceases not at the expiration of official seasons, but which proceeds diligently on holidays and by artificial light and even into vacation periods. Only thereby can he do his part in the great work of speeding up the administration of justice and rehabilitating the Judiciary in the estimation of the people. Any unjustified failure to decide

a case within the reglementary period constitutes gross inefficiency that deserves the imposition of the proper administrative sanctions. Hence, decision-making is his primordial and most important duty as a member of the Bench.

2. ID.; ID.; THE PROPER AND EFFICIENT MANAGEMENT OF HIS COURT IS THE RESPONSIBILITY OF EVERY PRESIDING JUDGE.— The Court has ruled in *Office of the Court Administrator v. Judge Aquino* that the incompleteness of the transcripts of stenographic notes was not a valid reason for not deciding cases within the extended period granted by the Court, for, precisely, judges have been instructed to take notes of the salient portions of their hearings, and to proceed in the preparation of their decisions without waiting for the transcripts. To let judges await the transcription of the stenographic notes before they could render their decisions would cause undue delays because judges could then easily find justifications for failing to comply with the mandatory period to decide cases. Verily, the proper and efficient management of his court is the responsibility of every presiding judge - he alone is directly responsible for the proper discharge of official functions.

3. ID.; ID.; UNDUE DELAY IN RENDERING A DECISION IS CLASSIFIED AS A LESS SERIOUS CHARGE; IMPOSABLE PENALTY.— Under Rule 140 of the *Rules of Court*, as amended, undue delay in rendering a decision is classified as a less serious charge that carries with it the penalty of suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱l0,000.00 but not exceeding ₱20,000.00. However, the offense of Judge Pantanosas, Jr. did not involve only a single but several unrendered decisions. Hence, his offense was a compounded one worthy of the highest sanction. x x x Accordingly, the Court sanctions him properly by forfeiting all his retirement benefits, except earned leave credits.

4. ID.; ID.; GRAVE MISCONDUCT; SUBMITTING FALSE CERTIFICATES OF SERVICE WHERE THE JUDGE CERTIFIED THAT HE DID NOT HAVE ANY UNRESOLVED CASES AND MATTERS PENDING IN HIS COURT'S DOCKET MAKES HIM GUILTY OF GRAVE MISCONDUCT; PRESENT IN CASE AT BAR.— We are

much dismayed to uncover that in addition to his gross inefficiency, Judge Pantanosas, Jr. was guilty of a grave misconduct pursuant to Section 8, Rule 140 of the *Rules of Court*, as amended, by submitting false certificates of service in which he certified that he did not have any unresolved cases and matters pending in his court's docket. Thereby, he defrauded the Government. The certificates of service were not only the means to ensure his paycheck but were also the instruments by which the Court could fulfill the constitutional mandate of the people's right to a speedy disposition of cases. His dishonesty - because it badly reflected on his integrity as a member of the Judiciary and seriously undermined his service to our country and people - merited for him the very high penalty of suspension without pay for a period of six months, similar to what the Court prescribed for a judge who did not timely decide an election protest for eight months and submitted false certificates of service, in addition to being found guilty of habitual absenteeism.

5. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; BRANCH CLERKS OF COURT ARE CHARGED WITH THE DUTY TO ASSIST IN THE PROPER MANAGEMENT OF THE CALENDAR OF THE COURT AND IN ALL MATTERS THAT DO NOT INVOLVE DISCRETION OR JUDGMENT; VIOLATION IN CASE AT BAR.— The Court adopts the recommendation of the OCA finding Atty. Macabinlar guilty of gross inefficiency and incompetence. Branch Clerks of Court are officers who perform vital functions in the prompt and efficient administration of justice. Their office is at the core of the adjudicative and administrative orders, processes and concerns. One of their most important responsibilities is to conduct monthly physical inventory of cases. It is also their duty to assist in the proper management of the calendar of the court and in all matters that do not involve discretion or judgment that is the exclusive province of their judges. As such, they are required to be persons of competence, honesty and probity, and are not permitted to be lackadaisical on the job. This finding against Atty. Macabinlar serves to underscore the value of a Branch Clerk of Court like him in the organization of the Regional Trial Courts. Atty. Macabinlar did not tender any satisfactory explanation for his consistent failure to promptly submit the monthly report

of cases, and for his failure to timely accomplish the Commissioner's Reports in the 39 cases assigned to him for *ex parte* reception of evidence. He is administratively liable. He ought to recognize that the great responsibility of ensuring that delays in the disposition of cases be kept to a minimum rested not only on the judge but also on him as the Branch Clerk of Court.

D E C I S I O N

PER CURIAM:

A judge who fails to decide cases and related matters within the periods prescribed by law is guilty of gross inefficiency, and may be punished with dismissal from the service even for the first offense, unless he has been meanwhile separated from the service, in which instance he may be imposed the stiffest of fines. For falsely rendering certificates of service to the effect that he did not have any unresolved cases and matters pending in his court's docket, he is also guilty of dishonesty, another act of gross misconduct, for which he should be sanctioned with dismissal from the service even for the first offense. But his intervening separation from the service leaves the only proper penalty to be forfeiture of his entire retirement benefits, except his earned leaves.

Antecedents

A.M. No. 07-9-454-RTC

From February 21 to February 24, 2005, an Audit Team dispatched by the Office of the Court Administrator (OCA) conducted a judicial audit of Brnach 20 of the Regional Trial Court in Cagayan de Oro City, presided by respondent Judge Gregorio D. Pantanosas, Jr. The report of the Audit Team revealed that as of the audit dates, Branch 20 had a total caseload of 599 cases consisting of 256 criminal cases and 343 civil cases.[1]

[1] *Rollo* (A.M. No. 07-9-454-RTC), pp. 1-46.

Of the 256 criminal cases, the Audit Team found that: (*a*) Branch 20 failed to take any action on three criminal cases from the time of their filing; (*b*) no further action or setting was taken in 41 criminal cases; (*c*) 14 criminal cases had pending incidents already submitted for resolution but remained unresolved despite the lapse of the reglementary period to resolve; and (*d*) 28 criminal cases submitted for decision remained unresolved despite the lapse of the reglementary period to decide.

As to the 343 civil cases, the Audit Team uncovered that: (*a*) no action was taken on 11 cases from the time of their filing; (*b*) no further action or setting was taken in 54 cases for a considerable length of time; (*c*) 75 cases had pending incidents that remained unresolved despite the lapse of the reglementary period to resolve; and (*d*) 56 cases submitted for decision remained unresolved despite the lapse of the reglementary period to decide.

The Audit Team discovered that: (*a*) Branch 20 ordered forfeiture of the bonds of the accused in 10 criminal cases; (*b*) the latest Monthly Report of Cases submitted by Branch 20 to the Court Management Office was that for January 2004; despite reminders, the Presiding Judge failed to submit the required monthly reports; (*c*) no certificates of arraignment were attached to the records of criminal cases where the accused had entered a plea; (*d*) the criminal and civil docket books were not updated; and (*e*) the stenographic notes in Criminal Case No. 4819 entitled *People v. Obita, et al.*, an appealed case for theft, were not transcribed because of the demise of court stenographer Josephine Casino and the retirement of court stenographer Valerio Piscos of the Municipal Circuit Trial Court in Jasaan.

Based on the audit report, the Deputy Court Administrator Christopher Lock issued a memorandum directing Judge Pantanosas, Jr. to:[2]

1. Take appropriate action on the cases without any action taken from the time of their filing, as well as those cases without further setting or action for a considerable length of time;

[2] *Id.* at 47-69.

2. Resolve within the reglementary period the pending incidents in the criminal and civil cases, and submit copies of the resolutions to the OCAD within 10 days from their resolution;

3. Explain within ten days from notice his failure to resolve the pending incidents in 14 criminal and 75 civil cases within the reglementary period, and resolve the same and submit copies of the resolutions to the OCAD within ten days from their resolution;

4. Decide within the reglementary period the civil and criminal cases submitted for decision and submit copies of the decisions to the OCAD within ten days fro their rendition;

5. Explain within ten days from notice his failure to decide within the reglementary period the 28 criminal cases and 56 civil cases mentioned in the audit report.

6. Take appropriate action on all untranscribed stenographic notes of all cases particularly those submitted for decision; and

7. Explain within fifteen days from receipt his failure to submit the required Monthly Report of Cases starting from February 2004 up to April 11, 2005 and submit the same within 30 days from receipt, otherwise, the Office will Recommend to the Chief Justice the withholding of his salaries pending compliance with the said administrative circular.

Another memorandum was sent to Atty. Taumaturgo U. Macabinlar, the Branch Clerk of Court of Branch 20, ordering him to:

1. Apprise the Acting Presiding Judge from time to time of cases submitted for resolution/decision and those cases that require immediate action;

2. Attach the corresponding Certificate of Arraignment on all criminal case folders where the accuses has entered a plea, duly signed by both the accused and his/her counsel;

3. Order and Supervise the updating of the criminal and civil docket books;

4. Explain within fifteen (15) days from receipt his failure to submit the required Monthly Report of Cases starting from February 2004 up to the present pursuant to Administrative

Circular No. 4-2004 dated 4 February 2004 which states that the Monthly Report of cases must be filed with, or sent by registered mail to the Supreme Court on or before the tenth (10th) calendar day of the succeeding month and SUBMIT the same within 30 days from receipt, otherwise, the Office will Recommend to the Chief Justice the withholding of his salaries pending full compliance with the said administrative circular; and

5. Inform this Court, through the Court Management Office, within fifteen days from receipt whether the judgment on the bond on the 10 criminal cases mentioned above had been duly executed and submit copies of the order and writ of execution and report of satisfaction of judgment thereon.[3]

Another memorandum was issued directing Jean Hernandez and Jacqueline Astique, Clerks-in-Charge of the criminal and civil docket books, respectively, to update the entries in their respective docket books and to submit their compliance within sixty days from notice, with a warning that continued failure to do so would be dealt with more severely.[4]

In his compliance,[5] Judge Pantanosas, Jr. explained that he had failed to decide or resolve the cases within the reglementary period for the following reasons:

(*a*) Criminal Case Nos. 948, 1863, 3418 and 1396, and Civil Case Nos. 3673, 3672 and 13 other cases had incomplete transcripts of stenographic notes (TSN); and the stenographers concerned had already retired from the service and their whereabouts were unknown;

(*b*) Criminal Case No. 2208 was an inherited case submitted for decision before the Judge Alejandro Velez;

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[3] *Id.* at 857-858 (quoted from Memorandum of Court Administrator Christopher Lock dated August 15, 2007).

[4] *Id.*

[5] *Id.* at 77-79.

(*c*) He was granted an extension of 90 days in 13 criminal cases and 11 civil cases pursuant to the Resolution promulgated on March 30, 2005 in A.M. No. 05-2-108-RTC;[6]

(*d*) 27 civil cases had no Commissioner's Report.

As to the delayed submission of the Monthly Reports of Cases, Judge Pantanosas, Jr. explained that the person in charge had inadvertently overlooked its timely submission, but that the report was already submitted to the proper office of the OCA on April 14, 2005. He pleaded for leniency for his delayed resolution of cases due to his heavy caseload.

Atty. Macabinlar also submitted his compliance,[7] in which he stated that the delay in the submission of monthly reports of cases had been caused by the difficulty of using the new form; and that he had failed to remind the clerks-in-charge of the civil and criminal cases to prepare their reports on time due to the volume of work as well as due to inadvertence. He apologized for the delay and reported the latest action of the court regarding the criminal cases with forfeited bonds.

Hernandez and Astique did not submit any compliance.

The OCA did not consider the foregoing explanations as sufficient compliance with its directives. Hence, it issued a second set of memoranda dated May 5, 2006[8] reiterating the instructions of the first memorandum.

In compliance with the second memorandum, Judge Pantanosas, Jr. informed the OCA by letter dated September 1, 2006 that he had rendered his decisions in 18 cases; resolved the pending incidents or motions in 63 cases; and acted on 52 cases having

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[6] A.M. No. 05-2-108-RTC was consolidated with A.M. No. 07-9-454-RTC on November 26, 2007 pursuant to the Court Administrator's recommendation considering that the cases subject of the request of Judge Pantanosas, Jr. for extension of time to decide were also subject of the judicial audit being conducted in his court.

[7] *Rollo,* (A.M. No. 07-9-454-RTC), pp. 70-71.

[8] *Id.* at 118-150; 151-153.

no further actions or settings after the lapse of a considerable period of time, and on eight cases with no initial action since the time of filing.[9]

In separate letters dated August 15, 2006 and January 12, 2007,[10] Atty. Macabinlar informed the OCA that: (a) he already apprised Judge Pantanosas, Jr. of the cases submitted for decision, the cases with pending matters or incidents for resolution, and the cases requiring immediate action; (b) he already attached the required certificates of arraignment to the records after the accused were arraigned; (c) he already updated the submission of the Monthly Reports of Cases by submitting such report for the month of November 2006; and (d) he also submitted the copy of the latest order of the court concerning the list of cases with forfeited bonds.

Hernandez and Astique submitted their respective letters-compliance dated August 22, 2006 and January 26, 2007,[11] stating that they had already updated the docket books assigned to them immediately upon receipt of the first memorandum but that they had failed to notify the OCA; and that they apologized for the delay of their responses. The letters-compliance were supported by certifications dated August 22, 2006 and January 26, 2007 issued by Atty. Macabinlar.[12]

Accordingly, the OCA treated the matter concerning Hernandez and Astique as closed and terminated due to their having complied with its directives.

On February 20, 2007, the OCA issued a third memorandum directing Judge Pantanosas, Jr. and Atty. Macabinlar to fully comply with the directives of the previous memoranda.[13]

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[9] *Id.* at 154-174.

[10] *Id.* at 496-497; 521.

[11] *Id.* at 516 and 520.

[12] *Id.* at 517 and 519.

[13] *Id.* at 579-600.

Judge Pantanosas, Jr. and Atty, Macabinlar submitted their third compliance.[14] Nevertheless, Judge Pantanosas, Jr. still did not take appropriate action on a criminal case and on four civil cases with no initial actions from the time of their filing; to further act in two criminal and 22 civil cases; to resolve motions and incidents in four criminal and 24 civil cases; and to decide 17 criminal and 31 civil cases.

Summarized hereunder are the cases decided, resolved or appropriately acted upon by Judge Pantanosas, Jr., to wit:[15]

Status/ Stage of Proceed-ings	First Memo. 04/04/05	Com-pliance	2nd Memo 05/02/06	Com-pliance	3rd Memo 02/20/07	Com-pliance	Total no. of cases which remain undecided/ unresolved/ unacted
Submitted for Decision	90[16]	None	90	18	72	12	60
Submitted for Resolution	103[17]	None	103	63	40	13	27
No further action/ setting/ proc eeding	95	None	95	52	43	12	31

[14] *Id.* at 612-616; 602-603.

[15] *Id.* at 918-919.

[16] Out of the 90 cases, 84 were already beyond the reglementary period to decide, while 6 were still within the reglementary period to decide.

[17] Out of these 103 pending incidents, 89 were beyond the reglementary period period to resolve, while the remaining 14 were still within the reglementary period to resolve.

No initial action taken	14	None	14	8	6	1	5

Of the three memoranda requiring Judge Pantanosas, Jr. to comply, he submitted the appropriate compliance only after receiving the second and third memoranda.

Results/Findings of the Follow-Up Audit

On January 24-26, 2007, the Second Audit Team conducted a follow-up audit, and made the following findings:[18]

(*a*) The total number of cases submitted fro decision was reduced from 124 to 115 cases;

(*b*) The total number of cases with pending matter or incident for resolution was reduced from 106 to 100 cases; and

(*c*) The total number of cases with no further action/setting/ proceeding was reduced from 101 to 100 cases;

(*d*) 39 cases referred to the Branch Clerk of Court for *ex parte* hearing had no Commissioner's Report.[19]

(*e*) There were five criminal cases that were either in the pre-trial or trial stage, or were already submitted for decision without conducting an arraignment of the accused.[20]

Of the 115 cases that Judge Pantanosas, Jr. left undecided: (*a*) 60 were found to be submitted for decision by the First Audit Team; (*b*) 19 were considered inherited cases; (*c*) some of the inherited cases had no transcripts of stenographic notes; and (*d*) 39 had no Commissioner's Reports. Of the 100 cases with pending matters or incidents for resolution, the First Audit Team found 25 of them unresolved.

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[18] *Rollo*, (A.M. No. 07-9-454-RTC), p. 891.

[19] *Id.* at 914-916.

[20] *Id.* at 916.

Despite prior directives from the OCA, Judge Pantanosas, Jr. did not take proper action on the cases with untranscribed stenographic notes, particularly those already submitted for decision.

The Second Audit Team further found that there were more motions or pending incidents that had remained unresolved despite the lapse of the reglementary period; and that there were more cases that had remained unacted upon despite the lapse of a considerable length of time.[21]

Status after Judge Pantanosas' Resignation

On March 29, 2007, Judge Pantanosas, Jr. filed his certificate of candidacy for the position of Vice Governor of the Province of Misamis Oriental, and was thereby deemed automatically resigned from the Judiciary. As of the date of his resignation, all of the cases submitted for decision and all of the cases with pending matters or incidents for resolution were already beyond the reglementary period to decide or resolve.

Clearly, prior to his resignation, Judge Pantanosas, Jr. did not: (*a*) decide 115 cases; (*b*) resolve pending matters or incidents in 100 cases; (*c*) appropriately act on 100 cases with no further action or setting after the lapse of a considerable length of time; (*d*) appropriately act on 45 criminal cases with warrants of arrest but without return of service; and (*e*) appropriately act on five criminal cases that had proceeded to pre-trial or trial proper without conducting an arraignment of the accused.[22]

A.M. No. 05-2-108-RTC

On January 20, 2005, or a month prior to the first judicial audit, Judge Pantanosas, Jr. filed in the Office of then Senior Deputy Court Administrator Zenaida N. Elepaño a request for an extension of 90 days within which to decide 14 criminal cases and 11 civil cases that had been submitted for decision as

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[21] *Id.* at 917.

[22] *Id.*

early as in the period from October 2001 until October 2004.[23] His request was docketed as Administrative Matter No. 05-2-108-RTC.

Pursuant to the OCA's recommendation,[24] the Court resolve on March 30, 2005 to:[25]

a) NOTE the said letter of Judge Gregorio D. Pantanosas, Jr.;

b) GRANT Judge Pantanosas, Jr. a period of ninety (90) days from receipt of notice hereof within which to decide Criminal Cases Nos. 92-1935, 93-2417, 94-448, 94-936, 95-541, 95-620, 96-114, 96-582, 96-583, 97-585, 97-586, 97-13116, 97-1646, 99-893, 00-973, 99-1003, and Civil Cases Nos. 93-605, 92-009, 00-051, 20-017, 91-398, 98-553, 98-652, 95-515, 00-124, 99-557 and 98-266;

c) REMIND Judge Pantanosas, Jr. to state the ground/s for his request for extension of time to decide cases;

d) DIRECT Judge Pantanosas, Jr. to EXPLAIN within ten (10) days from receipt of notice why the abovementioned cases which have been submitted for decision as early as October 2001 were not resolved within the reglementary period; and why Criminal Cases Nos. 95-541 and 97-1646 as well as Civil Cases Nos. 98-553 and 00-124 were not reflected in the "List of Cases submitted for decision but not yet decided at the end of the month";

e) DIRECT Judge Pantanosas, Jr. to SUBMIT to the Court, through the Office of the Court Administrator, a copy of each of his decisions in the aforementioned cases within five (5) days from rendition thereof;

f) DIRECT Atty. Taumaturgo U. Macabinlar, Branch Clerk of Court, Regional Trial Court, Branch 20, Cagayan de Oro City to EXPLAIN within ten (10) days from receipt of notice why Criminal Cases Nos. 95-541 and 97-1646 as well as Civil Cases Nos. 98-553 and 00-124 were not reflected in the monthly report of cases particularly from January 2004 and the prior months, as among the cases yet to be decided.

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[23] *Rollo*, (A.M. No. 05-2-108-RTC), pp. 4-8.

[24] *Id.* at 2-3.

[25] *Id.* at 9-10.

In his explanation,[26] Atty. Macabinlar wrote: (*a*) that in Criminal Case No. 95-541, Branch 20 had issued an order on August 2, 2002[27] directing the stenographers to transcribe their notes and to attach the transcripts to the records; that it was only on February 20, 2004 when the case was ordered submitted for decision upon the submission of the stenographic notes; and that the case was reported as submitted for decision only in the monthy report for February, 2004; (*b*) that Criminal Case No. 97-1646 was reported as submitted for decision only in the monthly report of August 30, 2004, because the Private Prosecutor submitted his memorandum only on July 30, 2004;[28] (*c*) that Civil Case No. 98-553 was the incorrect docket number of the case pending decision; that the correct docket number was Civil Case No. 98-533; that Judge Pantanosas, Jr. had erroneously indicated the docket number in his request for a 90-day extension to resolve several civil and criminal cases; that Civil Case No. 98-533 was included in the April 2002 monthly report among the cases submitted for decision; and (*d*) that Civil Case no. 2000-124 was already reflected in the monthly report as of May, 2003, but was inadvertently reported as Civil Case No. 2000-120; he would rectify the error in the February 2004 report.

On his part, Atty. Macabinlar begged the indulgence of the Court for his inadvertence in reporting the incorrect docket numbers, and promised to double-check the docket numbers of all cases reported in the monthly reports in order to avoid similar mistakes in the future.

In his explanation,[29] Judge Pantanosas, Jr. stated that he did not resolve the cases submitted for decision because of his heavy caseload, which included the cases inherited from the former

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[26] *Id.* at 13-14.

[27] *Id.* at 16.

[28] *Id.* at 19.

[29] *Id.* at 36.

presiding judge consisting of more than 150 cases submitted for decision.

On June 27, 2005, the Court resolved to refer this administrative matter to the OCA for evaluation, report and recommendation.[30]

Pursuant to the OCA's recommendation,[31] the Court consolidated Administrative Matter No. 05-2-108-RTC with A.M. No. 07-9-454-RTC on November 26, 2007 because the cases subject of Judge Pantanosas, Jr.'s request for extension to decide were also among the cases subject of the judicial audit and physical inventory conducted on Branch 20 for the past two years.[32]

On February 4, 2008, Atty. Macabinlar submitted to the OCA copies of the Commissioner's Reports[33] in the 14 cases that had been referred to him for *ex parte* hearing.[34] He declared that he no longer needed to submit the Commissioner's Reports in four land registration cases cited in the OCA's directive[35] because said cases had already been decided.[36] Thus, he still failed to fully comply with the directive to him, because he did not submit his report on the remaining 21 cases referred to him for *ex parte* hearing. He apologized for his inadvertence and explained that he had failed to promptly submit the Commissioner's Reports because the records of the cases had been placed in the archives after the *ex parte* hearings.

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[30] *Id.* at 34.

[31] *Id.* at 43-44.

[32] *Id.* at 45.

[33] *Id.* at 99-233.

[34] Aside from these 14 reports, Atty. Macabinlar also submitted 8 other Commissioner's Reports that were not subject of the OCA's directive. These included reports in Civil Cases Nos. 2005-285, 2004-331, 2000-178, 97-514, 95-521, 96-370, 92481, and 90-258.

[35] LRC Nos. 99-076, 2000-069, 2003-034 and 2005-028.

[36] *Rollo*, (A.M. No. 05-2-108-RTC), pp. 120-122; 117-119; 114-116 and 111-113.

The OCA's Recommendation

In his memorandum dated August 15, 2007,[37] Court Administrator Lock recommended as follows:[38]

1. Judge Gregorio G. Pantanosas, Jr., former Presiding Judge, Regional Trial Court, Branch 20, Cagayan de Oro City, be found GUILTY of gross inefficiency and gross misconduct and that he be imposed a FINE in an amount equivalent to the salary and benefits for six (6) months to be deducted from the retirement benefits due him;

x x x x x x x x x

4. Atty. Taumaturgo U. Macabinlar, Branch Clerk of Court, RTC, Branch 20, Cagayan de Oro City, be:

   (a) Found GUILTY of inefficiency and incompetence and that he be imposed a penalty of SUSPENSION from office for three (3) months with a STERN WARNING that a repetition of similar act in the future shall be severely dealt with;

   (b) DIRECTED to: (1) EXPLAIN in writing within fifteen (15) days from receipt of notice why he failed to submit the Commissioner's Report in the 39 cases listed under Table 6 above; (2) to SUBMIT the Commissioner's Report in the 39 cases listed under Table 6 above within thirty (30) days from receipt of notice and to furnish the Honorable Court through this Office a copy of the said report, immediately upon his assumption to office after service of suspension;

   (c) RELIEVED from being appointed as Commissioner to receive *ex parte* evidence until the submission of all Commissioner's Report in all cases where he was deputized as such.

The OCA found that Judge Pantanosas, Jr.'s failure to decide cases within the reglementary period constituted gross inefficiency that should be sanctioned; that despite the prior

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[37] *Rollo* (A.M. No. 07-9-454-RTC), pp. 856-924.

[38] *Id.* at 922-924.

request for extension of time to decide some of the pending cases, Judge Pantanosas, Jr. still did not resolve them within the extended period; and that Judge Pantanosas, Jr. also did not take appropriate action to secure transcripts of stenographic notes in some of the inherited cases.

Aside from gross inefficiency, the OCA found Judge Pantanosas, Jr. guilty of dishonesty amounting to gross misconduct for continuing to collect his salary and other benefits based on false certificates of service that did not reflect the actual number of his undecided cases. A careful reading of his certificates of service[39] for the months of January 2007 to March 2007, and from February 2006 to December 2006 revealed that he stated therein that he had only around 37 to 41 undecided cases, when he was aware that he had 60 undecided cases during such periods of time because he had failed to fully comply with the memoranda of the OCA dated April 4, 2005, May 2, 2006 and February 20, 2007.

The OCA concluded that pursuant to Administrative Circular No. 04-2004 dated February 4, 2004, the monthly reports of cases must be filed with or sent by registered mail to the Supreme Court on or before the 10th calendar day of the succeeding month; that Atty. Macabinlar had been consistently late in the submission of monthly reports of cases; that his lapses in the timely submission of monthly reports of cases and his failure to fully implement the writs of execution of forfeited bonds in some criminal cases had amounted to inefficiency and incompetence in the performance of his official duties; that under Civil Service Rules, inefficiency and incompetence in the performance of official duty was a grave offense with an imposable penalty of suspension of six months and one day to one year for the first offense, and dismissal from the service for the second offense.

However, the OCA considered Atty. Macabinlar's partial compliance with the directives to him, and the fact that this was his first offense as mitigating; and recommended as penalty

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[39] *Id.* at 840-855.

his suspension from office for three months with a stern warning that a repetition of similar acts would be severely dealt with.

Due to the Second Audit Team's finding that he had not submitted the Commissioners Reports in 39 cases where he had received evidence *ex-parte* as commissioner (which by then had already been reduced to 21 cases), Atty. Macabinlar should be required to submit the reports and to explain why he had not submitted them despite the lapse of a considerable time. In the meantime that he was preparing and completing the submission of all the Commissioners Reports, he should not be deputized as commissioner to receive eveidence *ex parte*.

The OCA's Modified Recommendation

On April 11, 2008, Court Administrator Elepaño modified the OCA's recommendations, as follows:

1. Judge Gregorio G. Pantanosas, Jr. former Presiding Judge, Regional Trial Court, Branch 20, Cagayan De Oro City be found Guilty of gross inefficiency and gross misconduct and that he be FINED an amount equivalent to his salary and benefits (including SAJJ, RATA, JDF and Extraordinary Allowance) for six (6) months to be deducted from the retirement benefits due him to serve as a strong deterrent to judges who may wish to thwart the coercive powers of this Court by filing a certificate of candidacy; and

2. Atty. Taumaturgo U. Macabinlar, Branch Clerk of Court, RTC, Branch 20, Cagayan de Oro City, be found GUILTY of inefficiency and incompetence and FINED the amount of FIFTY THOUSAND PESOS (₱50,000.00) with a STERN WARNING that a repetition of similar acts in the future shall be dealt with more severely. It is likewise recommended that he be RELIEVED from being appointed as Commissioner to receive *ex parte* evidence until the submission of Commissioner's Report in all cases where he was deputized as such.

Ruling

The Court agrees with the findings of the OCA.

Liability of Judge Pantanosas, Jr.

The speedy disposition of cases in our courts is a primary aim of the Judiciary, so that the ends of justice may not be compromised and the Judiciary will be true to its commitment to provide litigants their constitutional right to a speedy disposition of their cases.[40] The *Code of Judicial Conduct* mandates that a judge administers justice impartially and without delay.[41] Under the *New Code of Judicial Conduct for the Philippine Judiciary*,[42] a judge is obliged to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.[43] To comply with his obligation, he must display such interest in his office which stops not at the minimum of the day's labors fixed by the law, and which ceases not at the expiration of official seasons, but which proceeds diligently on holidays and by artificial light and even into vacation periods. Only thereby can he do his part in the great work of speeding up the administration of justice and rehabilitating the Judiciary in the estimation of the people.[44] Any unjustified failure to decide a case within the reglementary period constitutes gross inefficiency that deserves the imposition of the proper administrative sanctions. Hence, decision-making is his primordial and most important duty as a member of the Bench.

Based on the audit reports of the OCA's Audit Teams, Judge Pantanosas, Jr. did not live up to these tenets. Accordingly, he was administratively liable for gross inefficiency.

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[40] *Re: Report on the Judicial Audit Conducted in the RTC-Br. 37, Lingayen, Pangasinan*, A.M. No. 99-11-470-RTC, July 24, 2000, 336 SCRA 344, 351.

[41] Rule 1.02, Canon 1.

[42] A.M. No. 03-05-01-SC, effective on June 1, 2004.

[43] Canon 6, Sec. 5.

[44] *Re: Report on the Judicial Audit Conducted in the RTC, Br. 22, Kabacan, North Cotabato*, A.M. No. 02-8-441-RTC, March 3, 2004, 424 SCRA 206, 211.

Yet, Judge Pantanosas, Jr. seeks to avoid liability by attributing part of the delay in deciding the pending cases to the absence of the transcripts of stenographic notes.

The excuse interposed by Judge Pantanosas, Jr. is unacceptable. The Court has ruled in *Office of the Court Administrator v. Judge Aquino*[45] that the incompleteness of the transcripts of stenographic notes was not a valid reason for not deciding cases within the extended period granted by the Court, for, precisely, judges have been instructed to take notes of the salient portions of their hearings, and to proceed in the preparation of their decisions without waiting for the tanscripts.[46] To let judges await the transcription of the stenographic notes before they could render their decisions would cause undue delays because judges could then easily find justifications for failing to comply with the mandatory period to decide cases. Verily, the proper and efficient management of his court is the responsibility of every presiding judge – he alone is directly responsible for the proper discharge of official functions.[47]

Judge Pantanosas, Jr. could not also cite the incompleteness of the TSNs as an excuse for not deciding the cases inherited from a predecessor judge. This is because it was entirely within his power as the incumbent presiding judge to compel the stenographic reporters concerned to complete their transcripts, or face sanctions. He could also have resorted to other ways of seeing to the reproduction of testimonies should the incompleteness ever prevent the performance of his primary responsibility to resolve the cases. But it is clear to us that he did not exert his best effort towards that end. Consequently, he had no one else to blame but himself.

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[45] A.M. No. RTJ-00-1555, June 22, 2000, 334 SCRA 179, 184.

[46] *Guitante v. Bantuas*, Adm. Matter No. 1638-CFI, January 28, 1980, 95 SCRA 433, 435.

[47] *Report on the On-the-Spot Judicial Audit Conducted in the Regional Trial Court, Branches 45 and 53, Bacolod City*, A.M. No. 00-2-65-RTC, February 15, 2005, 451 SCRA 303, 316-317.

Under Rule 140 of the *Rules of Court*, as amended, undue delay in rendering a decision is classified as a less serious charge that carries with it the penalty of suspension from office without salary and other benefits for not less than one nor more than three months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. However, the offense of Judge Pantanosas, Jr. did not involve only a single but several unrendered decisions. Hence, his offense was a compounded one worthy of the highest sanction.

We are much dismayed to uncover that in addition to his gross inefficiency, Judge Pantanosas, Jr. was guilty of a grave misconduct pursuant to Section 8, Rule 140 of the *Rules of Court*, as amended,[48] by submitting false certificates of service in which he certified that he did not have any unresolved cases and matters pending in his court's docket. Thereby, he defrauded the Government. The certificates of service were not only the means to ensure his paycheck but were also the instruments by which the Court could fulfill the constitutional mandate of the people's right to a speedy disposition of cases. His dishonesty – because it badly reflected on his integrity as a member of the Judiciary and seriously undermined his service to our country and people – merited for him the very high penalty of suspension without pay for a period of six months, similar to what the Court prescribed for a judge who did not timely decide an election protest for eight months and submitted false certificates of service, in addition to being found guilty of habitual absenteeism.[49]

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[48] Section 8. *Serious charges* include:

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2. **Dishonesty** and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);

x x x x x x x x x

[49] *Bolalin v. Occiano*, A.M. No. MTJ-96-1104, January 14, 1997, 266 SCRA 203, 211.

This is not the first time that Judge Pantanosas, Jr. is administratively sanctioned. In *Uy v. Judge Pantanosas, Jr.*,[50] the Court already declared him guilty of gross inefficiency for the undue delay in the resolution of Civil Case No. 2002-241,[51] and fined him ₱10,000.00 with a warning that a repetition of a similar act would be dealt with more severely.

Given all the circumstances, Judge Pantanosas, Jr. was guilty of two grave offenses of compounded gross inefficiency and dishonesty. With the aggravating circumstance of his having been already severely sanctioned for the similar offense of failure to decide a case within the reglementary period, the highest penalty is warranted. That penalty would be dismissal from the service had he still been in the active service. But the filing on March 29, 2007 of his certificate of candidacy to run for public office automatically deemed him resigned from the service. Accordingly, the Court sanctions him properly by forfeiting all his retirement benefits, except earned leave credits.

Liability of Atty. Macabinlar

The Court adopts the recommendation of the OCA finding Atty. Macabinlar guilty of gross inefficiency and incompetence. Branch Clerks of Court are officers who perform vital functions in the prompt and efficient administration of justice. Their office is at the core of the adjudicative and administrative orders, processes and concerns. One of their most important responsibilities is to conduct monthly physical inventory of cases. It is also their duty to assist in the proper management of the calendar of the court and in all matters that do not involve discretion or judgment that is the exclusive province of their judges. As such, they are required to be persons of

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[50] A.M. RTJ-07-2094, December 10, 2007, 539 SCRA 514, 516-517.

[51] Entitled *Silver Swan Manufacturing Corporation v. Cuerquiz,* for judicial abatement of nuisance with prayer for mandatory injunction and damages.

competence, honesty and probity, and are not permitted to be lackadaisical on the job.[52]

This finding against Atty. Macabinlar serves to underscore the value of a Branch Clerk of Court like him in the organization of the Regional Trial Courts. Atty. Macabinlar did not tender any satisfactory explanation for his consistent failure to promptly submit the monthly report of cases, and for his failure to timely accomplish the Commissioner's Reports in the 39 cases assigned to him for *ex parte* reception of evidence. He is administratively liable. He ought to recognize that the great responsibility of ensuring that delays in the disposition of cases be kept to a minimum rested not only on the judge but also on him as the Branch Clerk of Court.[53]

The modified recommendation by then Court Administrator Elepaño for the imposition of a ₱50,000.00 fine is too harsh, however, for it would in effect require Atty. Macabinlar to continue rendering service as the Branch Clerk of Court without compensation until he would have fully paid the fine out of his salary. The fact that the offense was the first for him is a mitigating circumstance in his favor. As such, his suspension of one month without pay, plus a severe warning against a repetition, is sufficient.

WHEREFORE, the Court:

1. **FINDS** Judge **GREGORIO D. PANTANOSAS, JR.**, retired Presiding Judge of Branch 20 of the Regional Trial Court in Cagayan de Oro City, **GUILTY** of **TWO COUNTS OF GROSS MISCONDUCT**; and **DECLARES** his retirement benefits **FORFEITED**, without prejudice to the payment to him of any balance of his earned leave credits; and

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[52] *Re: Judicial Audit Conducted in the Regional Trial Court, Branch 54, Lapu-Lapu City*, A.M. No. 05-8-539-RTC, November 11, 2005, 474 SCRA 455, 463.

[53] *Re: Report on the Judicial Audit Conducted at the Municipal Trial Court in Cities (Branch 1), Surigao City*, A.M. No. P-04-1835, January 11, 2005, 448 SCRA 13, 23.

2. **PRONOUNCES** Atty. **TAUMATURGO U. MACABINLAR**, Branch Clerk of Court, Branch 20 of the Regional Trial Court in Cagayan de Oro **GUILTY** of **INEFFICIENCY AND INCOMPETENCE**, and **SUSPENDS** him from office for one month without pay with a **STERN WARNING** that a repetition of the offense or similar acts shall be dealt with more severely.

After the service of his suspension, **ATTY. MACABINLAR** shall submit the Commissioner's Reports respecting the 21 remaining cases enumerated under Table 6 of OCA Memorandum dated April 11, 2008, and to furnish the Office of the Court Administrator with copies of the Commissioner's Reports immediately upon his re-assumption of office following the service of his suspension. He shall be disqualified from serving as a Commissioner to receive evidence *ex parte* until the submission of all Commissioner' Reports in the cases for which he had been so authorized to receive evidence.

SO ORDERED.

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

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

Del Castillo, J., no part.

Perlas-Bernabe, J., on leave.

SECOND DIVISION

[A.C. No. 7961. March 19, 2014]

ATTY. CLODUALDO C. DE JESUS, *complainant, vs.* **ATTY. ALICIA A. RISOS-VIDAL,** *respondent.*

SYLLABUS

LEGAL ETHICS; DISCIPLINE OF LAWYERS; DISBARMENT OR SUSPENSION; THE SUPREME COURT HAS CONSISTENTLY HELD THAT CLEAR PREPONDERANT EVIDENCE IS NECESSARY TO JUSTIFY THE IMPOSITION OF ADMINISTRATIVE PENALTY; PREPONDERANCE OF EVIDENCE, EXPLAINED.— As a rule, an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved. The burden of proof in disbarment and suspension proceedings always rests on the complainant. Considering the serious consequence of disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of administrative penalty. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. Thus, not only does the burden of proof that the respondent committed the act complained of rests on complainant, but the burden is not satisfied when complainant relies on mere assumptions and suspicions as evidence. In the present case, we find that De Jesus failed to discharge the burden of proving Risos-Vidal's administrative liability by clear preponderance of evidence. Except for his allegations, De Jesus did not present any proof to substantiate his claim that Risos-Vidal used her position as Director of the IBP-CBD to enhance her law practice. x x x De Jesus cannot likewise shift the burden of proof to Risos-Vidal by asking her to present the testimonies of Condenuevo, Po and Armas. It is axiomatic that he who alleges an act has the *onus* of proving it. If the burden of proof is not overcome, the respondent is under no obligation to prove her defense.

APPEARANCES OF COUNSEL

De Jesus & Associates for complainant.

R E S O L U T I O N

CARPIO, *J.*:

The Case

Before the Court is a disciplinary action filed by Atty. Clodualdo C. De Jesus (De Jesus) against Atty. Alicia A. Risos-Vidal (Risos-Vidal), then Director of the Integrated Bar of the Philippines, Commission on Bar Discipline (IBP-CBD), for gross misconduct, dishonesty and gross unethical behavior.

The Facts

The facts, as culled from the records, are as follows:

The present administrative case stemmed from Civil Case No. 99-93873, *"Anastacia F. Torres, Plaintiff, v. Susan F. Torres, Defendant"* (civil case), where De Jesus acted as counsel for the defendant Susan F. Torres (Torres).

On 16 May 2006, the Regional Trial Court of Manila, Branch 28 (RTC) issued a decision approving the compromise agreement of the parties in the civil case. On 12 September 2007, De Jesus filed an omnibus motion (motion) to compel Torres to pay ₱4,000,000.00 as success fees and to sell some of Torres' properties, the certificates of title of which were still with De Jesus.

On 6 November 2007, Torres filed an administrative complaint[1] (complaint) against De Jesus before the IBP-CBD, alleging that De Jesus refused to return her certificates of title despite already paying attorney's fees amounting to ₱2,436,820.96.

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[1] *Rollo,* pp. 20-22.

On 7 November 2007, Risos-Vidal, then Director of IBP-CBD, issued an order[2] requiring De Jesus to answer the complaint filed by Torres.

In the meantime, Risos-Vidal became the new counsel of Torres in the civil case and she filed a comment[3] dated 7 December 2007 to De Jesus' motion. The comment stated that De Jesus already received more than what he was entitled as attorney's fees, and still he refused to return Torres' certificates of title despite the termination of his services. On 20 December 2007, De Jesus filed his manifestation/compliance in the civil case, attaching Torres' certificates of title and conditioning their release upon the payment of his success fees.

In compliance with the order of Risos-Vidal, De Jesus filed his answer[4] dated 18 January 2008 to the complaint. In his answer, De Jesus alleged that the subject matter of the complaint was sub judice because of the civil case, and Risos-Vidal took advantage of her position as Director of the IBP-CBD by actually preparing the complaint against him and by issuing an order the next day. On 6 March 2008, Torres filed her reply[5] alleging that Atty. Solomon L. Condenuevo (Condenuevo) prepared her complaint against De Jesus, and not Risos-Vidal.

On 10 June 2008, Atty. Anthony L. Po (Po) and Atty. Jose Paolo C. Armas (Armas) entered their appearances as counsels for Torres in the complaint against De Jesus before the IBP-CBD. On 23 June 2008, Torres, through Po and Armas, filed a supplemental and/or amended complaint[6] expounding the

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[2] *Id*. at 19. The order states that: "Pursuant to Rule 139-B, Sec. 6 of the Rules of Court, respondent is hereby ordered to submit his Answer to the attached copy of the complaint, duly verified, in six (6) copies, and furnish the complainants with a copy thereof, within fifteen (15) days from receipt of this Order. Failure to do so, the Commission will consider you in default and this case shall be heard *ex-parte.*"

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

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

[5] *Id*. at 96-98.

[6] *Id*. at 204-207.

grounds for the complaint such as De Jesus' collecting of exorbitant attorney's fees, withholding of certificates of title and failing to file a case despite payment of his fees.

On 7 July 2008, De Jesus filed this present administrative complaint[7] before the Court accusing Risos-Vidal of gross misconduct, dishonesty and gross unethical behavior under Rule 138, Section 27 of the Rules of Court.[8] In this present administrative complaint, De Jesus alleged that Risos-Vidal actually prepared the following: (1) Torres' complaint against him; (2) reply; and (3) the supplemental and/or amended complaint, which were then filed before her IBP-CBD office. Risos-Vidal allegedly converted the issue in the civil case into an administrative complaint against him, and used Po and Armas in filing the supplemental and/or amended complaint. According to De Jesus, Risos-Vidal used her position as Director of IBP-CBD to enhance her private practice.

In a comment dated 20 October 2008,[9] Risos-Vidal denied any participation in the complaint filed against De Jesus. Risos-Vidal alleged that De Jesus failed to present evidence to support his accusations, while she attached Torres' affidavit[10] stating that: (1) Condenuevo prepared her complaint against De Jesus; (2) even before retaining Risos-Vidal's services to defend her in the civil case, she already retained Condenuevo to file her complaint against De Jesus; and (3) when she could no longer contact

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[7] *Id*. at 1-10.

[8] Rules of Court, Rule 138, Section 27 provides: "A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice."

[9] *Rollo,* pp. 135-144.

[10] *Id*. at 177-180.

Condenuevo, she asked Po, her previous lawyer, to assist her in preparing her supplemental and/or amended complaint.

In a reply dated 5 November 2008,[11] De Jesus alleged that there were similarities in contents, style and computer used between the pleadings submitted by Torres with the IBP-CBD and those filed by Risos-Vidal in the civil case. De Jesus also attacked Risos-Vidal's failure to adduce the sworn statements of Condenuevo, Po and Armas to substantiate her denial. De Jesus likewise accused Torres of lying because Torres' affidavit stated that she engaged the services of Po on 18 June 2008, but Armas' acknowledgement receipt was dated 3 June 2008.

In a Resolution dated 8 December 2008,[12] the Court, through the First Division, referred this case to the IBP for investigation, report and recommendation.

The IBP's Report and Recommendation

In an Order dated 13 March 2009,[13] IBP Commissioner Salvador B. Hababag (Commissioner Hababag) stated that both De Jesus and Risos-Vidal appeared during the mandatory conference. They agreed that admissions and stipulations shall be limited to the pleadings already filed.

In a Report and Recommendation dated 6 July 2009,[14] Commissioner Hababag recommended that the administrative complaint against Risos-Vidal be dismissed for lack of merit. He found that De Jesus had not only failed to show sufficient proof in support of his claim, but Risos-Vidal also rebutted his accusation with preponderant evidence.

In Resolution No. XIX-2010-177[15] passed on 26 February 2010, the IBP Board of Governors adopted and approved Commissioner Hababag's report and recommendation, to wit:

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[11] *Id.* at 189-197.

[12] *Id.* at 251.

[13] *Id.* at 261.

[14] *Id.* at 393-402.

[15] *Id.* at 479.

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that the complaint lacks merit, the same is hereby **DISMISSED**.
>
> N. B. CBD Director Alicia A. Risos-Vidal stepped out of the room and took no part on the discussion of this case considering that she is the respondent in this case.

In Resolution No. XIX-2011-122[16] passed on 12 April 2011, the IBP Board of Governors likewise denied the motion for reconsideration filed by De Jesus since the Board found no cogent reason to reverse its initial findings.

Hence, De Jesus filed this petition.[17]

The Ruling of the Court

We sustain the findings and recommendations of the IBP Board of Governors.

As a rule, an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved.[18] The burden of proof in disbarment and suspension proceedings always rests on the complainant.[19] Considering the serious consequence of disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of administrative penalty.[20] Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater

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[16] *Id*. at 478.

[17] *Id*. at 496-521. Petition for review on *certiorari* dated 10 August 2011.

[18] *Joven v. Cruz,* A.C. No. 7686, 31 July 2013, 702 SCRA 545.

[19] *Id*.; *Ylaya v. Gacott*, A.C. No. 6475, 30 January 2013, 689 SCRA 452; *Chan v. Go,* A.C. No. 7547, 4 September 2009, 598 SCRA 145; *Berbano v. Barcelona,* 457 Phil. 331 (2003).

[20] *Ylaya v. Gacott*, *supra* note 19; *Berbano v. Barcelona, supra* note 19.

weight than that of the other.[21] Thus, not only does the burden of proof that the respondent committed the act complained of rests on complainant, but the burden is not satisfied when complainant relies on mere assumptions and suspicions as evidence.[22]

In the present case, we find that De Jesus failed to discharge the burden of proving Risos-Vidal's administrative liability by clear preponderance of evidence. Except for his allegations, De Jesus did not present any proof to substantiate his claim that Risos-Vidal used her position as Director of the IBP-CBD to enhance her law practice.

Under the Rules of the IBP-CBD, within two (2) days from receipt of the verified complaint, the IBP-CBD shall issue the required summons, stating that the respondent has fifteen (15) days from receipt within which to file his answer.[23] As Director of the IBP-CBD, Risos-Vidal merely complied with the rules when after the IBP-CBD received the complaint against De Jesus, she ordered him to answer the complaint. Risos-Vidal issued the order to De Jesus in a ministerial capacity, with no discretion, and even before she became the new counsel of Torres in the civil case.

The Rules of the IBP-CBD further provide that after receiving the answer of the respondent, the case shall be assigned by raffle to an Investigating Commissioner.[24] The Investigating Commissioner shall then set a mandatory conference, direct the submission of position papers, conduct clarification

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[21] *Ylaya v. Gacott, supra* note 19.

[22] *Rubin v. Corpus-Cabochan,* OCA I.P.I. No. 11-3589-RTJ, 29 July 2013, 702 SCRA 330, citing *Dela Peña v. Huelma,* 530 Phil. 322 (2006).

[23] Rules of the Commission on Bar Discipline, Rule III, Section 3 provides: "Issuance of Summons. Within two (2) days from receipt of the verified complaint, the Commission shall issue the required summons, attaching thereto a copy of the complaint and supporting documents, if any. The summons shall indicate that the respondent has fifteen (15) days from receipt within which to file six (6) verified copies of his answer."

[24] Rules of the Commission on Bar Discipline, Rule IV, Section 2.

questioning, and submit his report and recommendation to the IBP Board of Governors.[25] Every case heard by the Investigating Commissioner shall thereafter be reviewed by the IBP Board of Governors.[26] In the present case, the Investigating Commissioner assigned to the complaint against De Jesus was not Risos-Vidal, but Commissioner Eduardo V. De Mesa.[27]

Thus, Risos-Vidal could not have used her position as Director of IBP-CBD against De Jesus. The Rules further provide that it is the IBP Board of Governors, by majority vote of its total membership, which determines whether respondent should be recommended for suspension from the practice of law or for disbarment.[28]

On the other hand, De Jesus insisted that Risos-Vidal acted as Torres' counsel in the complaint filed against him because the pleadings filed by Risos-Vidal in the civil case are similar "in contents, style, and computer used" with the complaint against him. Clearly, De Jesus' claims are anchored on mere assumptions and suspicions, and not backed by clear preponderant evidence necessary to justify the imposition of administrative penalty on Risos-Vidal.

De Jesus cannot likewise shift the burden of proof to Risos-Vidal by asking her to present the testimonies of Condenuevo, Po and Armas. It is axiomatic that he who alleges an act has the *onus* of proving it.[29] If the burden of proof is not overcome, the respondent is under no obligation to prove her defense.[30]

In any case, as found by the IBP, Risos-Vidal has, in her favor, the following evidence: (1) the supplemental and/or amended

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[25] Rules of the Commission on Bar Discipline, Rule V, Sections 1, 2, 3 and 7.

[26] Rules of Court, Rule 139-B, Section 12 (a).

[27] *Rollo*, pp. 4, 99 and 111.

[28] Rules of Court, Rule 139-B, Section 12 (b).

[29] *Chan v. Go, supra* note 19.

[30] *Anonymous v. Achas*, A.M. No. MTJ-11-1801, 27 February 2013, 692 SCRA 18, citing *Go v. Judge Achas*, 493 Phil. 343 (2005).

complaint signed by Torres, Po and Armas; (2) Torres' affidavit stating that Risos-Vidal had no participation in the complaint filed against De Jesus; (3) receipts that Torres paid Po and Armas their counsel fees; (4) the issuance of the order to De Jesus was part of Risos-Vidal's work as Director of IBP-CBD; and (5) the presumption of regularity in the performance of official duties.[31]

Considering that De Jesus failed to discharge the burden of proof to justify the imposition of administrative penalty against Risos-Vidal, we dismiss this complaint.

WHEREFORE, we **DISMISS** the complaint against respondent Atty. Alicia A. Risos-Vidal for lack of merit.

SO ORDERED.

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

THIRD DIVISION

[A.C. No. 9896. March 19, 2014]

MA. ELENA CARLOS NEBREJA, *petitioner, vs.* **ATTY. BENJAMIN REONAL,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISCIPLINE OF LAWYERS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 18.03, CANON 18 THEREOF; VIOLATED BY THE MERE FAILURE OF THE LAWYER TO PERFORM THE OBLIGATIONS DUE TO THE CLIENT; PRESENT IN CASE AT BAR.— Despite

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[31] *Rollo,* p. 401.

the engagement of his services, respondent did not file the contracted petition. His conduct, as held in *Vda. De Enriquez v. San Jose*, amounted to inexcusable negligence. This was found to be contrary to the mandate prescribed in Rule 18.03, Canon 18 of the Code of Professional Responsibility, which enjoined a lawyer not to neglect a legal matter entrusted to him. x x x This Court has consistently held, in construing this Rule, that the mere failure of the lawyer to perform the obligations due to the client is considered *per se* a violation. Thus, a lawyer was held to be negligent when he failed to do anything to protect his client's interest after receiving his acceptance fee. x x x In this case, respondent clearly received his acceptance fee, among others, and then completely neglected his client's cause. Moreover, he failed to inform complainant of the true status of the petition. His act of receiving money as acceptance fee for legal services in handling the complainant's case and, subsequently, failing to render the services, was a clear violation of Canon 18 of the Code of Professional Responsibility. For all of respondent's acts - failure to file the contracted petition for annulment of marriage in behalf of the complainant, his misrepresentation on its status and his use of a fictitious office address, he deserves the penalty imposed upon him by the IBP.

2. ID.; ID.; ID.; ID.; ID.; THE COURT HAS RECENTLY ADOPTED A POLICY TO LET THE COMPLAINANT CLAIM AND COLLECT THE AMOUNT DUE FROM THE RESPONDENT IN AN INDEPENDENT ACTION, CIVIL OR CRIMINAL; CASE AT BAR.— The Court, however, deletes the aforementioned order stated in the resolution of the IBP, to wit, "To return the amount of Eighty Thousand Nine Hundred Pesos (₱80,900.00) to complainant within five (5) days from notice with 12% interest per annum from the date this recommendation is affirmed by the Supreme Court." The Court has recently adopted the policy to let the complainant claim and collect the amount due from the respondent in an independent action, civil or criminal.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for complainant.

RESOLUTION

MENDOZA, *J.*:

For resolution is the administrative complaint for disbarment[1] filed by Ma. Elena Carlos Nebreja *(complainant)* against Atty. Benjamin Reonal *(respondent)* for his failure to file the contracted petition for annulment of marriage in her behalf; for his misrepresentation on its status; and for his use of a fictitious office address.

On June 26, 2006, complainant filed a verified Complaint-Affidavit before the Commission on Bar Discipline *(CBP)* of the Integrated Bar of the Philippines against respondent. Complainant alleged in her complaint-affidavit and position paper that sometime in March 2004, she engaged respondent's services to file her petition for annulment. She paid in cash and in checks,[2] the various fees he asked from her on several occasions which totalled ₱55,000.00.

After paying respondent, however, complainant did not receive any word from him with regard to the status of her petition for annulment other than his claim that they needed to wait for her appointment with the psychologist evaluation.

On April 4, 2005, respondent told complainant that her petition for annulment was dismissed for lack of evidence. He then again asked for sums of money, on separate occasions, totalling ₱25,900.00, to pay for the psychological test, the sheriff's fee, the re-filing fee, and the publication. Complainant again, despite respondent's receipt of sums of money, failed to receive any update from respondent.

When complainant asked for the schedule of her psychological test, respondent merely told her that the psychologist was unavailable. When she tried to ask for the number of her case and to obtain copies of the records, respondent just told her

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

[2] *Id.* at 6-14.

that the records were kept in a cabinet, the key to which was in the possession of his law partner who was out of town at that time.

On March 14, 2006, complainant met with respondent to secure copies of her annulment case file. Respondent, however, merely handed to her photocopies of her marriage contract and her children's birth certificates. When she asked for copies of her case files, he just told her that his law office could not let her use the pleadings of the case. She then asked for his office address to appeal to his law partners, but respondent refused to give it.

Complainant checked her records and found respondent's demand letter bearing the address of his claimed law office, "18/f Century Towers Building, Legaspi St. corner de la Rosa, Makati." When complainant tried to look for the said office, she discovered that there was no such building. She also found respondent's calling card bearing the address, "86 Magat Salamat Street, Project 4, Quezon City," which, complainant found out, was respondent's residential address.

When complainant tried again to obtain copies of her annulment case from respondent, he did not give any and told her that her annulment case would just be re-filed. When she asked him to write a letter to explain to the University of Perpetual Help-Rizal the discrepancy between the surnames appearing in her children's NSO-issued birth certificates and the school records, respondent did not mention any pending annulment case in the letter, which he filed in complainant's behalf. These circumstances made complainant suspect that he did not file any petition for annulment at all.

In his answer and position paper, respondent denied having been engaged by complainant to handle her petition for annulment and having been paid therefor. In particular, respondent averred that complainant did not engage him to be her lawyer because she was unemployed and could not afford his legal services; that he was the retained counsel of one Desiree Dee, complainant's associate, in the prosecution of labor, civil and criminal cases,

but not for her annulment; that in the preparation of the affidavit for the University of Perpetual Help, he did not mention her intention to pursue an annulment proceeding against her husband upon her request; and that no psychological test was conducted because she refused to allocate time to accommodate the schedule of the clinical psychologist.

There are two principal issues to be resolved in this case. First, whether indeed respondent failed to file the requisite petition for annulment for complainant and misrepresented its status; and second, whether or not he used a fictitious office address.

With regard to the first issue, the CBD found that respondent was liable for inexcusable negligence for failing to file her petition for annulment. There was no dispute that the parties met to discuss about the filing of complainant's intended petition for annulment of marriage. They, however, disagreed on the engagement of his services to file the petition.

On the matter, CBD found as sufficient the documentary evidence of payment submitted by complainant to prove the engagement of his legal services. During the clarificatory hearing, complainant answered the questions on the purposes for which the payments were given in a categorical, straightforward, spontaneous, and frank manner, which demeanor was a badge of credibility.[3]

The CBD did not give credence to respondent's denials, which prevailed over the positive and categorical statement of the complainant. It cited the well-settled rule that positive statement was stronger and attained greater evidentiary weight than negative evidence.[4] Moreover, he did not submit any evidence to support or corroborate his denials and allegations or to refute complainant's evidence. In sum, his claims were merely supported by his allegations, which, by law, were not equivalent to proof.[5]

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[3] *People v. Baltazar*, 385 Phil. 1023 (2000).

[4] *Republic v. Bautista*, 559 Phil. 360 (2007).

[5] *Sadhwani v. Court of Appeals*, 346 Phil. 54 (1997).

With regard to the second issue, the CBD found that indeed, respondent used a fictitious office address to deceive complainant. He did not submit any proof that such building existed or that he held office at said address. He also did not deny either the due execution and authenticity of the letter with his printed office address. By failing to controvert the evidence of the other party, the truth of the said evidence was deemed to be admitted by the litigant.[6] Such act, as held by the CBD, was a violation of respondent's lawyer's oath to do no falsehood and which consequently rendered him administratively liable.

On September 25, 2008, the CBD found respondent guilty of both charges and recommended his suspension from the practice of law and ordered him to return the amounts taken from the complainant. The dispositive portion of its report reads:

> WHEREFORE, it is therefore respectfully recommended that respondent be: (a) suspended from the practice of law for a period of one (1) year; and (b) ordered to return to complainant, within five (5) days from notice, the sum of ₱80,900.00 with 12% interest *per annum* from the date when this recommendation is affirmed by the Supreme Court until the full amount shall have been returned.

On December 11, 2008, a resolution was passed by the Board of Governors of the IBP, which adopted and approved the recommendation of the CBD. The IBP Resolution is hereby quoted as follows:

> RESOLUTION NO. XVIII-2008-652
> CBD Case No. 06-1767
> Ma. Elena Carlos Nebreja vs.
> Atty. Benjamin Reonal
>
> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Rule 18.03, Canon

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[6] *Manila Bay Club Corporation v. Court of Appeals*, 319 Phil. 413 (1995).

18 of the Code of Professional Responsibility for his inexcusable negligence by failure to file the annulment petition and for misrepresentation, Atty. Benjamin Reonal is hereby SUSPENDED from the practice of law for one (1) year and Ordered to return the amount of Eighty Thousand Nine Hundred Pesos (₱80,900.00)* to complainant within five (5) days from notice with 12% interest per annum from the date this recommendation is affirmed by the Supreme Court.

Complainant and respondent filed their motions for reconsideration on April 25, 2009 and April 27, 2009 respectively, but both were denied in a resolution, dated January 3, 2013.

After a thorough review of the records, the Court agrees with the resolution of the IBP except with respect to the order to return the amount of ₱80,900.00.

Despite the engagement of his services, respondent did not file the contracted petition. His conduct, as held in *Vda. De Enriquez v. San Jose*,[7] amounted to inexcusable negligence. This was found to be contrary to the mandate prescribed in Rule 18.03, Canon 18 of the Code of Professional Responsibility, which enjoined a lawyer not to neglect a legal matter entrusted to him.

Rule 18.03, Canon 18 of the Code of Professional Responsibility provides for the rule on negligence and states:

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

This Court has consistently held, in construing this Rule, that the mere failure of the lawyer to perform the obligations due to the client is considered per se a violation.[8] Thus, a lawyer was held to be negligent when he failed to do anything to protect his client's interest after receiving his acceptance fee.[9] In

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[7] 545 Phil. 379 (2007).

[8] *Solidon v. Macalad*, A.C. No. 8158, February 24, 2010, 613 SCRA 472.

[9] *Villafuerte v. Cortez*, 351 Phil. 915 (1998).

another case,[10] this Court has penalized a lawyer for failing to inform the client of the status of the case, among other matters. In another instance, for failure to take the appropriate actions in connection with his client's case, the lawyer was suspended from the practice of law for a period of six months and was required to render accounting of all the sums he received from his client.[11]

With regard to respondent's misrepresentation of his office address, the case of *Porac Trucking, Inc. v. Court of Appeals*,[12] sets an example. In the said case, the Court imposed a six-month suspension on the lawyer after it was established that the said lawyer indeed claimed to be a lawyer of Porac Trucking, Inc. when, in truth and in fact, he was not. Still, in another case,[13] the same six (6) month suspension was imposed on the erring lawyer after it was established that he claimed before the trial court to be a member of Citizens Legal Assistance Office when in truth, he was not.

In this case, respondent clearly received his acceptance fee, among others, and then completely neglected his client's cause. Moreover, he failed to inform complainant of the true status of the petition. His act of receiving money as acceptance fee for legal services in handling the complainant's case and, subsequently, failing to render the services, was a clear violation of Canon 18 of the Code of Professional Responsibility.[14]

For all of respondent's acts - failure to file the contracted petition for annulment of marriage in behalf of the complainant, his misrepresentation on its status and his use of a fictitious office address, he deserves the penalty imposed upon him by the IBP.

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[10] *Garcia v. Atty. Manuel*, 443 Phil. 479 (2003).

[11] *Reyes v. Vitan*, 496 Phil. 1 (2005).

[12] 279 Phil. 736 (1991).

[13] *Afurong v. Aquino*, 373 Phil. 695 (1999).

[14] *Reyes v. Vitan*, *supra* note 11.

The Court, however, deletes the aforementioned order stated in the resolution of the IBP, to wit, "To return the amount of Eighty Thousand Nine Hundred Pesos (₱80,900.00) to complainant within five (5) days from notice with 12% interest per annum from the date this recommendation is affirmed by the Supreme Court." The Court has recently adopted the policy to let the complainant claim and collect the amount due from the respondent in an independent action, civil or criminal.

Nevertheless, the Court looks with disfavor at the non-payment by a lawyer of his due obligations.

WHEREFORE, the December 11, 2008 Resolution of the IBP adopting and approving the September 25, 2008 Recommendation of the Commission on Bar Discipline of the IBP that Atty. Benjamin Reonal be suspended from the practice of law for one (1) year is hereby **APPROVED.** The order to return the amounts received from complainant is hereby **DELETED**. This decision is immediately executory and is without prejudice to the filing of any civil or criminal action against respondent.

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

[A.M. No. MTJ-13-1823. March 19, 2014]

P/SR. INSP. TEDDY M. ROSQUETA, *complainant, vs.* **JUDGE JONATHAN A. ASUNCION, MUNICIPAL TRIAL COURT IN CITIES, BRANCH 2, LAOAG CITY,** *respondent*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; THE CONDUCT REQUIRED OF COURT PERSONNEL, FROM THE PRESIDING JUDGE TO THE LOWLIEST CLERK, MUST ALWAYS BE BEYOND REPROACH AND CIRCUMSCRIBED WITH THE HEAVY BURDEN OF RESPONSIBILITY AS TO LET THEM BE FREE FROM ANY SUSPICION THAT COULD TAINT THE JUDICIARY; APPLICATION IN CASE AT BAR.— The incongruities contained in Judge Asuncion's explanation inevitably lead us to conclude that he took a personal interest in the firearm and appropriated it. Accountability for his actuations is inescapable for him. He was guilty of misusing evidence entrusted to his court. He thereby did not live up to the exacting standards prescribed by the *New Code of Judicial Conduct*, specifically its Canon 2 and Canon 4. x x x The admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to lower court judges. Indeed, judges are reminded that after having accepted their exalted position in the Judiciary, they owe to the public to uphold the exacting standards of conduct demanded of them. The circumstances obtaining here seriously tainted the good image and reputation of the Judiciary, even as it reflected badly on Judge Asuncion's personal and official reputation. As this Court held in *Re: Josefina V. Palon,* the conduct required of court personnel, from the Presiding Judge to the lowliest clerk, must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that could taint the judiciary.

2. ID.; ID.; VIOLATION OF THE CODE OF JUDICIAL CONDUCT IS CLASSIFIED AS GROSS MISCONDUCT; IMPOSABLE PENALTY.— Section 8, Rule 140 of the *Rules of Court* classifies violations of the *Code of Judicial Conduct* under the category of gross misconduct. We have defined gross misconduct as a "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer." Gross misconduct involves corruption, or an act that is inspired by the intention to violate the law, or that is a persistent disregard of well-known rules. Needless to state, any gross misconduct seriously undermines the faith and confidence of the people in the Judiciary. x x x Considering that this is the first time that Judge Asuncion committed a serious administrative offense, we adopt the recommendation of the OCA to impose upon him a fine of ₱21,000.00, but have to issue to him a stern warning that a repetition of the same or similar acts will be dealt with more severely. He should likewise be directed to turn over the firearm to the PNP in accordance with SC Circular No. 47-98 within 10 days from notice, unless the firearm had already been turned over. The objective of disciplining an officer or employee is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the Government.

D E C I S I O N

BERSAMIN, *J.*:

The members of the Bench are one of the pillars of our justice system. They must strive to observe the highest standards of integrity and probity in their professional and personal lives. The public has the right to expect an unimpeachable bearing from them. This expectation is not limited to their judgments, but extends to their public demeanor, and should stand to the closest of scrutiny. They deserve to be condignly sanctioned otherwise.

Antecedents

On July 2, 2008, complainant Police Sr. Insp. Teddy M. Rosqueta, then Deputy Chief of Police of Bacarra, Ilocos Norte, filed an affidavit-complaint charging respondent Presiding Judge Jonathan A. Asuncion of the Municipal Trial Court in Cities (MTCC), Branch 2, in Laoag City, Ilocos Norte with grave misconduct and violation of the *New Code of Judicial Conduct*, specifically Canon 2, Rule 2.01.[1]

The antecedents of the charge follow.

At about 4:30 pm of April 25, 2008, Chief Insp. Jericho Baldeo, the Chief of Police of Bacarra, received a report about persons armed with firearms in the house of one Alex Asuncion. Chief Insp. Baldeo dispatched Sr. Insp. Rosqueta and other members of the Bacarra Municipal Police Station to verify the report. Sr. Insp. Rosqueta and his team proceeded to the area, where they found two shirtless males with guns tucked on their waists and immediately apprehended them for illegally possessing firearms, magazines and ammunitions. The arrestees were identified as Fidel Refuerzo and Rex Dalere. The firearm that became the subject of this administrative charge – identified as a DAEWOO 9mm pistol bearing serial number BA 005280 – was seized from Refuerzo.[2]

Based on Sr. Insp. Rosqueta's investigation, Refuerzo, a resident of *Barangay* 15, Bacarra, Ilocos Norte, worked as an associate/bodyguard of Judge Asuncion.[3] Upon verification at the Ilocos Norte Police Provincial Office of the Office of the Firearms and Explosives, Security Agencies and Guards Supervision (FESAGS), Refuerzo was found to be not listed as a registered or licensed holder of any kind and caliber of firearm.[4]

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[1] *Rollo*, pp. 2-5.

[2] *Id.* at 12.

[3] *Supra* note 1.

[4] *Rollo*, p. 15.

The investigation revealed that the firearm in question had been previously seized from the possession of one Joseph Canlas during an illegal drugs buy-bust operation conducted on August 23, 2005 in Darayday, Laoag City, Ilocos Norte; and that Sr. Insp. Rosqueta had led the buy-bust operation and had seen to the filing on August 24, 2005 of criminal cases charging Canlas with illegal possession of dangerous drugs in violation of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act*), and with the illegal possession of a firearm and ammunition in violation of Presidential Decree No. 1866, as amended by Republic Act No. 8294.

The criminal case for illegal possession of firearms, docketed as Criminal Case No. 34412, was assigned to Branch 2 where Judge Asuncion presided.[5] However, Canlas moved to quash the information in Criminal Case No. 34412 on the ground that under Republic Act No. 8294, the illegal possession of firearms and ammunitions could not be prosecuted as a separate offense if the firearm and ammunitions had been seized during the commission of the other crime of illegal possession of dangerous drugs.[6]

On September 12, 2005, pending the resolution of Canlas' motion to quash, Sr. Insp. Rosqueta formally moved for the release of the DAEWOO 9mm pistol bearing serial number BA 005280 "for ballistic and cross matching examination with some other crimes committed wherein a caliber 9mm pistol was used."[7] In his order dated September 13, 2005,[8] Judge Asuncion denied Sr. Insp. Rosqueta's motion on the ground that it lacked the conformity of the public prosecutor.

On October 5, 2005, Judge Asuncion granted the motion to quash and dismissed Criminal Case No. 34412.[9]

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[5] *Id*. at 134.

[6] *Id*. at 73.

[7] *Id*. at 26.

[8] *Id*. at 27.

[9] *Id*. at 29-30.

On January 16, 2006, then Assistant City Prosecutor Myra Sheila Nalupta-Barba filed a motion seeking the turnover of the DAEWOO 9mm pistol bearing serial number BA 005280 to the Laoag City Prosecutor's Office to enable said office to act upon the request of the PNP Provincial Office to include the firearm in the list of PNP properties for the use of PNP personnel.[10] In his order dated April 11, 2006, however, Judge Asuncion denied the motion for lack of merit.[11]

Upon the recovery of the firearm some two years after the dismissal of Criminal Case No. 34412, Sr. Insp. Rosqueta insisted that Judge Asuncion should have turned over the firearm to the PNP to accord with Supreme Court (SC) Circular No. 47-98, to wit:

> 7. Firearms being used as evidence in courts will only be turned-in to FEO (now Firearms and Explosives Division) upon the termination of the cases or when it is no longer needed as evidence.
>
> Strict compliance herewith is enjoined.

Sr. Insp. Rosqueta also contended that Judge Asuncion committed serious misconduct because he had shown malicious interest in the firearm by allowing his bodyguard to take possession of the firearm.

In his comment dated October 24, 2008,[12] Judge Asuncion maintained that he did not commit any indiscretion in denying the motions to withdraw the exhibits in Criminal Case No. 34412; that SC Circular No. 47-98 did not apply because the information in Criminal Case No. 34412 had been quashed, leaving the firearm as unoffered evidence; that the reasons proffered by Sr. Insp. Rosqueta and the Office of the City Prosecutor were unavailing, because the firearm could neither be forfeited in favor of the Government nor released to the Firearms and Explosives Division if the information, being void, did not validly charge Canlas

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[10] *Id*. at 31.

[11] *Id*. at 33.

[12] *Id*. at 46-54.

with the alleged crime; that the firearm still impliedly belonged to Canlas; and that Sr. Insp. Rosqueta had usurped the authority of his superior officer and the City Prosecutor by taking it upon himself to file the motion to withdraw the firearm without the consent of either official.

Judge Asuncion recalled that two years after the quashal of the information against Canlas in Criminal Case No. 34412, the clerk of court presented the firearm to him and inquired about what should be done to dispose it; that he then contemplated transferring the custody of the firearm to the PNP Provincial Office, and accordingly instructed the clerk of court to put the firearm in the trunk of his car;[13] that he planned to discuss the transfer with the PNP Provincial Director on April 21, 2008 before issuing the order corresponding thereto; that he meanwhile fell ill with acute bronchitis and underwent medical treatment in the period of April 21-30, 2008; that when he accompanied his daughter to enroll in Baguio City on April 25, 2008, he asked his brother-in-law, Randy Esperanza, to bring the car to a mechanic, but overlooked that the firearm was inside the trunk of the car; that he tried to call and tell Esperanza about the firearm but he could not reach the latter; that he called Refuerzo to have him look for Esperanza in the motor shop in order to instruct him to give the firearm to his sister for safekeeping; that unable to locate Esperanza, Refuerzo himself took the firearm from the car with the intention of delivering it to the sister of Esperanza; and that on his way home from the motor shop, Refuerzo dropped by his (Judge Asuncion) house, and it was there where the policemen frisked him allegedly for no reason at all and seized the firearm.[14]

In the Resolution promulgated on August 4, 2010,[15] the Court referred the administrative complaint to Executive Judge Conrado A. Ragucos of the Regional Trial Court in Laoag City for investigation, report, and recommendation.

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[13] *Id*. at 64.

[14] *Id*. at 64-65.

[15] *Id*. at 149.

Executive Judge Ragucos submitted his Investigation Report dated January 11, 2011, wherein he rendered his findings and observations, as follows:

1. Criminal Case No. 34412, *People of the Philippines vs. Joseph Canlas* was dismissed on technicality. The firearm subject of the Information was not yet offered as evidence, hence, the prosecution was deemed to be still in custody of the firearm. It was with the Court allegedly for safe keeping. By denying the Motion of the Prosecution to Withdraw the Exhibit, the respondent judge appears to have shown undue interest.

2. When the respondent Judge and the Clerk of Court discussed about what to do with the firearm, it was clear that the court does not need it anymore. There was no need to discuss it with the PNP Provincial Director. All that the respondent judge should have done was to instruct the Clerk of Court to forward it to the Firearms and Explosives unit of the PNP through the Provincial Director in accordance with SC Circular No. 47-98. The respondent judge did not do this. Was it because the firearm was no longer in the custody of the court?

3. There was no need for the respondent judge to bring home the firearm. It had been safe in the locker of the court for two (2) years. It was the bringing home of the firearm by the respondent Judge which was the mainspring of confiscation of the firearm that seriously tainted the integrity of the judiciary.

4. In fairness to the respondent judge, there is no substantial evidence that he delivered the firearm to Fidel Refuerzo and that the latter was his bodyguard.[16]

Executive Judge Ragucos recommended that Judge Asuncion be held liable for simple misconduct and simple neglect of duty; and that a fine be imposed upon him at the Court's discretion.[17]

The Office of the Court Administrator (OCA) adopted the findings of Executive Judge Ragucos. It noted the two opportunities in which Judge Asuncion could have turned over

[16] *Id.* at 79-80.

[17] *Id.* at 80.

the firearm long after Criminal Case No. 34412 had been dismissed; that by denying the motions to withdraw the firearm as an exhibit, "it cannot be gainsaid that he took a special interest in the subject firearm;"[18] and that it was incomprehensible that Judge Asuncion supposedly brought the firearm home seven days prior to its seizure although it had lain undisturbed in the custody of the court for nearly two years.

The OCA recommended the following:

1. This case be TREATED as a regular administrative matter;

2. **Judge Jonathan A. Asuncion,** Branch 2, Municipal Trial Court in Cities, Laoag City, Ilocos Norte, be ADJUDGED GUILTY of gross misconduct constituting a violation of the Code of Judicial Conduct, and a FINE of Twenty-One Thousand Pesos (Php21,000.00) be IMPOSED upon him with a stern warning that a repetition of the same or similar acts will be dealt with more severely; and

3. Judge Asuncion be DIRECTED to turn-over within fifteen (15) days from notice the handgun (cal. 9mm pistol with serial number BA 005280) subject matter of this case to the Philippine National Police in accordance with Circular No. 47-98, unless the same had already been previously done.[19]

Issues

Did Judge Asuncion take the firearm and give it to Refuerzo? If so, did he violate the *New Code of Judicial Conduct* as to make him guilty of gross misconduct?

Ruling

After due consideration of the findings and evaluation of Executive Judge Ragucos, which the OCA adopted, we find that Judge Asuncion took the firearm and gave it to Refuerzo in violation of the *New Code of Judicial Conduct*. Accordingly, we pronounce him guilty of gross misconduct.

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[18] *Id*. at 139.

[19] *Id*. at 142.

1.
Explanations of Judge Asuncion were not entitled to credence

The firearm, then in the custody of Branch 2 of the MTCC, would have been evidence in Criminal Case No. 34412 to prove the charge of illegal possession of a firearm and its ammunitions, but its being offered as evidence did not ultimately come to pass because of the intervening quashal of the information on October 5, 2005 upon the motion of Canlas. Being unoffered evidence, the firearm had to be properly disposed of thereafter either by the Office of the City Prosecutor of Laoag City, whose evidence the firearm was supposed to be offered in court, or by the PNP, the agency expressly authorized by law to take custody of the firearm. Under SC Circular 47-98, *supra*, which was a substantial reiteration of SC Circular 2 dated May 13, 1983,[20] Judge Asuncion and his clerk of court in Branch 2 had the ministerial duty and the primary responsibility to turn over the firearm to the proper office of the PNP (*i.e.*, FESAGS) because it would no longer be needed as evidence upon the dismissal of Criminal Case No. 34412. A ministerial duty or function is one that an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of judgment upon the propriety or impropriety of the act to be done.[21] However, on April 11, 2006, Judge Asuncion denied the motion filed on January 16,

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[20] SC Circular No. 2 dated May 13, 1983 directed all clerks of court "to turn over, effective immediately, to the nearest Constabulary Command all firearms in your custody after the cases involving such firearms shall have been terminated. In Metro Manila, the firearms may be turned over to the Firearms and Explosives Unit at Camp Crame, Quezon City, while in the provinces, the firearms may be turned over to the respective PC Provincial Commands."

[21] *De Guzman, Jr. v. Mendoza,* A.M. No. P-03-1693, March 17, 2005, 453 SCRA 565, 571; *Sismaet v. Sabas,* A.M. No. P-03-1680, May 27, 2004, 429 SCRA 241, 247-248; *Philippine Bank of Communications v. Torio,* A.M. No. P-98-1260, January 14, 1998, 284 SCRA 67, 74, cited in *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission,* G.R. No. 144322, February 6, 2007, 514 SCRA 346, 357.

2006 by the Office of the City Prosecutor of Laoag City seeking the turnover of the firearm to the PNP.

The actuations of Judge Asuncion in relation to the firearm conceded that the dismissal of Criminal Case No. 34412 did not invest the rightful custody of the firearm either in him or his court. Yet, the established facts and circumstances show that he still appropriated the firearm and given it to Refuerzo, his bodyguard. His appropriation of the firearm would have gone undiscovered had not the team led by Sr. Insp. Rosqueta seized it from Refuerzo, who had nothing to do with its proper custody. It then became incumbent upon Judge Asuncion to explain how the firearm landed in the possession of Refuerzo.

In his comment, Judge Asuncion sought to explain by narrating that he had instructed the clerk of court to put the firearm in the trunk of his car because he would take up the turnover of the firearm personally with the PNP Provincial Director on April 21, 2008. Such explanation would justify why the firearm had been taken out of the court's custody. The explanation cannot command credence, however, because it was blatantly implausible. For one, even assuming that Judge Asuncion would be directly taking up the turnover of the firearm with the PNP Provincial Director, we cannot understand why he had to have the physical possession of the firearm to do so. Also, why Judge Asuncion would himself take the matter up with the PNP Provincial Director was puzzling considering that all he needed to do as the judge was to direct the clerk of court to deliver the firearm to the custody of the PNP Provincial Office, or simply to require a representative of the PNP Provincial Office to collect the firearm from the clerk of court. Either alternative would have substantially complied with the directive of SC Circular 47-98 regarding the firearm.

Judge Asuncion would further explain how the firearm landed in the possession of Refuerzo. He affirmed that when he requested his brother-in-law to bring the car to the mechanic he had overlooked that the firearm was still inside the trunk of his car after April 21, 2008; and that he remembered about the

firearm being in the trunk only after the car was already in the mechanic's shop. Thus, according to him, after having tried but failed to reach his brother-in-law by phone, he had requested Refuerzo to find his brother-in-law in the shop and have him take the firearm from the trunk of the car. However, Refuerzo, who was unable to find the brother-in-law, opted to get the firearm himself from the trunk of the car.

The foregoing story of how the firearm came into the hands of Refuerzo was incredible. To start with, carelessly or forgetfully leaving the firearm in the trunk of the car after April 21, 2008 was very unlikely for a judge like Judge Asuncion who had already irregularly taken the firearm from the effective custody of his court. Equally highly unlikely was for him to carelessly dispatch the car to the mechanic with the firearm still inside the trunk. Common experience would have him take the greatest care of the firearm as if it was his very own, instead, given the dire consequences to him if it were to be lost. And, thirdly, that Refuerzo should himself retrieve the firearm from the trunk, and then be caught red-handed by the PNP team under Sr. Insp. Rosqueta with the firearm in his possession was just too much of a coincidence. If the story of Refuerzo's part was true, his possession could easily and credibly be explained. But it seems to be far from the truth, with the records showing that the firearm was seized from Refuerzo when he was then shirtless and displaying the firearm along with another equally armed person.

Judge Asuncion did not clarify why there had been a delay of two years since the dismissal of the criminal case before he and the clerk of court would think of turning the firearm over to the PNP Provincial Office for the first time. Although SC Circular 47-98 did not so specify, the prompt and immediate compliance with its directive of turning the firearm over by either Judge Asuncion or the clerk of court was reasonably expected. The unexplained long delay could only mean that he had already taken personal interest in the firearm.

Judge Asuncion took the position that the firearm, unoffered in evidence because of the quashal of the information, still "impliedly belonged to Joseph Canlas;"[22] hence, the directive of SC Circular 47-98 for the turnover of the firearm to the PNP did not apply to the firearm involved here. His position is clearly untenable. Firstly, he had no discretion to withhold the firearm from the PNP and to return it instead to Canlas, who held no license or authority to possess it. Indeed, the turnover to the PNP was based on the clear and straightforward text and tenor of SC Circular 47-98 – *Firearms being used as evidence in courts will only be turned-in to FEO (now Firearms and Explosives Division) upon the termination of the cases or when it is no longer needed as evidence*. And, secondly, he did not sincerely believe in his own position, because he did he not order the return of the firearm to Canlas upon the dismissal of Criminal Case No. 34412.

The foregoing incongruities contained in Judge Asuncion's explanation inevitably lead us to conclude that he took a personal interest in the firearm and appropriated it. Accountability for his actuations is inescapable for him. He was guilty of misusing evidence entrusted to his court. He thereby did not live up to the exacting standards prescribed by the *New Code of Judicial Conduct*, specifically its Canon 2 and Canon 4, *viz*:

CANON 2
INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

Section 1. Judges 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.

Sec. 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

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[22] *Rollo*, p. 139.

CANON 4
PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

Section 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

The admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to lower court judges.[23] Indeed, judges are reminded that after having accepted their exalted position in the Judiciary, they owe to the public to uphold the exacting standards of conduct demanded of them. The circumstances obtaining here seriously tainted the good image and reputation of the Judiciary, even as it reflected badly on Judge Asuncion's personal and official reputation. As this Court held in *Re: Josefina V. Palon*,[24] the conduct required of court personnel, from the Presiding Judge to the lowliest clerk, must always be beyond reproach and circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that could taint the judiciary.

Section 8, Rule 140 of the *Rules of Court* classifies violations of the *Code of Judicial Conduct* under the category of gross misconduct. We have defined gross misconduct as a "transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."[25] Gross misconduct involves corruption, or an act that is inspired by the intention to violate the law, or that is a persistent disregard of well-known rules.[26] Needless to state, any gross misconduct

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[23] *Tabora v. Carbonell,* A.M. No. RTJ-08-2145, June 18, 2010, 621 SCRA 196, 209.

[24] A.M. No. 92-8-027-SC, September 2, 1992, 213 SCRA 219, 221.

[25] *Uy and Bascug v. Judge Javellana,* A.M. No. MTJ-07-1666, September 5, 2012, 680 SCRA 13, 41-42.

[26] *Almojuela, Jr. v. Judge Ringor*, A.M. No. MTJ-04-1521, July 27, 2004, 435 SCRA 261, 267; *Mercado v. Dysangco*, A.M. No. MTJ-00-1301, July 30, 2002, 385 SCRA 327, 332.

seriously undermines the faith and confidence of the people in the Judiciary.[27] A further reading of the rule provides the penalties therefor, to wit:

> Section 11. *Sanctions*.– A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
>
> 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
>
> 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00
>
> x x x x x x x x x

Considering that this is the first time that Judge Asuncion committed a serious administrative offense, we adopt the recommendation of the OCA to impose upon him a fine of ₱21,000.00, but have to issue to him a stern warning that a repetition of the same or similar acts will be dealt with more severely.[28] He should likewise be directed to turn over the firearm to the PNP in accordance with SC Circular No. 47-98 within 10 days from notice, unless the firearm had already been turned over.

The objective of disciplining an officer or employee is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the Government.[29] Judge Asuncion is

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[27] *De Guzman, Jr. v. Sison*, A.M. No. RTJ-01-1629, March 26, 2001, 355 SCRA 69.

[28] *Rollo*, p. 142.

[29] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, 608, citing *Bautista v. Negado, etc., and NAWSA*, 108 Phil. 283, 289 (1960), cited in *Government Service Insurance System v. Mayordomo*, G.R. No. 191218, May 31, 2011, 649 SCRA 667, 687.

reminded, therefore, that "the Constitution stresses that a public office is a public trust and public officers must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives. These constitutionally-enshrined principles, oft-repeated in our case law, are not mere rhetorical flourishes or idealistic sentiments. They should be taken as working standards by all in the public service."[30]

WHEREFORE, the Court **PRONOUNCES Judge JONATHAN A. ASUNCION**, Presiding Judge of Branch 2, Municipal Trial Court in Cities, in Laoag City **ADMINISTRATIVELY LIABLE** for **GROSS MISCONDUCT** for violating Section 1 and Section 2 of Canon 2, and Section 1 of Canon 4, of the *New Code of Judicial Conduct*; **FINES** him in the amount of ₱21,000.00 to be paid within fifteen (15) days from the finality hereof, with a stern warning that a repetition of the same or similar act will be dealt with more severely; and **DIRECTS** him to turn over the firearm known as DAEWOO 9mm pistol with serial number BA 005280 to the Philippine National Police in accordance with SC Circular No. 47-98 within 10 days from notice, unless the firearm had already been turned over.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and Reyes, JJ., concur.

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[30] *Id*.

FIRST DIVISION

[G.R. No. 158916. March 19, 2014]

HEIRS OF CORNELIO MIGUEL, *petitioners, vs.* **HEIRS OF ANGEL MIGUEL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; ELEMENTS.— *Res judicata* in the concept of conclusiveness of judgment precludes the complaint in Civil Case No. 2735. A better understanding of the fundamentals of *res judicata* and conclusiveness of judgment will explain and clarify the Court's ruling. The following are the elements of *res judicata*: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Under Rule 39 of the Rules of Court, *res judicata* embraces two concepts: (1) bar by prior judgment as enunciated in Section 47(b) of the said Rule and (2) conclusiveness of judgment as explained in Section 47(c) of the same Rule. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.

2. ID.; ID.; ID.; CONCEPT OF CONCLUSIVENESS OF JUDGMENT.— *Nabus v. Court of Appeals* clarifies the concept of conclusiveness of judgment further: The doctrine states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction

on either the same or a different cause of action, while the judgment remains unreversed or unvacated by proper authority. **The only identities thus required for the operation of the judgment as an estoppel x x x are identity of parties and identity of issues**. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit x x x.

3. ID.; ID.; ID.; FOR *RES JUDICATA* IN THE CONCEPT OF CONCLUSIVENESS OF JUDGMENT TO APPLY, IDENTITY OF CAUSE OF ACTION IS NOT REQUIRED BUT MERELY IDENTITY OF ISSUE.— Identity of parties is a requisite in the application of conclusiveness of judgment. So long as the parties or their privies are identical, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated whether or not the claim, demand, purpose, or subject matter of the two actions is the same. In this case, the Court of Appeals held the following as regards the issue of identity of parties: As further held, conclusiveness of judgment calls for identity of parties, not causes of action, and "there is identity of parties not only when the parties are the same but also those on privity with them, as between their successors in interest by title subsequent to the commencement of the action, litigation for the same thing and under the same title and in the same capacity, or when there is substantial identity of parties." In the present case, appellants were the successors in interest of petitioner Cornelio in Civil Case No. 1185 against respondent Angel, whereas in Civil Case No. 2735, appellees were the successors in interest of Angel. Undeniably, there is substantial identity of parties in the said two cases. And since the matter directly controverted and determined in Civil Case No. 1185 is the lot which is also the bone of contention in Civil Case No. 2735, the judgment rendered in the first case is conclusive in the

second case. The petitioners do not question the ruling of the Court of Appeals that there is identity of parties in Civil Case No. 1185 and Civil Case No. 2735. What the petitioners principally contend is that the judgment in Civil Case No. 1185 cannot bar Civil Case No. 2735 as the two cases involve different causes of action and different subject matters. However, for *res judicata* in the concept of conclusiveness of judgment to apply, identity of cause of action is not required but merely identity of issue.

4. ID.; ID.; ID.; FOR PURPOSE OF CONCLUSIVENESS OF JUDGMENT, IDENTITY OF ISSUES MEANS THAT THE RIGHT, FACT, OR MATTER IN ISSUE HAS PREVIOUSLY BEEN EITHER DIRECTLY ADJUDICATED OR NECESSARILY INVOLVED IN THE DETERMINATION OF AN ACTION; THE JUDGMENT IN CIVIL CASE NO. 1185 ON THE ISSUE OF THE IDENTITY OF THE LAND DONATED BY CORNELIO AND NIEVES TO ANGEL IS CONCLUSIVE IN CIVIL CASE NO. 2735, THERE BEING A SIMILARITY OF PARTIES IN THE SAID CASES.— For purposes of conclusiveness of judgment, identity of issues means that the right, fact, or matter in issue has previously been either "directly adjudicated or necessarily involved in the determination of an action" by a competent court. In this case, the issue of the transfer pursuant to the deed of donation to Angel of Lot J of Psd. 146880 and, corollarily, his right over the said property has been necessarily involved in Civil Case No. 1185. The petitioners engage in hair-splitting in arguing that none of the issues involved in Civil Case No. 1185 is also involved in Civil Case No. 2735. The primary issue in Civil Case No. 1185 is whether the true intention of the spouses Cornelio and Nieves as donors was to donate to Angel the property described in the deed of donation, that is, Lot J of Psd. 146880. The issue in Civil Case No. 1185 is therefore the identity of one of the properties donated by the spouses Cornelio and Nieves for which Cornelio and the petitioners sought reformation of the deed of donation. As stated above, the order of dismissal of the complaint in Civil Case No. 1185 necessarily implied that, as the deed of donation is not subject to reformation, the identity of the property subject of the donation is the property corresponding to the technical description, Lot J of Psd. 146880. On the other hand, the

subject matter of Civil Case No. 2735 is the recovery of Lot J of Psd. 146880 on the petitioners' claim that a clerical error prevented the deed of donation from conforming to the true intention of the spouses Cornelio and Nieves as to the identity of the property they intended to donate to Angel. This boils down to the issue of the true identity of the property, which has been, as earlier stated, necessarily adjudicated in Civil Case No. 1185. Thus, the judgment in Civil Case No. 1185 on the issue of the identity of the land donated by Cornelio and Nieves to Angel is conclusive in Civil Case No. 2735, there being a similarity of parties in the said cases.

5. ID.; ID.; ID.; CIVIL CASE NO. 2735 IS BARRED BY THE CONCLUSIVENESS OF THE JUDGMENT IN CIVIL CASE NO. 1185.— The petitioners also question the validity of the deed of donation executed by the spouses Cornelio and Nieves in favor of Angel. Indeed, that is the foundation of their claim. However, that issue had been settled with finality in Civil Case No. 1185. The petitioners who were parties against Angel in Civil Case No. 1185 cannot resurrect that issue against the privies or successors-in-interest of Angel in Civil Case No. 2735 without violating the principle of *res judicata*. In other words, Civil Case No. 2735 is barred by the conclusiveness of the judgment in Civil Case No. 1185. As the issues of whether Lot J of Psd. 146880 is one of the properties donated by the spouses Cornelio and Nieves to Angel and whether such donation was valid have been necessarily settled in Civil Case No. 1185, they can no longer be relitigated again in Civil Case No. 2735. The Order dated January 31, 1986 effectively held that the said property had been donated to Angel. It follows that he had properly sought its registration in his name under TCT No. 11349 and he had validly partitioned and donated it to his four children who acquired TCT Nos. 20094, 20095, 20096, and 20097 in their respective names.

APPEARANCES OF COUNSEL

Usman Law Office for petitioners.
Batino Law Offices for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This an appeal from the Decision[1] dated January 31, 2003 of the Court of Appeals in CA-G.R. CV No. 50122 dismissing the appeal of the petitioners, the heirs of Cornelio Miguel, and affirming the Order[2] dated March 21, 1995 of the Regional Trial Court (RTC) of Puerto Princesa City, Palawan, Branch 51 in Civil Case No. 2735 which dismissed the petitioners' complaint for the nullification of deeds of donation and reconveyance of property.

While blood may be thicker than water, land has caused numerous family disputes which are oftentimes bitter and protracted. This case is another example.

The petitioners are the surviving children of the deceased Cornelio Miguel, while the respondents are the widow and the children of the petitioners' own brother, Angel Miguel.[3]

Cornelio Miguel was the registered owner under Original Certificate of Title (OCT) No. S-14 of a 93,844 sq.m. parcel of land situated at Barrio Calero, Puerto Princesa City in Palawan. He had the property subdivided into ten smaller lots which were designated as Lots A to J of Psd-146880. Cornelio sold nine of the lots to his children, with Lot G going to his son Angel, predecessor-in-interest of the respondents in this case. The remaining lot, Lot J, Cornelio kept for himself and his wife, Nieves.[4]

The spouses Cornelio and Nieves were the registered owners of another property in Calero, Puerto Princesa City with an area of 172,485 sq.m. It was designated as Lot 2 of Psd-146879

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[1] *Rollo*, pp. 17-23; penned by Associate Justice Danilo B. Pine with Associate Justices Eugenio S. Labitoria and Renato C. Dacudao, concurring.

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

[3] *Id*. at 4.

[4] *Id*. at 18.

and covered by OCT No. G-211. The land was subsequently subdivided into nineteen smaller lots.[5]

In a deed of donation[6] *inter vivos* dated December 28, 1973, the spouses Cornelio and Nieves donated two lots to Angel. One of the lots was described in the deed of donation as follows:

LOT 2-J, (LRC) 146880

A parcel of land (Lot 2-J of the subdivision plan (LRC) Psd-146880, being a portion of a parcel of land described on plan S1-13184, LRC Rec. No. 5, Pat. No. V-3), situated in the Barrio of Calero, Municipality of Puerto Princesa, Province of Palawan, Island of Palawan. Bounded on the NE., points 4 to 5 by Lot I; on the E., SE., and SW., point[s] 5 to 7, 7 to 1 and 1 to 3 by Lot K (proposed road widening); and on the W., points 3 to 4 by Lot F, all of the subdivision plan. Beginning at a point marked "1" on plan being S., 65 deg. 37°E., 285.42 m. from BLBM 1, Bo. of Tiniguiban, Puerto Princesa.

thence	N. 60 deg.	49°W.,	91.32 m. to point 2;
thence	N. 64 deg.	18°W.,	37.61 m. to point 3;
thence	N. 7 deg.	17°E.,	33.74 m. to point 4;
thence	S. 81 deg.	20°E.,	146.06 m to point 5;
thence	S. 2 deg.	24°W.,	94.80 m. to point 6;
thence	S. 79 deg.	55°W.,	11.12 m. to point 7;
thence	N. 39 deg.	34°W.,	31.64 m. to point of beginning;

containing an area of NINE THOUSAND ONE HUNDRED NINETY [-] SEVEN (9,197) SQUARE METERS, more or less. Assessed ₱1,843.06 under Tax Declaration No. 4-3-1922-O of the Office of the City Assessor of Puerto Princesa City, Philippines.[7]

Angel accepted the donation in the same instrument.[8]

The donation of the property described above became the subject of various suits between Cornelio, Angel, and Angel's siblings, and also between Angel's siblings and Angel's children.

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[5] *Id*.

[6] Records, pp. 18-20, Deed of Donation of Real Property.

[7] *Id*. at 19.

[8] *Id*.

I. Spl. Proc. No. 444

On March 25, 1977, Angel filed a petition for the issuance of a new owner's duplicate of OCT No. S-14 to replace his father Cornelio's copy which was allegedly eaten and destroyed by white ants. The petition was docketed as Spl. Proc. No. 444 and assigned to the Court of First Instance of Palawan, Branch II.[9]

After hearing, the trial court granted Angel's petition. The relevant portions of the Decision dated June 27, 1977 read as follows:

> From the evidence adduced, it appears that the Owner's Original Certificate of Title exists in the archives of the Registry of Deeds of Puerto Princesa City. The notice of hearing together with the petition was posted on the bulletin boards of the Capitol Building of this province at Puerto Princesa, at the City Hall and on the premises of the property in Barrio San Pedro, where the land is located.
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> Petitioner Angel M. Miguel testifying for and in his behalf alleged that a parcel of land covered by Original Certificate of Title No. S-14 is in the name of his parents Cornelio Miguel and Nieves Malabad; that this land has been subdivided and that Petitioner has acquired two (2) lots, [letters] "G" and "J" from his parents; that he could not secure the title to these lots from the City Register of Deeds of Puerto Princesa because the latter required him to produce the owner's duplicate certificate of title of the mother land; that petitioner then went to his father to borrow the said owner's certificate of title as required by the City Register of Deeds of Puerto Princesa City; that forthwith, Mr. Cornelio Miguel went to get the title from a certain [carton] where he had his other important papers secured in a room in his house; that to his amazement, he found only bits of [paper], once constituting a solid piece which was his duplicate of his original certificate of title; that the same is now completely beyond recognition and, for all purpose, a complete destruction. Petitioner further [alleged] that the two (2) lots involved have not been delivered to anybody, neither have they been encumbered to secure the performance of any obligation whatsoever. Petitioner has declared the property for tax purposes and is up-to-date in payment of taxes to the government.

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[9] *Id.* at 333.

The court is convinced that petitioner is a person in interest within the [contemplation] of law.

The requisites of law having been complied with and the evidence adduced satisfactory, the Court believes that for reasons of public interest and in fairness to the petitioner, the relief sought for should be granted.

WHEREFORE, in view of the foregoing, the Register of Deeds of Puerto Princesa City, is hereby directed to issue a New Owner's Duplicate Certificate of Title No. S-14, in lieu of the one destroyed, which is the subject of this proceeding. Such title shall contain a memorandum stating that it is issued in lieu of the destroyed one but shall, in all respects, be deemed to be of the same effect as the destroyed owner's duplicate certificate of title for all intents and purposes under the Land Registration Act.

A copy of this order shall be furnished the Register of Deeds of Puerto Princesa City.[10]

The Decision was not contested or appealed and became final and executory.[11]

II. Civil Case No. 1185

Subsequently, however, on December 12, 1977, Cornelio filed a complaint for the annulment of the deed of donation on the alleged ground that one of the properties subject of the donation, Lot 2-J of Psd-146879, was given the technical description of Lot J of Psd-146880. This was attributed either to the notary public who prepared the deed of donation or to his secretary who typed it.[12]

The case, docketed as Civil Case No. 1185, was assigned to the then Court of First Instance of Palawan, Branch I. On Angel's motion, it was dismissed in an Order dated January 31, 1986 for lack of cause of action. In particular, the trial court found that, while the complaint was supposedly denominated

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[10] *Id.* at 392-394.

[11] *Id.* at 395.

[12] *Id.* at 382.

as for the annulment of the donation, the allegations of the complaint were really for reformation of instrument because it essentially sought the correction or amendment of the deed of donation to conform to the alleged true intention of the donors to donate Lot 2-J of Psd-146879 and not Lot J of Psd-146880. However, the complaint failed to allege that the donation was conditional and the deed of donation attached as an annex of the complaint showed that no condition was imposed for the donation.[13] As such, it was a simple donation that is not subject of reformation under Article 1366 of the Civil Code which provides:

> Art. 1366. **There shall be no reformation in the following cases**:
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> (1) **Simple donations *inter vivos* wherein no condition is imposed**;
>
> (2) Wills;
>
> (3) When the real agreement is void. (Emphasis supplied.)

According to the trial court, even if the action were to be considered as for annulment of the deed of donation, it would still be dismissed for lack of cause of action. There was no allegation that the consent of the donors was vitiated when they made the donation, nor was there an allegation of any ground that could have vitiated the donors' consent, such as mistake, violence, intimidation, undue influence, or fraud.[14]

Finally, the trial court found that Cornelio alleged in the complaint that his wife, Nieves, died prior to the filing of the complaint. The trial court ruled that Cornelio lacked personality to sue in behalf of Nieves because her right as a co-donor is purely personal to her and her right to reform or revoke the donation is exclusively reserved for her such that no other person can exercise such right for her. Also, the subsequent death of Cornelio during the pendency of the case extinguished

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[13] *Id.* at 384-387.

[14] *Id.* at 387-388.

his personal right to pursue the case, an intransmissible right, and the petitioners herein as his heirs could not have validly substituted him. The trial court concluded that the lack of personality on the part of the heirs of Cornelio constituted lack of cause of action.[15] Thus, the trial court ordered:

> ACCORDINGLY, in view of the foregoing findings, the amended complaint is hereby ordered dismissed for lack of cause of action. No costs. Motion to Dismiss is hereby GRANTED.[16]

The motion for reconsideration of Cornelio's heirs was denied in an Order dated March 19, 1986. As no appeal was made, the dismissal of the case attained finality.[17]

III. Spl. Civil Action No. 1950

Angel subsequently applied for the issuance of a certificate of title in his name over Lot J of Psd-146880 but the Registrar of Deeds of Puerto Princesa City denied it. Thus, Angel filed a petition for *mandamus* to compel the Registrar of Deeds to issue a certificate of title in his favor. The case was docketed as Spl. Civil Action No. 1950 and assigned to the Regional Trial Court of Palawan, Branch 48.[18]

After hearing the parties, the trial court issued an Order[19] dated February 27, 1987 directing the Registrar of Deeds of Puerto Princesa City to issue a certificate of title in Angel's name over Lot J of Psd-146880. In arriving at its Order, the trial court took note of the finality of the Order dated January 31, 1986 in Civil Case No. 1185. The trial court also ruled that as the technical description of one of the parcels of land subject of the donation corresponded to Lot J of Psd-146880, what was donated was Lot J of Psd-146880 and the mention of

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[15] *Id.* at 389-390.

[16] *Id.* at 390.

[17] *Rollo*, p. 19.

[18] *Id.*

[19] *Id.* at 40-53.

"Lot 2-J of Psd-146880" was merely a typographical error.[20] The trial court explained:

> Considering that the determinative technical description, describing and denoting the boundaries thereof, are the same [as] in the Deed of Donation Inter-vivos and in Civil Case No. 1185 for annulment are the same in every aspect and detail, it is crystal clear that one of the subject[s] of donation is Lot No. "J" (LRC) PSD-146880 and not Lot "2-J" (LRC) PSD-146880. It is clear beyond doubt and cavil that a clerical error has been inadvertently committed as to the Lot Number concerned although there was already a meeting of minds o[n] the two (2) lots donated. x x x.
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> x x x x x x x x x
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> For brevity['s] sake, the technical description of the land donated (2nd lot) erroneously identified as Lot 2-J (LRC) PSD-146880 doesn't exist, a mere clerical error but what exist[s] is Lot No. J (LRC) PSD-146880, the technical description of which are the same which leaves no shadow of doubt that what is donated is Lot No. J (LRC) PSD-146880. What is controlling is the technical description x x x.[21]

As the deed of donation in favor of Angel clearly refers to Lot J of Psd-146880 in view of the technical description of the land and considering further that a certificate of title in the name of Angel over the other parcel of land subject of the deed of donation was already issued, the Registrar of Deeds should have performed its ministerial duty under the law to issue a certificate of title in the name of Angel over Lot J of Psd-146880. In particular, the trial court ordered:

> WHEREFORE, illuminated by the light of all the foregoing facts, laws and arguments, x x x, and since the other and/or 1st mentioned lot donated, Lot No. 1-J (LRC) PSD-146879, has long already been titled in the name of herein petitioner as TCT No. 4213, issued on June 18, 1976, there is no need of consolidation. Instead the Register of Deeds of the City of Puerto Princesa is hereby ["]mandamused["], commanded and/or ordered to register

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[20] *Id*. at 45-46.

[21] *Id*. at 46-47.

and issue the title to now corrected, denominated and identified as Lot No. "J" (LRC) PSD-146880 in the name of herein petitioner, Angel Miguel, married to Ofelia Palanca, both residents of the City of Puerto Princesa, Philippines.[22]

The Registrar of Deeds of Puerto Princesa City appealed the Order dated February 27, 1987 but subsequently withdrew the appeal upon receipt of the resolution of the Land Registration Authority (LRA) on the *Consulta* of the said Registrar of Deeds in which the LRA allowed the registration of the disputed property in the name of Angel provided that the Order dated February 27, 1987 is already final and executory. With the withdrawal of the appeal, the Order dated February 27, 1987 became final and executory. Subsequently, on December 29, 1987, Transfer Certificate of Title (TCT) No. 11349 was issued in the name of Angel over Lot J of Psd-146880.[23]

Angel later on caused the subdivision of Lot J of Psd-146880 into four smaller lots which he correspondingly donated to each of his four sons, Peter Albert, Omar Angelo, Leo Antonio, and Oscar Joseph. Following the donation, TCT Nos. 20094 in the name of Peter Albert, 20095 in the name of Omar Angelo, 20096 in the name of Leo Antonio, and 20097 in the name of Oscar Joseph were issued.[24]

IV. Civil Case No. 2735

On July 7, 1994, petitioners filed a complaint for declaration of nullity of Angel's TCT No. 11349 and its derivative titles, TCT Nos. 20094, 20095, 20096, and 20097, as well as of the respective deeds of donation Angel executed in favor of his sons. Petitioners claimed that, as the true intention of their parents Cornelio and Nieves as donors was to donate Lot 2-J of Psd. 146879 and not Lot J of Psd. 146880, the deed of donation was rendered void by the typographical error relating to the description of the property. An implied trust was therefore

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[22] *Id*. at 53.

[23] *Id*. at 19-20.

[24] *Id*. at 20.

created where Angel held Lot J of Psd. 146880 in trust for the petitioners as heirs of the donors. As such trustee, Angel had no right either to have the property registered in his name or to transfer it to his sons through donation. Thus, petitioners argued, the sons of Angel as his heirs should return the ownership and possession of their respective portion of Lot J of Psd. 146880 and reconvey the same to the petitioners.[25]

For their part, the respondents moved for the dismissal of the complaint. They asserted that the petitioners' cause of action is already barred by prior judgment in Civil Case No. 1185 as the issue of Angel's ownership and possession of Lot J of Psd. 146880 had already been settled in Spl. Proc. No. 444, Civil Case No. 1185 and Spl. Civil Action No. 1950, all of which have been decided with finality.[26]

The respondents also contended that, in alleging the clerical error of the typist of the notary public who prepared the deed of donation executed by Cornelio and Nieves in favor of Angel, the petitioners effectively seek the correction or amendment of the said deed of donation pursuant to Article 1364 of the Civil Code. However, the petitioners may not avail of the remedy of reformation because the donation made by Cornelio and Nieves to Angel was a simple donation which, under Article 1366(1) of the Civil Code, may not be subject of reformation.[27]

The respondents further claimed that the petitioners have no legal capacity to sue. The petitioners effectively seek the reformation or annulment of the deed of donation executed by Cornelio and Nieves in favor of Angel. However, the right of action for the reformation or annulment of the said deed of donation properly and exclusively pertained to Cornelio and Nieves as donors. Such right is personal and intransmissible and therefore cannot be claimed by the petitioners.[28]

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[25] Records, pp. 1-12.

[26] *Id.* at 321-379.

[27] *Id.* at 372-375.

[28] *Id.* at 375-376.

In an Order[29] dated March 21, 1995, the trial court dismissed the complaint. The Order's dispositive portion reads:

> In the light of the foregoing, the instant action is hereby ordered dismissed for having been barred by a prior judgment. As thus dismissed, the notice of lis pendens on Transfer Certificate of Title Nos. 20094, 20095, 20096 and 20097 is accordingly hereby ordered cancelled therefrom.[30]

The petitioners appealed the Order of the trial court to the Court of Appeals. In a Decision dated January 31, 2003, however, the appellate court ruled that Spl. Proc. No. 444, Civil Case No. 1185 and Spl. Civil Action No. 1950 all dealt with the question of ownership over Lot J of Psd. 146880 and they have all been adjudged with finality. The appellate court concluded that the judgments in the said cases effectively foreclosed any further inquiry on the matter in accordance with the doctrine of *res judicata*, particularly the conclusiveness of judgment. The petitioners were the successors-in-interest of Cornelio, the complainant against Angel in Civil Case No. 1185, and the respondents are being sued as successors-in-interest of Angel in Civil Case No. 2735. The matter directly controverted in Civil Case No. 1185 was Lot J of Psd. 146880 which is also the bone of contention in Civil Case No. 2735. Thus, the appellate court ruled that the judgment in Civil Case No. 1185 is conclusive in Civil Case No. 2735. The dispositive portion of the Decision dated January 31, 2003 reads:

> **WHEREFORE**, premises considered, the appeal is hereby dismissed and the appealed decision, **AFFIRMED**.[31]

The petitioners are now before this Court, assailing the Decision dated January 31, 2003 of the Court of Appeals. They argue that the Court of Appeals misapplied the doctrine of *res judicata* in the concept of conclusiveness of judgment.[32]

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[29] *Id*. at 572-577.

[30] *Id*. at 577.

[31] *Rollo*, p. 23.

[32] *Id*. at 8-14, Petition for Review on *Certiorari*.

According to the petitioners, conclusiveness of judgment precludes only the re-litigation of a particular fact or issue in another action between the same parties on a different cause of action. They posit that there is no issue resolved on Civil Case No. 1185 that is being litigated anew in Civil Case No. 2735. The petitioners maintain that the complaint in Civil Case No. 1185 was dismissed for failure to state a cause of action and not because the plaintiffs, Cornelio and the petitioners, had no cause of action. In other words, the petitioners imply that they had a cause of action in Civil Case No. 1185 but they only failed to sufficiently allege such cause of action.[33]

The petitioners also point out that there is neither identity of subject matter nor identity of cause of action between Civil Case No. 1185 and Civil Case No. 2735. They say that the subject matter of Civil Case No. 1185 was the deed of donation executed by Cornelio and Nieves in favor of Angel while the subject matter of Civil Case No. 2735 is the recovery of Lot J of Psd. 146880. The cause of action in Civil Case No. 1185 was the reformation of the deed of donation executed by Cornelio and Nieves in favor of Angel while the cause of action in Civil Case No. 2735 is the reconveyance of Lot J of Psd. 146880 based on Angel's violation of the implied trust created in favor of the petitioners.[34]

For their part, the respondents insist on the correctness of both the Order dated March 21, 1995 of the trial court in Civil Case No. 2735 and the Decision dated January 31, 2003 of the appellate court affirming the said Order.[35]

The Court's Ruling

The petition fails. *Res judicata* in the concept of conclusiveness of judgment precludes the complaint in Civil Case No. 2735.

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[33] *Id*. at 9.

[34] *Id*. at 10-13.

[35] *Id*. at 30-77, 46-75, Opposition to Petition for Review on *Certiorari*.

A better understanding of the fundamentals of *res judicata* and conclusiveness of judgment will explain and clarify the Court's ruling.

The following are the elements of *res judicata*:

(1) the judgment sought to bar the new action must be final;
(2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties;
(3) the disposition of the case must be a judgment on the merits; and
(4) there must be as between the first and second action, identity of parties, subject matter, and causes of action.[36]

Under Rule 39 of the Rules of Court, *res judicata* embraces two concepts: (1) bar by prior judgment as enunciated in Section 47(b) of the said Rule and (2) conclusiveness of judgment as explained in Section 47(c) of the same Rule. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a "bar by prior judgment" would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as "conclusiveness of judgment" applies.[37]

Nabus v. Court of Appeals[38] clarifies the concept of conclusiveness of judgment further:

> The doctrine states that a fact or question which was in issue in a former suit, and was there judicially passed on and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein, as far as concerns the parties to that action and persons in privity with them, and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or a different cause of action, while the judgment remains unreversed

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[36] *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, G.R. No. 167050, June 1, 2011, 650 SCRA 50, 57-58.

[37] *Id.* at 56, 58.

[38] 271 Phil. 768, 784 (1991).

or unvacated by proper authority. **The only identities thus required for the operation of the judgment as an estoppel x x x are identity of parties and identity of issues**.

It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issues be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit x x x. (Emphasis supplied.)

Identity of parties is a requisite in the application of conclusiveness of judgment. So long as the parties or their privies are identical, any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[39] In this case, the Court of Appeals held the following as regards the issue of identity of parties:

As further held, conclusiveness of judgment calls for identity of parties, not causes of action, and "there is identity of parties not only when the parties are the same but also those on privity with them, as between their successors in interest by title subsequent to the commencement of the action, litigation for the same thing and under the same title and in the same capacity, or when there is substantial identity of parties." In the present case, appellants were the successors in interest of petitioner Cornelio in Civil Case No. 1185 against respondent Angel, whereas in Civil Case No. 2735, appellees were the successors in interest of Angel. Undeniably, there is substantial identity of parties in the said two cases. And since the matter directly controverted and determined in Civil Case No. 1185

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[39] *P.L. Uy Realty Corporation v. ALS Management and Development Corporation*, G.R. No. 166462, October 24, 2012, 684 SCRA 453, 466 citing *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.*, *supra* note 36 at 57.

is the lot which is also the bone of contention in Civil Case No. 2735, the judgment rendered in the first case is conclusive in the second case.[40]

The petitioners do not question the ruling of the Court of Appeals that there is identity of parties in Civil Case No. 1185 and Civil Case No. 2735. What the petitioners principally contend is that the judgment in Civil Case No. 1185 cannot bar Civil Case No. 2735 as the two cases involve different causes of action and different subject matters.

However, for *res judicata* in the concept of conclusiveness of judgment to apply, identity of cause of action is not required but merely identity of issue.[41]

The claim of the petitioners that Civil Case No. 1185 was dismissed not because they have no cause of action but because they failed to state such a cause of action is wrong. The dispositive portion of the Order dated January 31, 1986 is clear: the amended complaint was "ordered dismissed **for lack of cause of action**."[42]

The Order dated January 31, 1986 in Civil Case No. 1185 ruled that Cornelio and the petitioners had no cause of action in connection with the reformation of the deed of donation executed by the spouses Cornelio and Nieves in favor of Angel because the said deed of donation is a simple donation and therefore not a proper subject of an action for reformation. As there can be no reformation of the deed of donation pursuant to Article 1366 of the Civil Code, the necessary implication and consequence of the Order dated January 31, 1986 in Civil Case No. 1185 is that the deed of donation stands and the identity of the property subject of the donation is that parcel of land which corresponds to the technical description in the deed of donation. In other words, the property donated under the

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[40] *Rollo*, pp. 22-23.

[41] *P.L. Uy Realty Corporation v. ALS Management and Development Corporation*, *supra* note 39 at 466.

[42] Records, p. 390.

deed of donation is that which matches the property whose metes and bounds is particularly described in the deed of donation. This is because the technical description of the land is proof of its identity.[43] Such technical description embodies the identity of the land.[44] In this case, the technical description in the deed of donation pertains to Lot J of Psd. 146880. That is why the trial court in Spl. Civil Action No. 1950 ordered the issuance in Angel's name of TCT No. 11349 over Lot J of Psd. 146880. Thus, in Civil Case No. 1185 and Spl. Civil Action No. 1950, Lot J of Psd. 146880 is the property donated to Angel and registered in his name as TCT No. 11349 and, subsequently, to Angel's four children as TCT Nos. 20094, 20095, 20096, and 20097.

For purposes of conclusiveness of judgment, identity of issues means that the right, fact, or matter in issue has previously been either "directly adjudicated or necessarily involved in the determination of an action"[45] by a competent court. In this case, the issue of the transfer pursuant to the deed of donation to Angel of Lot J of Psd. 146880 and, corollarily, his right over the said property has been necessarily involved in Civil Case No. 1185.

The petitioners engage in hair-splitting in arguing that none of the issues involved in Civil Case No. 1185 is also involved in Civil Case No. 2735. The primary issue in Civil Case No. 1185 is whether the true intention of the spouses Cornelio and Nieves as donors was to donate to Angel the property described in the deed of donation, that is, Lot J of Psd. 146880. The issue in Civil Case No. 1185 is therefore the identity of one of the properties donated by the spouses Cornelio and Nieves for which Cornelio and the petitioners sought reformation of the

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[43] See *Republic v. Espinosa*, G.R. No. 171514, July 18, 2012, 677 SCRA 92, 110.

[44] See *VSD Realty & Development Corporation v. Uniwide Sales, Inc.*, G.R. No. 170677, July 31, 2013, 702 SCRA 597, 606.

[45] *P.L. Uy Realty Corporation v. ALS Management and Development Corporation*, *supra* note 39 at 466.

deed of donation. As stated above, the order of dismissal of the complaint in Civil Case No. 1185 necessarily implied that, as the deed of donation is not subject to reformation, the identity of the property subject of the donation is the property corresponding to the technical description, Lot J of Psd. 146880. On the other hand, the subject matter of Civil Case No. 2735 is the recovery of Lot J of Psd. 146880 on the petitioners' claim that a clerical error prevented the deed of donation from conforming to the true intention of the spouses Cornelio and Nieves as to the identity of the property they intended to donate to Angel. This boils down to the issue of the true identity of the property, which has been, as earlier stated, necessarily adjudicated in Civil Case No. 1185. Thus, the judgment in Civil Case No. 1185 on the issue of the identity of the land donated by Cornelio and Nieves to Angel is conclusive in Civil Case No. 2735, there being a similarity of parties in the said cases.

The petitioners also question the validity of the deed of donation executed by the spouses Cornelio and Nieves in favor of Angel. Indeed, that is the foundation of their claim. However, that issue had been settled with finality in Civil Case No. 1185. The petitioners who were parties against Angel in Civil Case No. 1185 cannot resurrect that issue against the privies or successors-in-interest of Angel in Civil Case No. 2735 without violating the principle of *res judicata*. In other words, Civil Case No. 2735 is barred by the conclusiveness of the judgment in Civil Case No. 1185.

As the issues of whether Lot J of Psd. 146880 is one of the properties donated by the spouses Cornelio and Nieves to Angel and whether such donation was valid have been necessarily settled in Civil Case No. 1185, they can no longer be relitigated again in Civil Case No. 2735. The Order dated January 31, 1986 effectively held that the said property had been donated to Angel. It follows that he had properly sought its registration in his name under TCT No. 11349 and he had validly partitioned and donated it to his four children who acquired TCT Nos. 20094, 20095, 20096, and 20097 in their respective names.

WHEREFORE, the petition is hereby **DENIED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177493. March 19, 2014]

ERIC GODFREY STANLEY LIVESEY, *petitioner, vs.* **BINSWANGER PHILIPPINES, INC. and KEITH ELLIOT**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RESPONDENT'S PETITION FOR *CERTIORARI* BEFORE THE COURT OF APPEALS WAS FILED OUT OF TIME; THE SIXTY (60)-DAY FILING PERIOD UNDER RULE 65 OF THE RULES OF COURT SHOULD BE COUNTED FROM THE DATE OF RECEIPT OF THE ASSAILED DECISION OR RESOLUTION.— The respondents' petition for *certiorari* before the CA was filed out of time. The sixty (60)-day filing period under Rule 65 of the Rules of Court should have been counted from January 19, 2006, the date of receipt of a copy of the NLRC resolution denying the respondents' motion for reconsideration by the Corporate Counsels Philippines, Law Offices which was the respondents' counsel of record at the time. The respondents cannot insist that Atty. Jacosalem's receipt of a copy of the resolution on March 17, 2006 as the reckoning date for the filing of the petition as we shall discuss below. The CA chided the NLRC for serving a copy of the resolution on the Corporate Counsels

Philippines, Law Offices, instead of on Atty. Jacosalem as it believed that the labor tribunal impliedly recognized Atty. Jacosalem as the respondents' counsel when it acted on the motion for reconsideration that he signed. As we see it, the fault was not on the NLRC but on Atty. Jacosalem himself as he left no forwarding address with the NLRC, a serious lapse that even he admitted. This is a matter that cannot just be taken for granted as it betrays a careless legal representation that can cause adverse consequences to the other party. To our mind, Atty. Jacosalem's non-observance of a simple, but basic requirement in the practice of law lends credence to Livesey's claim that the lawyer did not formally enter his appearance before the NLRC as the respondents' new counsel; if it had been otherwise, he would have supplied his office address to the NLRC. Also, had he exercised due diligence in the performance of his duty as counsel, he could have inquired earlier with the NLRC and should not have waited as late as March 17, 2006 about the outcome of the respondents' motion for reconsideration which was filed as early as October 28, 2005. To reiterate, the filing of the respondents' petition for *certiorari* should have been reckoned from January 19, 2006 when a copy of the subject NLRC resolution was received by the Corporate Counsels Philippines, Law Offices, which, as of that date, had not been discharged or had withdrawn and therefore remained to be the respondents' counsel of record. Clearly, the petition for *certiorari* was filed out of time. Section 6(a), Rule III of the NLRC Revised Rules of Procedure provides that "[f]or purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record."

2. MERCANTILE LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE VEIL OF CORPORATE FICTION; EXPLAINED.— It has long been settled that the law vests a corporation with a personality distinct and separate from its stockholders or members. In the same vein, a corporation, by legal fiction and convenience, is an entity shielded by a protective mantle and imbued by law with a character alien to the persons comprising it. Nonetheless, the shield is not at all times impenetrable and cannot be extended to a point beyond its reason and policy. Circumstances might deny a claim for corporate personality, under the "**doctrine of piercing the**

veil of corporate fiction." Piercing the veil of corporate fiction is an equitable doctrine developed to address situations where the separate corporate personality of a corporation is abused or used for wrongful purposes. Under the doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions, in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical.

3. ID.; ID.; ID.; THERE IS AN INDUBITABLE LINK BETWEEN THE FORMER CORPORATION'S CLOSURE AND RESPONDENT CORPORATION'S INCORPORATION; THE FORMER CORPORATION CEASED TO EXIST ONLY BY NAME BUT IT REEMERGED IN THE PERSON OF RESPONDENT FOR AN URGENT PURPOSE WHICH IS TO AVOID PAYMENT OF ITS MONETARY OBLIGATION AND OTHER FINANCIAL LIABILITIES.— In the present case, we see an indubitable link between CBB's closure and Binswanger's incorporation. CBB ceased to exist only in name; it re-emerged in the person of Binswanger for an urgent purpose — to avoid payment by CBB of the last two installments of its monetary obligation to Livesey, as well as its other financial liabilities. Freed of CBB's liabilities, especially that owing to Livesey, Binswanger can continue, as it did continue, CBB's real estate brokerage business. Livesey's evidence, whose existence the respondents never denied, converged to show this continuity of business operations from CBB to Binswanger. It was not just coincidence that Binswanger is engaged in the same line of business CBB embarked on: (1) it even holds office in the very same building and on the very same floor where CBB once stood; (2) CBB's key officers, Elliot, no less, and Catral moved over to Binswanger, performing the tasks they were doing at CBB; (3) notwithstanding CBB's closure, Binswanger's Web Editor (Young), in an e-mail correspondence, supplied the information that Binswanger is "now known" as either CBB (Chesterton Blumenauer Binswanger or as Chesterton Petty, Ltd., in the Philippines; (4) the use of Binswanger of CBB's paraphernalia (receiving stamp) in connection with a labor case

where Binswanger was summoned by the authorities, although Elliot claimed that he bought the item with his own money; and (5) Binswanger's takeover of CBB's project with the PNB. While the ostensible reason for Binswanger's establishment is to continue CBB's business operations in the Philippines, which by itself is not illegal, the close proximity between CBB's disestablishment and Binswanger's coming into existence points to an unstated but urgent consideration which, as we earlier noted, was to evade CBB's unfulfilled financial obligation to Livesey under the compromise agreement.

4. ID.; ID.; ID.; THE FORMER CORPORATION'S WRONGFUL INTENT CANNOT AND MUST NOT BE CONDONED, FOR IT WILL GIVE A PREMIUM TO AN INIQUITOUS BUSINESS STRATEGY WHERE A CORPORATION IS FORMED OR USED FOR A NON-LEGITIMATE PURPOSE, SUCH AS TO EVADE A JUST AND DUE OBLIGATION.— This underhanded objective, it must be stressed, can only be attributed to Elliot as it was apparent that Binswanger's stockholders had nothing to do with Binswanger's operations as noted by the NLRC and which the respondents did not deny. Elliot was well aware of the compromise agreement between Livesey and CBB, as he "agreed and accepted" the terms of the agreement for CBB. He was also well aware that the last two installments of CBB's obligation to Livesey were due on June 30, 2003 and September 30, 2003. These installments were not met and the reason is that after the alleged sale of the majority of CBB's shares of stock, it closed down. With CBB's closure, Livesey asked why people would buy into a corporation and simply close it down immediately thereafter? The answer — to pave the way for CBB's reappearance as Binswanger. Elliot's "guiding hand," as Livesey puts it, is very much evident in CBB's demise and Binswanger's creation. Elliot knew that CBB had not fully complied with its financial obligation under the compromise agreement. He made sure that it would not be fulfilled when he allowed CBB's closure, despite the condition in the agreement that "unless and until the Compromise Amount has been fully settled and paid by the Company in favor of Mr. Livesey, the Company shall not x x x suspend, discontinue, or cease its entire or a substantial portion of its business operations[.]" What happened to CBB, we believe, supports Livesey's assertion

> that De Guzman, CBB's former Associate Director, informed him that at one time Elliot told her of CBB's plan to close the corporation and organize another for the purpose of evading CBB's liabilities to Livesey and its other financial liabilities. This wrongful intent we cannot and must not condone, for it will give a premium to an iniquitous business strategy where a corporation is formed or used for a non-legitimate purpose, such as to evade a just and due obligation. We, therefore, find Elliot as liable as Binswanger for CBB's unfulfilled obligation to Livesey.

APPEARANCES OF COUNSEL

Puyat Jacinto & Santos for petitioner.
Udarbe and Jacosalem and *Posadas Law Firm* for respondents.

D E C I S I O N

BRION, *J.*:

We resolve this petition for review on *certiorari*[1] assailing the decision[2] dated August 18, 2006 and the resolution[3] dated March 29, 2007 of the Court of Appeals (*CA*) in CA-G.R. SP No. 94461.

The Antecedents

In December 2001, petitioner Eric Godfrey Stanley Livesey filed a complaint for illegal dismissal with money claims[4] against CBB Philippines Strategic Property Services, Inc. (*CBB*) and Paul Dwyer. CBB was a domestic corporation engaged in real estate brokerage and Dwyer was its President.

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[1] *Rollo*, pp. 3-44; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id.* at 49-61; penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr.

[3] *Id.* at 513-514.

[4] *Id.* at 98.

Livesey alleged that on April 12, 2001, CBB hired him as Director and Head of Business Space Development, with a monthly salary of US$5,000.00; shareholdings in CBB's offshore parent company; and other benefits. In August 2001, he was appointed as Managing Director and his salary was increased to US$16,000.00 a month. Allegedly, despite the several deals for CBB he drew up, CBB failed to pay him a significant portion of his salary. For this reason, he was compelled to resign on December 18, 2001. He claimed CBB owed him US$23,000.00 in unpaid salaries.

CBB denied liability. It alleged that it engaged Livesey as a corporate officer in April 2001: he was elected Vice-President (with a salary of ₱75,000.00/month), and thereafter, he became President (at ₱1,200,000.00/year). It claimed that Livesey was later designated as Managing Director when it became an extension office of its principal in Hongkong.[5]

On December 17, 2001, Livesey demanded that CBB pay him US$25,000.00 in unpaid salaries and, at the same time, tendered his resignation. CBB posited that the labor arbiter (*LA*) had no jurisdiction as the complaint involved an intra-corporate dispute.

In his decision dated September 20, 2002,[6] LA Jaime M. Reyno found that Livesey had been illegally dismissed. LA Reyno ordered CBB to reinstate Livesey to his former position as Managing Director and to pay him US$23,000.00 in accrued salaries (from July to December 2001), and US$5,000.00 a month in back salaries from January 2002 until reinstatement; and 10% of the total award as attorney's fees.

Thereafter, the parties entered into a compromise agreement[7] which LA Reyno approved in an order dated November 6, 2002.[8]

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[5] *Id*. at 89.

[6] *Id*. at 455-465.

[7] *Id*. at 537-539.

[8] *Id*. at 540.

Under the agreement, Livesey was to receive US$31,000.00 in full satisfaction of LA Reyno's decision, broken down into US$13,000.00 to be paid by CBB to Livesey or his authorized representative upon the signing of the agreement; US$9,000.00 on or before June 30, 2003; and US$9,000.00 on or before September 30, 2003. Further, the agreement provided that unless and until the agreement is fully satisfied, CBB shall not: (1) sell, alienate, or otherwise dispose of all or substantially all of its assets or business; (2) suspend, discontinue, or cease its entire, or a substantial portion of its business operations; (3) substantially change the nature of its business; and (4) declare bankruptcy or insolvency.

CBB paid Livesey the initial amount of US$13,000.00, but not the next two installments as the company ceased operations. In reaction, Livesey moved for the issuance of a writ of execution. LA Eduardo G. Magno granted the writ,[9] but it was not enforced. Livesey then filed a motion for the issuance of an *alias* writ of execution,[10] alleging that in the process of serving respondents the writ, he learned "that respondents, in a clear and willful attempt to avoid their liabilities to complainant x x x have organized another corporation, [Binswanger] Philippines, Inc."[11] He claimed that there was evidence showing that CBB and Binswanger Philippines, Inc. (*Binswanger*) are one and the same corporation, pointing out that CBB stands for **Chesterton Blumenauer Binswanger**.[12] Invoking the doctrine *of piercing the veil of corporate fiction*, Livesey prayed that an *alias* writ of execution be issued against respondents Binswanger and Keith Elliot, CBB's former President, and now Binswanger's President and Chief Executive Officer (*CEO*).

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[9] *Id.* at 542-543.

[10] *Id.* at 544-551.

[11] *Id.* at 545.

[12] *Id.* at 546.

The Compulsory Arbitration Rulings

In an order[13] dated March 22, 2004, LA Catalino R. Laderas denied Livesey's motion for an *alias* writ of execution, holding that the doctrine of piercing the corporate veil was inapplicable in the case. He explained that the stockholders of the two corporations were not the same. Further, LA Laderas stressed that LA Reyno's decision had already become final and could no longer be altered or modified to include additional respondents.

Livesey filed an appeal which the National Labor Relations Commission (*NLRC*) granted in its decision[14] dated September 7, 2005. It reversed LA Laderas' March 22, 2004 order and declared the respondents jointly and severally liable with CBB for LA Reyno's decision[15] of September 20, 2002 in favor of Livesey. The respondents moved for reconsideration, filed by an Atty. Genaro S. Jacosalem,[16] not by their counsel of record at the time, Corporate Counsels Philippines, Law Offices. The NLRC denied the motion in its resolution of January 6, 2006.[17] The respondents then sought relief from the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.

The respondents charged the NLRC with grave abuse of discretion for holding them liable to Livesey and in exercising jurisdiction over an intra-corporate dispute. They maintained that Binswanger is a separate and distinct corporation from CBB and that Elliot signed the compromise agreement in CBB's behalf, not in his personal capacity. It was error for the NLRC, they argued, when it applied the doctrine of piercing the veil of corporate fiction to the case, despite the absence of clear evidence in that respect.

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[13] *Id*. at 492-496.

[14] *Id*. at 74-85; penned by Commissioner Angelita A. Gacutan, and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[15] *Supra* note 6.

[16] *Rollo*, pp. 88-95.

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

For his part, Livesey contended that the petition should be dismissed outright for being filed out of time. He claimed that the respondents' counsel of record received a copy of the NLRC resolution denying their motion for reconsideration as early as January 19, 2006, yet the petition was filed only on May 15, 2006. He insisted that in any event, there was ample evidence supporting the application of the doctrine of piercing the veil of corporate fiction to the case.

The CA Decision

The CA granted the petition,[18] reversed the NLRC decision[19] of September 7, 2005 and reinstated LA Laderas' order[20] of March 22, 2004. The CA found untenable Livesey's contention that the petition for *certiorari* was filed out of time, stressing that while there was no valid substitution or withdrawal of the respondents' former counsel, the NLRC impliedly recognized Atty. Jacosalem as their new counsel when it resolved the motion for reconsideration which he filed.

On the merits of the case, the CA disagreed with the NLRC finding that the respondents are jointly and severally liable with CBB in the case. It emphasized that the mere fact that Binswanger and CBB have the same President is not in itself sufficient to pierce the veil of corporate fiction of the two entities, and that although Elliot was formerly CBB's President, this circumstance alone does not make him answerable for CBB's liabilities, there being no proof that he was motivated by malice or bad faith when he signed the compromise agreement in CBB's behalf; neither was there proof that Binswanger was formed, or that it was operated, for the purpose of shielding fraudulent or illegal activities of its officers or stockholders or that the corporate veil was used to conceal fraud, illegality or inequity at the expense of third persons like Livesey.

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[18] *Supra* note 2.

[19] *Supra* note 14.

[20] *Supra* note 13.

Livesey moved for reconsideration, but the CA denied the motion in its resolution dated March 29, 2007.[21] Hence, the present petition.

The Petition

Livesey prays for a reversal of the CA rulings on the basis of the following arguments:

1. The CA erred in not denying the respondents' petition for *certiorari* dated May 12, 2006 for being filed out of time.

Livesey assails the CA's reliance on the Court's pronouncement in *Rinconada Telephone Co., Inc. v. Hon. Buenviaje*[22] to justify its ruling that the receipt on March 17, 2006 by Atty. Jacosalem of the NLRC's denial of the respondents' motion for reconsideration was the reckoning date for the filing of the petition for *certiorari*, not the receipt of a copy of the same resolution on January 19, 2006 by the respondents' counsel of record, the Corporate Counsels Philippines, Law Offices. The cited Court's pronouncement reads:

> In view of respondent judge's recognition of Atty. Santos as new counsel for petitioner without even a valid substitution or withdrawal of petitioner's former counsel, said new counsel logically awaited for service to him of any action taken on his motion for reconsideration. Respondent judge's sudden change of posture in insisting that Atty. Maggay is the counsel of record is, therefore, a whimsical and capricious exercise of discretion that prevented petitioner and Atty. Santos from taking a timely appeal[.][23]

With the above citation, Livesey points out, the CA opined that a copy of the NLRC resolution denying the respondents' motion for reconsideration should have been served on Atty. Jacosalem and no longer on the counsel of record, so that the **sixty (60)-day period** for the filing of the petition should be reckoned from March 17, 2006 when Atty. Jacosalem secured

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[21] *Supra* note 3.

[22] 263 Phil. 654 (1990).

[23] *Id.* at 660.

a copy of the resolution from the NLRC (the petition was filed by a Jeffrey Jacosalem on May 15, 2006).[24] Livesey submits that the CA's reliance on *Rinconada* was misplaced. He argues that notwithstanding the signing by Atty. Jacosalem of the motion for reconsideration, it was only proper that the NLRC served a copy of the resolution on the Corporate Counsels Philippines, Law Offices as it was still the respondents' counsel at the time.[25] He adds that Atty. Jacosalem never participated in the NLRC proceedings because he did not enter his appearance as the respondents' counsel before the labor agency; further, he did not even indicate his office address on the motion for reconsideration he signed.

2. The CA erred in not applying the doctrine of piercing the veil of corporate fiction to the case.

Livesey bewails the CA's refusal to pierce Binswanger's corporate veil in his bid to make the company and Elliot liable, together with CBB, for the judgment award to him. He insists that CBB and Binswanger are one and the same corporation as shown by the "overwhelming evidence" he presented to the LA, the NLRC and the CA, as follows:

a. CBB stands for "Chesterton Blumenauer Binswanger."[26]

b. After executing the compromise agreement with him, through Elliot, CBB ceased operations following a transaction where a substantial amount of CBB shares changed hands. Almost simultaneously with CBB's closing (in July 2003), Binswanger was established with its headquarters set up beside CBB's office at Unit 501, 5/F Peninsula Court Building in Makati City.[27]

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[24] *Rollo*, p. 62.

[25] *Id*. at 842; Corporate Counsels Philippines, Law Offices filed its notice of withdrawal as the respondents' counsel only on April 28, 2006.

[26] *Id*. at 449; Internal Memo dated December 21, 2001 from Livesey to Lina Serra.

[27] *Id*. at 580-584.

c. Key CBB officers and employees moved to Binswanger led by Elliot, former CBB President who became Binswanger's President and CEO; Ferdie Catral, former CBB Director and Head of Operations; Evangeline Agcaoili and Janet Pei.

d. Summons served on Binswanger in an earlier labor case was received by Binswanger using CBB's receiving stamp.[28]

e. A Leslie Young received on August 23, 2003 an online query on whether CBB was the same as Blumaneuver Binswanger (*BB*). Signing as Web Editor, Binswanger/CBB, Young replied *via* e-mail:[29]

> We are known as either CBB (Chesterton Blumenauer Binswanger) or as Chesterton Petty Ltd. in the Philippines. Contact info for our office in Manila is as follows:
>
> Manila Philippines
> CBB Philippines
> Unit 509, 5th Floor
> Peninsula Court, Paseo de Roxas corner
> Makati Avenue
> 1226 Makati City
> Philippines
> Contact: Keith Elliot

f. In a letter dated August 21, 2003,[30] Elliot noted a Binswanger bid solicitation for a project with the Philippine National Bank (*PNB*) which was actually a CBB project as shown by a CBB draft proposal to PNB dated January 24, 2003.[31]

g. The affidavit[32] dated October 1, 2003 of Hazel de Guzman, another former CBB employee who also filed an

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[28] *Id.* at 761.

[29] *Id.* at 592.

[30] *Id.* at 593.

[31] *Id.* at 594.

[32] *Id.* at 595-597.

illegal dismissal case against the company, attested to the existence of Livesey's documentary evidence in his own case and who deposed that at one time, Elliot told her of CBB's plan to close the corporation and to organize another for the purpose of evading CBB's liabilities.

h. The findings[33] of facts of LA Veneranda C. Guerrero who ruled in De Guzman's favor that bolstered his own evidence in the present case.

3. The CA erred in not holding Elliot liable for the judgment award.

Livesey questions the CA's reliance on *Laperal Development Corporation v. Court of Appeals*,[34] *Sunio, et al. v. NLRC, et al.*,[35] and *Palay, Inc., et al. v. Clave, etc., et al.*,[36] in support of its ruling that Elliot is not liable to him for the LA's award. He argues that in these cases, the Court upheld the separate personalities of the corporations and their officers/employees because there was no evidence that the individuals sought to be held liable were in bad faith or that there were badges of fraud in their actions against the aggrieved party or parties in said cases. He reiterates his submission to the CA that the circumstances of the present case are different from those of the cited cases. He posits that the closure of CBB and its immediate replacement by Binswanger could not have been possible without Elliot's guiding hand, such that when CBB ceased operations, Elliot (CBB's President and CEO) moved to Binswanger in the same position. More importantly, Livesey points out, as signatory for CBB in the compromise agreement between him (Livesey) and CBB, Elliot knew that it had not been and would never be fully satisfied.

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[33] *Id.* at 882-893.

[34] G.R. No. 96354, June 8, 1993, 223 SCRA 261.

[35] 212 Phil. 355 (1984).

[36] 209 Phil. 523 (1983).

Livesey thus laments Elliot's devious scheme of leaving him an unsatisfied award, stressing that Elliot was the chief orchestrator of CBB and Binswanger's fraudulent act of evading the full satisfaction of the compromise agreement. In this light, he submits that the Court's ruling in *A.C. Ransom Labor Union-CCLU v. NLRC*,[37] which deals with the issue of who is liable for the worker's backwages when a corporation ceases operations, should apply to his situation.

The Respondents' Position

Through their comment[38] and memorandum,[39] the respondents pray that the petition be denied for the following reasons:

1. The NLRC had no jurisdiction over the dispute between Livesey and CBB/Dwyer as it involved an intra-corporate controversy; under Republic Act No. 8799, the Regional Trial Court exercises jurisdiction over the case.

As shown by the records, Livesey was appointed as CBB's Managing Director during the relevant period and was also a shareholder, making him a corporate officer.

2. There was no employer-employee relationship between Livesey and Binswanger. Under Article 217 of the Labor Code, the labor arbiters and the NLRC have jurisdiction only over disputes where there is an employer-employee relationship between the parties.

3. The NLRC erred in applying the doctrine of piercing the veil of corporate fiction to the case based only on mere assumptions. Point by point, they take exception to Livesey's submissions as follows:

a. The e-mail statement in reply to an online query of Young (CBB's Web Editor) that CBB is known as Chesterton Blumenauer Binswanger or Chesterton Petty.

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[37] 226 Phil. 199 (1986).

[38] *Rollo*, pp. 940-945; filed on October 15, 2007.

[39] *Id.* at 1054-1066; dated May 15, 2008.

Ltd. to establish a connection between CBB and Binswanger is inconclusive as there was no mention in the statement of Binswanger Philippines, Inc.

b. The affidavit of De Guzman, former CBB Associate Director, who also resigned from the company like Livesey, has no probative value as it was self-serving and contained only misrepresentation of facts, conjectures and surmises.

c. When Binswanger was organized and incorporated, CBB had already been abandoned by its Board of Directors and no longer subsidized by CBB-Hongkong; it had no business operations to work with.

d. The mere transfer of Elliot and Catral from CBB to Binswanger is not a ground to pierce the corporate veil in the present case absent a clear evidence supporting the application of the doctrine. The NLRC applied the doctrine on the basis only of LA Guerrero's decision in the De Guzman case.

e. The respondents' petition for *certiorari* was filed on time. Atty. Jacosalem, who was presumed to have been engaged as the respondents' counsel, was deemed to have received a copy of the NLRC resolution (denying the motion for reconsideration) on March 17, 2006 when he requested and secured a copy from the NLRC. The petition was filed on May 15, 2006 or fifty-nine (59) days from March 17, 2006. Atty. Jacosalem may have failed to indicate his address on the motion for reconsideration he filed but that is not a reason for him to be deprived of the notices and processes of the case.

The Court's Ruling

The procedural question

The respondents' petition for *certiorari* before the CA was filed out of time. The sixty (60)-day filing period under Rule 65 of the Rules of Court should have been counted from January

19, 2006, the date of receipt of a copy of the NLRC resolution denying the respondents' motion for reconsideration by the Corporate Counsels Philippines, Law Offices which was the respondents' counsel of record at the time. The respondents cannot insist that Atty. Jacosalem's receipt of a copy of the resolution on March 17, 2006 as the reckoning date for the filing of the petition as we shall discuss below.

The CA chided the NLRC for serving a copy of the resolution on the Corporate Counsels Philippines, Law Offices, instead of on Atty. Jacosalem as it believed that the labor tribunal impliedly recognized Atty. Jacosalem as the respondents' counsel when it acted on the motion for reconsideration that he signed. As we see it, the fault was not on the NLRC but on Atty. Jacosalem himself as he left no forwarding address with the NLRC, a serious lapse that even he admitted.[40] This is a matter that cannot just be taken for granted as it betrays a careless legal representation that can cause adverse consequences to the other party.

To our mind, Atty. Jacosalem's non-observance of a simple, but basic requirement in the practice of law lends credence to Livesey's claim that the lawyer did not formally enter his appearance before the NLRC as the respondents' new counsel; if it had been otherwise, he would have supplied his office address to the NLRC. Also, had he exercised due diligence in the performance of his duty as counsel, he could have inquired earlier with the NLRC and should not have waited as late as March 17, 2006 about the outcome of the respondents' motion for reconsideration which was filed as early as October 28, 2005.

To reiterate, the filing of the respondents' petition for *certiorari* should have been reckoned from January 19, 2006 when a copy of the subject NLRC resolution was received by the Corporate Counsels Philippines, Law Offices, which, as of that date, had not been discharged or had withdrawn and therefore remained to be the respondents' counsel of record.

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[40] *Id.* at 941-942.

Clearly, the petition for *certiorari* was filed out of time. Section 6(a), Rule III of the NLRC Revised Rules of Procedure provides that "[f]or purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record."

We now come to the issue of whether the NLRC had jurisdiction over the controversy between Livesey and CBB/ Dwyer on the ground that it involved an intra-corporate dispute.

Based on the facts of the case, we find this issue to have been rendered academic by the compromise agreement between Livesey and CBB and approved by LA Reyno.[41] That CBB reneged in the fulfillment of its obligation under the agreement is no reason to revive the issue and further frustrate the full settlement of the obligation as agreed upon.

The substantive aspect of the case

Even if we rule that the respondents' appeal before the CA had been filed on time, we believe and so hold that the appellate court committed a reversible error of judgment in its challenged decision.

The NLRC committed no grave abuse of discretion in reversing LA Laderas' ruling as there is substantial evidence in the records that Livesey was prevented from fully receiving his monetary entitlements under the compromise agreement between him and CBB, with Elliot signing for CBB as its President and CEO. *Substantial evidence* is more than a scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[42]

Shortly after Elliot forged the compromise agreement with Livesey, CBB ceased operations, a corporate event that was not disputed by the respondents. Then Binswanger suddenly

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[41] *Supra* note 8.

[42] *Gelmart Industries (Phils.), Inc. v. Hon. Leogardo, Jr.*, 239 Phil. 386, 391 (1987); citing *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

appeared. It was established almost simultaneously with CBB's closure, with no less than Elliot as its President and CEO. Through the confluence of events surrounding CBB's closure and Binswanger's sudden emergence, a reasonable mind would arrive at the conclusion that Binswanger is CBB's *alter ego* or that CBB and Binswanger are one and the same corporation. There are also indications of badges of fraud in Binswanger's incorporation. It was a business strategy to evade CBB's financial liabilities, including its outstanding obligation to Livesey.

The respondents impugned the probative value of Livesey's documentary evidence and insist that the NLRC erred in applying the doctrine of piercing the veil of corporate fiction in the case to avoid liability. They consider the NLRC conclusions as mere assumptions.

We disagree.

It has long been settled that the law vests a corporation with a personality distinct and separate from its stockholders or members. In the same vein, a corporation, by legal fiction and convenience, is an entity shielded by a protective mantle and imbued by law with a character alien to the persons comprising it.[43] Nonetheless, the shield is not at all times impenetrable and cannot be extended to a point beyond its reason and policy. Circumstances might deny a claim for corporate personality, under the "**doctrine of piercing the veil of corporate fiction**."

Piercing the veil of corporate fiction is an equitable doctrine developed to address situations where the separate corporate personality of a corporation is abused or used for wrongful purposes.[44] Under the doctrine, the corporate existence may be disregarded where the entity is formed or used for non-legitimate

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[43] Jose C. Vitug (Retired Supreme Court Associate Justice), *Commercial Law and Jurisprudence*, Volume II, 2006 ed., p. 9; citing *Lim v. Court of Appeals*, 380 Phil. 60, 76 (2000).

[44] *Ibid*., citing *Philippine National Bank v. Ritratto Group, Inc.* 414 Phil. 494, 505 (2001).

purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or intentions,[45] in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical.[46]

In the present case, we see an indubitable link between CBB's closure and Binswanger's incorporation. CBB ceased to exist only in name; it re-emerged in the person of Binswanger for an urgent purpose — to avoid payment by CBB of the last two installments of its monetary obligation to Livesey, as well as its other financial liabilities. Freed of CBB's liabilities, especially that owing to Livesey, Binswanger can continue, as it did continue, CBB's real estate brokerage business.

Livesey's evidence, whose existence the respondents never denied, converged to show this continuity of business operations from CBB to Binswanger. It was not just coincidence that Binswanger is engaged in the same line of business CBB embarked on: (1) it even holds office in the very same building and on the very same floor where CBB once stood; (2) CBB's key officers, Elliot, no less, and Catral moved over to Binswanger, performing the tasks they were doing at CBB; (3) notwithstanding CBB's closure, Binswanger's Web Editor (Young), in an e-mail correspondence, supplied the information that Binswanger is "now known" as either CBB (Chesterton Blumenauer Binswanger or as Chesterton Petty, Ltd., in the Philippines; (4) the use of Binswanger of CBB's paraphernalia (receiving stamp) in connection with a labor case where Binswanger was summoned by the authorities, although Elliot claimed that he bought the

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[45] *Ibid.*, citing *National Federation of Labor Union (NAFLU) v. Ople*, G.R. No. 68661, July 22, 1986, 143 SCRA 124; and *Commissioner of Internal Revenue v. Norton & Harrison Company,* No. L-17618, August 31, 1964, 11 SCRA 714.

[46] Hector S. de Leon and Hector M. De Leon, Jr., *The Corporation Code of the Philippines*, 9th ed., 2006, p. 26.

item with his own money; and (5) Binswanger's takeover of CBB's project with the PNB.

While the ostensible reason for Binswanger's establishment is to continue CBB's business operations in the Philippines, which by itself is not illegal, the close proximity between CBB's disestablishment and Binswanger's coming into existence points to an unstated but urgent consideration which, as we earlier noted, was to evade CBB's unfulfilled financial obligation to Livesey under the compromise agreement.[47]

This underhanded objective, it must be stressed, can only be attributed to Elliot as it was apparent that Binswanger's stockholders had nothing to do with Binswanger's operations as noted by the NLRC and which the respondents did not deny.[48] Elliot was well aware of the compromise agreement between Livesey and CBB, as he "agreed and accepted" the terms of the agreement[49] for CBB. He was also well aware that the last two installments of CBB's obligation to Livesey were due on June 30, 2003 and September 30, 2003. These installments were not met and the reason is that after the alleged sale of the majority of CBB's shares of stock, it closed down.

With CBB's closure, Livesey asked why people would buy into a corporation and simply close it down immediately thereafter?[50] The answer — to pave the way for CBB's reappearance as Binswanger. Elliot's "guiding hand," as Livesey puts it, is very much evident in CBB's demise and Binswanger's creation. Elliot knew that CBB had not fully complied with its financial obligation under the compromise agreement. He made sure that it would not be fulfilled when he allowed CBB's closure, despite the condition in the agreement that "unless and until the Compromise Amount has been fully settled and paid by the Company in favor of Mr. Livesey, the Company

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[47] *Supra* note 7.

[48] *Rollo*, p. 875.

[49] *Id.* at 539.

[50] *Id.* at 546.

shall not x x x suspend, discontinue, or cease its entire or a substantial portion of its business operations[.]"[51]

What happened to CBB, we believe, supports Livesey's assertion that De Guzman, CBB's former Associate Director, informed him that at one time Elliot told her of CBB's plan to close the corporation and organize another for the purpose of evading CBB's liabilities to Livesey and its other financial liabilities.[52] This wrongful intent we cannot and must not condone, for it will give a premium to an iniquitous business strategy where a corporation is formed or used for a non-legitimate purpose, such as to evade a just and due obligation.[53] We, therefore, find Elliot as liable as Binswanger for CBB's unfulfilled obligation to Livesey.

WHEREFORE, premises considered, we hereby **GRANT** the petition. The decision dated August 18, 2006 and the Resolution dated March 29, 2007 of the Court of Appeals are **SET ASIDE**. Binswanger Philippines, Inc. and Keith Elliot (its President and CEO) are declared jointly and severally liable for the second and third installments of CBB's liability to Eric Godfrey Stanley Livesey under the compromise agreement dated October 14, 2002. Let the case record be remanded to the National Labor Relations Commission for execution of this Decision.

Costs against the respondents.

SO ORDERED.

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

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[51] *Id.* at 539.

[52] *Id.* at 596.

[53] Jose C. Vitug (Retired Supreme Court Associate Justice), *Commercial Law and Jurisprudence*, Volume II, 2006 ed., p. 9; citing *National Federation of Labor Union v. Ople*, 227 Phil. 113 (1986).

[*] Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1650 dated March 13, 2014.

SECOND DIVISION

[G.R. No. 181055. March 19, 2014]

HEIRS OF TERESITA MONTOYA, represented by JOEL MONTOYA, HEIRS OF PATRICIO OCAMPO, represented by VIOLETA OCAMPO, and BARTOLOME OCAMPO, *petitioners, vs.* **NATIONAL HOUSING AUTHORITY, DORITA GONZALES and ERNESTO GONZALES, in his capacity and as attorney-in-fact,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; INSTANT PETITION'S ARGUMENTS PRESENT PROSCRIBED FACTUAL ISSUES.— The petitioners essentially assail in this petition the validity of the NHA's acquisition of the property, in view of the prohibition on sale or disposition of agricultural lands under E.O. No. 228, in relation to P.D. No. 27 and Section 6 of R.A. No. 6657. Resolution of this petition's core issue requires the proper interpretation and application of the laws and the rules governing the government's agrarian reform program, as well as the laws governing the powers and functions of the NHA as the property's acquiring entity. As presented, therefore, this petition's core issue is a question of law that a Rule 45 petition properly addresses. This notwithstanding, the resolution of this petition's core issue necessitates the prior determination of two essentially factual issues, *i.e.*, the validity of the property's conversion and the petitioners' claimed ownership of the property. As questions of fact, they are proscribed in a Rule 45 petition. x x x To be sure, this Rule 45 proscription is not iron-clad and jurisprudence may admit of exceptions. A careful review of this case's records, however, justifies the application of the general proscriptive rule rather than the exception.

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); THE SUBJECT

PROPERTY IN CASE AT BAR WAS VALIDLY CONVERTED TO RESIDENTIAL FROM AGRICULTURAL USES UNDER R.A. NO. 6657.— In declaring the questioned Deed of Absolute Sale valid, all three tribunals found that the property has already been removed from the agrarian reform's coverage as a result of its valid conversion from agricultural to residential uses. We find no reason to disturb their findings and conclusion on this matter. In the November 30, 1996 order, the DAR Secretary approved the NHA's application for the property's conversion as it was substantially compliant with the rules and regulations on land use conversion. Significantly, the DAR Secretary noted that the department has already certified as exempt from CARP the property after the voluntary land transfer. Following the restriction set by Item VI-E of DAR A.O. 12-94, the DAR Secretary clearly would not have approved the NHA's application for conversion had the property been subjected to the CARP's coverage, more so if the NHA failed to comply with the documentary requirements enumerated in Item VII. As the government agency specifically tasked to determine the propriety of and to grant (or deny) the conversion of agricultural lands to non-agricultural uses, the DAR Secretary's determination on this matter of the property's conversion is, therefore, an exercise of discretion that this Court generally cannot interfere with. After all, official duties, such as the DAR Secretary's conversion order in this case, are presumed to have been done regularly, absent any showing of impropriety or irregularity in the officer's performance. x x x Under Section 51, in relation to Section 54, of R.A. No. 6657, any decision, order, award or ruling of the DAR on any matter pertaining to the application, implementation, enforcement or interpretation of the Act becomes final and conclusive after the lapse of fifteen (15) days unless assailed before the CA *via* a petition for *certiorari.* As the petitioners did not assail the DAR Secretary's conversion order pursuant to Sections 51 and 54, this conversion order became final and conclusive on the petitioners.

3. ID.; ID.; PROHIBITION IN SECTION 6 OF R.A. NO. 6657 ON SALES OR DISPOSITIONS OF PRIVATE AGRICULTURAL LAND DOES NOT APPLY TO THOSE THAT DO NOT VIOLATE OR WERE NOT INTENDED TO

CIRCUMVENT THE CARL'S RETENTION LIMITS.— Section 6 of R.A. No. 6657 specifically governs retention limits. Under its last paragraph, "any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of [R.A. No. 6657]" is considered null and void. A plain reading of the last paragraph appears to imply that the CARL absolutely prohibits sales or dispositions of private agricultural lands. The interpretation or construction of this prohibitory clause, however, should be made within the context of Section 6, following the basic rule in statutory construction that every part of the statute be "interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment." Notably, nothing in this paragraph, when read with the entire section, discloses any legislative intention to absolutely prohibit the sale or other transfer agreements of private agricultural lands after the effectivity of the Act. In other words, therefore, the sale, disposition, *etc*. of private lands that Section 6 of R.A. No. 6657 contextually prohibits and considers as null and void are those which the original owner executes in violation of this provision, *i.e.*, sales or dispositions executed with the intention of circumventing the retention limits set by R.A. No. 6657. Consistent with this interpretation, the proscription in Section 6 on sales or dispositions of private agricultural lands does not apply to those that do not violate or were not intended to circumvent the CARL's retention limits.

4. ID.; ID.; VALIDITY OF RESPONDENT'S SALE OF SUBJECT PROPERTY TO THE NATIONAL HOUSING AUTHORITY (NHA), UPHELD IN CASE AT BAR; REASONS.— We are not convinced that the Gonzaleses' act of selling the property to the NHA amounted to a sale or disposition of private agricultural lands that the terms of Section 6 of R.A. No. 6657 prohibit and consider as null and void, for three reasons. ***First**, P.D. No. 1472 applies, with equal force, to lands subsequently acquired by the NHA.* Under Section 1 of P.D. No. 1472, "government resettlement projects x x x and such other lands or property acquired by the National Housing Authority or its predecessors-in-interest or to be acquired by it for resettlement

purposes and/or housing development, are hereby declared as outside the scope of the Land Reform Program." In *National Housing Authority v. Department of Agrarian Reform Adjudication Board*, the Court, agreeing with the NHA's position, declared that "P.D. 1472 exempts from land reform those lands that petitioner NHA acquired for its housing and resettlement programs whether it acquired those lands when the law took effect or afterwards. x x x ***Second**, the NHA purchased the property for a public purpose; in effect, the NHA acquired the property in the exercise of the right of eminent domain.* The NHA was created pursuant to P.D. No. 757 as a government corporation mandated to implement the government's housing development and resettlement program. x x x Pursuant to its mandate and in the exercise of its powers and functions, the NHA purchased the property to meet the immediate public need or exigency of providing a resettlement site for the thousands of individuals displaced by the Mt. Pinatubo eruption – a catastrophe that destroyed and wiped out entire towns in the province of Pampanga. Under the circumstances, the Gonzaleses could not be said to have sold the property to the NHA in order to circumvent the retention limits set by R.A. No. 6657. x x x ***And third**, the respondents were willing and had offered to pay the petitioners disturbance compensation.* The payment of disturbance compensation is required by R.A. No. 3844, as well as by DAR A.O. 12-94 for a valid conversion of agricultural lands to non-agricultural uses. Accordingly, consistent with the findings of the three tribunals and the records, we affirm as valid the NHA's purchase of the property.

5. ID.; ID.; THE PETITIONERS' CERTIFICATE OF LAND TRANSFERS (CLT) COULD NOT HAVE VESTED THEM WITH OWNERSHIP OVER THE PROPERTY; A CLT ONLY SERVES AS THE TENANT-FARMER'S PROOF OF INCHOATE RIGHT OVER THE LAND COVERED THEREBY AND DOES NOT AUTOMATICALLY GRANT THE TENANT-FARMER ABSOLUTE OWNERSHIP OF THE COVERED LANDHOLDING.— A CLT is a document that the government issues to a tenant-farmer of an agricultural land primarily devoted to rice and corn production placed under the coverage of the government's OLT program pursuant

to P.D. No. 27. It serves as the tenant-farmer's (grantee of the certificate) proof of *inchoate* right over the land covered thereby. A CLT does not automatically grant a tenant-farmer absolute ownership of the covered landholding. Under PD No. 27, land transfer is effected in two stages: (1) issuance of the CLT to the tenant-farmer in recognition that said person is a "deemed owner"; and (2) issuance of an Emancipation Patent *(EP)* as proof of full ownership upon the tenant-farmer's full payment of the annual amortizations or lease rentals. As a preliminary step, therefore, the issuance of a CLT merely evinces that the grantee thereof is qualified to avail of the statutory mechanism for the acquisition of ownership of the land tilled by him, as provided under P.D. No. 27. x x x It is only after compliance with the conditions which entitle the tenant-farmer to an EP that the tenant-farmer acquires the vested right of absolute ownership in the landholding. x x x We agree, in this regard, that a tenant-farmer issued a CLT is "deemed owner" of the described landholding for P.D. No. 27, in relation to E.O. No. 228, states that the tenant-farmer "shall be deemed owner of a portion constituting a family-size farm[.]" Yet, as we clarified above, the legal effect of a CLT is different from that of an EP. The petitioners' presented CLTs are not muniments of title vesting them absolute ownership as to render void the Gonzaleses' sale of the property for want of authority. At most, these CLTs established an inchoate right over the property, in favor of the grantee, but which, nonetheless, was insufficient to divest the Gonzaleses ownership of the property and vest this ownership in the former. More so could these CLTs have legally prevented the NHA from purchasing the property under the circumstances and for the reasons discussed above.

6. ID.; ID.; ID.; CASE AT BAR.— We note, at this point, the PARAD's observation that despite claiming to have received CLTs from then President Ferdinand Marcos, the petitioners presented only two CLTs, both in Jose's name and covering a meager 1.96-hectare area. With the only CLTs issued to Jose as the CLTs on record, we are justified to conclude that no CLTs had been issued to Bartolome and Patricio. Hence, as holders of neither CLTs nor EPs, Bartolome and Patricio could never have acquired ownership of the property, "deemed" or

otherwise. All told, we find no error that we can reverse in the assailed CA rulings; the petitioners failed to show justifiable reason to warrant the reversal of the decisions of the PARAD and of the DARAB, as affirmed by the CA. Consequently, we deny the petition and affirm as VALID the Gonzaleses' sale of the property in favor of the NHA.

APPEARANCES OF COUNSEL

Proceso M. Nacino for petitioners.
Marko Callanta for NHA.
Esteban B. Nancho for private respondent.

D E C I S I O N

BRION, *J.*:

In this petition for review on *certiorari*,[1] we resolve the challenge to the August 31, 2007 decision[2] and the November 26, 2007 resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 97496. This CA decision affirmed *in toto* the August 17, 2005 decision[4] of the Department of Agrarian Reform Adjudication Board *(DARAB)* in DARAB Case No. 9832, which in turn affirmed the March 1, 2000 decision[5] of the Provincial Agrarian Reform Adjudicator *(PARAD)* of San Fernando, Pampanga. The PARAD decision denied the Complaint for Injunction and Declaration of Nullity of Deed of Absolute Sale filed by petitioners Heirs of Teresita Montoya, represented by Joel Montoya, Heirs of Patricio Ocampo, represented by Violeta Ocampo, and Bartolome Ocampo.

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[1] *Rollo*, pp. 9-35.

[2] Penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal; *id.* at 37-55.

[3] *Id.* at 65-66.

[4] Penned by DARAB Assistant Secretary/Member Edgar A. Igano; *id.* at 87-97.

[5] Penned by Provincial Adjudicator Erasmo SP. Cruz; *id.* at 217-228.

The Factual Antecedents

At the core of the present controversy are several parcels of land,[6] 1,296,204 square meters (or approximately 129.62 hectares) in total area *(property)*, situated in Barangay Pandacaqui, Mexico, Pampanga, and Barangay Telepayong and Barangay Buensuceso, Arayat, Pampanga. The property was a portion of the 402-hectare landholding *(landholding)* previously owned by the Gonzales family *(Gonzaleses)*; it is currently registered in the name of respondent National Housing Authority *(NHA)* under Transfer Certificate of Title Nos. 395781 to 395790.[7]

The PARAD summarized the facts as follows:

In 1992, the Gonzaleses donated a portion of their landholding in Pandacaqui, Mexico, Pampanga as a resettlement site for the thousands of displaced victims of the Mt. Pinatubo eruption. The donation[8] was signed in Malacañang and *per* the terms of the donation, the Gonzaleses gave the landholding's tenants one-half share of their respective tillage with the corresponding title at no cost to the latter. The Gonzaleses retained the property (pursuant to their retention rights) and registered it in respondent Dorita Gonzales-Villar's name.

Still needing additional resettlement sites, the NHA purchased the property on February 20, 1996.[9] The NHA, thereafter, applied, before the Department of Agrarian Reform *(DAR)*, for the conversion of the property to residential from agricultural use. On November 30, 1996,[10] the DAR approved the NHA's application for conversion.

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[6] These parcels of land were designated as Lots 1, 2, 3, 4, 5, 8, 9, 11 and 12 and respectively covered by Transfer Certificates of Title Nos. 393174-R, 393175-R, 393181-R, 393177-R, 393178-R, 393186-R, 393187-R, 393189-R and 393190-R of the Registry of Deeds of Pampanga; *id.* at 203-212.

[7] *Ibid*.

[8] See Memorandum of Agreement dated December 23, 1992; *id.* at 173-178.

[9] Deed of Absolute Sale; *id.* at 118-122.

[10] *Id.* at 168-171.

In their complaint[11] filed before the PARAD, the petitioners claimed that they were the registered tenants of the property, under the government's operation land transfer *(OLT)* program, *per* the April 25, 1996 certification of the Municipal Agrarian Reform Officer *(MARO)* of Arayat, Pampanga.[12] They argued that the 1992 donation (that gave the tenants one-half share of their respective tillage with the corresponding title at no cost) and the February 20, 1996 sale between the NHA and the Gonzaleses were intended to circumvent the provisions of Presidential Decree *(P.D.)* No. 27[13] and of Republic Act *(R.A.)* No. 6657 (the Comprehensive Agrarian Reform Law of 1988).

The petitioners further claimed that on March 15, 1996,[14] they informed the NHA of their objections to the NHA's purchase of the property. Despite this notice, the NHA destroyed their rice paddies and irrigation dikes in violation of their security of tenure.

The NHA answered,[15] in defense, that the Gonzaleses and the DAR assured them that the property was cleared from any claim of tenants/squatters. It pointed out that on November 9, 1994, the Provincial Agrarian Reform Officer (*PARO*) concurred with the MARO's recommendation for the conversion of the property to be used as resettlement site for the Mt. Pinatubo eruption victims and he (the PARO) indorsed this recommendation to the Office of the DAR Secretary.[16] Also, on February 7,

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[11] *Id.* at 112-116.

[12] *Id*. at 117. Per this Certification, the following were the petitioners' respective tillage: Patricio – Lot No. 23 (20,815 sqm.); Teresita – Lot No. 86 (13,287 sqm.), Lot No. 11 (4,870 sqm.) and Lot No. 24 (4,027 sqm.); and Bartolome – Lot No. 27 (14,000 sqm.).

[13] "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." Enacted on October 21, 1972.

[14] *Rollo,* p. 123.

[15] *Id.* at 124-131.

[16] See also the DAR's November 30, 1996 conversion order; *supra* note 10.

1996, the NHA Board, through Resolution No. 3385, approved the acquisition of the property for the stated purpose. It added that the DAR approved the property's conversion as having substantially complied with the rules and regulations on land conversion. Finally, it argued that the property was already outside the land reform program's coverage per Section 1 of P.D. No. 1472.[17]

In their answer,[18] Dorita and Ernesto (collectively, the *respondents*) similarly pointed to the DAR's November 30, 1996 conversion order. They also claimed, as special defense, that the petitioners had been remiss in their lease rental payments since 1978. Lastly, they pointed out that they had already paid the required disturbance compensation to the property's tenants, save for the petitioners who refused to accept their offer.

The PARAD's and the DARAB's rulings

In its decision of March 1, 2000,[19] the PARAD denied the petitioners' complaint. The PARAD found that the property's conversion to residential from agricultural uses conformed with the law and passed its rigorous requirements. The DAR's approval of the NHA's application for conversion made in compliance of the law legally converted and effectively removed the property from the coverage of the Comprehensive Agrarian Reform Program (*CARP*). Additionally, the PARAD pointed to the presumption of regularity that the law accords to the performance of official duties.

The PARAD also pointed out that the property's removal from the CARP's coverage further finds support in P.D. No. 1472, which exempts from the coverage of the agrarian reform program lands acquired or to be acquired by the NHA for its resettlement projects. In this regard, the PARAD highlighted the purpose for which the NHA purchased the property, *i.e.*,

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[17] Enacted on June 11, 1978.

[18] *Rollo*, pp. 132-135.

[19] *Supra* note 5.

as a resettlement site for the thousands of displaced victims of the Mt. Pinatubo eruption.

Lastly, the PARAD rejected the petitioners' claim of "deemed ownership" of the property under Executive Order *(E.O.)* No. 228,[20] in relation to P.D. No. 27. The PARAD pointed out that the petitioners presented only two Certificates of Land Transfer (*CLTs*), both under Jose Montoya's name that covered a 1.96 hectare area. Even then, the PARAD held that the CLTs are not proof of absolute ownership; at best, they are evidence of the government's recognition of Jose as the covered portion's tenant.

Nevertheless, the PARAD recognized the petitioners' entitlement to disturbance compensation in an amount equivalent to five times the average gross harvest for the last five years, pursuant to Section 36(1) of R.A. No. 3844,[21] less the petitioners' rental arrears.

In its August 17, 2005 decision,[22] the DARAB affirmed *in toto* the PARAD's ruling. It subsequently denied the petitioners' motion for reconsideration[23] in its October 4, 2006 resolution.[24]

The CA's ruling

In its August 31, 2007 decision,[25] the CA affirmed the DARAB's ruling (that affirmed those of the PARAD's). As the DARAB and the PARAD did, the CA held that the property's conversion complied with the law's requirements and procedures that are presumed to have been done in the regular performance of official duties. And, as the NHA acquired the property as

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[20] Enacted on July 17, 1987.

[21] Otherwise known as the "Agricultural Land Reform Code." Enacted on August 8, 1963.

[22] *Supra* note 4.

[23] *Rollo,* pp. 98-102.

[24] *Id.* at 103-105.

[25] *Supra* note 2.

resettlement sites, the CA pointed out that the property is exempted from the agrarian reform program's coverage, pursuant to P.D. No. 1472. The CA additionally observed that the property was the Gonzaleses' retained area that Section 6 of R.A. No. 6657 specifically guarantees to them (as landowners) despite the issuance of Jose's CLTs.

The petitioners filed the present petition after the CA denied their motion for reconsideration[26] in the CA's November 26, 2007 resolution.[27]

The Petition

The petitioners argue in this petition[28] that the CA erred in declaring the property as the Gonzaleses' retained area. They point out that the Gonzaleses failed to prove that they (the Gonzaleses) filed, before the DAR, an application to exercise their retention rights over the property or that the DAR approved such application pursuant to DAR Administrative Order No. 4, series of 1991 and DAR Administrative Order No. 6, series of 2000.

The petitioners also argue that the property had already been covered by the government's OLT program prior to the NHA's purchase; this purchase, therefore, constitutes a prohibited disposition of agricultural land per Section 6 of R.A. No. 6657. And, while P.D. No. 1472 exempts from the agrarian reform program's coverage lands that the NHA acquires for its resettlement projects, the petitioners argue that this law should be read in conjunction with the provisions of the Comprehensive Agrarian Reform Law (*CARL*); hence, as the NHA acquired the property after the CARL's effectivity date, the exempting provision of P.D. No. 1472 no longer applies.

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[26] *Rollo*, pp. 56-63.

[27] *Supra* note 3.

[28] *Supra* note 1. See also the petitioners' Memorandum; *rollo*, pp. 326-349.

Finally, the petitioners maintain that as CLT holders, they are deemed owners of their respective tillage as of October 21, 1972, pursuant to E.O. No. 228, in relation to P.D. No. 27. The Gonzaleses, therefore, could not have validly sold the property in 1996, the ownership of which the law had already vested to them as of October 21, 1972.

The Case for the Respondents

For their part, the respondents argue that the issue of whether the property is part of the Gonzaleses' retained area, which the DARAB and the CA resolved in their favor, is factual and, therefore, beyond the ambit of a Rule 45 petition.[29] In fact, the respondents point out that the DAR approved the property's conversion to residential from agricultural uses after ascertaining that it was part of their retained area, in addition to their compliance with the required documentation and procedures.

The respondents also argue that the sale/disposition-prohibition in Section 6 of R.A. No. 6657 applies only to private agricultural lands that are still covered by the CARP. To the respondents, this prohibition does not apply to private lands, such as the property, whose use the law had already validly converted.

Finally, the respondents reject the petitioners' claim of "deemed ownership" of the property *per* the issued CLTs. They maintain that the CLTs do not vest any title to or ownership over the covered property but, at most, are evidence of the preliminary step for acquiring ownership, which, in every case, requires prior compliance with the prescribed terms and conditions.

The Case for the NHA

The NHA argues in its comment[30] that the petition raises questions of fact that are proscribed in a petition for review

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[29] *Id*. at 245-260.

[30] *Id*. at 235-240. See also the NHA's Memorandum; *id.* at 305-313.

on *certiorari*. While the law allows certain exceptions to the question-of-fact proscription, it points out that the petitioners' cited exception does not apply as the PARAD, the DARAB and the CA unanimously ruled on these factual matters that were well supported by substantial evidence.

Additionally, the NHA argues that it acquired the property for its resettlement project (for the Mt. Pinatubo eruption victims) and is thus outside the CARL's coverage. It points out that the exempting provision of P.D. No. 1472 extends equally to lands that it had acquired prior to the effectivity of the CARL and to those that it acquired or will acquire thereafter.

The Court's Ruling

We do not find the petition meritorious.

The petition's arguments present proscribed factual issues

The petitioners essentially assail in this petition the validity of the NHA's acquisition of the property, in view of the prohibition on sale or disposition of agricultural lands under E.O. No. 228, in relation to P.D. No. 27 and Section 6 of R.A. No. 6657. Resolution of this petition's core issue requires the proper interpretation and application of the laws and the rules governing the government's agrarian reform program, as well as the laws governing the powers and functions of the NHA as the property's acquiring entity. As presented, therefore, this petition's core issue is a question of law that a Rule 45 petition properly addresses.

This notwithstanding, the resolution of this petition's core issue necessitates the prior determination of two essentially factual issues, *i.e.*, the validity of the property's conversion and the petitioners' claimed ownership of the property. As questions of fact, they are proscribed in a Rule 45 petition.

The settled rule is that the Court's jurisdiction in a petition for review on *certiorari* is limited to resolving only questions of law. A question of law arises when the doubt exists as to

what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts.[31] Under these significations, we clearly cannot resolve this petition's issues without conducting a re-examination and re-evaluation of the lower tribunals' unanimous findings on the factual matters (of the property's conversion and of the petitioners' ownership of the property), including the presented evidence, which the Court's limited Rule 45 jurisdiction does not allow.

Moreover, this Court generally accords respect, even finality to the factual findings of quasi-judicial agencies, *i.e.*, the PARAD and the DARAB, when these findings are supported by substantial evidence.[32] The PARAD and the DARAB, by reason of their official position have acquired expertise in specific matters within their jurisdiction, and their findings deserve full respect; without justifiable reason, these factual findings ought not to be altered, modified, or reversed.[33]

To be sure, this Rule 45 proscription is not iron-clad and jurisprudence may admit of exceptions.[34] A careful review of this case's records, however, justifies the application of the

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[31] *Republic v. Guilalas,* G.R. No. 159564, November 16, 2011, 660 SCRA 221, 228.

[32] See *Maylem v. Ellano,* G.R. No. 162721, July 13, 2009, 592 SCRA 440, 449.

[33] *Heirs of Arcadio Castro, Sr. v. Lozada,* G.R. No. 163026, August 29, 2012, 679 SCRA 271, 290.

[34] These exceptions are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

general proscriptive rule rather than the exception. Viewed in this light, we are constrained to deny the petition for raising proscribed factual issues and because we find no reason to depart from the assailed rulings.

Even if we were to disregard this procedural lapse and decide the case on its merits, we are inclined to deny the petition and affirm as valid the NHA's acquisition of the property on three main points, which we will discuss in detail below.

The property was validly converted to residential from agricultural uses

In declaring the questioned Deed of Absolute Sale valid, all three tribunals found that the property has already been removed from the agrarian reform's coverage as a result of its valid conversion from agricultural to residential uses.

We find no reason to disturb their findings and conclusion on this matter.

Under Section 65 of R.A. No. 6657, the DAR is empowered to authorize, under certain conditions, the reclassification or conversion of agricultural lands. Pursuant to this authority and in the exercise of its rule-making power under Section 49 of R.A. No. 6657, the DAR issued Administrative Order No. 12, series of 1994 *(DAR A.O. 12-94)* (the then prevailing administrative order), providing the rules and procedure governing agricultural land conversion. Item VII of DAR A.O. 12-94 enumerates the documentary requirements for approval of an application for land conversion.[35] Notably, Item VI-E

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[35] Item VII of DAR A.O. 12-94 pertinently provides:
VII. DOCUMENTARY REQUIREMENTS
A. Requirements for all applicants:
1. Application for Conversion (Land Use Conversion [LUC] Form No. 1, Series of 1994)
2. Special Power of Attorney, if the petitioner is other than the owner of the land
3. True copy of Original Certificate of Title (OCT) or Transfer Certificate of Title (TCT) certified by the Register of Deeds

provides that no application for conversion shall be given due course if: (1) the DAR has issued a Notice of Acquisition under the compulsory acquisition process; (2) a Voluntary Offer to Sell covering the subject property has been received by the

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4. Location Plan, Vicinity Map of the Land and Area Development Plan including Work and Financial Plan, statement of justification of economic/social benefits of the project and recent photographs of the property being applied for conversion

5. Proof of financial and organizational capability to develop the land, such as:

   a. Profile of developer, including details of past or current development projects

   b. Financial Statements duly authenticated by a certified public accountant

   c. Articles of Incorporation or Partnership, if the applicant/developer is a corporation or partnership

6. Zoning certification from the HLURB Regional Officer when the subject land is within a city/municipality with a land use plan/zoning ordinance approved and certified by the HLRB (LUC Form No. 2, Series of 1994)

7. Certification of the Provincial Planning and Development Coordinator that the proposed use conforms with the approved land use plan when the subject land is within a City/Municipality which a land use plan/zoning ordinance approved by the Sangguniang Panlalawigan (SP). The certification should specify the SP Resolution Number and the date of the approval of the land use plan. (LUC Form No. 3, Series of 1994)

8. Certification from the Regional Irrigation Manager of the National Irrigation Administration (NIA) (LUC Form No. 4, Series of 1994) or the President of the cooperative or irrigator's association, if the system is administered by a cooperative or association (LUC Form No. 4-A, Series of 1994) on whether or not the area is covered under AO No. 20, Series of 1992 of the Office of the President

9. Certification from the DENR Regional Executive Director concerned that the proposed conversion is ecologically sound (LUC Form No. 5, Series of 1994)

10. Additional requirements if at the time of the application the land is within the agricultural zone:

   a. Certification from the DA Regional Director concerned that the land has ceased to be economically feasible and sound for agricultural purposes (LUC Form No. 6, Series of 1994) or Certification from the local government unit that the land or locality has become highly urbanized and will have greater economic value for commercial, industrial and residential purposes (LUC Form No. 7, Series of 1994)

   b. Municipal/city resolution favorably indorsing the application for conversion.

DAR; or (3) there is already a perfected agreement between the landowner and the beneficiaries under Voluntary Land Transfer.

In the November 30, 1996 order, the DAR Secretary approved the NHA's application for the property's conversion as it was substantially compliant with the rules and regulations on land use conversion. Significantly, the DAR Secretary noted that the department has already certified as exempt from CARP the property after the voluntary land transfer.[36]

Following the restriction set by Item VI-E of DAR A.O. 12-94, the DAR Secretary clearly would not have approved the NHA's application for conversion had the property been subjected to the CARP's coverage, more so if the NHA failed to comply with the documentary requirements enumerated in Item VII. As the government agency specifically tasked to determine the propriety of and to grant (or deny) the conversion of agricultural lands to non-agricultural uses, the DAR Secretary's determination on this matter of the property's conversion is, therefore, an exercise of discretion that this Court generally cannot interfere with. After all, official duties, such as the DAR Secretary's conversion order in this case, are presumed to have been done regularly, absent any showing of impropriety or irregularity in the officer's performance.

Interestingly, the petitioners never appealed the DAR Secretary's conversion order which rendered the conversion order final and executory. Under Section 51, in relation to Section 54, of R.A. No. 6657, any decision, order, award or ruling of the DAR on any matter pertaining to the application, implementation, enforcement or interpretation of the Act becomes final and conclusive after the lapse of fifteen (15) days unless assailed before the CA *via* a petition for *certiorari*. As the petitioners did not assail the DAR Secretary's conversion order pursuant to Sections 51 and 54, this conversion order became final and conclusive on the petitioners.

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[36] *Rollo*, p. 170.

Section 6 of R.A. No. 6657 does not absolutely prohibit the sale or disposition of private agricultural lands

Section 6 of R.A. No. 6657[37] specifically governs retention limits. Under its last paragraph, "any sale, disposition, lease, management, contract or transfer of possession of private lands

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[37] Section 6 of R.A. No. 6657 reads in full:

Section 6. Retention Limits. — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size 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 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 areas originally retained by them thereunder: provided, further, that original homestead grantees or their 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 all cases, the security of tenure of the farmers or farmworkers 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 possession of private lands executed by the original landowner in violation of the Act shall be null and void**: provided, however, that those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds

executed by the original landowner in violation of [R.A. No. 6657]" is considered null and void. A plain reading of the last paragraph appears to imply that the CARL absolutely prohibits sales or dispositions of private agricultural lands. The interpretation or construction of this prohibitory clause, however, should be made within the context of Section 6, following the basic rule in statutory construction that every part of the statute be "interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment."[38] Notably, nothing in this paragraph, when read with the entire section, discloses any legislative intention to absolutely prohibit the sale or other transfer agreements of private agricultural lands after the effectivity of the Act.

In other words, therefore, the sale, disposition, *etc.* of private lands that Section 6 of R.A. No. 6657 contextually prohibits and considers as null and void are those which the original owner executes in violation of this provision, *i.e.*, sales or dispositions executed with the intention of circumventing the retention limits set by R.A. No. 6657. Consistent with this interpretation, the proscription in Section 6 on sales or dispositions of private agricultural lands does not apply to those that do not violate or were not intended to circumvent the CARL's retention limits.

Guided by these principles, we are not convinced that the Gonzaleses' act of selling the property to the NHA amounted to a sale or disposition of private agricultural lands that the terms of Section 6 of R.A. No. 6657 prohibit and consider as null and void, for three reasons.

***First**, P.D. No. 1472 applies, with equal force, to lands subsequently acquired by the NHA.* Under Section 1 of P.D.

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shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares. [emphasis ours]

[38] *Land Bank of the Phils. v. AMS Farming Corp.*, 590 Phil. 170, 203 (2008).

No. 1472, "government resettlement projects x x x and such other lands or property acquired by the National Housing Authority or its predecessors-in-interest or to be acquired by it for resettlement purposes and/or housing development, are hereby declared as outside the scope of the Land Reform Program."[39]

In *National Housing Authority v. Department of Agrarian Reform Adjudication Board*,[40] the Court, agreeing with the NHA's position, declared that "P.D. 1472 exempts from land reform those lands that petitioner NHA acquired for its housing and resettlement programs whether it acquired those lands when the law took effect or afterwards. The language of the exemption is clear: the exemption covers 'lands or property acquired x x x or to be acquired' by NHA."[41]

***Second**, the NHA purchased the property for a public purpose; in effect, the NHA acquired the property in the exercise of the right of eminent domain.* The NHA was created pursuant to P.D. No. 757[42] as a government corporation mandated to implement the government's housing development and resettlement program. To be able to perform this function, the NHA is vested with sovereign powers. This includes, among others, the exercise of the right of eminent domain or the right to "acquire by purchase privately owned lands for purposes of housing development, resettlement and related services and facilities[.]"[43]

Pursuant to its mandate and in the exercise of its powers and functions, the NHA purchased the property to meet the immediate

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[39] Underscore ours.

[40] G.R. No. 175200, May 4, 2010, 620 SCRA 33, 37.

[41] *Id*. at 37.

[42] Enacted on July 31, 1975. The title of this Decree reads: "Creating the National Housing Authority and Dissolving the Existing Housing Agencies, Defining its Powers and Functions, Providing Funds Therefor, and for Other Purposes."

[43] The NHA's powers and functions are enumerated in Section 6 of P.D. No. 757. It reads in part:

public need or exigency of providing a resettlement site for the thousands of individuals displaced by the Mt. Pinatubo eruption – a catastrophe that destroyed and wiped out entire towns in the province of Pampanga. Under the circumstances, the Gonzaleses could not be said to have sold the property to the NHA in order to circumvent the retention limits set by R.A. No. 6657. The property was sold in order to meet a clear public purpose – to serve as a resettlement site – which the context of Section 6 of R.A. No. 6657 does not prohibit.

***And third**, the respondents were willing and had offered to pay the petitioners disturbance compensation.* The payment of disturbance compensation is required by R.A. No. 3844, as well as by DAR A.O. 12-94 for a valid conversion of agricultural lands to non-agricultural uses.

Accordingly, consistent with the findings of the three tribunals and the records, we affirm as valid the NHA's purchase of the property.

The petitioners' presented CLTs could not have vested them with ownership over the property

A CLT is a document that the government issues to a tenant-farmer of an agricultural land primarily devoted to rice and corn production placed under the coverage of the government's OLT program pursuant to P.D. No. 27. It serves as the tenant-

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Section 6. Powers and functions of the Authority. The Authority shall have the following powers and functions to be exercised by the Board in accordance with the established national human settlements plan prepared by the Human Settlements Commission:
(a) Develop and implement the comprehensive and integrated housing program provided for in Section 1 hereof;
(b) Formulate and enforce general and specific policies for housing development and resettlement;
(c) Prescribe guidelines and standards for the reservation, conservation and utilization of public lands identified for housing and resettlement;
(**d) Exercise the right of eminent domain or acquire by purchase privately owned lands for purposes of housing development, resettlement and related services and facilities**[.] [emphasis ours]

farmer's (grantee of the certificate) proof of *inchoate* right over the land covered thereby.[44]

A CLT does not automatically grant a tenant-farmer absolute ownership of the covered landholding. Under PD No. 27, land transfer is effected in two stages: (1) issuance of the CLT to the tenant-farmer in recognition that said person is a "deemed owner"; and (2) issuance of an Emancipation Patent *(EP)* as proof of full ownership upon the tenant-farmer's full payment of the annual amortizations or lease rentals.[45]

As a preliminary step, therefore, the issuance of a CLT merely evinces that the grantee thereof is qualified to avail of the statutory mechanism for the acquisition of ownership of the land tilled by him, as provided under P.D. No. 27.[46] The CLT is not a muniment of title that vests in the tenant-farmer absolute ownership of his tillage.[47] It is only after compliance with the conditions which entitle the tenant-farmer to an EP that the tenant-farmer acquires the vested right of absolute ownership in the landholding.[48] Stated otherwise, the tenant-farmer does not acquire full ownership of the covered landholding simply by the issuance of a CLT. The tenant-farmer must first comply with the prescribed conditions and procedures for acquiring full ownership but until then, the title remains with the landowner.[49]

We agree, in this regard, that a tenant-farmer issued a CLT is "deemed owner" of the described landholding for P.D. No. 27, in relation to E.O. No. 228, states that the tenant-farmer "shall

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[44] See *Del Castillo v. Orciga*, 532 Phil. 204, 214 (2006).

[45] *Ibid*. See also *Maylem v. Ellano, supra* note 32, at 449-450.

[46] See *Dela Cruz, et al. v. Quiazon*, 593 Phil. 328, 340 (2008); and *Pagtalunan v. Judge Tamayo*, 262 Phil. 267, 275 (1990).

[47] *Dela Cruz, et al. v. Quiazon, supra* note 46, at 340.

[48] See *Pagtalunan v. Judge Tamayo, supra* note 46, at 275.

[49] See *Heirs of Dr. Jose Deleste v. Land Bank of the Philippines (LBP)*, G.R. No. 169913, June 8, 2011, 651 SCRA 352, 382, citing *Association of Small Landowners in the Philippines, Inc. v. Sec. of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 390-391.

be deemed owner of a portion constituting a family-size farm[.]" Yet, as we clarified above, the legal effect of a CLT is different from that of an EP. The petitioners' presented CLTs are not muniments of title vesting them absolute ownership as to render void the Gonzaleses' sale of the property for want of authority. At most, these CLTs established an inchoate right over the property, in favor of the grantee, but which, nonetheless, was insufficient to divest the Gonzaleses ownership of the property and vest this ownership in the former. More so could these CLTs have legally prevented the NHA from purchasing the property under the circumstances and for the reasons discussed above.

We note, at this point, the PARAD's observation that despite claiming to have received CLTs from then President Ferdinand Marcos, the petitioners presented only two CLTs, both in Jose's name and covering a meager 1.96-hectare area. With the only CLTs issued to Jose as the CLTs on record, we are justified to conclude that no CLTs had been issued to Bartolome and Patricio. Hence, as holders of neither CLTs nor EPs, Bartolome and Patricio could never have acquired ownership of the property, "deemed" or otherwise.

All told, we find no error that we can reverse in the assailed CA rulings; the petitioners failed to show justifiable reason to warrant the reversal of the decisions of the PARAD and of the DARAB, as affirmed by the CA. Consequently, we deny the petition and affirm as VALID the Gonzaleses' sale of the property in favor of the NHA.

WHEREFORE, in light of these considerations, we hereby **DENY** the petition. We **AFFIRM** the decision dated August 31, 2007 and the resolution dated November 26, 2007 of the Court of Appeals in CA-G.R. SP No. 97496. No costs.

SO ORDERED.

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

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[*] Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1650 dated March 13, 2014.

SECOND DIVISION

[G.R. No. 189176. March 19, 2014]

BARRY LANIER and PERLITA LANIER, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IT IS NOT NECESSARY THAT THE CONTENTS OF A MOTION FOR EXTENSION SHOULD BE SIMILAR TO A PETITION FOR *CERTIORARI*; WHEN THE OFFICE OF THE SOLICITOR GENERAL (OSG) IN ITS MOTION FOR EXTENSION FAILED TO IMPLEAD THE TRIAL COURT JUDGE, MUCH LESS ASSAIL HIS ORDER, SAID OMISSION SHOULD NOT LIMIT THE PITCH AND REACH OF THE PETITION AND IT IS SUFFICIENT THAT THE MOTION STATE THE MATERIAL DATES AND THE TIMELINESS OF THE FILING.— It is not necessary that the contents of a motion for extension should be similar to a petition for *certiorari*. When the OSG in his motion for extension failed to implead the trial court judge, much less assail his Order, said omission should not limit the pitch and reach of the petition. Otherwise, the prayer for more time would be pointless. It is sufficient that the motion for extension state the material dates, as the Motion of the OSG did, showing the timeliness of its filing. The grant of the Motion for Extension occasioned the timeliness of the review of both the DOJ Resolutions and the RTC Order.

2. ID.; ID.; ID.; THE APPELLATE COURT CORRECTLY TREATED THE URGENT MOTION FOR RECONSIDERATION SUBMITTED BY THE OSG BEFORE THE DEPARTMENT OF JUSTICE (DOJ) AS SUBSTANTIAL COMPLIANCE WITH THE CONDITION OF EXHAUSTING ALL PLAIN, SPEEDY AND ADEQUATE REMEDIES BEFORE FILING A *CERTIORARI* PETITION.— Petitioners question the failure of respondent to file a motion for reconsideration from the RTC Order before filing a petition for *certiorari* before the Court of Appeals.

Well-established is the rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. The rule however admits of exceptions, the most relevant of which is where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court. The RTC Order was anchored on the twin Resolutions issued by the DOJ granting the petition for review and directing the provincial prosecutor to withdraw the Information. Thus, the appellate court correctly treated the Urgent Motion for Reconsideration submitted by the OSG before the DOJ as a substantial compliance with the condition of exhausting all plain, speedy and adequate remedies before filing a *certiorari* petition. Clearly, the facts, issues and arguments that would have been raised in a motion for reconsideration in the RTC are rooted on the DOJ's finding of the non-existence of probable cause.

3. ID.; ID.; ID.; THE MOTION FOR EXTENSION BY THE OSG WAS FILED ON TIME.— Petitioners claim that the Urgent Motion for Reconsideration with the DOJ was filed out of time. Petitioners cited paragraph 1 of the Motion which states that the 6 May 2004 Resolution of the Secretary of Justice was received on 7 May 2004. Thus, respondent had until 17 May 2004 to file the Urgent Motion for Reconsideration, but the motion was filed only on 25 May 2004. A reading of the Motion for Extension indeed reveals that the OSG stated in Paragraph 1 that they received the 6 May 2004 Resolution on 7 May 2004. Differently, the OSG, in its Urgent Motion for Reconsideration, stated that the 6 May 2004 Resolution was received on 18 May 2004. Records show that the OSG erred in indicating in the motion for extension 7 May 2004 as the receipt date. 7 May 2004 was actually the mailing date as recorded in the registry receipt attached to the 6 May 2004 Resolution. Verily, the variance in dates could be attributed to a mere clerical error. The OSG received a copy of the 6 May 2004 Resolution on 18 May 2004. And the OSG complied with the 10-day reglementary period within which to file its Motion for Reconsideration by filing it on 26 May 2004.

4. ID.; ID.; ID.; WHEN THE SECRETARY OF JUSTICE CONCLUDED THAT THERE WAS PLANTING OF EVIDENCE BASED ON THE LONE FACT THAT THE

RAIDING TEAM ARRIVED AHEAD OF THE SEARCH TEAM, HE, IN EFFECT, WENT INTO THE MERITS OF THE CASE; WHEN HE MADE A DETERMINATION BASED ON HIS APPRECIATION OF THE PIECES OF EVIDENCE FOR OR AGAINST THE ACCUSED, HE EFFECTIVELY ASSUMED THE FUNCTION OF A TRIAL JUDGE IN THE EVALUATION OF THE PIECES OF EVIDENCE AND, THEREBY, ACTED OUTSIDE HIS JURISDICTION.— The elements of illegal possession of prohibited drugs are: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. The presence of these elements was attested to by evidence such as the Joint Affidavit of Arrest and the Receipt of the Properties seized. The police officers averred that they recovered 3 sachets of *shabu* weighing 10.4 grams inside a jewelry box on petitioners' living room. They also seized one (1) big gift pack containing dried *marijuana* leaves weighing more or less 950 grams and two (2) gift packs containing nine (9) bricks of dried *marijuana* leaves weighing 800 grams on top of the head board of petitioners' bed. Moreover, the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge or *animus possidendi*. When the Secretary of Justice concluded that there was planting of evidence based on the lone fact that the raiding team arrived ahead of the search team, he, in effect went into the merits of the defense. When he made a determination based on his own appreciation of the pieces of evidence for and against the accused, he effectively assumed the function of a trial judge in the evaluation of the pieces of evidence and, thereby, acted outside his jurisdiction.

5. ID.; ID.; ID.; WHEN THE TRIAL COURT'S ORDER RESTS ENTIRELY ON THE ASSESSMENT OF THE DOJ WITHOUT DOING ITS OWN INDEPENDENT EVALUATION, THE TRIAL COURT EFFECTIVELY ABDICATES ITS JUDICIAL POWER AND REFUSES TO PERFORM A POSITIVE DUTY ENJOINED BY LAW; WHILE THE SECRETARY'S RULING IS PERSUASIVE, IT IS NOT BINDING ON COURTS.— The RTC erroneously held that it has not yet effectively acquired jurisdiction over

the person of the accused as no commitment order has yet been issued against them. In *Crespo v. Mogul,* the Court held that once a criminal complaint or information is filed in court, any disposition of the case or dismissal or acquittal or conviction of the accused rests within the exclusive jurisdiction, competence, and discretion of the trial court. The rule applies to a motion to withdraw the Information or to dismiss the case even before or after arraignment of the accused. When the trial court grants a motion of the public prosecutor to dismiss the case, or to quash the Information, or to withdraw the Information in compliance with the directive of the Secretary of Justice, or to deny the said motion, it does so not out of subservience to or defiance of the directive of the Secretary of Justice but in sound exercise of its judicial prerogative.

6. ID.; ID.; ID.; THE TRIAL COURT IN CASE AT BAR CLEARLY DEFERRED THE FINDING OF PROBABLE CAUSE BY THE SECRETARY OF JUSTICE WITHOUT DOING ITS OWN INDEPENDENT EVALUATION.— The RTC clearly deferred to the finding of probable cause by the Secretary of Justice without doing its own independent evaluation. The trial court even expressed its apprehension that no prosecutor would be willing to prosecute the case should the motion to withdraw be denied. The only matter discussed by the trial court was its concurrence with the DOJ relative to the service and conduct of the search for illegal drugs. The trial court declared that the evidence is inadmissible in view of the manner the search warrant was served. Settled is the rule that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits. In the case at bar, the grounds relied upon by petitioners should be fully explained and threshed out not in a preliminary investigation but during trial as the same are matters of defense involving factual issues. At the risk of sounding repetitive, we must emphasize that the trial court, having acquired jurisdiction over the case, is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the Secretary's ruling is persuasive, it is not binding on courts. All told, the Court of Appeals did not commit any reversible error when it nullified and set aside the Resolutions and Order, rendered by the Secretary of Justice and the RTC, respectively.

7. ID.; CRIMINAL PROCEDURE; PROBABLE CAUSE; COURTS OF LAW ARE PRECLUDED FROM DISTURBING THE FINDINGS OF PUBLIC PROSECUTORS AND THE DEPARTMENT OF JUSTICE (DOJ) ON THE EXISTENCE OR NON-EXISTENCE OF PROBABLE CAUSE FOR THE PURPOSE OF FILING CRIMINAL INFORMATIONS, UNLESS SUCH FINDINGS ARE TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.— It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The *rationale* behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. Judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion.

8. ID.; ID.; ID.; PROBABLE CAUSE IMPLIES MERE PROBABILITY OF GUILT, A FINDING BASED ON MORE THAN BARE SUSPICION BUT LESS THAN EVIDENCE THAT WOULD JUSTIFY A CONVICTION.— As a requisite to the filing of a criminal complaint, probable cause pertains to facts and circumstances sufficient to incite a well-founded belief that a crime has been committed and the accused is probably guilty thereof. Only such facts sufficient to support a *prima facie* case against the respondent are required, not absolute certainty.

Probable cause implies mere probability of guilt, *i.e.*, a finding based on more than bare suspicion but less than evidence that would justify a conviction. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial.

9. ID.; ID.; ONCE A CRIMINAL COMPLAINT OR INFORMATION IS FILED IN COURT, ANY DISPOSITION OF THE CASE OR DISMISSAL OR CONVICTION OF THE ACCUSED RESTS WITHIN THE EXCLUSIVE JURISDICTION, COMPETENCE, AND DISCRETION OF THE TRIAL COURT.— Regarding the submission of petitioners that the remedy from the RTC's Order to withdraw the filing of the Information should have been an ordinary appeal, we rule that on a finding of grave abuse of discretion, the RTC Order may be elevated to the Court of Appeals on *certiorari*. There is, here, a basis for such finding. When confronted with a motion to withdraw an Information on the ground of lack of probable cause based on a resolution of the Secretary of Justice, the bounden duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding farther with the trial. While the Secretary's ruling is persuasive, it is not binding on courts. When the trial court's Order rests entirely on the assessment of the DOJ without doing its own independent evaluation, the trial court effectively abdicates its judicial power and refuses to perform a positive duty enjoined by law.

APPEARANCES OF COUNSEL

Paul Edwin D.S. Bautista for petitioners.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

While the determination of probable cause is primarily an executive function, the Court would not hesitate to interfere if

there is a clear showing that Secretary of Justice gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached.

Guided by this principle, we shall resolve whether the Court of Appeals erred in reinstating the Information against petitioners.

Assailed in this Petition for Review is the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP No. 85736 reversing the Department of Justice (DOJ) Resolutions dated 6 May 2004 and 17 June 2004 which nullified the provincial prosecutor's Resolution finding probable cause to indict petitioners for illegal possession of prohibited drugs and the Regional Trial Court's (RTC) Order granting the Motion to Withdraw the Information.

First, the factual antecedents.

In their Joint Affidavit of Arrest, SPO1 Juan Gorion (SPO1 Gorion) and PO2 Noemi Remaneses (PO2 Remaneses) attested that Task Force Roulette of the Aklan Police Provincial Office (APPO) and the Philippine Drug Enforcement Agency (PDEA) received information from an asset that petitioners Barry Lanier and Perlita Lanier (Perlita) were engaged in selling illegal drugs in Boracay Island. The police operatives conducted a test-buy at petitioners' residence in *Barangay* Balabag, Boracay Island where they were able to purchase ₱5,000.00 worth of *shabu* and ₱1,000.00 worth of *marijuana* from petitioners. On the basis of the test-buy operation, they were able to secure a search warrant from the RTC of Aklan.[3]

SPO1 Gorion and PO2 Remaneses narrated that on 17 December 2003, police operatives proceeded to the house of petitioners to serve the search warrant. After presentment of

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[1] Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Francisco P. Acosta and Edgardo L. De Los Santos, concurring. *Rollo,* pp. 57-74.

[2] *Id.* at 75.

[3] Records, p. 4.

the warrant, the police operatives, in the presence of the *Barangay* Captain and some members of the media, conducted the search. In the living room in the second floor, they recovered three (3) sachets of *shabu* weighing 10.4 grams more or less, inside a jewelry box. They also found one big pack containing dried *marijuana* leaves weighing 950 grams and two gift packs containing 9 bricks of *marijuana* with an aggregate weight of 800 grams. A Receipt for Property Seized was prepared by SPO1 Nathaniel A. Tan, but petitioners refused to sign the same. Thereafter, petitioners were placed under arrest.[4]

On 18 December 2003, the Assistant Provincial Prosecutor of Kalibo, Aklan filed an Information charging petitioners of violation of Section 11, Article II of Republic Act No. 9165, which reads:

> That on or about the 17th day of December, 2003, in the morning, at Barangay Balabag, Boracay Island, Municipality of Malay, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping each other, without authority of law, have in their possession, custody and control one (1) big pack of suspected dried Marijuana leaves weighing more or less NINE HUNDRED FIFTY (950) grams, Nine (9) bricks of suspected dried Marijuana leaves weighing more or less EIGHT HUNDRED (800) grams and Three (3) plastic sachet[s] of suspected *shabu* weighing more or less 10.4 grams which members of the Task Force Roulette of the Aklan Police Provincial Office, and the joint elements of Philippine Drug Enforcement Agency confiscated from their possession and control in the course of a search by virtue of Search Warrant Number 46-2003 issued by Honorable Judge Marietta J. Homena-Valencia, Executive Judge, Regional Trial Court, Kalibo, Aklan.[5]

On 23 December 2003, petitioners filed a Motion for Preliminary Investigation/Re-investigation.[6]

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[4] *Id*.

[5] *Id*. at 1.

[6] *Id*. at 14.

On 9 January 2004, a Motion to Quash the Information[7] was filed before the RTC of Kalibo, Aklan. Petitioners questioned why the police did not arrest them after allegedly receiving the marked money during the test-buy operation and why the marked money was not presented as evidence. Petitioners cried frame up and accused the police of planting the illegal drugs. In their Counter-Affidavit, petitioners claimed that around 4:00 a.m. on 17 December 2003, several men demanded entry into their house. When Perlita opened the door, two men pointed their guns at her and declared a raid. More than 15 people stormed into their house. She also saw 5 to 6 men, who were carrying backpacks, go into the master's bedroom. The police officers called petitioners to the master's bedroom and showed them sachets of *shabu* allegedly found inside a box and *marijuana* leaves found in gift packs. They were forced to sign the inventory receipt but they refused to do so. Petitioners ascribed ill-motives on the part of the police officers on behest of the *Barangay* Captain against whom the petitioners had filed an administrative complaint.[8]

Petitioners attached to their motion the affidavits of their witnesses and the Home Study Report in Special Proceeding No. 6829 of the RTC of Kalibo, Aklan with 75 pages of character references and a drug-test report showing that they were tested negative for illegal drugs.

On 28 January 2004, the trial court issued an Order denying the Motion to Quash. And on 9 February 2004, the trial court remanded the case to the provincial prosecutor for preliminary investigation.

In a Resolution dated 8 March 2004, the provincial prosecutor upheld the Information and directed the return of the records to the trial court for disposition.

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[7] *Id.* at 21-27.

[8] *Id.* at 37-54.

On 28 March 2004, however, petitioners filed a petition for review before the DOJ assailing the 8 March 2004 Resolution of the provincial prosecutor. On 6 May 2004, the Secretary of Justice acted on the petition favorably and directed the withdrawal of the Information which directive the provincial prosecutor heeded by filing a Motion to Withdraw Information before the trial court. The trial court granted the Motion to Withdraw Information on 24 June 2004.

The Secretary of Justice gave more credence to the version of petitioners that the illegal drugs seized were planted. The Secretary of Justice took note of the testimony of SPO1 Gorion during the clarificatory hearing on 20 February 2004 that there were two groups – the raiding team and the search team that entered the house of petitioners. The fact that the raiding team arrived ahead of the search team bolstered petitioners' assertion that the illegal drugs seized were planted by the raiding team.

The Office of the Solicitor General (OSG) filed with the Court of Appeals a petition for *certiorari* seeking to annul the DOJ Resolutions directing the withdrawal of the Information against petitioners and the RTC's Order granting the Motion to Withdraw filed by the provincial prosecutor.

On 26 September 2008, the Court of Appeals nullified and set aside the DOJ Resolutions and the RTC Order and reinstated the Information against petitioners in Criminal Case No. 6972. The appellate court declared that the petition for review was filed within the extension granted by the court; that the People, through the OSG, correctly filed the petition under Rule 65 of the Rules of Court because the Court of Appeals may review the resolution of the Secretary of Justice only in a petition for *certiorari* under Rule 65 on the ground of grave abuse of discretion; that the Urgent Motion for Reconsideration filed by the provincial prosecutor complied with the condition *sine qua non* of exhausting all plain, speedy and adequate remedies in the ordinary course of law; and that the petition for *certiorari* bore the proper verification of the OSG as the People's statutory counsel.

In the main, the appellate court found that there is probable cause to sustain petitioners' indictment.

Petitioners elevated the case to this Court seeking the reversal of the Decision of the Court of Appeals and consequently, the withdrawal of the Information for illegal possession of prohibited drugs filed against them.

Petitioners now proffer essentially the same arguments presented before the Court of Appeals:

1. The petition for review before the Court of Appeals assailing the RTC Order is fatally defective because: a) it was filed out of time; b) it substituted a lost appeal; and, c) it was not preceded by a timely motion for reconsideration.

2. The petition for review before the Court of Appeals assailing the DOJ Resolutions is fatally defective because: a) it was filed out of time; and, b) it had become moot and academic when the RTC granted the withdrawal of the Information.

3. The fact that the police officers were able to move around the house, unescorted by competent witnesses, and were able to predetermine the precise weight of the illegal drugs prior to the arrival of the weighing scale placed in serious doubt the real sources of the alleged illegal drugs.

4. The admissions made by the arresting officers during the clarificatory hearings, pointing to the illegality of the search and thereby rendering inadmissible all evidence obtained therefrom, negated the existence of probable cause.

According to petitioners, the Decision of the Court of Appeals is riddled with procedural lapses. First, petitioners point out that the motion for extension of time filed by respondent prior to the filing of the petition for review before the Court of Appeals is patently defective, because, while the motion for extension did not implead the RTC Judge of Kalibo, the latter was made a respondent in the petition for review. Since the RTC Judge was not furnished a copy of the motion for extension, said motion became a mere scrap of paper which did not toll the

running of the period to file the petition for review. Hence, the petition for review was filed out of time.

It is not necessary that the contents of a motion for extension should be similar to a petition for *certiorari*. When the OSG in his motion for extension failed to implead the trial court judge, much less assail his Order, said omission should not limit the pitch and reach of the petition. Otherwise, the prayer for more time would be pointless. It is sufficient that the motion for extension state the material dates, as the Motion of the OSG did, showing the timeliness of its filing. The grant of the Motion for Extension occasioned the timeliness of the review of both the DOJ Resolutions and the RTC Order.

Second, petitioners question the failure of respondent to file a motion for reconsideration from the RTC Order before filing a petition for *certiorari* before the Court of Appeals.

Well-established is the rule that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. The rule however admits of exceptions,[9] the most relevant of which is where the questions raised in the *certiorari*

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[9] (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no opportunity to object; and, (i) where the issue raised is one purely of law or where public interest is involved. See *Republic v. Bayao*, G.R. No. 179492, 5 June 2013 citing *Siok Ping Tang v. Subic Bay Distribution, Inc.*, G.R. No. 162575, 15 December 2010, 638 SCRA 457, 469-470; *Republic v. Pantranco North Express, Inc. (PNEI)*, G.R. No. 178593, 15 February 2012, 666 SCRA 199, 205-206; *Domdom v. Third and Fifth Divisions of the Sandiganbayan*, G.R. Nos. 182382-83, 24 February 2010, 613 SCRA 528, 532-533 citing *Tan v. Court of Appeals*, 341 Phil. 570, 576-578 (1997).

proceedings have been duly raised and passed upon by the lower court. The RTC Order was anchored on the twin Resolutions issued by the DOJ granting the petition for review and directing the provincial prosecutor to withdraw the Information. Thus, the appellate court correctly treated the Urgent Motion for Reconsideration submitted by the OSG before the DOJ as a substantial compliance with the condition of exhausting all plain, speedy and adequate remedies before filing a *certiorari* petition. Clearly, the facts, issues and arguments that would have been raised in a motion for reconsideration in the RTC are rooted on the DOJ's finding of the non-existence of probable cause.

Third, petitioners claim that the Urgent Motion for Reconsideration with the DOJ was filed out of time. Petitioners cited paragraph 1 of the Motion which states that the 6 May 2004 Resolution of the Secretary of Justice was received on 7 May 2004. Thus, respondent had until 17 May 2004 to file the Urgent Motion for Reconsideration, but the motion was filed only on 25 May 2004.

A reading of the Motion for Extension indeed reveals that the OSG stated in Paragraph 1 that they received the 6 May 2004 Resolution on 7 May 2004. Differently, the OSG, in its Urgent Motion for Reconsideration, stated that the 6 May 2004 Resolution was received on 18 May 2004. Records show that the OSG erred in indicating in the motion for extension 7 May 2004 as the receipt date. 7 May 2004 was actually the mailing date as recorded in the registry receipt attached to the 6 May 2004 Resolution.[10] Verily, the variance in dates could be attributed to a mere clerical error. The OSG received a copy of the 6 May 2004 Resolution on 18 May 2004. And the OSG complied with the 10-day reglementary period within which to file its Motion for Reconsideration by filing it on 26 May 2004.

Fourth, petitioners maintain that the petition for *certiorari* had become moot and academic as against the Resolutions of the Secretary of Justice when the RTC Judge assumed jurisdiction over the case and granted the motion to withdraw the information.

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[10] DOJ Records, p. 23. (See back page).

In *Verzano, Jr. v. Paro*,[11] we had the occasion to rule that while generally it is the Secretary of Justice who has the authority to review the decisions of the prosecutors, the Court Appeals has the authority to correct the acts of the prosecutorial officers tainted with grave abuse of discretion notwithstanding the filing of the informations before the trial court. The authority of the Court of Appeals is bolstered by the fact that the petition filed before it was one under Rule 65, such that it has the jurisdiction to determine whether or not the prosecutor and/or the Secretary of Justice acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[12] The filing or withdrawal, as in this case, of an Information before the RTC does not foreclose the review on the basis of grave abuse of discretion the resolution of a prosecutor, or the Secretary of Justice on the issue of probable cause.

On the merits of the case, petitioners defend the Secretary of Justice in ordering the withdrawal of the Information on the ground that the pieces of evidence obtained through an illegal search becomes inadmissible in evidence. Petitioners explain that the search was illegal because it violated Section 8, Rule 126 of the Rules of Criminal Procedure when the search was not made in the presence of the lawful occupants of the house. Petitioners aver that the Secretary of Justice correctly rejected the version of the police officers based on the existing records. Petitioners noted that the time of search recorded on the Receipt for Property Seized is 5:10 a.m., while it as admitted by one police officer that they were about to gain entry in the house only at 5:30 a.m. Petitioners raise doubts on how the police officers were able to determine and record the exact weight of the illegal drugs when the weighing scale, as admitted by the SPO1 Gorio, came at around 8:00 p.m.

It is well-settled that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing

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[11] G.R. No. 171643, 9 August 2010, 627 SCRA 209.

[12] *Id.* at 216.

criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. The *rationale* behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of *certiorari*, has been tasked by the present Constitution to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[13]

Judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion.[14]

As a requisite to the filing of a criminal complaint, probable cause pertains to facts and circumstances sufficient to incite a well-founded belief that a crime has been committed and the accused is probably guilty thereof. Only such facts sufficient to support a *prima facie* case against the respondent are required, not absolute certainty. Probable cause implies mere probability of guilt, *i.e.*, a finding based on more than bare suspicion but less than evidence that would justify a conviction. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial.[15]

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[13] *Balois v. Court of Appeals*, G.R. Nos. 182130 and 182132, 19 June 2013.

[14] *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581, 591 (2007) citing *Metropolitan Bank & Trust Co. v. Tonda*, 392 Phil. 797, 814 (2000).

[15] *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 519 (2008).

We quote with approval the appellate court's finding of probable cause based on the following circumstances:

1. Before the police conducted the search in Spouses Lanier's residence, they had a thorough and careful surveillance of their activities in the island of Boracay;

2. The police officers conducted a test-buy on Spouses Lanier who themselves sold to SPO1 Juben Vega and his Filipino-American companion *shabu* and *marijuana* worth six thousand (₱6,000.00) pesos;

3. Based on the surveillance and test-buy, Executive Judge Marietta Homena-Valencia found probable cause and issued a search warrant on Spouses Lanier's residence. There, the police officers recovered approximately 1.750 kilograms of dried *marijuana* leaves and 10.4 grams of *shabu* in the presence of *Barangay* Captain Glenn Sacapano, two (2) members of the media and Perlita Lanier herself;

4. The testimonies of SPO1 Juan Gorion and SPO1 Juben Vega of the APPO and PO2 Noemi Ramaneses of PDEA were consistent on what transpired from the time they received a tip regarding the illegal drug activities of Spouses Lanier up to the time of the implementation of the search warrant was completed;

5. The defense failed to destroy the presumption of regularity in favor of the police officers who conducted the search;

6. Spouses Lanier failed to substantiate their claim that *Barangay* Captain Joel Gelito orchestrated the raid in retaliation to the administrative complaint they allegedly filed against him;

7. Failure to use and present marked money during the preliminary investigation in itself does not weaken the existence of probable cause against Spouses Lanier. For "settled is the rule that in the prosecution for the sale of dangerous drugs, the absence of marked money does not create a *hiatus* in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation. What is material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale

> actually took place, coupled with the presentation in court of the *corpus delicti* as evidence."[16]

The elements of illegal possession of prohibited drugs are: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[17]

The presence of these elements was attested to by evidence such as the Joint Affidavit of Arrest and the Receipt of the Properties seized. The police officers averred that they recovered 3 sachets of *shabu* weighing 10.4 grams inside a jewelry box on petitioners' living room. They also seized one (1) big gift pack containing dried *marijuana* leaves weighing more or less 950 grams and two (2) gift packs containing nine (9) bricks of dried *marijuana* leaves weighing 800 grams on top of the head board of petitioners' bed. Moreover, the finding of a dangerous drug in the house or within the premises of the house of the accused is *prima facie* evidence of knowledge or *animus possidendi*.[18]

When the Secretary of Justice concluded that there was planting of evidence based on the lone fact that the raiding team arrived ahead of the search team, he, in effect went into the merits of the defense. When he made a determination based on his own appreciation of the pieces of evidence for and against the accused, he effectively assumed the function of a trial judge in the evaluation of the pieces of evidence and, thereby, acted outside his jurisdiction.[19]

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[16] *Rollo*, pp. 70-71.

[17] *Asiatico v. People*, G.R. No. 195005, 12 September 2011, 657 SCRA 443, 450.

[18] *People v. Pambid*, G.R. No. 192237, 26 January 2011, 640 SCRA 722, 738; *People v. Cruz*, G.R. No. 185381, 16 December 2009, 608 SCRA 350, 364; *People v. Guiara*, G.R. No. 186497, 17 September 2009, 600 SCRA 310, 326.

[19] *Villanueva v. Caparas*, G.R. No. 190969, 30 January 2013, 689 SCRA 679, 687.

Regarding the submission of petitioners that the remedy from the RTC's Order to withdraw the filing of the Information should have been an ordinary appeal, we rule that on a finding of grave abuse of discretion, the RTC Order may be elevated to the Court of Appeals on *certiorari*.

There is, here, a basis for such finding.

When confronted with a motion to withdraw an Information on the ground of lack of probable cause based on a resolution of the Secretary of Justice, the bounden duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding farther with the trial. While the Secretary's ruling is persuasive, it is not binding on courts.[20] When the trial court's Order rests entirely on the assessment of the DOJ without doing its own independent evaluation, the trial court effectively abdicates its judicial power and refuses to perform a positive duty enjoined by law.

The RTC erroneously held that it has not yet effectively acquired jurisdiction over the person of the accused as no commitment order has yet been issued against them. In *Crespo v. Mogul*,[21] the Court held that once a criminal complaint or information is filed in court, any disposition of the case or dismissal or acquittal or conviction of the accused rests within the exclusive jurisdiction, competence, and discretion of the trial court. The rule applies to a motion to withdraw the Information or to dismiss the case even before or after arraignment of the accused. When the trial court grants a motion of the public prosecutor to dismiss the case, or to quash the Information, or to withdraw the Information in compliance with the directive of the Secretary of Justice, or to deny the said motion, it does so not out of subservience to or defiance of the directive of the Secretary of Justice but in sound exercise of its judicial prerogative.

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[20] *Hipos, Sr. v. Bay*, G.R. Nos. 174813-15, 17 March 2009, 581 SCRA 674, 687.

[21] 235 Phil. 465, 476 (1987).

The RTC clearly deferred to the finding of probable cause by the Secretary of Justice without doing its own independent evaluation. The trial court even expressed its apprehension that no prosecutor would be willing to prosecute the case should the motion to withdraw be denied. The only matter discussed by the trial court was its concurrence with the DOJ relative to the service and conduct of the search for illegal drugs. The trial court declared that the evidence is inadmissible in view of the manner the search warrant was served. Settled is the rule that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense, the truth of which can be best passed upon after a full-blown trial on the merits. In the case at bar, the grounds relied upon by petitioners should be fully explained and threshed out not in a preliminary investigation but during trial as the same are matters of defense involving factual issues.

At the risk of sounding repetitive, we must emphasize that the trial court, having acquired jurisdiction over the case, is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the Secretary's ruling is persuasive, it is not binding on courts.

All told, the Court of Appeals did not commit any reversible error when it nullified and set aside the Resolutions and Order, rendered by the Secretary of Justice and the RTC, respectively.

WHEREFORE, the petition is **DENIED**. The Decision dated 26 September 2008 and Resolution dated 31 July 2009 of the Court of Appeals in CA-G.R. SP No. 85736 are **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Reyes,*[*] *JJ.,* concur.

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[*] Per Special Order No. 1650 dated 13 March 2014.

SECOND DIVISION

[G.R. No. 193628. March 19, 2014]

SPLASH PHILIPPINES, INC., LORENZO ESTRADA, TAIYO SANGYO TRADING and MARINE SERVICE, LTD. (TST PANAMA S.A.) and M/V HARUTAMOU, *petitioners, vs.* **RONULFO G. RUIZO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; THE DEGREE OF A SEAFARER'S DISABILITY CANNOT BE DETERMINED ON THE BASIS SOLELY OF THE 120-DAY RULE OR IN TOTAL DISREGARD OF THE SEAFARER'S EMPLOYMENT CONTRACT, THE PARTIES' COLLECTIVE BARGAINING AGREEMENT (CBA) IF THERE IS ONE, AND PHILIPPINE LAW OR RULES IN CASE OF ANY UNRESOLVED DISPUTE, CLAIM OR GRIEVANCE ARISING OUT OR IN CONNECTION WITH THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC).— As in many other maritime compensation cases which reached the Court, the CA's award of permanent total disability benefits to Ruizo is anchored on the 120-day rule often invoked through the Court's pronouncement in *Crystal Shipping*. The CA declared: "***The true test of whether respondent suffered from a permanent disability is whether there is evidence that he was unable to perform his customary work as chief cook for more than 120 days***." The 120-day rule laid down in *Crystal Shipping* and other cases similarly resolved, however, had already been clarified or modified. In *Vergara v. Hammonia Maritime Services, Inc.*, the Court declared: [T]he respondent in the case "was unable to perform his customary work for more than 120 days which constitutes permanent total disability." This declaration of a permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts.

The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations. Under the above Court pronouncement, it is clear that the degree of a seafarer's disability cannot be determined on the basis solely of the 120-day rule or in total disregard of the seafarer's employment contract (executed in accordance with the POEA-SEC), the parties' CBA if there is one, and Philippine law and rules in case of any unresolved dispute, claim or grievance arising out of or in connection with the POEA-SEC, as the Court explained in *Vergara*. ***Thus, in every maritime disability compensation claim, it is important to bear in mind that under Section 20(B)3 of the POEA-SEC, in the event a seafarer suffers a work-related injury or illness, the employer is liable only for the resulting disability that has been assessed or evaluated by the company-designated physician. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer whose decision shall be final and binding on both parties. Further, the parties' supposed CBA (the complete copy belatedly submitted by Ruizo to the CA) contains an almost identical provision (as the POEA-SEC) in its Article 20.1.4.2***.

2. ID.; ID.; ID.; THE 120-DAY RULE CANNOT BE USED AS A CURE-ALL FORMULA FOR ALL MARITIME COMPENSATION CASES; ITS APPLICATION MUST DEPEND ON THE CIRCUMSTANCES OF THE CASE, INCLUDING ESPECIALLY COMPLIANCE WITH THE PARTIES' CONTRACTUAL DUTIES AND OBLIGATIONS AS LAID DOWN IN THE POEA-SEC AND/OR THEIR CBA, IF ONE EXISTS.— There is one other POEA-SEC provision that is often overlooked or ignored, but which should be given due consideration in the determination of the seafarer's disability compensation, and this is found in Section 20(B)6 which states: **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 arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted**. In light of the above-cited provisions of the

POEA-SEC **which is the law between the parties**, we cannot find a basis for the award of permanent total disability benefits to Ruizo, except the much belabored 120-day rule. The rule, as earlier emphasized, had already been modified pursuant to the Court's pronouncement in *Vergara*. It cannot simply "be xxx applied as a general rule for all cases and in all contexts." **In short, it cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including especially compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists. Thus, the CA ruled outside of legal contemplation and thus committed grave abuse of discretion.**

3. ID.; ID.; ID.; THE 120-DAY RULE HAD LOST ITS RELEVANCE IN CASE AT BAR.— Significantly, Ruizo himself recognized the relevance of the POEA-SEC in his case when he acknowledged that under the contract, "a medically repatriated seafarer is subject for examination and treatment by the company designated physician for a period not exceeding 120 days. After which the company designated physician will make [an] assessment whether the seafarer had already become fit for work or not." Ruizo, however, was not medically repatriated; **he went home for a finished contract**. In any event, as we said in *Vergara*: "***a temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability***." Although the 240-day maximum treatment period under the rules had already expired, counted from his repatriation on December 21, 2005, it can be said that Ruizo and the petitioners agreed to have the treatment period extended as it was obvious that he still needed treatment. In fact, he agreed, after some trepidation, to be subjected to an ultrasound procedure (ESWL) in the effort of the petitioners to improve his condition; he was expected to return after February 5, 2007 to Dr. Cruz for a repeat ESWL, but he failed to do so. Clearly, under the circumstances, the 120-day rule had lost its relevance.

4. ID.; ID.; ID.; THE ABSENCE OF DISABILITY ASSESSMENT IN CASE AT BAR WAS DUE TO RESPONDENT SEAFARER'S REFUSAL TO UNDERGO FURTHER TREATMENT; UNDER THE POEA-SEC, SUCH REFUSAL NEGATES THE PAYMENT OF DISABILITY BENEFITS.— The facts of the case show that the absence of a disability assessment by Dr. Cruz was not of the doctor's making, but was due to Ruizo's refusal to undergo further treatment. In the absence of any disability assessment from Dr. Cruz, Ruizo's claim for disability benefits must fail for his obvious failure to comply with the procedure under the POEA-SEC which he was duty bound to follow as we emphasized in *Philippine Hammonia*. Ruizo's non-compliance with his obligation under the POEA-SEC is aggravated by the fact that while he was still undergoing treatment under the care of Dr. Cruz, he filed the present complaint on May 26, 2006. Moreover, after he failed to return for further ESWL and without informing the agency or Dr. Cruz, he consulted Dr. Vicaldo who examined him only for a day or on May 7, 2007, certified him unfit to work, and gave him a disability rating of *Impediment Grade VII (41.8%)*. This aspect of the case bolsters the LA's conclusion that Ruizo was merely making excuses for his failure to report to Dr. Cruz and had become indifferent to treatment as he was determined to claim and obtain disability benefits from the petitioners. It also lends credence to the petitioners' submission that he abandoned his treatment under Dr. Cruz. Worse, it validates the LA's opinion that his inability to work and the persistence of his kidney ailment could be attributed to his own willful refusal to undergo treatment. Under the POEA-SEC, such a refusal negates the payment of disability benefits.

5. ID.; ID.; ID.; THE SCHEDULE OF DISABILITY COMPENSATION UNDER SECTION 32 OF THE POEA-SEC MUST BE SERIOUSLY OBSERVED CONSIDERING THAT DISABILITY IS NOT MEASURED IN TERMS OF NUMBER OF DAYS BUT BY GRADINGS ONLY.— Earlier, we called attention to a compensation system provided by the POEA-SEC which is often ignored or overlooked in maritime compensation cases. This system is found in Section 32 of the POEA-SEC which provides for a schedule of disability compensation, in conjunction with Section 20(B)6. To our mind, the reason why this compensation system is often ignored or

disregarded is the fixation on the 120-day rule and the notion that an "unfit-to-work" or "inability-to-work" assessment should be awarded permanent total disability compensation even when the seafarer is given a disability grading in accordance with Section 32 of the POEA-SEC. In this case for instance, Ruizo was assessed by his physician, Dr. Vicaldo, with an Impediment Grade VII (41.8%), yet he was awarded by the CA full disability compensation of US$100,000.00 under a CBA whose existence is under serious question. A NOTE in Section 32 of the POEA-SEC declares that "***any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability***." Any other grading, therefore, constitutes only as temporary total disability. Considering that the POEA-SEC embodies the terms and conditions governing the employment of Filipino seafarers onboard ocean-going vessels, it is about time that the schedule of disability compensation under Section 32 is seriously observed. A step towards this direction had already been taken by way of the Court's clarificatory Resolution dated February 12, 2007 in *Crystal Shipping* where we declared that admittedly, the POEA-SEC (1996) ***does not measure disability in terms of number of days but by gradings only***. Be this as it may, Ruizo would not still be entitled to the compensation corresponding to the grading given to him by Dr. Vicaldo because he abandoned his treatment with Dr. Cruz who, for his failure to return for further treatment, was not given the opportunity to issue a disability assessment, a mandatory requirement under the POEA-SEC or even under the supposed CBA between him and Taiyo.

6. ID.; ID.; ID.; EVEN IF A CBA EXISTED, IT CANNOT BE THE BASIS OF AN AWARD OF DISABILITY BENEFITS IN CASE AT BAR.— The CA's conclusion shows that it disregarded evidence patently on record – Ruizo's employment was not covered by a CBA. In his comment dated May 3, 2012, Ruizo stated that he obtained a copy of the CBA during his employment with the petitioners, yet he submitted before LA Cuyuca only a one-page unsigned copy of the CBA. If he obtained a copy of the CBA while still in employment with the petitioners, how could he have submitted in evidence a one-page copy of the document? Further, while he later submitted a copy of the purported CBA, it bore no indication of who his employer was

as the space reserved for the employer was blank. Still further, the copy he submitted was for 2004; it already expired when he signed his POEA contract with the petitioners on February 4, 2005. LA Cuyuca was correct when she declared that the one-page copy of the CBA Ruizo submitted was insufficient to prove its existence**. But more importantly, even if the CBA existed, it cannot be the basis of an award of disability benefits to Ruizo for reasons above discussed.**

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
R.C. Carrera Law Office for respondent.

D E C I S I O N

BRION, *J.*:

For resolution is the petition for review on *certiorari*[1] assailing the decision[2] dated August 25, 2009 and the resolution[3] dated September 13, 2010 of the Court of Appeals (*CA*) in CA-G.R. SP No. 107013.

The Antecedents

The case commenced on May 26, 2006 when respondent Ronulfo Ruizo filed a complaint[4] for disability compensation, damages and attorney's fees against the petitioners, local manning agent Splash Philippines, Inc. (*agency*), its President, Lorenzo Estrada, and its principal, Taiyo Sangyo Trading and Marine Service, Ltd. (TST Panama S.A. [*Taiyo*]).

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[1] *Rollo*, pp. 45-82.

[2] *Id*. at 13-39; penned by Associate Justice Jose L. Sabio, Jr., and concurred in by Associate Justices Arcangelita M. Romilla-Lontok and Sixto C. Marella, Jr.

[3] *Id.* at 41-42.

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

On February 4, 2005, Ruizo entered into a nine-month contract of employment[5] (as chief cook) with the agency for Taiyo's vessel, the *M/V Harutamou*. On or about December 13, 2005, while on duty onboard the vessel, Ruizo experienced pain in his lumbar region and groin. He was referred to the Karratha Medical Centre in Dampier, Australia where he was diagnosed with "*Blocked Right Kidney by Stone Repeat U/S Showed No Improvement*."[6]

On December 21, 2005, Ruizo was repatriated to the Philippines due to the completion of his contract. The agency referred him to the company-designated physician, Dr. Nicomedes Cruz, who diagnosed him to be suffering from *ureterolithiasis with hydronephrosis*, a kidney ailment. Dr. Cruz prescribed medication for him and recommended that he undergo a *KUV/ IVP, CT stonogram without contrast* at the National Kidney Institute which he did, at the expense of the petitioners.

In the meantime, and while he was still undergoing treatment under the supervision of Dr. Cruz, Ruizo filed the present complaint based allegedly on a collective bargaining agreement (*CBA*) which his union, the Associated Marine Officers and Seamen's Union of the Philippines (*AMOSUP*), had with the petitioners. He prayed for maximum disability benefits since he was unable to work for more than 120 days without a disability assessment from Dr. Cruz.

As Ruizo's medical condition had not improved, Dr. Cruz further recommended that he undergo *extracorporeal shockwave lithotripsy* (*ESWL*). Ruizo was initially reluctant to submit to the procedure, but he finally agreed and underwent ESWL on January 19, 2007, again at the petitioners' expense. He reported to the company doctor for a follow-up on February 5, 2007, but failed to go back for a further ESWL which the company

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[5] *Id*. at 185; in accordance with the Philippine Overseas Employment Administration Standard Employment Contract (*POEA-SEC*).

[6] *Id*. at 186.

urologist believed was necessary as "[t]here is possibility of declaring the patient fit to work after treatment."[7]

On May 7, 2007, without informing Dr. Cruz or the agency, Ruizo consulted Dr. Efren Vicaldo, an internist, who diagnosed him to be suffering from *bilateral nephrolithiasis* and *essential hypertension* 1. Dr. Vicaldo gave him a disability rating of *Impediment Grade VII* (41.8%).[8] Ruizo claimed that he did not report to the company doctor after February 5, 2007 because he was advised by the doctor that he would already be forwarding his assessment to the petitioners.

The Compulsory Arbitration Rulings

On June 29, 2007, Labor Arbiter (*LA*) Ermita T. Abrasaldo-Cuyuca rendered a decision[9] dismissing the complaint for lack of merit. LA Cuyuca rejected Ruizo's claim that his employment was covered by the AMOSUP/IMEC TCCC CBA for 2004 as the evidence he presented – a one-page excerpt from the purported agreement[10] – was insufficient to prove its existence since it does not bear the signatures of the parties, nor does it indicate whether it applies to the crew of *M/V Harutamou*.

On Ruizo's disability, LA Cuyuca held that the absence of a disability rating from the company doctor negated his claim for compensation and this was due to Ruizo's voluntary act of not undergoing further medical treatment with the petitioners. She ruled out Ruizo's assertion that his inability to work for more than 120 days entitled him to permanent total disability benefits relying, in support of her ruling, on the Resolution[11] dated February 12, 2007 of this Court's Special First Division in *Crystal Shipping, Inc. v. Natividad*,[12] which declared that the duration

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[7] *Id*. at 225.

[8] *Id*. at 254.

[9] *Id*. at 152-159.

[10] *Id*. at 189.

[11] *Id*. at 238-240.

[12] 510 Phil. 332 (2005).

of the seafarer's treatment and the period that he is incapacitated to work do not have any bearing in the determination of whether he is entitled to maximum disability benefits.

Ruizo appealed. In its decision[13] of June 3, 2008, the National Labor Relations Commission (*NLRC*) denied the appeal for lack of merit. He moved for reconsideration, but the NLRC denied the motion. He then sought relief from the CA through a petition for *certiorari*, charging the NLRC with grave abuse of discretion in dismissing the complaint, although he was already permanently unfit for sea duty.

The CA Decision

The CA granted the petition. It set aside the NLRC rulings and awarded Ruizo permanent total disability compensation under the CBA in the amount of US$100,000.00; moral and exemplary damages of ₱10,000.00 each; and ₱10,000.00 in attorney's fees. It however denied Ruizo's claim for sick wages of US$2,386.50 because it was raised for the first time on appeal.

The CA found credence in Ruizo's submission that his employment with the petitioners was covered by a CBA "as he was informed by private respondents' officers that he is being deployed to a vessel that is covered by a CBA as a reward for his good performance as Chief Cook for several years."[14]

Further, the CA sustained Ruizo's position that he is entitled to permanent total disability compensation because he was unable to work as chief cook for more than 120 days. It denied the petitioners' subsequent motion for reconsideration.[15]

The Petition

The petitioners now ask this Court to set aside the CA judgment, on the grounds that the CA committed a reversible error when it: (1) ruled that Ruizo's employment was covered

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[13] *Rollo*, pp. 161-166.

[14] *Id.* at 141.

[15] *Supra* note 3.

by a verbal CBA; (2) held that since Ruizo was unable to work for more than 120 days, he is automatically entitled to permanent total disability benefits; and (3) awarded Ruizo moral and exemplary damages, as well as attorney's fees.

The petitioners bewail the CA's admission of the CBA that allegedly covered Ruizo's employment as basis for the award. They question the CBA's existence as it had not been reduced to writing; even if it does exist, Ruizo adduced no evidence that it applies to him (Ruizo would later on submit a copy of a CBA between AMOSUP and an unnamed employer).[16] They reiterate their submission to the CA (through their motion for reconsideration) that AMOSUP issued a certification[17] that *M/V Harutamou* "is/was not covered by any Collective Bargaining Agreement between AMOSUP and any foreign principal employer."

On their second assignment of error, the petitioners maintain that the "so called 120 Day Rule and the latter 240 Day Rule are not iron-clad rules that should apply to all cases."[18] They argue that the "[r]espondent is guilty of medical abandonment and as such, the 120 or 240 Day Rules should not apply to him."[19] The 120-day rule laid down in *Crystal Shipping*, they point out, had already been reversed, or at least modified, by this Court in its clarificatory Resolution[20] dated February 12, 2007 in the very same *Crystal Shipping* case. They stress, as the LA did, that in said Resolution, the Court clarified that the POEA-SEC (series of 1996) did not measure disability in terms of number of days but by gradings only. In *Crystal Shipping*, the Court said that since the seafarer's physician rated his disability as Grade 1, the same was necessarily total and permanent, regardless of the number of days he was disabled.

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[16] *Rollo*, pp. 497-520; the space intended for the employer's name was left blank.

[17] *Id.* at 485.

[18] *Id.* at 60.

[19] *Ibid.*

[20] *Supra* note 11.

In any event, they continue, the CA erred when it applied the 120-day rule under the Labor Code in Ruizo's case, overlooking the fact that as a seafarer, Ruizo was a contractual employee whose terms of employment, including disability compensation claims, were governed by contract and not by the Labor Code as the Court declared in *NYK-FIL Ship Mgmt., Inc. &/or NYK Ship Mgmt. Hk., Ltd. v. NLRC*.[21] The petitioners add that more importantly, for abandoning his medical treatment under the supervision of the company-designated physician who was prevented from making a final assessment of his disability, Ruizo lost his entitlement to the maximum disability compensation and foreclosed the possibility of a recovery from his ailment.

The Case for Ruizo

In his comment (on the petition)[22] filed on May 4, 2012, Ruizo prays that the petition be denied for lack of merit, it being just a reiteration of the petitioners' arguments presented to, and which were already judiciously resolved by, the CA. He contends that the issues raised by the petitioners are factual and not subject to review by this Court. At any rate, he argues, since he was unable to work despite treatment by Dr. Cruz for more than 120 days, the CA committed no error when it declared that he was already unfit to work as a seafarer; thus, his entitlement to full disability compensation under the CBA.

The Court's Ruling

I. *The procedural question*

While the Court is not a trier of facts,[23] we deem it proper to inquire into the facts of the present dispute to determine if any grave abuse of discretion intervened when the CA reversed

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[21] 534 Phil. 725, 733 (2006).

[22] *Rollo*, pp. 556-574.

[23] *Lanuza v. Muñoz*, 473 Phil. 616, 627 (2004).

the NLRC's appreciation of evidence.[24] The labor tribunals found Ruizo to have abandoned his treatment with Dr. Cruz and, for this reason, they denied his claim for disability benefits, there being no assessment of his disability from Dr. Cruz. The CA, on the other hand, found that Ruizo was permanently and totally disabled because he was unable to work as a seafarer for more than 120 days and should be paid the corresponding disability benefits under the parties' CBA, the unsigned one-page excerpt of which (presented by Ruizo to the LA) it admitted in evidence, but which was considered by the LA and the NLRC to have no probative value.

II. *The merits of the case*

A. *The 120-day rule*

As in many other maritime compensation cases which reached the Court, the CA's award of permanent total disability benefits to Ruizo is anchored on the 120-day rule often invoked through the Court's pronouncement in *Crystal Shipping*. The CA declared: "***The true test of whether respondent suffered from a permanent disability is whether there is evidence that he was unable to perform his customary work as chief cook for more than 120 days***."[25]

The 120-day rule laid down in *Crystal Shipping* and other cases similarly resolved, however, had already been clarified or modified. In *Vergara v. Hammonia Maritime Services, Inc.*,[26] the Court declared:

> [T]he respondent in the case "was unable to perform his customary work for more than 120 days which constitutes permanent total disability." This declaration of a permanent total disability after the initial 120 days of temporary total disability cannot, however, be simply lifted and applied as a general rule for all cases in all contexts.

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[24] *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012, 666 SCRA 382, 394.

[25] *Rollo*, p. 32.

[26] G.R. No. 172933, October 6, 2008, 567 SCRA 610, 631; underscore ours.

The specific context of the application should be considered, as we must do in the application of all rulings and even of the law and of the implementing regulations.

Under the above Court pronouncement, it is clear that the degree of a seafarer's disability cannot be determined on the basis solely of the 120-day rule or in total disregard of the seafarer's employment contract (executed in accordance with the POEA-SEC), the parties' CBA if there is one, and Philippine law and rules in case of any unresolved dispute, claim or grievance arising out of or in connection with the POEA-SEC, as the Court explained in *Vergara*. ***Thus, in every maritime disability compensation claim, it is important to bear in mind that under Section 20(B)3 of the POEA-SEC, in the event a seafarer suffers a work-related injury or illness, the employer is liable only for the resulting disability that has been assessed or evaluated by the company-designated physician. If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the employer and the seafarer whose decision shall be final and binding on both parties. Further, the parties' supposed CBA (the complete copy belatedly submitted by Ruizo to the CA[27]) contains an almost identical provision (as the POEA-SEC) in its Article 20.1.4.2***.[28]

Relatedly, there is one other POEA-SEC provision that is often overlooked or ignored, but which should be given due consideration in the determination of the seafarer's disability compensation, and this is found in Section 20(B)6 which states:

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[27] *Supra* note 16.

[28] The degree of disability which the employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer. If a doctor appointed by the seafarer and his Union disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the Seafarer and his Union, and the third doctor's decision shall be final and binding on both parties. The copy/ies of the medical certificate and other relevant medical reports shall be made available by the Company to the seafarer. (*Rollo*, p. 142; underscore ours.)

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 arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.[29]

In light of the above-cited provisions of the POEA-SEC **which is the law between the parties**,[30] we cannot find a basis for the award of permanent total disability benefits to Ruizo, except the much belabored 120-day rule. The rule, as earlier emphasized, had already been modified pursuant to the Court's pronouncement in *Vergara*. It cannot simply "be xxx applied as a general rule for all cases and in all contexts."[31] **In short, it cannot be used as a cure-all formula for all maritime compensation cases. Its application must depend on the circumstances of the case, including especially compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists. Thus, the CA ruled outside of legal contemplation and thus committed grave abuse of discretion.**

Significantly, Ruizo himself recognized the relevance of the POEA-SEC in his case when he acknowledged that under the contract, "a medically repatriated seafarer is subject for examination and treatment by the company designated physician for a period not exceeding 120 days. After which the company designated physician will make [an] assessment whether the seafarer had already become fit for work or not."[32] Ruizo, however, was not medically repatriated; **he went home for a finished contract**.[33] In any event, as we said in *Vergara*: "***a***

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[29] Emphasis and underscore ours.

[30] *Philippine Hammonia Ship Agency, Inc., etc., et al. v. Eulogio V. Dumadag*, G.R. No. 194362, June 26, 2013.

[31] *Vergara v. Hammonia Maritime Services, Inc., supra* note 26, at 631.

[32] *Rollo*, pp. 558-559.

[33] *Id.* at 153.

temporary total disability only becomes permanent when so declared by the company physician within the periods he is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period*[34] *without a declaration of either fitness to work or the existence of a permanent disability."[35]

Although the 240-day maximum treatment period under the rules had already expired, counted from his repatriation on December 21, 2005, it can be said that Ruizo and the petitioners agreed to have the treatment period extended as it was obvious that he still needed treatment. In fact, he agreed, after some trepidation, to be subjected to an ultrasound procedure (ESWL) in the effort of the petitioners to improve his condition; he was expected to return after February 5, 2007 to Dr. Cruz for a repeat ESWL, but he failed to do so. Clearly, under the circumstances, the 120-day rule had lost its relevance.

B. ***Compliance with the POEA-SEC***

As earlier emphasized, under the POEA-SEC, the employer is liable for a seafarer's disability, resulting from a work-connected injury or illness, **only** after the degree of disability **has been established by the company-designated physician and, if the seafarer consulted with a physician of his choice whose assessment disagrees with that of the company-designated physician, the disagreement must be referred to a third doctor for a final assessment**.[36]

In the present dispute, no showing exists that the relevant POEA-SEC provisions had been observed or complied with. While Ruizo reported to Dr. Cruz upon his repatriation for examination and treatment, he cut short his sessions with the doctor and missed an important medical procedure (ESWL)

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[34] Amended Rules on Employees Compensation, Rule X, Section 2.

[35] *Vergara v. Hammonia Maritime Services, Inc., supra* note 26, at 629; italics and emphasis ours.

[36] POEA-SEC, Section 20(B)3.

which could have improved his health condition and his capability to work.[37] Ruizo's explanation that he did not return for further ESWL because Dr. Cruz told him that he would already be forwarding his assessment to the petitioners is belied by the doctor's report[38] to the agency dated March 19, 2007, stating that he did not return for further ESWL. The reason for Ruizo's failure to return and continue his treatment with Dr. Cruz was, as the LA aptly saw it, his awareness of the possibility that he could be declared fit to work after treatment. Thus, the LA said:

> **If there was persistence of right kidney stone and a schedule of repeat ultrasound then how can complainant rightfully claim that he is done with the consultation with the company doctor. This reveals that complainant is merely making excuses for his failure to report to the company doctor because, apparently, complainant is aware that there is a possibility that he may be declared fit to work after treatment. This Arbitration Branch notes that the instant complaint was filed on May 26, 2006 while complainant was still undergoing treatment and this suggests complainant's indifference to treatment and his determination to claim disability benefits from respondents. Unfortunately, disability benefits could not be awarded in the instant case because complainant's inability to work and persistence of his kidney ailment may be said to be attributable to his own willful refusal to undergo treatment**.[39]

Thus, the facts of the case show that the absence of a disability assessment by Dr. Cruz was not of the doctor's making, but was due to Ruizo's refusal to undergo further treatment. In the absence of any disability assessment from Dr. Cruz, Ruizo's claim for disability benefits must fail for his obvious failure to comply with the procedure under the POEA-SEC which he was duty bound to follow[40] as we emphasized in *Philippine Hammonia*.

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[37] *Supra* note 6.

[38] *Ibid*.

[39] *Rollo*, pp. 156-157; emphasis and underscore ours.

[40] SECTION 1. DUTIES of the POEA-SEC.

Ruizo's non-compliance with his obligation under the POEA-SEC is aggravated by the fact that while he was still undergoing treatment under the care of Dr. Cruz, he filed the present complaint on May 26, 2006. Moreover, after he failed to return for further ESWL and without informing the agency or Dr. Cruz, he consulted Dr. Vicaldo who examined him only for a day or on May 7, 2007, certified him unfit to work, and gave him a disability rating of *Impediment Grade VII (41.8%)*. This aspect of the case bolsters the LA's conclusion that Ruizo was merely making excuses for his failure to report to Dr. Cruz and had become indifferent to treatment as he was determined to claim and obtain disability benefits from the petitioners. It also lends credence to the petitioners' submission that he abandoned his treatment under Dr. Cruz. Worse, it validates the LA's opinion that his inability to work and the persistence of his kidney ailment could be attributed to his own willful refusal to undergo treatment. Under the POEA-SEC, such a refusal negates the payment of disability benefits.[41]

C. *Schedule of disability compensation*

Earlier, we called attention to a compensation system provided by the POEA-SEC which is often ignored or overlooked in maritime compensation cases. This system is found in Section 32 of the POEA-SEC which provides for a schedule of disability compensation, in conjunction with Section 20(B)6. To our mind, the reason why this compensation system is often ignored

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B. Duties of the Seafarer:

to faithfully comply with and observe the terms and conditions of this contract. Violation of which shall be subject to disciplinary action pursuant to Section 33 of this contract[.] [underscore ours]

[41] SECTION 20. Compensation and Benefits

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D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer. [underscore ours]

or disregarded is the fixation on the 120-day rule and the notion that an "unfit-to-work" or "inability-to-work" assessment should be awarded permanent total disability compensation even when the seafarer is given a disability grading in accordance with Section 32 of the POEA-SEC. In this case for instance, Ruizo was assessed by his physician, Dr. Vicaldo, with an Impediment Grade VII (41.8%), yet he was awarded by the CA full disability compensation of US$100,000.00 under a CBA whose existence is under serious question. A NOTE in Section 32 of the POEA-SEC declares that "***any item in the schedule classified under Grade 1 shall be considered or shall constitute total and permanent disability***." Any other grading, therefore, constitutes only as temporary total disability.

Considering that the POEA-SEC embodies the terms and conditions governing the employment of Filipino seafarers onboard ocean-going vessels, it is about time that the schedule of disability compensation under Section 32 is seriously observed. A step towards this direction had already been taken by way of the Court's clarificatory Resolution[42] dated February 12, 2007 in *Crystal Shipping* where we declared that admittedly, the POEA-SEC (1996) ***does not measure disability in terms of number of days but by gradings only***.[43] Be this as it may, Ruizo would not still be entitled to the compensation corresponding to the grading given to him by Dr. Vicaldo because he abandoned his treatment with Dr. Cruz who, for his failure to return for further treatment, was not given the opportunity to issue a disability assessment, a mandatory requirement under the POEA-SEC or even under the supposed CBA between him and Taiyo.

D. *Is there an AMOSUP/IMEC TCCC CBA between the parties?*

The CA's conclusion shows that it disregarded evidence patently on record – Ruizo's employment was not covered by

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[42] *Supra* note 11.

[43] The 2000 and 2010 series of the POEA-SEC contain the same disability compensation schedule as in the 1996 series.

a CBA. In his comment[44] dated May 3, 2012, Ruizo stated that he obtained a copy of the CBA during his employment with the petitioners, yet he submitted before LA Cuyuca only a one-page unsigned copy of the CBA.[45] If he obtained a copy of the CBA while still in employment with the petitioners, how could he have submitted in evidence a one-page copy of the document? Further, while he later submitted a copy of the purported CBA,[46] it bore no indication of who his employer was as the space reserved for the employer was blank. Still further, the copy he submitted was for 2004; it already expired when he signed his POEA contract with the petitioners on February 4, 2005.[47] LA Cuyuca was correct when she declared that the one-page copy of the CBA Ruizo submitted was insufficient to prove its existence. **But more importantly, even if the CBA existed, it cannot be the basis of an award of disability benefits to Ruizo for reasons above discussed.**

All told, we find merit in the petition.

WHEREFORE, premises considered, the petition is **GRANTED.** The assailed decision and resolution of the Court of Appeals are **set aside**. The complaint is **DISMISSED** for lack of merit.

SO ORDERED.

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

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[44] *Rollo,* pp. 569-570.

[45] *Supra* note 10.

[46] *Supra* note 16.

[47] *Rollo,* p. 323.

[*] Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1650 dated March 13, 2014.

SECOND DIVISION

[G.R. No. 195542. March 19, 2014]

SECURITIES AND EXCHANGE COMMISSION, *petitioner, vs.* **OUDINE SANTOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE AUTHORITY OF THE PROSECUTOR OR THE DEPARTMENT OF JUSTICE (DOJ) IS NOT ABSOLUTE, IT CANNOT BE EXERCISED ARBITRARILY OR CAPRICIOUSLY; WHERE THE FINDINGS OF THE INVESTIGATING PROSECUTOR OR THE SECRETARY OF JUSTICE AS TO EXISTENCE OF PROBABLE CAUSE ARE EQUIVALENT TO A GROSS MISAPPREHENSION OF FACTS, *CERTIORARI* WILL LIE TO CORRECT THE ERRORS.— Generally, at the preliminary investigation proper, the investigating prosecutor, and ultimately, the Secretary of the DOJ, is afforded wide latitude of discretion in the exercise of its power to determine probable cause to warrant criminal prosecution. The determination of probable cause is an executive function where the prosecutor determines merely that a crime has been committed and that the accused has committed the same. The rules do not require that a prosecutor has moral certainty of the guilt of a person simply for preliminary investigation purposes. However, the authority of the prosecutor and the DOJ is not absolute; it cannot be exercised arbitrarily or capriciously. Where the findings of the investigating prosecutor or the Secretary of the DOJ as to the existence of probable cause are equivalent to a gross misapprehension of facts, *certiorari* will lie to correct these errors.

2. ID.; ID.; ID.; EXCEPTIONS TO THE GENERAL RULE OF COURT'S NON-INTERFERENCE IN THE CONDUCT OF PRELIMINARY INVESTIGATIONS.— While it is our policy not to interfere in the conduct of preliminary investigations, we have, on more than one occasion, adhered to some exceptions to the general rule: 1. when necessary to afford adequate protection to the constitutional rights of the accused; 2. when necessary for the orderly administration of justice or

to avoid oppression or multiplicity of actions; 3. when there is a prejudicial question which is *sub judice*; 4. *when the acts of the officer are without or in excess of authority*; 5. where the prosecution is under an invalid law, ordinance or regulation; 6. when double jeopardy is clearly apparent; 7. where the court has no jurisdiction over the offense; 8. where it is a case of persecution rather than prosecution; 9. where the charges are manifestly false and motivated by the lust for vengeance; 10. when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.

3. MERCANTILE LAW; SECURITIES REGULATION CODE; ELEMENTS OF VIOLATION OF SECTION 28 THEREOF; RESPONDENT'S PARTICIPATION IN THE SALE OF SECURITIES EVEN IF NOT SHOWN STRICTLY ON PAPER, WAS *PRIMA FACIE* ESTABLISHED.— To determine whether the DOJ Secretary's Resolution was tainted with grave abuse of discretion, we pass upon the elements for violation of Section 28 of the Securities Regulation Code: (a) engaging in the business of buying or selling securities in the Philippines as a broker or dealer; or (b) acting as a salesman; or (c) acting as an associated person of any broker or dealer, unless registered as such with the SEC. Tying it all in, there is no quarrel that Santos was in the employ of PIPC Corporation and/or PIPC-BVI, a corporation which sold or offered for sale unregistered securities in the Philippines. To escape probable culpability, Santos claims that she was a mere clerical employee of PIPC Corporation and/or PIPC-BVI and was never an agent or salesman who actually solicited the sale of or sold unregistered securities issued by PIPC Corporation and/or PIPC-BVI. Solicitation is the act of seeking or asking for business or information; it is not a commitment to an agreement. Santos, by the very nature of her function as what she now unaffectedly calls an information provider, brought about the sale of securities made by PIPC Corporation and/or PIPC-BVI to certain individuals, specifically private complainants Sy and Lorenzo by providing information on the investment products of PIPC Corporation and/or PIPC-BVI with the end in view of PIPC Corporation closing a sale. While Santos was not a signatory to the contracts on Sy's or Lorenzo's investments, Santos procured the sale of these unregistered securities to the two (2) complainants by providing information on the investment products being offered for sale by PIPC Corporation

and/or PIPC-BVI and convincing them to invest therein. No matter Santos' strenuous objections, it is apparent that she connected the probable investors, Sy and Lorenzo, to PIPC Corporation and/or PIPC-BVI, acting as an ostensible agent of the latter on the viability of PIPC Corporation as an investment company. At each point of Sy's and Lorenzo's investment, Santos' participation thereon, even if not shown strictly on paper, was *prima facie* established. In all of the documents presented by Santos, she never alleged or pointed out that she did not receive extra consideration for her simply providing information to Sy and Lorenzo about PIPC Corporation and/or PIPC-BVI. Santos only claims that the monies invested by Sy and Lorenzo did not pass through her hands. In short, Santos did not present in evidence her salaries as a supposed "mere clerical employee or information provider" of PIPC-BVI. Such presentation would have foreclosed all questions on her status within PIPC Corporation and/or PIPC-BVI at the lowest rung of the ladder who only provided information and who did not use her discretion in any capacity. We cannot overemphasize that the very information provided by Santos locked the deal on unregistered securities with Sy and Lorenzo.

4. ID.; ID.; ID.; THE EXCULPATION OF RESPONDENT CANNOT BE PRELIMINARILY ESTABLISHED SIMPLY BY ASSERTING THAT SHE DID NOT SIGN THE INVESTMENT CONTRACTS, AS THE FACTS ALLEGED IN THE CASE CONSTITUTE FRAUD PERPETRATED ON THE PUBLIC; SPECIALLY SO BECAUSE THE ABSENCE OF RESPONDENT'S SIGNATURE IN THE CONTRACT IS, LIKEWISE, INDICATIVE OF A SCHEME TO CIRCUMVENT AND EVADE LIABILITY SHOULD THE PYRAMID FALL APART.— What is palpable from Sy's affidavit is that Sy and Lorenzo did not go directly to Liew or any of PIPC Corporation's and/or PIPC-BVI's principal officers before making their investment or renewing their prior investment. However, undeniably, Santos actively recruited and referred possible investors to PIPC Corporation and/or PIPC-BVI and acted as the go-between on behalf of PIPC Corporation and/or PIPC-BVI. The DOJ's and Court of Appeals' reasoning that Santos did not sign the investment contracts of Sy and Lorenzo is specious. The contracts merely document the act performed by Santos. Individual complainants and the

SEC have categorically alleged that Liew and PIPC Corporation and/or PIPC-BVI is not a legitimate investment company but a company which perpetrated a scam on 31 individuals where the president, a foreign national, Liew, ran away with their money. Liew's absconding with the monies of 31 individuals and that PIPC Corporation and/or PIPC-BVI were not licensed by the SEC to sell securities are uncontroverted facts. The transaction initiated by Santos with Sy and Lorenzo, respectively, is an investment contract or participation in a profit sharing agreement that falls within the definition of the law. When the investor is relatively uninformed and turns over his money to others, essentially depending upon their representations and their honesty and skill in managing it, the transaction generally is considered to be an investment contract. The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others. At bottom, the exculpation of Santos cannot be preliminarily established simply by asserting that she did not sign the investment contracts, as the facts alleged in this case constitute fraud perpetrated on the public. Specially so because the absence of Santos' signature in the contract is, likewise, indicative of a scheme to circumvent and evade liability should the pyramid fall apart. Lastly, we clarify that we are only dealing herein with the preliminary investigation aspect of this case. We do not adjudge respondents' guilt or the lack thereof. Santos' defense of being a mere employee or simply an information provider is best raised and threshed out during trial of the case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cruz Enverga and Lucero for respondent.

D E C I S I O N

PEREZ, *J.*:

Before us is another cautionary tale of an investment arrangement which, at the outset, appeared good, unraveling unhappily as a deal **too-good-to-be-true**.

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision[1] of the Court of Appeals in CA-G.R. SP No. 112781 affirming the Resolutions[2] of the Secretary of Justice in I.S. No. 2007-1054 which, among others, dismissed the criminal complaint for violation of Section 28 of Republic Act No. 8799, the Securities Regulation Code, filed by petitioner Securities and Exchange Commission (SEC) against respondent Oudine Santos (Santos).

Sometime in 2007, yet another investment scam was exposed with the disappearance of its primary perpetrator, Michael H.K. Liew (Liew), a self-styled financial *guru* and Chairman of the Board of Directors of Performance Investment Products Corporation (PIPC-BVI), a foreign corporation registered in the British Virgin Islands.

To do business in the Philippines, PIPC-BVI incorporated herein as Philippine International Planning Center Corporation (PIPC Corporation).

Because the head of PIPC Corporation had gone missing and with it the monies and investment of a significant number of investors, the SEC was flooded with complaints from thirty-one (31) individuals against PIPC Corporation, its directors, officers, employees, agents and brokers for alleged violation of certain provisions of the Securities Regulation Code, including Section 28 thereof. Santos was charged in the complaints in her capacity as investment consultant of PIPC Corporation, who supposedly induced private complainants Luisa Mercedes P. Lorenzo (Lorenzo) and Ricky Albino P. Sy (Sy), to invest their monies in PIPC Corporation.

The common recital in the 31 complaints is that:

x x x [D]ue to the inducements and solicitations of the PIPC corporation's directors, officers and employees/agents/brokers, the former were enticed to invest their hard-earned money, the

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[1] Penned by Associate Justice Isaias Dicdican with Associate Justices Stephen C. Cruz and Jane Aurora C. Lantion, concurring. *Rollo*, pp. 56-66.

[2] Dated 18 April 2008 and 2 September 2008. *Id*. at 246-269 and 270-277.

minimum amount of which must be US$40,000.00, with PIPC-BVI, with a promise of higher income potential of an interest of 12 to 18 *percentum* (%) per annum at relatively low-risk investment program. The private complainants also claimed that they were made to believe that PIPC Corporation refers to Performance Investment Product Corporation, the Philippine office or branch of PIPC-BVI, which is an entity engaged in foreign currency trading, and not Philippine International Planning Center Corporation.[3]

Soon thereafter, the SEC, through its Compliance and Endorsement Division, filed a complaint-affidavit for violation of Sections 8,[4] 26[5] and 28[6] of the Securities Regulation Code before the Department of Justice which was docketed as I.S. No. 2007-1054. Among the respondents in the complaint-affidavit were the principal officers of PIPC: Liew, Chairman and President; Cristina Gonzalez-Tuason, Director and General Manager; Ma. Cristina Bautista-Jurado, Director; and herein respondent Santos.

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[3] *Id.* at 57.

[4] Sec. 8. ***Requirement of Registration of Securities.*** **—** 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

[5] Sec. 26. ***Fraudulent Transactions***. - It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

26.1. Employ any device, scheme, or artifice to defraud;

26.2. Obtain money or property by means of any untrue statement of a material fact of any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

[6] Sec. 28. ***Registration of Brokers, Dealers, Salesmen and Associated Persons***. - 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

Private complainants, Lorenzo and Sy, in their affidavits annexed to SEC's complaint-affidavit, respectively narrated Santos' participation in how they came to invest their monies in PIPC Corporation:

1. Lorenzo's affidavit

x x x x x x x x x

2. I heard about PIPC Corporation from my friend Derrick Santos during an informal gathering sometime in March 2006. He said that the investments in PIPC Corporation generated a return of 18-20% p.a. every two (2) months. He then gave me the number of his sister, **Oudine Santos** who worked for PIPC Philippines to discuss the investment further.

3. I then met with Oudine Santos sometime during the first week of April 2006 at PIPC Philippines' lounge x x x. Oudine Santos conducted for my personal benefit a presentation of the characteristics of their investment product called "Performance Managed Portfolio" (PMP). The main points of her presentation are indicated in a summary she gave me, x x x:

x x x x x x x x x

4. I asked Oudine Santos who were the traders, she said their names were "confidential."

5. Oudine Santos also emphasized in that same meeting that I should keep this transaction to myself because they were not allowed to conduct foreign currency trading. However, she assured me that I should not worry because they have a lot of "big people" backing them up. She also mentioned that they were applying for a seat in the "stock exchange."

6. I ultimately agreed to put in FORTY THOUSAND US DOLLARS (US$40,000.00) in their investment product.

7. Oudine Santos then gave me instructions on how to place my money in PMP and made me sign a Partnership Agreement. x x x.

x x x x x x x x x

8. Soon thereafter, pursuant to the instructions Oudine Santos gave me, I remitted US$40,000.00 to ABN-AMRO Hong Kong.

9. Afterwards, I received a letter dated 17 April 2006, signed by Michael H.K. Liew, welcoming my investment.

x x x x x x x x x

10. Sometime on May 2006, I added another US$ 60,000.00 to my then subsisting account #181372, thus totaling US$100,000.00. This amount, pursuant to the instructions of Oudine Santos, was remitted to Standard Chartered Bank.

x x x x x x x x x

14. Then sometime on May 2007, I planned to pull out my remaining US$100,000.00 investment in PIPC Philippines. On 22 May 2007, I met with Oudine Santos at the 15th Floor of Citibank Tower in Makati City. I told her I wanted to terminate all my investments.

15. Oudine Santos instead said that PIPC Philippines has a new product I might be interested in. x x x She explained that this product had the following characteristics:

x x x x x x x x x

16. Oudine Santos reiterated these claims in an email she sent me on 22 May 2007. x x x.

17. Enticed by these assurances and promises of large earnings, I put in FOUR HUNDRED THOUSAND US DOLLARS (US$400,000.00) in PMP (RZB), which became account # R149432.

18. Pursuant to the instructions Oudine Santos gave me, I remitted the amount of US$ 400,000.00 to RZB Austria, Singapore Branch.

x x x x x x x x x

22. I tried calling Oudine Santos and was finally able to reach her at around 7 in the morning. She confirmed what Leah Caringal told me. I told her then that I want full recovery of my investment in accordance with their 100% principal guarantee. To this day[,] I have not received my principal investment.[7]

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[7] *Rollo*, pp. 83-89.

5. Sy's affidavit

2. I have been a depositor of the Bank of the Philippine Islands (BPI) Pasong Tamo branch for the past 15 years. Sometime in the last quarter of 2006, I was at BPI Pasong Tamo to accomplish certain routine transactions. Being a client of long standing, the bank manager[,] as a matter of courtesy, allowed me to wait in her cubicle. It was there that the bank manager introduced me to another bank client, Ms. Oudine Santos. After exchanging pleasantries, and in the course of a brief conversation, Ms. Santos told me that she is a resident of Damariñas Village and was working as an investment consultant for a certain company, Performance Investment Products Corporation [PIPC]. She told me that she wanted to invite me to her office at the Citibank Tower in Makati so that she could explain the investment products that they are offering. I gave her my contact number and finished my transaction with the bank for that day;

3. Ms. Santos texted me to confirm our meeting. A few days later, I met her at the business lounge of [PIPC] located at the 15th Floor of Citibank Tower, Makati. During the meeting, Ms. Santos enticed me to invest in their Performance Managed Portfolio which she explained was a risk controlled investment program designed for individuals like me who are looking for higher investment returns than bank deposits while still having the advantage of security and liquidity. She told me that they were engaged in foreign currency trading abroad and that they only employ professional and experienced foreign exchange traders who specialize in trading the Japanese Yen, Euro, British Pound, Swiss Francs and Australian Dollar. I then told her that I did not have any experience in foreign currency trading and was quite conservative in handling my money;

4. Ms. Santos quickly allayed my fears by emphasizing that the capital for any investment with [PIPC] is secure. She then trumpeted [PIPC's] track record in the Philippines, having successfully solicited investments from many wealthy and well-known individuals since 2001;

5. Ms. Santos convinced me to invest in Performance Management Portfolio I x x x [which] features full protection for the principal investment and a 60%-40% sharing of the profit between the client and [PIPC] respectively;

6. In November of 2006, I decided to invest USD 40,000 specifically in Performance Management Portfolio I x x x. After signing the Partnership Agreement, x x x, I was instructed by Ms. Santos to deposit the amount by telegraphic transfer to [PIPC's] account in ABN AMRO Bank Hong Kong. I did as instructed;

x x x x x x x x x

8. Sometime January to March of 2007, [Santos] was convincing me to make an additional investment under a second product, Performance Management Portfolio II [PMP II] which provides a more limited guarantee for the principal investment of USD 100,000 and a 80%-20% sharing of the profit between the client and [PIPC] respectively. In both schemes, the client's participation will be limited to choosing two currencies which will in turn be traded by professional traders abroad. Profit earned from the transaction will then be remitted to the client's account every 8 weeks;

x x x x x x x x x

10. After I made my USD 40,000 PMP I investment, Ms. Santos invited me to meet Mr. Michael Liew in the business lounge some time during the first quarter of this year. My impression was that he was quite unassuming considering that he was the head of an international investment firm. x x x.[8]

On the whole, Lorenzo and Sy charge Santos in her capacity as investment consultant of PIPC Corporation who actively engaged in the solicitation and recruitment of investors. Private complainants maintain that Santos, apart from being PIPC Corporation's employee, acted as PIPC Corporation's agent and made representations regarding its investment products and that of the supposed global corporation PIPC-BVI. Facilitating Lorenzo's and Sy's investment with PIPC Corporation, Santos represented to the two that investing with PIPC Corporation, an affiliate of PIPC-BVI, would be safe and full-proof.

In SEC's complaint-affidavit, it charged the following:

x x x x x x x x x

[8] *Id*. at 112-113.

12. This case stems from the act of fraud and chicanery masterfully orchestrated and executed by the officers and agents of PIPC Corp. against their unsuspecting investors. *The deception is founded on the basic fact that neither PIPC Corp. nor its officers, employees and agents are registered brokers/dealers, making their numerous transactions of buying and selling securities to the public a blatant violation of the provisions of the SRC, specifically Sections 8 and 28 thereof.* Their illegal offer/sale of securities in the form of the "Performance Management Partnership Agreement" to the public was perpetrated for about nine (9) years and would have continued were it not for the alleged, and most probably, contrived and deliberate withdrawal of the entire funds of the corporation by Michael H.K. Liew. The [scam] was masked by a supposed offshore foreign currency trading scheme promising that the principal or capital infused will be guaranteed or fully protected. Coupled with this [full] guarantee for the principal is the prospect of profits at an annual rate of 12 to 18%. [One of] the other enticements provided by the subject company were free use of its business either for personal or business purposes, free subscription of imported magazines, [trips] abroad, and insurance coverage, just to name a few. Fully convinced and enamored [by the] thought of earning higher rates of interest along with the promise of a guaranteed [capital] the investors placed and entrusted their money to PIPC Corp., only to find out later [that they] had been deceived and taken for a ride.

x x x x x x x x x

17. Sometime in 2006, an investigation was undertaken by the [Compliance and Enforcement Division of the SEC] on the [account] of PIPC Corp. Per its Articles of Incorporation, PIPC Corp. was authorized to engage [in the] dissemination of information on the current flow of foreign exchange (forex) as x x x precious metals such as gold, silver, and oil, and items traded in stock and securities/commodities exchanges around the world. To be more specific, PIPC Corp. [was] authorized to act only as a research arm of their foreign clients.

x x x x x x x x x

22. x x x.

Name of Investors	Broker / Agent	Bank/Location to which funds were transferred	Date	Account Number	Amount of Investment	Bank/ Location xxx
x x x			x x x			x x x
23. Luisa Mercedes P. Lorenzo	Oudine Santos	RZB Austria, Singapore Branch	June 2007	R149432	US$500,000	Not provided
x x x			x x x			x x x
32. Ricky Albino P. Sy	Oudine Santos	ABN-AMRO Bank Hongkong	9 October 2006	0800287 769	US$40,000	BPI Pasong Tamo B[9]

23. A careful perusal of the complaint-affidavits revealed that for every completed investment transaction, a company brochure, depending on the type of investment portfolio chosen, was provided to each investor containing the following information on Performance BVI and its investment product called Performance Managed Portfolio or PMP, the points of which are as follows:

a. 8 calendar week maturity period[,]
b. principal investment (minimum of USD 40,000) is protected[,]
c. investments maintained in strict confidentiality[,]
d. features: security, liquidity, short term commitment,
e. tax-exemption status for offshore investments.

24. The investment flow is described as follows:

a. Investors' funds will be placed into a fixed deposit account with a PIPC designated bank and shall not be exposed for trading purposes. The PIPC designated bank shall then extend a margin line request for trading based on the deposit;
b. PIPC shall open a separate account which will contain an amount of not more than 30% of its own funds to serve as a profit and loss account;
c. Trading will commence with PIPC designated bank closely monitoring the performance to ensure that if losses are incurred trading will cease immediately should the 20% stop limit be hit;

[9] *Id.* at 177-182.

d. Profits will be credited into the Profit and Loss account with PIPC designated bank account. Losses will be debited from the same account up to the controlled 20% limit;
e. Notice of withdrawals must be submitted two weeks prior to schedule of maturity otherwise investment is automatically rolled over to the next batch;
f. At maturity, profits accumulated in the settlement account shall be distributed and deposited into each investor's dollar bank account within fourteen (14) banking days;
g. The funds of various investors are pooled, batched and deposited with PIPC designated bank account acting as custodian bank, to form a massive asset base. This account is separate and distinct from the Profit and Loss Account. The line from this pooled fund is then entrusted to full time professional and experienced foreign traders who each specialize in the following currencies: Japanes Yen, Euro, British Pound, Swiss Francs and Australian Dollar. Profits generated from trading these major currencies is credited into the Profit and Loss Account, which at the end of the eight calendar week lock-in period, will be distributed among the investors. Investors are informed of their account status thru trading statements issued by PIPC every time there is a trade made in their respective accounts.

x x x x x x x x x

25. Furthermore, it was relayed by the officers and agents to complainants-investors that PIPC Corp. is the Philippine office of the Performance Group of Companies affiliates situated in different parts of the world, particularly China, Indonesia, Hong Kong, Japan, Korea, Singapore, and the British Virgin Islands (BVI), even reaching Switzerland. With such basic depiction of the legitimacy and stability of PIPC Corp., complainants-investors deduced that it was clothed with the authority to solicit, offer [and] sell securities. As regards the officers and agents of [PIPC Corp.], they secured proper individual licenses with the SEC as brokers/dealers of securities to enable to solicit, offer and/or sell the same.

26. Official SEC documents would show that while PIPC Corp. is indeed registered with the SEC, it having engaged in the solicitation and sale of securities was contrary to the purpose for which it was established which is only to act as a financial research. Corollarily, PIPC Corp.'s officers, agents, and brokers were not licensed to

solicit, offer and sell securities to the public, a glaring violation of Sections 8 and 28 of the SRC.[10]

In refutation, Santos denied intentionally defrauding complainants Lorenzo and Sy:

12. I cannot understand how I can be charged of forming, or even of being a part of, a syndicate "formed with the intention of carrying an unlawful or illegal act, transaction, enterprise or scheme." If this charge has reference to PIPC Corp. then I certainly cannot be held liable therefore. As I mentioned above, I joined PIPC Corp. only in **April 2005** and, by that time, the company was already in existence for over four years. I had no participation whatsoever in its creation or formation, as I was not even connected with PIPC Corp. at the time of its incorporation. In fact, I have never been a stockholder, director, general manager or officer of PIPC Corp. Further, PIPC Corp. was duly registered with the Securities and Exchange Commission and was organized for a legitimate purpose, and certainly not for the purpose of perpetrating a fraud against the public.

13. That I was an employee and, later on, an independent information provider of PIPC Corp. is of little consequence. My duties as such were limited to providing information about the corporate clients of PIPC Corp. that had been expressly requested by interested individuals. I performed my assigned job without any criminal intent or malice. In this regard, I have been advised that offenses penalized under the RPC are intentional felonies for which criminal liability attaches only when it is shown that the malefactors acted with criminal intent or malice. There can be no crime when the criminal mind is wanting. In this case, I performed my task of providing requested information about the clients of PIPC Corp. without any intent to violate the law. Thus, there can be no criminal liability.

[14]. I have also been advised that under the law, the directors and officers of a corporation who act for and in behalf of the corporation, who keep within the lawful scope of their authority, and act in good faith, do not become liable, whether civilly or otherwise, for the consequences of their acts, as these acts are properly attributed to the corporation alone. The same principle should apply to individual, like myself, who was only acting within the bounds of her assigned

[10] *Id.* at 174-184.

tasks and had absolutely no decision-making power in the management and supervision of the company.

[15]. Neither can I be liable of forming a syndicate with respect to PIPC-BVI. To reiterate, at no time was I ever a stockholder, director, employee, officer or agent of PIPC-BVI. Said company is simply one of many companies serviced by PIPC Corp. I had no participation whatsoever in its creation and/or in the direction of its day-to-day affairs.

x x x x x x x x x

19. Further, I have been advised by counsel that conspiracy must be established by positive and conclusive evidence. It cannot be based on mere conjecture but must be established as a fact. In this case, no proof of conspiracy was presented against me. In fact, it appears that I have been dragged in to this allegation based on the hearsay statement of Felicia Tirona that I was one of the in-house "account executives" or "work force" of PIPC-BVI and PIPC Corp. There was no allegation whatsoever of any illegal act done by me to warrant the institution of criminal charges against me. If at all, only Michael Liew should be held criminally liable, as he was clearly the one who absconded with the money of the investors of PIPC-BVI. Mr. Liew has since disappeared and efforts to locate him have apparently proved to be futile to date.

x x x x x x x x x

23. In the first place, I did not receive any money or property from any of the complainants. As clearly shown by the documents submitted to this Honorable Office, particularly, the Portfolio Management Partnership Agreement, Security Agreement, Declaration of Trust, bank statements and acknowledgement receipts, complainants delivered their money to PIPC-BVI, not to PIPC Corp. Complainants deposited their investment in PIPC-BVI's bank account, and PIPC-BVI would subsequently issue an acknowledgement receipt. No part of the said money was ever delivered to PIPC Corp. or to me.

24. Indeed, complainant's own evidence show that the Portfolio Management Partnership Agreement, Security Agreement and Declaration of Trust were executed between PIPC-BVI and the individual complainants. Further, paragraph 2 of the Declaration of Trust explicitly stated that PIPC-BVI "hold the said amount of money UPON TRUST for the Beneficiary Owner." The complainants cannot,

therefore, hold PIPC Corp., or any of its officers or employees, with misappropriating their money or property when they were fully aware that they delivered their money to, and transacted solely with, PIPC-BVI, and not PIPC Corp.

25. It also bears stressing that of the twenty-one (21) complainants in this case, only complainant Ricky Albino Sy alleged that he had actually dealt with me. Complainant Sy himself never alleged that he delivered or entrusted any money or property to me. On the contrary, complainant Sy admitted that he deposited his investment of U.S.$40,000.00 by bank transfer to PIPC-BVI's account in the ABN Amro Bank. That the money was delivered to PIPC-BVI, and not to me, is shown by the fact that the receipt was issued by PIPC-BVI. I never signed or issued any acknowledgement receipt, as I never received any such money. Neither did I ever gain physical or juridical possession of the said money.[11] (Emphasis and underscoring supplied).

Santos' defense consisted in: (1) denying participation in the conspiracy and fraud perpetrated against the investor-complainants of PIPC Corporation, specifically Sy and Lorenzo; (2) claiming that she was initially and merely an employee of, and subsequently an independent information provider for, PIPC Corporation; (3) PIPC Corporation being a separate entity from PIPC-BVI of which Santos has never been a part of in any capacity; (4) her not having received any money from Sy and Lorenzo, the two having, in actuality, directly invested their money in PIPC-BVI; (5) Santos having dealt only with Sy and the latter, in fact, deposited money directly into PIPC-BVI's account; and (6) on the whole, PIPC-BVI as the other party in the investment contracts signed by Sy and Lorenzo, thus the only corporation liable to Sy and Lorenzo and the other complainants.

On 18 April 2008, the DOJ, in I.S. No. 2007-1054, issued a Resolution signed by a panel of three (3) prosecutors, with recommendation for approval of the Assistant Chief State Prosecutor, and ultimately approved by Chief State Prosecutor Jovencito R. Zuño, indicting: (a) Liew and Gonzalez-Tuason

[11] *Id.* at 202-207.

for violation of Sections 8 and 26 of the Securities Regulation Code; and (b) herein respondent Santos, along with Cristina Gonzalez-Tuason and 12 others for violation of Section 28 of the Securities Regulation Code. The same Resolution likewise dismissed the complaint against 8 of the respondents therein for insufficiency of evidence. In the 18 April 2008 Resolution, the DOJ discussed at length the liability of PIPC Corporation and its officers, employees, agents and all those acting on PIPC Corporation's behalf, to wit:

> Firstly, complainant SEC filed the instant case for alleged violation by respondents [therein, including herein respondent, Santos,] of Section 8 of the SRC.
>
> Sec. 8. *Requirement of Registration of Securities*. – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.
>
> Based on the above provision of the law, complainant SEC is now accusing all respondents [therein, including Santos,] for violating the same when they allegedly sold and/or offered for sale unregistered securities.
>
> However, Section 8.5 thereof provides that "*The Commission may audit the financial statements, assets and other information of a firm applying for registration of its securities whenever it deems the same necessary to insure full disclosure or to protect the interest of the investors and the public in general.*"
>
> The above-quoted provision is loud and clear and needs no further interpretation. It is the firm through its authorized officers that is required to register its securities with the SEC and not the individual persons allegedly selling and/or offering for sale said unregistered securities. To do otherwise would open the floodgates to numerous complaints against innocent individuals who have no hand in the control, decision-making and operations of said investment company.
>
> Clearly, it is only the PIPC Corp. and respondents Michael H. Liew and Cristina Gonzalez-Tuason being the President and the General Manager respectively, of PIPC Corp. who violated Section 8 of the SRC.

x x x x x x x x x

Respondents Liew and Tuason are directors and officers of PIPC Corp. who exercise power of control and supervision in the management of said corporation. Surely they cannot claim having no knowledge of the operations of PIPC Corp. *vis-à-vis* its scope of authority since they are the ones who actually created and manage the same. They are well aware that PIPC Corp. is a mere financial research facility and has nothing to do with selling or offering for sale securities to the general public. But despite knowledge, they continue to recruit and deceive the general public by making it appear that PIPC Corp. is a legitimate investment company.

Moreover, they cannot evade liability by hiding behind the veil of a corporate fiction. x x x.

x x x x x x x x x

In the case at bar, the investors were made to believe that PIPC Corp. and PIPC-BVI is one and the same corporation. There is nothing on record that would show that private complainants were informed that PIPC Corp. and PIPC-BVI are two entities distinct and separate from one another. In fact, when they invested their money, they dealt with PIPC Corp. and the people acting on its behalf but when they signed documents they were provided with ones bearing the name of PIPC-BVI. Clearly, this obvious and intentional confusion of names of the two entities is designed to defraud and later to avoid liabilities from their victims. Therefore, the defense of a corporate fiction is unavailing in the instant case.

x x x x x x x x x

Buying and selling of securities is an indispensable element that makes one a broker or dealer. So if one is not engaged in the business of buying and selling of securities, naturally he or she cannot be considered as a broker or dealer. However, a person may be considered as an agent of another, juridical or natural person, if it can be inferred that he or she acts as an agent of his or her principal as above-defined. One can also be an investor and agent at the same time.

An examination of the records and the evidence submitted by the parties, we have observed that all respondents are investors of PIPC-BVI, same with the private complainants, they also lost thousands of dollars. We also noted the fact that most of the private complainants and alleged brokers or agents are long time friends if not blood

related individuals. Notably also is the fact that most of them are highly educated businessmen/businesswomen who are financially well-off. Hence, they are regarded to be wiser and more prudent and expected to exercise due diligence of a good father of a family in managing their finances as compared to those who are less fortunate in life.

However, we still need to delve deeper into the facts and the [evidence] on record to determine the degree of respondents' participations and if on the basis of their actions, it can be inferred that they acted as employees-agents or investor-agents of PIPC Corp. or PIPC-BVI then are liable under Section 28 of the SRC otherwise, they cannot be [blamed] for being mere employees or investors thereof.

x x x x x x x x x

Oudine Santos. Investment Consultant of PIPC Corp. who allegedly invited, convinced and assured private complainants Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy to invest in PIPC Corp. To prove their allegations, respondents attached email exchanges with respondent Santos regarding the details in investing with PIPC-BVI. Respondent Santos failed to submit counter-affidavit despite subpoena.

x x x x x x x x x

After painstakingly going over the record and the supporting documents attached thereto and after carefully evaluating the respective claims and defenses raised by all the parties, the undersigned panel of prosecutors has a reason to believe that Section 28 of the SRC has been violated and that the following respondents are probably guilty thereof and should, therefore, be held for trial:

1. Cristina Gonzalez-Tuason
2. x x x.

x x x x x x x x x

13. Oudine Santos

The above-named respondents, aside from being officers, employees or investors, clearly acted as agents of PIPC Corp. who made representations regarding PIPC Corp. and PIPC-BVI investment products. They assured their clients that investing with PIPC-BVI will be 100% guaranteed. In addition, they also facilitated their clients' investments with PIPC-BVI and some, if not all, even received money

investors as evidenced by the acknowledgement receipts they signed and on behalf of PIPC-BVI. The documentary evidence submitted by witnesses and their categorical and positive assertion of facts which, taken together corroborate one another, prevails over the defense of denial raised by the above-named respondents which are mostly self-serving in nature.

A formal or written contract of agency between two or more persons is not necessary for one to become an agent of the other for as long as it can be inferred from their actions that there exists a principal-agent relationship between them on the one hand and the PIPC Corp. or PIPC-BVI on the other hand, then, it is implied that a contract of agency is created.

As to their contention that they are not officers or employees of PIPC Corp., the Supreme Court ruled that one may be an agent of a domestic corporation although he or she is not an officer thereto. x x x. The basis of agency is representation; the question of whether an agency has been created is ordinarily a question which may be established in the same way as any other fact, either by direct or substantial evidence; though that fact or extent of authority of the agents may not, as a general rule, be established from the declarations of the agents alone, if one professes to act as agent for another, he or she is estopped to deny her agency both as against the asserted principal and third persons interested in the transaction in which he or she is engaged.

Further, they cannot raise the defense of good faith for the simple reason that the SRC is a special law where criminal intent is not an essential element. Mere violation of which is punishable except in some provisions thereof where fraud is a condition *sine qua non* such as Section 26 of the said law.

x x x x x x x x x

WHEREFORE, the foregoing considered, it is respectfully recommended that this resolution be APPROVED and that:

1. An information for violation of Section 8 of the SRC be filed against respondent PIPC Corp., MICHAEL H. LIEW and CRISTINA GONZALEZ-TUASON;
2. An information for violation of Section 26 thereof be also filed against respondents MICHAEL H. LIEW and CRISTINA GONZALEZ-TUASON; and

3. An information for violation of Section 28 thereof be filed against respondents CRISTINA GONZALEZ-TUASON, MA. CRISTINA BAUTISTA-JURADO, BARBARA GARCIA, ANTHONY KIERULF, EUGENE GO, MICHAEL MELCHOR NUBLA, MA. PAMELA MORRIS, LUIS 'JIMBO' ARAGON, RENATO SARMIENTO, JR., VICTOR JOSE VERGEL DE DIOS, NICOLINE AMORANTO MENDOZA, JOSE 'JAY' TENGCO III, [respondent] OUDINE SANTOS AND HERLEY JESUITAS; and
4. The complaint against MAYENNE CARMONA, YEYE SAN PEDRO-CHOA, MIA LEGARDA, NICOLE ORTEGA, DAVID CHUA-UNSU, STANLEY CHUA-UNSU, DEBORAH V. YABUT, CHRISTINE YU and JONATHAN OCAMPO be dismissed for insufficiency of evidence.[12] (Emphasis supplied).

In sum, the DOJ panel based its finding of probable cause on the collective acts of the majority of the respondents therein, including herein respondent Santos, which consisted in their acting as employees-agent and/or investor-agents of PIPC Corporation and/or PIPC-BVI. Specifically alluding to Santos as Investment Consultant of PIPC Corporation, the DOJ found probable cause to indict her for violation of Section 28 of the Securities Regulation Code for engaging in the business of selling or offering for sale securities, on behalf of PIPC Corporation and/or PIPC-BVI (which were found to be an **issuer**[13] of securities without the necessary registration from the SEC) without Santos being registered as a broker, dealer, salesman or an associated person.

On separate motions for reconsideration of the respondents therein, including herein respondent Santos, the DOJ panel issued a Resolution dated 2 September 2008 modifying its previous ruling and excluding respondent Victor Jose Vergel de Dios from prosecution for violation of Section 28 of the Securities Regulation Code, thus:

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[12] *Id.* at 248-267.

[13] SEC. 3. *Definition of Terms.* – x x x.

3.2 "*Issuer*" is the originator, maker, obligor, or creator of the security.

After an assiduous re-evaluation of the facts and the evidence submitted by the parties in support of their respective positions, the undersigned panel finds x x x [that the] rest of the respondents mainly rehashed their earlier arguments except for a few respondents who, in one way or another, failed to participate in the preliminary investigation; hence raising their respective defenses for the first time in their motions for reconsideration.

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With respect to respondents Luis "Jimbo" Aragon and Oudine Santos who also claimed to have not received subpoenas, this panel, after thoroughly evaluating their respective defenses, finds them to be similarly situated with the other respondents who acted as agents for and in behalf of PIPC Corp. and/or PIPC-BVI; hence, their inclusion in the information is affirmed.

x x x x x x x x x

x x x As to the issue on whether or not PMPA is a security contract, we rule in the affirmative, as supported by the herein below provisions of the SRC, particularly:

> Sec. 8. Requirement of Registration of Securities. – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

Securities have been defined as shares, participation or interest in a corporation or in a commercial enterprise or profit making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes among others, investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription.

Under the SRC's Amended Implementing Rules and Regulations, specifically Rule 3, par. 1 subpar. G, an investment contract has been defined as a contract, transaction or scheme (collectively "contract"), whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others. It is likewise provided in the said provision that an investment contract is presumed to exist whenever a person seeks

to use the money or property of others on the promise of profits and a common enterprise is deemed created when two (2) or more investors "pool" their resources creating a common enterprise, even if the promoter receives nothing more than a broker's commission. Undoubtedly, the PMPA is an investment contract falling within the purview of the term securities as defined by law.

x x x x x x x x x

It bears to emphasize that the purpose of a preliminary investigation and/or confrontation between the party-litigants is for them to lay down all their cards on the table to properly inform and apprise the other of the charges against him/her, to avoid suprises and to afford the adverse party all the opportunity to defend himself/herself based on the evidence submitted against him/her. Thus, failure on the part of the defaulting party to submit evidence that was then available to him is deemed a waiver on his part to submit it in the same proceedings against the same party for the same issue.

WHEREFORE, the foregoing premises considered, the undersigned panel of prosecutors respectfully recommends that the assailed resolution be *modified* by dismissing the complaint against Victor Jose Vergel De Dios and that the Information filed with the appropriate court for violation of Section 28 of the SRC be amended accordingly.[14]

Respondent Santos filed a petition for review before the Office of the Secretary of the DOJ assailing the Resolutions dated 18 April 2008 and 2 September 2008 and claiming that she was a mere clerical employee/information provider who never solicited nor recruited investors, in particular complainants Sy and Lorenzo, for PIPC Corporation or PIPC-BVI. Santos also claimed dearth of evidence indicating she was a salesman/agent or an associated person of a broker or dealer, as defined under the Securities Regulation Code.

The SEC filed its Comment opposing Santos' petition for review. Thereafter, the Office of the Secretary of the DOJ, through its then Undersecretary Ricardo R. Blancaflor, issued a Resolution dated 1 October 2009 which, as previously adverted

[14] *Rollo,* pp. 271-274.

to, excluded respondent Santos from prosecution for violation of Section 28 of the Securities Regulation Code. For a complete picture, we quote in full the disquisition of the Secretary of the DOJ:

[Santos] argues that while Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy mentioned two (2) instances wherein she allegedly enticed them to invest, their own pieces of evidence, particularly the Annex "E" series (several "Details of Profit distribution & Renewal of Partnership Agreement" bearing different dates addressed to Ricky Albino P. Sy with stamped signature for PIPC-BVI), indicate that they invested and reinvested their money with PIPC-BVI repeatedly and even earned profits from these transactions through direct dealing with PIPC-BVI and without her participation. In addition, she maintains that Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy had several opportunities to divest or withdraw their respective investments but opted not to do so at their own volitions.

x x x x x x x x x

The sole issue in this case is whether or not respondent Santos acted as agent of PIPC Corp. or had enticed Luisa Mercedes P. Lorenzo or Ricky Albino P. Sy to buy PIPC Corp. or PIPC-BVI's investment products.

We resolve in the negative.

Section 28 of the Securities Regulation Code (SRC) reads:

SEC. [28]. ***Registration of Brokers, Dealers, Salesmen and Associated Persons***. – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer unless registered as such with the Commission.

28.2. No registered broker or dealer shall employ any salesman or any associated person, and no issuer shall employ any salesman, who is not registered as such with the Commission.

Jurisprudence defines an "*agent*" as a "business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third persons." x x x On the other hand, the Implementing Rules of the SRC simply provides that an agent or a "salesman" is a person employed as such or as an agent, by the dealer, issuer or broker to buy and sell securities x x x.

A judicious examination of the records indicates the lack of evidence that respondent Santos violated Section 28 of the SRC, or that she had acted as an agent for PIPC Corp. or enticed Luisa Mercedes P. Lorenzo or Ricky Albino P. Sy to buy PIPC Corp. or PIPC-BVI's investment products.

The annex "D" ("Welcome to PMP" Letter dated [17 April 2006] addressed to Luisa Mercedes P. Lorenzo signed by Michael Liew as president of PIPC-BVI), Annex "E" (Fixed Deposit Advice Letter dated [26 June 2006] addressed to Luisa Mercedes P. Lorenzo and stamped signature for PIPC-BVI), and Annex "H" ("Welcome to PMP" Letter dated [30 May 2007] addressed to Luisa Mercedes P. Lorenzo signed by Michael Liew as President of PIPC-BVI) of the complaint-affidavit dated [11 September 2007] of Luisa Mercedes P. Lorenzo show that she directly dealt with PIPC-BVI in placing her investment. The same is true with regard to Annex "A" series (Portfolio Management Partnership Agreement between Ricky Albino P. Sy and PIPC-BVI, Security Agreement between Ricky Albino P. Sy and PIPC-BVI, and Declaration of Trust between Ricky Albino P. Sy and PIPC-BVI), Annex "B" (Official Receipt dated 09 November 2006 issued by PIPC-BVI), Annex "C" ("Welcome to PMP" Letter dated [10 November 2006] addressed to Ricky Albino P. Sy and signed by Michael [Liew] as President of PIPC-BVI), and Annex "D" (Fixed Deposit Advice Letter dated [29 January 2007] addressed to Ricky Albino P. Sy with stamped signature for PIPC-BVI) of the complaint-affidavit dated [26 September 2007] of Ricky Albino P. Sy. These documents categorically show that the parties therein, *i.e.*, Luisa Mercedes P. Lorenzo or Ricky Albino P. Sy and PIPC-BVI, transacted with each other directly without any participation from respondent Santos. These documents speak for themselves. Moreover, it bears stressing that Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy admit in their respective affidavits that they directly deposited their investments by bank transfer to PIPC-BVI's offshore bank account.

Annex "B" (Printed background of the PMP of [PIPC]-BVI enumerating the features of said product) and Annex "C" (Printed "Procedures in PMP Account Opening" instructing the client what to do in placing his/her investment) of the complaint-affidavit of Luisa Mercedes P. Lorenzo actually supports the allegations of respondent Santos that there were printed forms/brochures for distribution to persons requesting the same. These printed/prepared

handouts contain the assurances or guarantees of PIPC-BVI and the instructions on where and how to deposit the investors' money.

Likewise, Luisa Mercedes P. Lorenzo's Annex "A" (2006 GIS of PIPC Corp. listing the stockholders, board of directors an[d] officers thereof), Annex "F" (Deposit Confirmation dated [14 June 2006] from Standard Chartered Bank) and Annexes "I" to "L" (SEC Certifications stating that PIPC Corp., PIPC, PIPC-BVI and Performance Investment Products Ltd., respectively, are not registered issuer of securities nor licensed to offer or sell securities to the public) are not evidence against respondent Santos. Her name is not even mentioned in any of these documents. If at all, these documents are evidence against PIPC Corp. and its officers named therein.

Further, it is important to note that in the "Request Form," one of the documents being distributed by respondent Santos x x x, it is categorically stated therein that said request *"shall not be taken as an investment solicitation x x x, but is mainly for the purpose of providing me with information."* Clearly, this document proves that respondent Santos did not or was not involved in the solicitation of investments but merely shows that she is an employee of PIPC Corp. In addition, the "Information Dissemination Agreement" between her employer PIPC Corp. and PIPC-BVI readably and understandably provides that she is prohibited from soliciting investments in behalf of PIPC-BVI and her authority is limited only to providing interested persons with the *"necessary information regarding how to communicate directly with PIPC."* Parenthetically, the decision to sign the partnership Agreement with PIPC-BVI to invest and repeatedly reinvest their monies with PIPC-BVI were made by Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy themselves without any inducement or undue influence from respondent Santos.

x x x x x x x x x

WHEREFORE, the assailed resolution is hereby MODIFIED, the Chief State Prosecutor is directed to EXCLUDE respondent Oudine Santos from the Information for violation of Section 28 of the Securities and Regulation Code, if any has been filed, and report the action taken thereon within ten (10) days from receipt hereof.[15]

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[15] *Id.* at 313-317.

Expectedly, after the denial of the SEC's motion for reconsideration before the Secretary of the DOJ, the SEC filed a petition for *certiorari* before the Court of Appeals seeking to annul the 1 October 2009 Resolution of the DOJ.

The Court of Appeals dismissed the SEC's petition for *certiorari* and affirmed the 1 October 2009 Resolution of the Secretary of the DOJ:

> Prescinding from the foregoing, a person must first and foremost be engaged in the business of buying and selling securities in the Philippines before he can be considered as a broker, a dealer or salesman within the coverage of the Securities Regulation Code. The record in this case however is bereft of any showing that [Santos] was engaged in the business of buying and selling securities in the Philippines, whether for herself or in behalf of another person or entity. Apart from [SEC's] sweeping allegation that [Santos] enticed Sy and Lorenzo and solicited from them investments for PIPC-BVI without first being registered as broker, dealer or salesman with SEC, no evidence had been adduced that shows [Santos'] actual participation in the alleged offer and sale of securities to the public, particularly to Sy and Lorenzo, within the Philippines. There was likewise no exchange of funds between Sy and Lorenzo, on one hand, and [Santos], on the other hand, as the price of certain securities offered by PIPC-BVI. There was even no specific proof that [Santos] misrepresented to Sy and Lorenzo that she was a licensed broker, dealer or salesperson of securities, thereby inducing them to invest and deliver their hard-earned money with PIPC-BVI. In fact, the Information Dissemination Agreement between PIPC Corporation, [Santos' employer], and PIPC-BVI clearly provides that [Santos] was prohibited from soliciting investments in behalf of PIPC-BVI and that her authority is limited only to providing prospective client with the "*necessary information on how to communicate directly with PIPC*." Thus, it is obvious that the final decision of investing and reinvesting their money with PIPC-BVI was made solely by Sy and Lorenzo themselves.
>
> x x x x x x x x x

WHEREFORE, in view of the foregoing premises, the petition filed in this case is hereby **DENIED** and, consequently, **DISMISSED**. The assailed Resolutions dated [1 October 2009] and [23 November

2009] of the Secretary of Justice in I.S. No. 2007-1054 are hereby **AFFIRMED**.[16]

Hence, this appeal by *certiorari* raising the sole error of Santos' exclusion from the Information for violation of Section 28 of the Securities Regulation Code.

Generally, at the preliminary investigation proper, the investigating prosecutor, and ultimately, the Secretary of the DOJ, is afforded wide latitude of discretion in the exercise of its power to determine probable cause to warrant criminal prosecution. The determination of probable cause is an executive function where the prosecutor determines merely that a crime has been committed and that the accused has committed the same.[17] The rules do not require that a prosecutor has moral certainty of the guilt of a person simply for preliminary investigation purposes.

However, the authority of the prosecutor and the DOJ is not absolute; it cannot be exercised arbitrarily or capriciously. Where the findings of the investigating prosecutor or the Secretary of the DOJ as to the existence of probable cause are equivalent to a gross misapprehension of facts, *certiorari* will lie to correct these errors.[18]

While it is our policy not to interfere in the conduct of preliminary investigations, we have, on more than one occasion, adhered to some exceptions to the general rule:

1. when necessary to afford adequate protection to the constitutional rights of the accused;
2. when necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
3. when there is a prejudicial question which is *sub judice*;

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[16] *Id*. at 65-66.

[17] *Po v. Department of Justice*, G.R. Nos. 195198 and 197098, 11 February 2013, 690 SCRA 214, 224-225.

[18] *First Women's Credit Corporation v. Hon. Perez*, 524 Phil. 305, 308-309 (2006) citing *Hegerty v. Court of Appeals*, 456 Phil. 542, 547-548 (2003); *Punzalan v. Dela Peña*, 478 Phil. 771, 783 (2004).

4. *when the acts of the officer are without or in excess of authority*;
5. where the prosecution is under an invalid law, ordinance or regulation;
6. when double jeopardy is clearly apparent;
7. where the court has no jurisdiction over the offense;
8. where it is a case of persecution rather than prosecution;
9. where the charges are manifestly false and motivated by the lust for vengeance;
10. when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.[19] (Italics supplied).

In excluding Santos from the prosecution of the supposed violation of Section 28 of the Securities Regulation Code, the Secretary of the DOJ, as affirmed by the appellate court, debunked the DOJ panel's finding that Santos was *prima facie* liable for either: (1) selling securities in the Philippines as a broker or dealer, or (2) acting as a salesman, or an associated person of any broker or dealer on behalf of PIPC Corporation and/or PIPC-BVI without being registered as such with the SEC.

To get to that conclusion, the Secretary of the DOJ and the appellate court ruled that no evidence was adduced showing Santos' actual participation in the final sale by PIPC Corporation and/or PIPC-BVI of unregistered securities since the very affidavits of complainants Lorenzo and Sy proved that Santos had never signed, neither was she mentioned in, any of the investment documents between Lorenzo and Sy, on one hand, and PIPC Corporation and/or PIPC-BVI, on the other hand.

The conclusions made by the Secretary of the DOJ and the appellate court are a myopic view of the investment solicitations made by Santos on behalf of PIPC Corporation and/or PIPC-BVI while she was not licensed as a broker or dealer, or registered as a salesman, or an associated person of a broker or dealer.

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[19] *Filadas Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 470, citing *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, 430 Phil. 101, 113 (2002).

We sustain the DOJ panel's findings which were not overruled by the Secretary of the DOJ and the appellate court, that PIPC Corporation and/or PIPC-BVI was: (1) an issuer of securities without the necessary registration or license from the SEC, and (2) engaged in the business of buying and selling securities. In connection therewith, we look to Section 3 of the Securities Regulation Code for pertinent definitions of terms:

> Sec. 3. ***Definition of Terms***. – x x x.
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> x x x x x x x x x
>
> 3.3. "Broker" is a person engaged in the business of buying and selling securities for the account of others.
>
> 3.4. "Dealer" means [any] person who buys [and] sells securities for his/her own account in the ordinary course of business.
>
> 3.5. "Associated person of a broker or dealer" is an employee thereof whom, directly exercises control of supervisory authority, but does not include a salesman, or an agent or a person whose functions are solely clerical or ministerial.
>
> x x x x x x x x x
>
> 3.13. "Salesman" is a natural person, employed as such [or] as an agent, by a dealer, issuer or broker to buy and sell securities.

To determine whether the DOJ Secretary's Resolution was tainted with grave abuse of discretion, we pass upon the elements for violation of Section 28 of the Securities Regulation Code: (a) engaging in the business of buying or selling securities in the Philippines as a broker or dealer; or (b) acting as a salesman; or (c) acting as an associated person of any broker or dealer, unless registered as such with the SEC.

Tying it all in, there is no quarrel that Santos was in the employ of PIPC Corporation and/or PIPC-BVI, a corporation which sold or offered for sale unregistered securities in the Philippines. To escape probable culpability, Santos claims that she was a mere clerical employee of PIPC Corporation and/or PIPC-BVI and was never an agent or salesman who actually solicited the sale of or sold unregistered securities issued by PIPC Corporation and/or PIPC-BVI.

Solicitation is the act of seeking or asking for business or information; it is not a commitment to an agreement.[20]

Santos, by the very nature of her function as what she now unaffectedly calls an information provider, brought about the sale of securities made by PIPC Corporation and/or PIPC-BVI to certain individuals, specifically private complainants Sy and Lorenzo by providing information on the investment products of PIPC Corporation and/or PIPC-BVI with the end in view of PIPC Corporation closing a sale.

While Santos was not a signatory to the contracts on Sy's or Lorenzo's investments, Santos procured the sale of these unregistered securities to the two (2) complainants by providing information on the investment products being offered for sale by PIPC Corporation and/or PIPC-BVI and convincing them to invest therein.

No matter Santos' strenuous objections, it is apparent that she connected the probable investors, Sy and Lorenzo, to PIPC Corporation and/or PIPC-BVI, acting as an ostensible agent of the latter on the viability of PIPC Corporation as an investment company. At each point of Sy's and Lorenzo's investment, Santos' participation thereon, even if not shown strictly on paper, was *prima facie* established.

In all of the documents presented by Santos, she never alleged or pointed out that she did not receive extra consideration for her simply providing information to Sy and Lorenzo about PIPC Corporation and/or PIPC-BVI. Santos only claims that the monies invested by Sy and Lorenzo did not pass through her hands. In short, Santos did not present in evidence her salaries as a supposed "mere clerical employee or information provider" of PIPC-BVI. Such presentation would have foreclosed all questions on her status within PIPC Corporation and/or PIPC-BVI at the lowest rung of the ladder who only provided information and who did not use her discretion in any capacity.

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[20] http://thelawdictionary.org/solicitation-2/ last visited 17 February 2014.

We cannot overemphasize that the very information provided by Santos locked the deal on unregistered securities with Sy and Lorenzo.

In fact, Sy alleged in his affidavit, which allegation was not refuted by Santos, that he was introduced to Santos while he performed routine transactions at his bank:

> 2. I have been a depositor of the Bank of the Philippine Islands (BPI) Pasong Tamo branch for the past 15 years. Sometime in the last quarter of 2006, I was at BPI Pasong Tamo to accomplish certain routine transactions. Being a client of long standing, the bank manager[,] as a matter of courtesy, allowed me to wait in her cubicle. It was there that the bank manager introduced me to another bank client, Ms. Oudine Santos. After exchanging pleasantries, and in the course of a brief conversation, Ms. Santos told me that she is a resident of Damariñas Village and was working as an investment consultant for a certain company, Performance Investment Products Corporation [PIPC]. She told me that she wanted to invite me to her office at the Citibank Tower in Makati so that she could explain the investment products that they are offering. I gave her my contact number and finished my transaction with the bank for that day;
>
> 3. Ms. Santos texted me to confirm our meeting. A few days later, I met her at the business lounge of [PIPC] located at the 15th Floor of Citibank Tower, Makati. During the meeting, Ms. Santos enticed me to invest in their Performance Managed Portfolio which she explained was a risk controlled investment program designed for individuals like me who are looking for higher investment returns than bank deposits while still having the advantage of security and liquidity. She told me that they were engaged in foreign currency trading abroad and that they only employ professional and experienced foreign exchange traders who specialize in trading the Japanese Yen, Euro, British Pound, Swiss Francs and Australian Dollar. I then told her that I did not have any experience in foreign currency trading and was quite conservative in handling my money;[21]

Santos countered that:

> 28. I also categorically deny complainant Sy's allegation that I "enticed" him to enter into a Partnership Agreement with PIPC-

[21] *Rollo,* p. 112.

BVI. In the first place, I came to know complainant Sy only when he was referred to me by a mutual acquaintance, Ms. Ana Liliosa Santos, who was then the Manager of the Bank of the Philippine Islands, Pasong Tamo Branch. Ms. Ana Santos set up a meeting between complainant Sy and me because complainant Sy wanted to know more about PIPC-BVI. As with the other individuals who expressed interest in PIPC Corp.'s client companies, I then provided complainant Sy with additional information about PIPC-BVI. The decision to enter into the aforementioned Partnership Agreement with PIPC-BVI was made by complainant Sy alone without any inducement or undue influence from me, as in fact I only met him twice – the first one was on the meeting set up by Ms. Ana Santos and the second one was to introduce him to Michael Liew. Indeed, complainant Sy appears to be a well-educated person with years of experience as a businessman. It is reasonable to assume that before entering into the said Partnership Agreement with PIPC-BVI, complainant Sy had fully understood the nature of the agreement and that in entering thereto, he had been motivated by a desire to earn a profit and had believed, as I myself have been led to believe, that PIPC-BVI was a legitimate business concern which offered a reasonable return on investment, Moreover, complainant Sy could have withdrawn his initial investment of US$40,000.00 on its date of maturity, *i.e.*, 26 January 2007, as indicated in the PIPC-BVI's letter dated 10 November 2006, a copy of which is attached to complainant Sy's Sworn Statement. Complainant Sy, however, obviously decided on his own volition to keep his investment with PIPC-BVI presumably because he wanted to gain more profit therefrom. Complainant Sy in fact admitted that he received monetary returns from PIPC-BVI in the total amount of US$2,439.12.[22]

What is palpable from the foregoing is that Sy and Lorenzo did not go directly to Liew or any of PIPC Corporation's and/or PIPC-BVI's principal officers before making their investment or renewing their prior investment. However, undeniably, Santos actively recruited and referred possible investors to PIPC Corporation and/or PIPC-BVI and acted as the go-between on behalf of PIPC Corporation and/or PIPC-BVI.

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[22] *Id.* at 208-209.

The DOJ's and Court of Appeals' reasoning that Santos did not sign the investment contracts of Sy and Lorenzo is specious. The contracts merely document the act performed by Santos.

Individual complainants and the SEC have categorically alleged that Liew and PIPC Corporation and/or PIPC-BVI is not a legitimate investment company but a company which perpetrated a scam on 31 individuals where the president, a foreign national, Liew, ran away with their money. Liew's absconding with the monies of 31 individuals and that PIPC Corporation and/or PIPC-BVI were not licensed by the SEC to sell securities are uncontroverted facts.

The transaction initiated by Santos with Sy and Lorenzo, respectively, is an investment contract or participation in a profit sharing agreement that falls within the definition of the law. When the investor is relatively uninformed and turns over his money to others, essentially depending upon their representations and their honesty and skill in managing it, the transaction generally is considered to be an investment contract.[23] The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.[24]

At bottom, the exculpation of Santos cannot be preliminarily established simply by asserting that she did not sign the investment contracts, as the facts alleged in this case constitute fraud perpetrated on the public. Specially so because the absence of Santos' signature in the contract is, likewise, indicative of a scheme to circumvent and evade liability should the pyramid fall apart.

Lastly, we clarify that we are only dealing herein with the preliminary investigation aspect of this case. We do not adjudge respondents' guilt or the lack thereof. Santos' defense of being a mere employee or simply an information provider is best raised and threshed out during trial of the case.

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[23] *People v. Petralba*, 482 Phil. 362, 377 (2004).

[24] *Id*.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. No. SP No. 112781 and the Resolutions of the Department of Justice dated 1 October 2009 and 23 November 2009 are **ANNULLED** and **SET ASIDE**. The Resolution of the Department of Justice dated 18 April 2008 and 2 September 2008 are **REINSTATED.** The Department of Justice is directed to include respondent Oudine Santos in the Information for violation of Section 28 of the Securities and Regulation Code.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Reyes,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 199146. March 19, 2014]

HEIRS OF PACIFICO POCDO, namely, RITA POCDO GASIC, GOLIC POCDO, MARCELA POCDO ALFELOR, KENNETH POCDO, NIXON CADOS, JACQUELINE CADOS LEE, EFLYN CADOS, and GIRLIE CADOS DAPLIN, herein represented by their Attorney-in-Fact JOHN POCDO, *petitioners, vs.* **ARSENIA AVILA and EMELINDA CHUA,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; QUIETING OF TITLE; WHERE THE DISPUTED PROPERTY IS ADMITTEDLY A

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[*] Per Special Order No. 1650 dated 13 March 2014.

PUBLIC LAND, THE TRIAL COURT LACKS JURISDICTION TO DETERMINE A COMPLAINT TO QUIET TITLE OVER THE DISPUTED LAND; CASE AT BAR.— In the administrative case involving the disputed property, which forms part of Lot 43, the DENR ruled that Lot 43 is public land located within the Baguio Townsite Reservation. In his Decision dated 14 May 2004 in DENR Case No. 5599, the DENR Secretary stated: Lot 43 is public land and part of the Baguio Townsite Reservation. This has already been settled by the decision of the Court of First Instance of Benguet and Mountain Province dated 13 November 1922 in Civil Reservation Case No. 1. The fact that the heirs of Pocdo Pool were able to reopen Civil Reservation Case No. 1, LRC Case No. 211 and secure a decision in their favor for registration of Lot 43 is of no moment. As held in *Republic v. Pio R. Marcos* (52 SCRA 238), the Court of First Instance of Baguio and Benguet had no jurisdiction to order the registration of lands already declared public in Civil Reservation Case No. 1. Lot 43 being part of the Baguio Townsite Reservation, disposition thereof is under Townsite Sales Application ("TSA"). Precisely on this bone [sic] that Lot 43 was not awarded a Certificate of Land Ancestral Claim [sic] under DENR Circular No. 03, series of 1990, because it is within the Baguio Townsite Reservation. The DENR Decision was affirmed by the Office of the President which held that lands within the Baguio Townsite Reservation belong to the public domain and are no longer registrable under the Land Registration Act. The Office of the President ordered the disposition of the disputed property in accordance with the applicable rules of procedure for the disposition of alienable public lands within the Baguio Townsite Reservation, particularly Chapter X of Commonwealth Act No. 141 on Townsite Reservations and other applicable rules. Having established that the disputed property is public land, the trial court was therefore correct in dismissing the complaint to quiet title for lack of jurisdiction. The trial court had no jurisdiction to determine who among the parties have better right over the disputed property which is admittedly still part of the public domain.

2. ID.; ID.; ID.; IT IS INDISPENSABLE IN AN ACTION TO QUIET TITLE THAT THE COMPLAINANT HAS A LEGAL OR EQUITABLE TITLE TO OR INTEREST IN THE REAL PROPERTY SUBJECT OF THE ACTION.— In an action for quieting of title, the complainant is seeking for "an adjudication that a claim of title or interest in property adverse to the claimant is invalid, to free him from the danger of hostile claim, and to remove a cloud upon or quiet title to land where stale or unenforceable claims or demands exist." Under Articles 476 and 477 of the Civil Code, the two indispensable requisites in an action to quiet title are: (1) that the plaintiff has a legal or equitable title to or interest in the real property subject of the action; and (2) that there is a cloud on his title by reason of any instrument, record, deed, claim, encumbrance or proceeding, which must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity. In this case, petitioners, claiming to be owners of the disputed property, allege that respondents are unlawfully claiming the disputed property by using void documents, namely the "Catulagan" and the Deed of Waiver of Rights. However, the records reveal that petitioners do not have legal or equitable title over the disputed property, which forms part of Lot 43, a public land within the Baguio Townsite Reservation. It is clear from the facts of the case that petitioners' predecessors-in-interest, the heirs of Pocdo Pool, were not even granted a Certificate of Ancestral Land Claim over Lot 43, which remains public land. Thus, the trial court had no other recourse but to dismiss the case.

APPEARANCES OF COUNSEL

Oracion Barlis & Associates for petitioners.
Law Firm of Rondez & Partners for respondents.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 12 October 2011 Decision[2] of the Court of Appeals in CA-G.R. CV No. 91039. The Court of Appeals affirmed the 14 January 2008 Resolution of the Regional Trial Court of Baguio City, Branch 61, in Civil Case No. 4710-R, dismissing the complaint for lack of jurisdiction.

The Facts

In June 2000, Pacifico Pocdo, who was later substituted by his heirs upon his death, filed a complaint to quiet title over a 1,728-square meter property (disputed property) located in Camp 7, Baguio City, and covered by Tax Declaration 96-06008-106641. Pacifico claimed that the disputed property is part of Lot 43, TS-39, which originally belonged to Pacifico's father, Pocdo Pool. The disputed property is allegedly different from the one-hectare portion alloted to Polon Pocdo, the predecessor-in-interest of the defendants Arsenia Avila and Emelinda Chua, in a partition made by the heirs of Pocdo Pool. Pacifico alleged that the defendants unlawfully claimed the disputed property, which belonged to Pacifico.

The facts of the case were summarized by the Court of Appeals as follows:

> As it appears, in 1894, Pocdo Pool, who died in 1942, began his occupation and claim on three lots that were eventually surveyed in his name as Lot 43, TS 39-SWO-36431, Lot 44, TS 39-SWO-36420 and Lot 45 TS 39-SWO-36429 with an area of 144,623 [sq.m.], 64,112 [sq.m.], and 9,427 square meters, respectively, and situated at Residence Section 4, Baguio City. These lots were the subject of

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 30-42. Penned by Associate Justice Mario L. Guariña III, with Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios, concurring.

a petition to reopen judicial proceedings filed by the Heirs of Pocdo Pool with the CFI of Baguio City in Civil Reservation Case No. 1, LRC Case 211. The registration of the lots in the names of the petitioners were [sic] granted in October 1964, but since the decision was not implemented within the 10 years [sic] prescribed period, the Heirs filed their ancestral land claims with the DENR. In August 1991, Certificates of Ancestral Lands Claims (CALS) were issued by the DENR for Lots 44 and 45, but Lot 43 was not approved due to Memorandum Order 98-15 issued by the DENR Secretary in September 199[8].

In the meantime, on September 14, 1960, Polon Pocdo, an heir of Pocdo Pool, ceded his rights over the three lots to Pacifico Pocdo in exchange for a one hectare lot to be taken from Lot 43. However, Pacifico entered into a contract with Florencio Pax and Braulio Yaranon on November 21, 1968 revoking the agreement with Polon. In the contract, the 4,875 square meters where Polon's house was located became part of the 1-hectare given to Pax and Yaranon in exchange for their services in the titling of Pacifico's lands.

Polon filed a complaint in August 1980 [with] the Office of the *Barangay* Captain at Camp 7, Baguio City, which was settled by an amicable settlement dated September 3, 1980 between Pacifico and Polon. They agreed that Polon would again retain the 4,875 square meters and Pacifico would give the 5,125 square meter area, the remaining portion of the 1-hectare share of Polon, to be taken from Lot 43 after a segregation.

On April 18, 1981, Polon entered into a Catulagan with Arsenia Avila authorizing the latter to undertake the segregation of his one-hectare land from Lot 43 in accord with the amicable settlement of September 3, 1980. In exchange, Polon would award to her 2,000 square meters from the 1-hectare lot. After spending time, money and effort in the execution of the survey, Avila gave the survey results to Polon prompting Polon to execute a Waiver of Rights dated January 21, 1987. Accordingly, the subdivided lots were declared for tax purposes and the corresponding tax declaration issued to Polon and Arsenia, with 8,010 square meters going to Polon and 1,993 square meters to Avila.

On March 10, 2000, finding the amicable settlement, the Catulagan and Waiver of Rights in order, the CENRO of Baguio City issued in favor of Avila a Certificate of Exclusion of 993 square meters

from the Ancestral Land Claim of the Heirs of Pocdo Pool over Lot 43.

On April 27, 2000, however, the Heirs of Polon Pocdo and his wife Konon filed an affidavit of cancellation with OIC-CENRO Teodoro Suaking and on that basis, Suaking cancelled the Certificate of Exclusion. On May 8, 2000, Avila complained to the Regional Executive Director or RED the unlawful cancellation of her Certificate of Exclusion, and on June 1, 2000, the RED issued a memorandum setting aside the revocation and restoring the Certificate of Exclusion. On August 13, 2001, Avila filed an administrative complaint against Suaking, and on July 16, 2002, the RED dismissed the letter-complaint of Avila and referred the administrative complaint to the DENR Central Office.

Acting on the motion for reconsideration by Avila [against oppositors Pacifico Pocdo, *et al.*], the RED in an Order on October 28, 2002 set aside the July 16, 2002 order. The Affidavit of Cancellation dated April 27, 2002 filed by the heirs of Polon Pocdo was dismissed for lack of jurisdiction and the validity of the Amicable Settlement, Catulagan and Deed of Waiver of Rights were recognized. The letter dated April 28, 2000 and certification issued on May 31, 2000 by Suaking were ordered cancelled. Accordingly, the RED held that the TSA applications of Arsenia Avila and others under TSA Application 15313, 15314, 15409 and 15410 should be given due course subject to compliance with existing laws and regulations.

The DENR Secretary affirmed his Order in [his] Decision of May 14, 2004 in DENR Case 5599, with the modification that the TSAs fo[r] the appellee Avila could now be made the basis of disposition through public bidding and the appellant may participate in the bidding if qualified.

Pacifico Pocdo, as the appellant, went on appeal to the Office of the President which resulted in an affirmance of DENR Secretary's decision on April 19, 2005 in OP Case 04-H-360.

As mentioned, having exhausted administrative remedies, the Heirs of Pacifico Pocdo challenged the OP resolution before the Court of Appeals, but this petition was dismissed for having been filed late. The Supreme Court dismissed the Heirs' appeal from this decision.

The instant case, Civil Case 4710-R, before the Regional Trial Court of Baguio City, Branch 61 was filed by Pacifico Pocdo against Arsenia Avila and Emelinda Chua in June 2000, just after the RED set aside Suaking's revocation on April 28, 2000 and ordered the restoration of Avila's Certificate of Exclusion. Since then, the judicial proceedings have run parallel to the administrative case.[3]

In a Resolution[4] dated 14 January 2008, the Regional Trial Court dismissed the case for lack of jurisdiction. The trial court held that the DENR had already declared the disputed property as public land, which the State, through the DENR, has the sole power to dispose. Thus, the claim of petitioners to quiet title is not proper since they do not have title over the disputed property. The trial court agreed with the DENR Secretary's ruling that petitioner may participate in the public bidding of the disputed property if qualified under applicable rules.

Petitioners appealed to the Court of Appeals, asserting that the case is not limited to quieting of title since there are other issues not affected by the DENR ruling, particularly the validity of the Waiver of Rights and the Catulagan. Petitioners maintained that the DENR's ruling that the disputed property is public land did not preclude the court from taking cognizance of the issues on who is entitled possession to the disputed property and whether the questioned documents are valid and enforceable against Pacifico and his heirs.

The Ruling of the Court of Appeals

The Court of Appeals ruled that petitioners, in raising the issue of quieting of title, failed to allege any legal or equitable title to quiet. Under Article 477 of the Civil Code, in an action to quiet title, the plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action. Instead of an action to quiet title or *accion reivindicatoria*, the Court of Appeals stated that petitioners should have filed an *accion publiciana* based merely on the recovery of possession *de jure*.

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[3] *Id.* at 31-33.

[4] *Id.* at 91-96.

On the validity of the Catulagan and the Waiver of Rights, the Court of Appeals held that petitioners have no right to question these since they were not parties to said documents had not participated in any manner in their execution. The Court of Appeals ruled that only the contracting parties are bound by the stipulations of the said documents. Those not parties to the said documents, and for whose benefit they were not expressly made, cannot maintain an action based on the said documents.

Thus, the Court of Appeals affirmed the trial court's resolution, subject to the right of petitioners to file the appropriate action.

The Issues

Petitioners raise the following issues:

THE COURT OF APPEALS ERRED IN RULING THAT THE PETITIONERS SHOULD JUST FILE THE NECESSARY ACTION FOR RECOVERY OF POSSESSION BECAUSE SAID COURT HAS FAILED TO TAKE INTO CONSIDERATION THAT RECOVERY OF POSSESSION IS PRECISELY ONE OF THE CAUSES OF ACTION IN THE PRESENT CASE.

THE COURT OF APPEALS ERRED IN RULING THAT THE RTC HAD NO JURISDICTION SINCE IT IS THE COURTS, NOT THE DENR, THAT HAS JURISDICTION OVER ACTIONS INVOLVING POSSESSION OF LANDS, EVEN ASSUMING WITHOUT ADMITTING, THAT THE LAND IS A PUBLIC LAND.

THE COURT OF APPEALS ERRED IN UPHOLDING THE DISMISSAL OF THE CASE BECAUSE THERE ARE OTHER CAUSES OF ACTION OVER WHICH THE RTC HAS JURISDICTION, *i.e.* RECOVERY OF POSSESSION, DECLARATION OF NULLITY OF DOCUMENTS.

THE COURT OF APPEALS ERRED IN FINDING THAT THE PETITIONERS HAVE NO TITLE TO THE PROPERTY THAT WOULD SUPPORT AN ACTION FOR QUIETING OF TITLE WHEN TRIAL HAD NOT YET COMMENCED. NONETHELESS, THE RECORD IS REPLETE OF PROOF THAT THE PETITIONERS HAVE RIGHTS/TITLE OVER THE SUBJECT PROPERTY.[5]

[5] *Id.* at 13-14.

The Ruling of the Court

We find the petition without merit.

In the administrative case involving the disputed property, which forms part of Lot 43, the DENR ruled that Lot 43 is public land located within the Baguio Townsite Reservation. In his Decision dated 14 May 2004 in DENR Case No. 5599, the DENR Secretary stated:

> Lot 43 is public land and part of the Baguio Townsite Reservation. This has already been settled by the decision of the Court of First Instance of Benguet and Mountain Province dated 13 November 1922 in Civil Reservation Case No. 1. The fact that the heirs of Pocdo Pool were able to reopen Civil Reservation Case No. 1, LRC Case No. 211 and secure a decision in their favor for registration of Lot 43 is of no moment. As held in *Republic v. Pio R. Marcos* (52 SCRA 238), the Court of First Instance of Baguio and Benguet had no jurisdiction to order the registration of lands already declared public in Civil Reservation Case No. 1. Lot 43 being part of the Baguio Townsite Reservation, disposition thereof is under Townsite Sales Application ("TSA"). Precisely on this bone [sic] that Lot 43 was not awarded a Certificate of Land Ancestral Claim [sic] under DENR Circular No. 03, series of 1990, because it is within the Baguio Townsite Reservation.[6]

The DENR Decision was affirmed by the Office of the President which held that lands within the Baguio Townsite Reservation belong to the public domain and are no longer registrable under the Land Registration Act.[7] The Office of the President ordered the disposition of the disputed property in accordance with the applicable rules of procedure for the disposition of alienable public lands within the Baguio Townsite Reservation, particularly Chapter X of Commonwealth Act No. 141 on Townsite Reservations and other applicable rules.

Having established that the disputed property is public land, the trial court was therefore correct in dismissing the complaint

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[6] *Id.* at 76.

[7] Citing *Republic v. Sangalang*, 243 Phil. 46 (1988) and *Heirs of Gumangan v. Court of Appeals*, 254 Phil. 569 (1989).

to quiet title for lack of jurisdiction. The trial court had no jurisdiction to determine who among the parties have better right over the disputed property which is admittedly still part of the public domain. As held in *Dajunos v. Tandayag*:[8]

> x x x The Tarucs' action was for "quieting of title" and necessitated determination of the respective rights of the litigants, both claimants to a free patent title, over a piece of property, admittedly public land. The law, as relied upon by jurisprudence, lodges "the power of executive control, administration, disposition and alienation of public lands with the Director of Lands subject, of course, to the control of the Secretary of Agriculture and Natural Resources."
>
> In sum, the decision rendered in civil case 1218 on October 28, 1968 is a patent nullity. The court below did not have power to determine who (the Firmalos or the Tarucs) were entitled to an award of free patent title over that piece of property that yet belonged to the public domain. Neither did it have power to adjudge the Tarucs as entitled to the "true equitable ownership" thereof, the latter's effect being the same: the exclusion of the Firmalos in favor of the Tarucs.[9]

In an action for quieting of title, the complainant is seeking for "an adjudication that a claim of title or interest in property adverse to the claimant is invalid, to free him from the danger of hostile claim, and to remove a cloud upon or quiet title to land where stale or unenforceable claims or demands exist."[10] Under Articles 476[11] and 477[12] of the Civil Code, the two

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[8] G.R. Nos. L-32651-52, 31 August 1971, 40 SCRA 449.

[9] *Id.* at 454-455.

[10] A. Baviera, *CIVIL LAW REVIEW* 103 (2008).

[11] Article 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

[12] Article 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject matter of the action. He need not be in possession of said property.

indispensable requisites in an action to quiet title are: (1) that the plaintiff has a legal or equitable title to or interest in the real property subject of the action; and (2) that there is a cloud on his title by reason of any instrument, record, deed, claim, encumbrance or proceeding, which must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity.[13]

In this case, petitioners, claiming to be owners of the disputed property, allege that respondents are unlawfully claiming the disputed property by using void documents, namely the "Catulagan" and the Deed of Waiver of Rights. However, the records reveal that petitioners do not have legal or equitable title over the disputed property, which forms part of Lot 43, a public land within the Baguio Townsite Reservation. It is clear from the facts of the case that petitioners' predecessors-in-interest, the heirs of Pocdo Pool, were not even granted a Certificate of Ancestral Land Claim over Lot 43, which remains public land. Thus, the trial court had no other recourse but to dismiss the case.

There is no more need to discuss the other issues raised since these are intrinsically linked to petitioners' action to quiet title.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 12 October 2011 Decision of the Court of Appeals in CA-G.R. CV No. 91039.

SO ORDERED.

Brion, del Castillo, Perez, and *Reyes,*[*] *JJ.*, concur.

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[13] *Mananquil v. Moico*, G.R. No. 180076, 21 November 2012, 686 SCRA 123; *Chung, Jr. v. Mondragon*, G.R. No. 179754, 21 November 2012, 686 SCRA 112; *National Spiritual Assembly of the Baha'is of the Philippines v. Pascual*, G.R. No. 169272, 11 July 2012, 676 SCRA 96.

[*] Designated Acting Member per Special Order No. 1650 dated March 13, 2014.

FIRST DIVISION

[G.R. No. 200468. March 19, 2014]

MACARIA ARGUELLES and the HEIRS OF THE DECEASED PETRONIO ARGUELLES, *petitioners, vs.* **MALARAYAT RURAL BANK, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; MORTGAGE; WHERE THE MORTGAGOR IS NOT THE REGISTERED OWNER OF THE PROPERTY BUT IS MERELY AN ATTORNEY-IN-FACT OF THE SAME, IT IS INCUMBENT UPON THE MORTGAGEE TO EXERCISE GREATER CARE AND A HIGHER DEGREE OF PRUDENCE IN DEALING WITH SUCH MORTGAGOR.— In *Cavite Development Bank v. Spouses Lim*, the Court explained the doctrine of mortgagee in good faith, thus: There is, however, a situation where, despite the fact that the mortgagor is not the owner of the mortgaged property, his title being fraudulent, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy. This is the doctrine of "mortgagee in good faith" based on the rule that all persons dealing with the property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. The public interest in upholding the indefeasibility of a certificate of title, as evidence of 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. x x x However, in *Bank of Commerce v. Spouses San Pablo, Jr.*, we also ruled that "[i]n cases where the mortgagee does not directly deal with the registered owner of real property, the law requires that a higher degree of prudence be exercised by the mortgagee." Specifically, we cited *Abad v. Sps. Guimba* where we held, "x x x While one who buys from the registered owner does not need to look behind the certificate of title, one who buys from one who is *not* the registered owner is expected to examine

not only the certificate of title but *all* factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor, or in [the] capacity to transfer the land." Although the instant case does not involve a sale but only a mortgage, the same rule applies inasmuch as the law itself includes a mortgagee in the term "purchaser." x x x. A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent purchaser for value."

2. ID.; ID.; ID.; BANKS ARE ENJOINED TO EXERT HIGHER DEGREE OF DILIGENCE, CARE, AND PRUDENCE THAN INDIVIDUALS IN HANDLING REAL ESTATE TRANSACTIONS.— In a long line of cases, we have consistently enjoined banks to exert a higher degree of diligence, care, and prudence than individuals in handling real estate transactions. In *Cruz v. Bancom Finance Corporation*, we declared: Respondent, however, is not an ordinary mortgagee; it is a mortgagee-bank. As such, unlike private individuals, it is expected to exercise greater care and prudence in its dealings, including those involving registered lands. A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations. In *Ursal v. Court of Appeals*, we held that where the mortgagee is a bank, it cannot rely merely on the certificate of title offered by the mortgagor in ascertaining the status of mortgaged properties. Since its business is impressed with public interest, the mortgagee-bank is duty-bound to be more cautious even in dealing with registered lands. Indeed, the rule that person dealing with registered lands can rely solely on the certificate of title does not apply to banks. Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owners thereof.

3. ID.; ID.; ID.; ID.; SINCE THE SUBJECT LAND WAS NOT MORTGAGED BY THE OWNER THEREOF AND SINCE RESPONDENT BANK IS NOT A MORTGAGEE IN GOOD

FAITH, THE UNREGISTERED SALE IN FAVOR OF PETITIONERS MUST PREVAIL OVER THE MORTGAGE LIEN OF RESPONDENT BANK.— In this case, we find that the respondent Malarayat Rural Bank fell short of the required degree of diligence, prudence, and care in approving the loan application of the spouses Guia. Respondent should have diligently conducted an investigation of the land offered as collateral. Although the *Report of Inspection and Credit Investigation* found at the dorsal portion of the Application for Agricultural Loan proved that the respondent Malarayat Rural Bank inspected the land, the respondent turned a blind eye to the finding therein that the "lot is planted [with] sugarcane with annual yield (crops) in the amount of ₱15,000." We disagree with respondent's stance that the mere planting and harvesting of sugarcane cannot reasonably trigger suspicion that there is adverse possession over the land offered as mortgage. Indeed, such fact should have immediately prompted the respondent to conduct further inquiries, especially since the spouses Guia were not the registered owners of the land being mortgaged. They merely derived the authority to mortgage the lot from the Special Power of Attorney allegedly executed by the late Fermina M. Guia. Hence, it was incumbent upon the respondent Malarayat Rural Bank to be more cautious in dealing with the spouses Guia, and inquire further regarding the identity and possible adverse claim of those in actual possession of the property. x x x Since the subject land was not mortgaged by the owner thereof and since the respondent Malarayat Rural Bank is not a mortgagee in good faith, said bank is not entitled to protection under the law. The unregistered sale in favor of the spouses Arguelles must prevail over the mortgage lien of respondent Malarayat Rural Bank.

APPEARANCES OF COUNSEL

Dennis I. Santos and Arturo S. Santos for petitioners.
Dante SL. Resurreccion for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* assailing the Decision[1] dated December 19, 2011 and Resolution[2] dated February 6, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 92555. The CA had reversed and set aside the July 29, 2008 Decision[3] of the Regional Trial Court (RTC) Branch 86, of Taal, Batangas, in Civil Case No. 66.

The facts, as culled from the records, follow:

The late Fermina M. Guia was the registered owner of Lot 3, a parcel of agricultural land in Barrio Pinagkurusan, Alitagtag, Batangas, with an area of 4,560 square meters, as evidenced by Original Certificate of Title (OCT) No. P-12930[4] of the Register of Deeds of Batangas. On December 1, 1990, Fermina M. Guia sold the south portion of the land with an approximate area of 1,350 square meters to the spouses Petronio and Macaria Arguelles.[5] Although the spouses Arguelles immediately acquired possession of the land, the Deed of Sale was neither registered with the Register of Deeds nor annotated on OCT No. P-12930. At the same time, Fermina M. Guia ordered her son Eddie Guia and the latter's wife Teresita Guia to subdivide the land covered by OCT No. P-12930 into three lots and to apply for the issuance of separate titles therefor, to wit: Lot 3-A, Lot 3-B, and Lot 3-C. Thereafter, she directed the delivery of the Transfer Certificate of Title (TCT) corresponding to Lot 3-C to the vendees of the unregistered sale or the spouses Arguelles. However, despite their repeated demands, the spouses Arguelles claimed

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[1] *Rollo*, pp. 52-71. Penned by Associate Justice Franchito N. Diamante, with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Mariflor P. Punzalan Castillo, concurring.

[2] *Id.* at 72-74.

[3] Records, pp. 368-378. Penned by Judge Juanita G. Areta.

[4] *Rollo*, pp. 75-77.

[5] Deed of Sale of A Parcel of Land, *id.* at 78-79.

that they never received the TCT corresponding to Lot 3-C from the spouses Guia.

Nevertheless, in accordance with the instructions of Fermina M. Guia, the spouses Guia succeeded in cancelling OCT No. P-12930 on August 15, 1994 and in subdividing the lot in the following manner:

Lot No.	**TCT No.**	**Registered Owner**
3-A	T-83943	Fermina M. Guia
3-B	T-83945	Spouses Datingaling
3-C	T-83944	Fermina M. Guia[6]

On August 18, 1997, the spouses Guia obtained a loan in the amount of ₱240,000 from the respondent Malarayat Rural Bank and secured the loan with a Deed of Real Estate Mortgage[7] over Lot 3-C. The loan and Real Estate Mortgage were made pursuant to the Special Power of Attorney[8] purportedly executed by the registered owner of Lot 3-C, Fermina M. Guia, in favor of the mortgagors, spouses Guia. Moreover, the Real Estate Mortgage and Special Power of Attorney were duly annotated in the memorandum of encumbrances of TCT No. T-83944 covering Lot 3-C.

The spouses Arguelles alleged that it was only in 1997 or after seven years from the date of the unregistered sale that they discovered from the Register of Deeds of Batangas City the following facts: (1) subdivision of Lot 3 into Lots 3-A, 3-B, and 3-C; (2) issuance of separate TCTs for each lot; and (3) the annotation of the Real Estate Mortgage and Special Power of Attorney over Lot 3-C covered by TCT No. T-83944. Two years thereafter, or on June 17, 1999, the spouses Arguelles registered their adverse claim[9] based on the unregistered sale dated December 1, 1990 over Lot 3-C.

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[6] Records, pp. 3, 264-265.

[7] *Rollo*, p. 82.

[8] *Id.* at 83.

[9] Records, pp. 266-267.

On July 22, 1999, the spouses Arguelles filed a complaint[10] for *Annulment of Mortgage and Cancellation of Mortgage Lien with Damages* against the respondent Malarayat Rural Bank with the RTC, Branch 86, of Taal, Batangas. In asserting the nullity of the mortgage lien, the spouses Arguelles alleged ownership over the land that had been mortgaged in favor of the respondent Malarayat Rural Bank. On August 16, 1999, the respondent Malarayat Rural Bank filed an *Answer with Counterclaim and Cross-claim*[11] against cross-claim-defendant spouses Guia wherein it argued that the failure of the spouses Arguelles to register the Deed of Sale dated December 1, 1990 was fatal to their claim of ownership.

On July 29, 2008, the RTC rendered a Decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered judgment is hereby rendered:

1) declaring the mortgage made by the defendants spouses Eddie Guia and Teresita Guia in favor of defendant Malarayat Rural Bank null and void;

2) setting aside the foreclosure sale had on December 6, 1999 and the corresponding certificate of sale issued by this Court dated May 12, 2000;

3) ordering the Register of Deeds of the Province of Batangas to cancel the annotation pertaining to the memorandum of encumbrances (entries no. 155686 and 155688) appearing in TCT No. T-839[4]4;

4) ordering cross defendants spouses Eddie and Teresita Guia to pay the amount of Php240,000.00 to cross claimant Malarayat Rural [B]ank corresponding to the total amount of the loan obligation, with interest herein modified at 12% per annum computed from default;

5) ordering defendants spouses Eddie and Teresita Guia to pay plaintiffs Arguelles the amount of Php100,000.00 as moral damages. However, the prayer of the plaintiffs to order the

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

[11] *Id.* at 27-33.

> registration of the deed of sale in their favor as well as the subsequent issuance of a new title in their names as the registered owners is denied considering that there are other acts that the plaintiffs ought to do which are administrative in nature, and are dependent upon compliance with certain requirements pertaining to land acquisition and transfer.
>
> SO ORDERED.[12]

The RTC found that the spouses Guia were no longer the absolute owners of the land described as Lot 3-C and covered by TCT No. T-83944 at the time they mortgaged the same to the respondent Malarayat Rural Bank in view of the unregistered sale in favor of the vendee spouses Arguelles. Thus, the RTC annulled the real estate mortgage, the subsequent foreclosure sale, and the corresponding issuance of the certificate of title. Moreover, the RTC declared that the respondent Malarayat Rural Bank was not a mortgagee in good faith as it failed to exercise the exacting degree of diligence required from banking institutions.

On September 16, 2008, the respondent filed a notice of appeal with the CA.

On December 19, 2011, the CA reversed and set aside the decision of the court *a quo*:

> IN LIGHT OF THE FOREGOING, premises considered, the instant appeal is GRANTED. Accordingly, the Decision of the RTC of Taal, Batangas, Branch 86 promulgated on July 29, 2008 in Civil Case No. 66 is hereby REVERSED AND SET ASIDE and the complaint below dismissed.
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> SO ORDERED.[13]

In granting the appeal, the CA held that because of the failure of the spouses Arguelles to register their deed of sale, the unregistered sale could not affect the respondent Malarayat Rural Bank. Thus, the respondent Malarayat Rural Bank has

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[12] *Id.* at 377-378.

[13] *Rollo*, pp. 70-71.

a better right to the land mortgaged as compared to spouses Arguelles who were the vendees in the unregistered sale. In addition, the CA found that the respondent Malarayat Rural Bank was a mortgagee in good faith as it sufficiently demonstrated due diligence in approving the loan application of the spouses Guia.

Aggrieved, the petitioners filed the instant petition raising the following issues for resolution:

A

THE COURT OF APPEALS ERRED IN HOLDING THAT THE DEED OF SALE EXECUTED BY FERMINA GUIA IN FAVOR OF THE SPOUSES PETRONIO AND MACARIA ARGUELLES CANNOT BE ENFORCED AGAINST APPELLANT BANK FOR NOT BEING REGISTERED AND ANNOTATED IN THE CERTIFICATE OF TITLE, DESPITE THE FACT THAT THE BANK HAD ACTUAL KNOWLEDGE THEREOF.

B

THE COURT OF APPEALS COMMITTED A MISTAKE IN FINDING THAT APPELLANT BANK IS A MORTGAGEE IN GOOD FAITH NOTWITHSTANDING CONCLUSIVE EVIDENCE ON RECORD THAT IT WAS GROSSLY NEGLIGENT IN NOT ASCERTAINING THE REAL CONDITION OF THE PROPERTY IN THE POSSESSION OF THE SPOUSES ARGUELLES BEFORE ACCEPTING IT AS COLLATERAL FOR THE LOAN APPLIED FOR BY A MERE ATTORNEY-IN-FACT.

C

THE COURT OF APPEALS COMMITTED AN ERROR IN DECLARING APPELLANT BANK HAS BECOME THE ABSOLUTE OWNER OF THE SUBJECT PROPERTY NOTWITHSTANDING THE NULLITY OF THE REAL ESTATE MORTGAGE EXTRAJUDICIALLY FORECLOSED BY IT.

D

THE COURT OF APPEALS ERRED IN HOLDING THAT THE SPOUSES ARGUELLES DID NOT PUT IN ISSUE THAT

APPELLANT BANK HAD CONSTRUCTIVE NOTICE AND POSSESSION OF THE SUBJECT LOT.[14]

In fine, the issue in this case is whether the respondent Malarayat Rural Bank is a mortgagee in good faith who is entitled to protection on its mortgage lien.

Petitioners imputed negligence on the part of respondent Malarayat Rural Bank when it approved the loan application of the spouses Guia. They pointed out that the bank failed to conduct a thorough ocular inspection of the land mortgaged and an extensive investigation of the title of the registered owner. And since the respondent Malarayat Rural Bank cannot be considered a mortgagee in good faith, petitioners argued that the unregistered sale in their favor takes precedence over the duly registered mortgage lien. On the other hand, respondent Malarayat Rural Bank claimed that it exercised the required degree of diligence before granting the loan application. In particular, it asserted the absence of any facts or circumstances that can reasonably arouse suspicion in a prudent person. Thus, the respondent Malarayat Rural Bank argued that it is a mortgagee in good faith with a better right to the mortgaged land as compared to the vendees to the unregistered sale.

The petition is meritorious.

At the outset, we note that the issue of whether a mortgagee is in good faith generally cannot be entertained in a petition filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.[15] This is because the ascertainment of good faith or the lack thereof, and the determination of negligence are factual matters which lay outside the scope of a petition for review on *certiorari*.[16] However, a recognized exception to this rule is

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[14] *Id.* at 19-20.

[15] See *PNB v. Heirs of Militar*, 504 Phil. 634, 643 (2005), citing *Sps. Uy v. Court of Appeals*, 411 Phil. 788, 798 (2001).

[16] See *PNB v. Heirs of Estanislao and Deogracias Militar*, 526 Phil. 788, 799-800 (2006).

when the RTC and the CA have divergent findings of fact[17] as in the case at bar. We find that the respondent Malarayat Rural Bank is not a mortgagee in good faith. Therefore, the spouses Arguelles as the vendees to the unregistered sale have a superior right to the mortgaged land.

In *Cavite Development Bank v. Spouses Lim*,[18] the Court explained the doctrine of mortgagee in good faith, thus:

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

In *Bank of Commerce v. Spouses San Pablo, Jr.*,[19] we declared that indeed, a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor of the property offered as security, and in the absence of any sign that might arouse suspicion, the mortgagee has no obligation to undertake further investigation.

However, in *Bank of Commerce v. Spouses San Pablo, Jr.*,[20] we also ruled that "[i]n cases where the mortgagee does not directly deal with the registered owner of real property, the law requires that a higher degree of prudence be exercised by the

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[17] See *Canadian Opportunities Unlimited, Inc. v. Dalangin, Jr.,* G.R. No. 172223, February 6, 2012, 665 SCRA 21, 31.

[18] 381 Phil. 355, 368 (2000) as cited in *Ereña v. Querrer-Kauffman*, 525 Phil. 381, 401-402 (2006).

[19] 550 Phil. 805, 821 (2007).

[20] *Id.*

mortgagee." Specifically, we cited *Abad v. Sps. Guimba*[21] where we held,

"x x x While one who buys from the registered owner does not need to look behind the certificate of title, one who buys from one who is *not* the registered owner is expected to examine not only the certificate of title but *all* factual circumstances necessary for [one] to determine if there are any flaws in the title of the transferor, or in [the] capacity to transfer the land." Although the instant case does not involve a sale but only a mortgage, the same rule applies inasmuch as the law itself includes a mortgagee in the term "purchaser."

Thus, where the mortgagor is not the registered owner of the property but is merely an attorney-in-fact of the same, it is incumbent upon the mortgagee to exercise greater care and a higher degree of prudence in dealing with such mortgagor.[22] Recently, in *Land Bank of the Philippines v. Poblete*,[23] we affirmed *Bank of Commerce v. Spouses San Pablo, Jr.*:

Based on the evidence, Land Bank processed Maniego's loan application upon his presentation of OCT No. P-12026, which was still under the name of Poblete. Land Bank even ignored the fact that Kapantay previously used Poblete's title as collateral in its loan account with Land Bank. In *Bank of Commerce v. San Pablo, Jr.*, we held that when "the person applying for the loan is other than the registered owner of the real property being mortgaged, [such fact] should have already raised a red flag and which should have induced the Bank x x x to make inquiries into and confirm x x x [the] authority to mortgage x x x. A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent purchaser for value."

Moreover, in a long line of cases, we have consistently enjoined banks to exert a higher degree of diligence, care, and prudence than individuals in handling real estate transactions.

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[21] 503 Phil. 321, 331-332 (2005).

[22] *Bank of Commerce v. Spouses San Pablo, Jr., supra* note 19.

[23] G.R. No. 196577, February 25, 2013, 691 SCRA 613, 626-627.

In *Cruz v. Bancom Finance Corporation*,[24] we declared:

> Respondent, however, is not an ordinary mortgagee; it is a mortgagee-bank. As such, unlike private individuals, it is expected to exercise greater care and prudence in its dealings, including those involving registered lands. A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.

In *Ursal v. Court of Appeals*,[25] we held that where the mortgagee is a bank, it cannot rely merely on the certificate of title offered by the mortgagor in ascertaining the status of mortgaged properties. Since its business is impressed with public interest, the mortgagee-bank is duty-bound to be more cautious even in dealing with registered lands.[26] Indeed, the rule that person dealing with registered lands can rely solely on the certificate of title does not apply to banks. Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owners thereof. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.[27]

In *Metropolitan Bank and Trust Co. v. Cabilzo*,[28] we explained the socio-economic role of banks and the reason for bestowing public interest on the banking system:

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[24] 429 Phil. 225, 239 (2002).

[25] 509 Phil. 628, 642 (2005).

[26] *Heirs of Manlapat v. Court of Appeals*, 498 Phil. 453, 473 (2005).

[27] *Philippine Banking Corporation v. Dy*, G.R. No. 183774, November 14, 2012, 685 SCRA 565, 575.

[28] 539 Phil. 316, 329 (2006).

We never fail to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general. The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence.

In this case, we find that the respondent Malarayat Rural Bank fell short of the required degree of diligence, prudence, and care in approving the loan application of the spouses Guia.

Respondent should have diligently conducted an investigation of the land offered as collateral. Although the *Report of Inspection and Credit Investigation* found at the dorsal portion of the Application for Agricultural Loan[29] proved that the respondent Malarayat Rural Bank inspected the land, the respondent turned a blind eye to the finding therein that the "lot is planted [with] sugarcane with annual yield (crops) in the amount of ₱15,000."[30] We disagree with respondent's stance that the mere planting and harvesting of sugarcane cannot reasonably trigger suspicion that there is adverse possession over the land offered as mortgage. Indeed, such fact should have immediately prompted the respondent to conduct further inquiries, especially since the spouses Guia were not the registered owners of the land being mortgaged. They merely derived the authority to mortgage the lot from the Special Power of Attorney allegedly executed by the late Fermina M. Guia. Hence, it was incumbent upon the respondent Malarayat Rural Bank to be more cautious in dealing with the spouses Guia, and inquire further regarding the identity and possible adverse claim of those in actual possession of the property.

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[29] Records, p. 34.

[30] *Rollo*, p. 145.

Pertinently, in *Land Bank of the Philippines v. Poblete*,[31] we ruled that "[w]here the mortgagee acted with haste in granting the mortgage loan and did not ascertain the ownership of the land being mortgaged, as well as the authority of the supposed agent executing the mortgage, it cannot be considered an innocent mortgagee."

Since the subject land was not mortgaged by the owner thereof and since the respondent Malarayat Rural Bank is not a mortgagee in good faith, said bank is not entitled to protection under the law. The unregistered sale in favor of the spouses Arguelles must prevail over the mortgage lien of respondent Malarayat Rural Bank.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated December 19, 2011 and Resolution dated February 6, 2012 of the Court of Appeals in CA-G.R. CV No. 92555 are **REVERSED** and **SET ASIDE**. The Decision dated July 29, 2008 of the Regional Trial Court, Branch 86, of Taal, Batangas, in Civil Case No. 66 is **REINSTATED and UPHELD**.

No pronouncement as to costs.

SO ORDERED.

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

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[31] *Supra* note 23, at 628, citing *San Pedro v. Ong*, G.R. No. 177598, October 17, 2008, 569 SCRA 767, 786 and *Instrade, Inc. v. Court of Appeals,* 395 Phil. 791, 802 (2000).

FIRST DIVISION

[G.R. No. 161151. March 24, 2014]

BJDC CONSTRUCTION, REPRESENTED BY ITS MANAGER/PROPRIETOR JANET S. DELA CRUZ, *petitioner, vs.* **NENA E. LANUZO, CLAUDETTE E. LANUZO, JANET E. LANUZO, JOAN BERNABE E. LANUZO, and RYAN JOSE E. LANUZO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; IN CIVIL CASES, LIKE THIS ONE, THE PARTY HAVING THE BURDEN OF PROOF MUST ESTABLISH HIS CASE BY A PREPONDERANCE OF EVIDENCE.— Inasmuch as the RTC and the CA arrived at conflicting findings of fact on who was the negligent party, the Court holds that an examination of the evidence of the parties needs to be undertaken to properly determine the issue. The Court must ascertain whose evidence was preponderant, for Section 1, Rule 133 of the *Rules of Court* mandates that in civil cases, like this one, the party having the burden of proof must establish his case by a preponderance of evidence. Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence. Generally, the party who denies has no burden to prove. In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side. The burden of proof is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the *Rules of Court*, but it may rest on the defendant if he admits expressly or impliedly the essential allegations but raises affirmative defense or defenses, which if proved, will exculpate him from liability. By preponderance of evidence, according to *Raymundo v. Lunaria*: x x x is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to

be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. In addition, according to *United Airlines, Inc. v. Court of Appeals*, the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's.

2. ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF THE WITNESSES IS PREFERRED TO THAT OF THE APPELLATE COURT'S BECAUSE OF THE TRIAL COURT'S UNIQUE FIRST-HAND OPPORTUNITY TO OBSERVE THE WITNESSES AND THEIR DEMEANOR AS SUCH.— The company presented as its documentary evidence the investigation report dated December 3, 1997 of SPO1 Corporal (Annex 1), the relevant portions of which indicated the finding of the police investigator on the presence of illumination at the project site x x x. Additionally, the company submitted the application for lighting permit covering the project site (Annex 7) to prove the fact of installation of the electric light bulbs in the project site. In our view, the RTC properly gave more weight to the testimonies of Zamora and SPO1 Corporal than to those of the witnesses for the Lanuzo heirs. There was justification for doing so, because the greater probability pertained to the former. Moreover, the trial court's assessment of the credibility of the witnesses and of their testimonies is preferred to that of the appellate court's because of the trial court's unique first-hand opportunity to observe the witnesses and their demeanor as such. x x x The Court observes, too, that SPO1 Corporal, a veteran police officer detailed for more than 17 years at the Pili Police Station, enjoyed the presumption of regularity in the performance of his official duties.

3. ID.; ID.; ID.; COURT DECLARATIONS ARE NOT SELF-SERVING CONSIDERING THAT THE ADVERSE PARTY IS ACCORDED THE OPPORTUNITY TO TEST THE VERACITY OF THE DECLARATIONS BY CROSS-EXAMINATION AND OTHER METHODS.— The CA unreasonably branded the testimonies of Zamora and SPO1 Corporal as "self-serving." They were not. Self-serving evidence

refers to out-of-court statements that favor the declarant's interest; it is disfavored mainly because the adverse party is given no opportunity to dispute the statement and their admission would encourage fabrication of testimony. But court declarations are not self-serving considering that the adverse party is accorded the opportunity to test the veracity of the declarations by cross-examination and other methods. There is no question that Zamora and SPO1 Corporal were thoroughly cross-examined by the counsel for the Lanuzo heirs. Their recollections remained unchallenged by superior contrary evidence from the Lanuzo heirs.

4. CIVIL LAW; CIVIL CODE; DAMAGES; NEGLIGENCE; IN ORDER THAT A PARTY MAY BE HELD LIABLE FOR DAMAGES FOR ANY INJURY BROUGHT ABOUT BY THE NEGLIGENCE OF ANOTHER, THE CLAIMANT MUST PROVE THAT THE NEGLIGENCE WAS THE IMMEDIATE AND PROXIMATE CAUSE OF THE INJURY.— Upon a review of the records, the Court affirms the findings of the RTC, and rules that the Lanuzo heirs, the parties carrying the burden of proof, did not establish by preponderance of evidence that the negligence on the part of the company was the proximate cause of the fatal accident of Balbino. Negligence, the Court said in *Layugan v. Intermediate Appellate Court*, is "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do, or as Judge Cooley defines it, '(t)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'" In order that a party may be held liable for damages for any injury brought about by the negligence of another, the claimant must prove that the negligence was the immediate and proximate cause of the injury. Proximate cause is defined as "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."

5. ID.; ID.; ID.; ID.; ID.; DOCTRINE OF *RES IPSA LOQUITOR*; NOT APPLICABLE IN CASE AT BAR.— The doctrine of

res ipsa loquitur had no application here. x x x For the doctrine to apply, the following requirements must be shown to exist, namely: (*a*) the accident is of a kind that ordinarily does not occur in the absence of someone's negligence; (*b*) it is caused by an instrumentality within the exclusive control of the defendant or defendants; and (c) the possibility of contributing conduct that would make the plaintiff responsible is eliminated. The Court has warned in *Reyes v. Sisters of Mercy Hospital*, however, that "*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." Based on the evidence adduced by the Lanuzo heirs, negligence cannot be fairly ascribed to the company considering that it has shown its installation of the necessary warning signs and lights in the project site. In that context, the fatal accident was not caused by any instrumentality within the exclusive control of the company. In contrast, Balbino had the exclusive control of how he operated and managed his motorcycle. The records disclose that he himself did not take the necessary precautions. As Zamora declared, Balbino overtook another motorcycle rider at a fast speed, and in the process could not avoid hitting a barricade at the site, causing him to be thrown off his motorcycle onto the newly cemented road. SPO1 Corporal's investigation report corroborated Zamora's declaration. This causation of the fatal injury went uncontroverted by the Lanuzo heirs. Moreover, by the time of the accident, the project, which had commenced in September 1997, had been going on for more than a month and was already in the completion stage. Balbino, who had passed there on a daily basis in going to and from his residence and the school where he then worked as the principal, was thus very familiar with the risks at the project site. Nor could the Lanuzo heirs justly posit that the illumination was not adequate, for it cannot be denied that Balbino's motorcycle was equipped with headlights that would have enabled him at dusk or night time to see the condition of the road ahead. That the accident still occurred surely indicated that he himself did not exercise the degree of care expected of him as a prudent motorist. According to Dr. Abilay, the cause of death of Balbino was the fatal depressed fracture at the back of his head, an injury that Dr. Abilay opined to be attributable to his head landing on the cemented road after being thrown off his motorcycle.

> Considering that it was shown that Balbino was not wearing any protective head gear or helmet at the time of the accident, he was guilty of negligence in that respect. x x x All the established circumstances showed that the proximate and immediate cause of the death of Balbino was his own negligence. Hence, the Lanuzo heirs could not recover damages.

APPEARANCES OF COUNSEL

Bongat Law Office for petitioner.
Gilbert P.E. Morandarte for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The party alleging the negligence of the other as the cause of injury has the burden to establish the allegation with competent evidence. If the action based on negligence is civil in nature, the proof required is preponderance of evidence.

This case involves a claim for damages arising from the death of a motorcycle rider in a nighttime accident due to the supposed negligence of a construction company then undertaking re-blocking work on a national highway. The plaintiffs insisted that the accident happened because the construction company did not provide adequate lighting on the site, but the latter countered that the fatal accident was caused by the negligence of the motorcycle rider himself. The trial court decided in favor of the construction company, but the Court of Appeals (CA) reversed the decision and ruled for the plaintiffs.

Hence, this appeal.

Antecedents

On January 5, 1998, Nena E. Lanuzo (Nena) filed a complaint for damages[1] against BJDC Construction (company), a single proprietorship engaged in the construction business under its

[1] Records, pp. 2-6.

Manager/Proprietor Janet S. de la Cruz. The company was the contractor of the re-blocking project to repair the damaged portion of one lane of the national highway at San Agustin, Pili, Camarines Sur from September 1997 to November 1997.

Nena alleged that she was the surviving spouse of the late Balbino Los Baños Lanuzo (Balbino) who figured in the accident that transpired at the site of the re-blocking work at about 6:30 p.m. on October 30, 1997; that Balbino's Honda motorcycle sideswiped the road barricade placed by the company in the right lane portion of the road, causing him to lose control of his motorcycle and to crash on the newly cemented road, resulting in his instant death; and that the company's failure to place illuminated warning signs on the site of the project, especially during night time, was the proximate cause of the death of Balbino. She prayed that the company be held liable for damages, to wit: (*a*) ₱5,000.00 as the actual damage to Balbino's motorcycle; (*b*) ₱100,000.00 as funeral and burial expenses; (*c*) ₱559,786.00 representing the "unearned income in expectancy" of Balbino; (*d*) ₱100,000.00 as moral damages; (*e*) ₱75,000.00 as attorney's fees, plus ₱1,500.00 per court appearance; and (*f*) ₱20,000.00 as litigation costs and other incidental expenses.

In its answer,[2] the company denied Nena's allegations of negligence, insisting that it had installed warning signs and lights along the highway and on the barricades of the project; that at the time of the incident, the lights were working and switched on; that its project was duly inspected by the Department of Public Works and Highways (DPWH), the Office of the Mayor of Pili, and the Pili Municipal Police Station; and that it was found to have satisfactorily taken measures to ensure the safety of motorists.

The company further alleged that since the start of the project in September 1997, it installed several warning signs, namely: (*a*) big overhead streamers containing the words SLOW DOWN ROAD UNDER REPAIR AHEAD hung approximately 100 meters before the re-blocking site, one facing the Pili-bound

[2] *Id*. at 17-22.

motorists and another facing the Naga-bound motorists; (*b*) road signs containing the words SLOW DOWN ROAD UNDER REPAIR 100 METERS AHEAD placed on the road shoulders below the streamers; (*c*) road signs with the words SLOW DOWN ROAD UNDER REPAIR 50 METERS AHEAD placed 50 meters before the project site; (*d*) barricades surrounded the affected portion of the highway, and a series of 50-watt light bulbs were installed and switched on daily from 6:00 p.m. until the following morning; (*e*) big warning signs containing the words SLOW DOWN ROAD UNDER REPAIR and SLOW DOWN MEN WORKING were displayed at both ends of the affected portion of the highway with illumination from two 50-watt bulbs from 6:00 p.m. until the following morning; and (*f*) the unaffected portion of the highway was temporarily widened in the adjacent road shoulder to allow two-way vehicular traffic.

The company insisted that the death of Balbino was an accident brought about by his own negligence, as confirmed by the police investigation report that stated, among others, that Balbino was not wearing any helmet at that time, and the accident occurred while Balbino was overtaking another motorcycle; and that the police report also stated that the road sign/barricade installed on the road had a light. Thus, it sought the dismissal of the complaint and prayed, by way of counterclaim, that the Nena be ordered to pay ₱100,000.00 as attorney's fees, as well as moral damages to be proven in the course of trial.

The RTC subsequently directed the amendment of the complaint to include the children of Nena and Balbino as co-plaintiffs, namely: Janet, Claudette, Joan Bernabe and Ryan Jose, all surnamed Lanuzo. Hence, the plaintiffs are hereinafter be referred to as the Lanuzo heirs.

Decision of the RTC

On October 8, 2001, the RTC rendered judgment in favor of the company, as follows:

Plaintiffs are the survivors of Balbino Los Baños Lanuzo who met a traumatic death on 30 October, 1997 at about 6:30 p.m., when

he bumped his motorcycle on a barricade that was lighted with an electric bulb, protecting from traffic the newly-reblocked cement road between San Agustin and San Jose, Pili, Camarines Sur; they claim defendant's OMISSION in lighting up the barricaded portion of the reblocking project being undertaken by defendant was the proximate cause of the accident, leaving them bereaved and causing them actual and moral damages.

Defendant DENIED the claim of plaintiffs; both parties offered testimonial and documentary evidence, from which this Court,

FINDS

that: plaintiff DID NOT present an eyewitness account of the death of their decedent; on the contrary, the flagman of defendant was present when the accident occurred, which was caused by the decedent having overtaken a motorcycle ahead of [him] and on swerving, to avoid the barricade, hit it, instead, breaking the lighted electric bulb on top of the barricade, resulting in the fall of the decedent about 18 paces from where his motorcycle fell on the reblocked pavement; the police investigator, policeman Corporal, by Exh. 1, confirmed the tale of the flagman, aside from confirming the presence of the warning devices placed not only on the premises but at places calculated to warn motorists of the ongoing reblocking project.

OPINION

From the foregoing findings, it is the opinion of this Court that the plaintiffs were unable to make out a case for damages, with a preponderance of evidence.

WHEREFORE, Judgment is hereby rendered, DISMISSING the complaint.[3]

Decision of the CA

The Lanuzo heirs appealed to the CA.

On August 11, 2003, the CA promulgated its decision declaring that the issue was whether the company had installed adequate lighting in the project so that motorists could clearly see the barricade placed on the newly cemented lane that was then still

[3] *Rollo*, pp. 52-53; penned by Presiding Judge Nilo A. Malanyaon.

closed to vehicular traffic,[4] thereby reversing the judgment of the RTC, and holding thusly:

> WHEREFORE, premises considered, the present appeal is hereby GRANTED and the decision appealed from in Civil Case No. P-2117 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered ordering the defendant-appellee to pay the plaintiff-appellants, heirs of the victim Balbino L. B. Lanuzo, the sums of ₱50,000.00 as death indemnity, ₱20,000.00 by way of temperate damages and ₱939,736.50 as loss of earning capacity of the deceased Balbino L. B. Lanuzo.
>
> SO ORDERED.[5]

The CA ruled that the following elements for the application of the doctrine of *res ipsa loquitur* were present, namely: (1) the accident was of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.

The CA regarded as self-serving the testimony of Eduardo Zamora, an employee of the company who testified that there was an electric bulb placed on top of the barricade on the area of the accident. It held that Zamora's statement was negated by the statements of Ernesto Alto and Asuncion Sandia to the effect that they had passed by the area immediately before the accident and had seen the road to be dark and lit only by a gas lamp. It noted that SPO1 Corporal, the police investigator, had noticed the presence of lighted electric bulbs in the area, but the same had been installed on the other side of the street opposite the barricade.

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[4] *Id*. at 40-49; penned by Associate Justice Martin S. Villarama, Jr. (now a Member of the Court), with Associate Justice Cancio C. Garcia (later Presiding Justice, and a Member of this Court, since retired) and Associate Justice Mario L. Guariña III (retired) concurring.

[5] *Id*. at 48.

The CA ruled that the placing of road signs and streamers alone did not prove that the electric bulbs were in fact switched on at the time of the accident as to sufficiently light up the newly re-blocked portion of the highway. It opined that "[t]he trial court gave undue weight to the self-serving statement of appellee's employee, Eduardo Zamora, which was supposedly corroborated by SPO1 Pedro Corporal. SPO1 Corporal arrived at the scene only *after* the accident occurred, and thus the electric bulbs could have already been switched on by Zamora who was at the area of the project." It concluded that the negligence of the company was the proximate cause of Balbino's death; hence, the company was liable for damages.

The company filed a motion for reconsideration,[6] but the CA denied the motion in the resolution promulgated on November 13, 2003.

Issues

In this appeal, the company submits the following issues, namely:

I. The application by the Honorable Court of Appeals of the doctrine of *res ipsa loquitur* to the case at bar, despite and contrary to the finding, among others, by the trial court that the proximate cause of the accident is the victim's own negligence, is "not in accord with the law or with the applicable decisions of the Supreme Court" [Sec. 6 (a), Rule 45, Rules of Court].

II. The Honorable Court of Appeals, by substituting its own findings of fact and conclusion with those of the trial court despite the lack of "strong or cogent reasons" therefor, "has so far departed from the accepted and usual course of judicial proceedings ... as to call for an exercise of the power of supervision" by this Honorable Supreme Court [Sec. 6 (b), *Ibid.*].

III. The findings by the Honorable Court of Appeals that respondents (appellants therein) "had satisfactorily presented a *prima facie* case of negligence which the appellee (petitioner herein) had not overcome with an adequate explanation" and which alleged negligence is "the

[6] CA *rollo*, pp. 90-106.

proximate cause of death of Lanuzo" are manifestations of grave abuse of discretion in the appreciation of facts, and constitute a judgment based on a misinterpretation of facts, which justify a review by this Honorable Supreme Court.[7]

The company reiterates the categorical finding of the RTC that the proximate cause of the accident was Balbino's own negligence, and that such finding was based on the conclusion stated by SPO1 Corporal in his investigation report to the effect that the incident was "purely self accident," and on the unrebutted testimony of Zamora to the effect that Balbino was driving his motorcycle at a fast speed trying to overtake another motorcycle rider before hitting the barricade. On the other hand, it insists that its documentary and testimonial evidence proved its exercise of due care and observance of the legally prescribed safety requirements for contractors.

The company maintains that Balbino was familiar with the re-blocking project that had been going on for months because he had been passing the area at least four times a day during weekdays in going to and from his place of work in the morning and in the afternoon; and that he could have avoided the accident had he exercised reasonable care and prudence.

The company assails the application of the doctrine of *res ipsa loquitur*, positing that the Lanuzo heirs did not establish all the requisites for the doctrine to apply.

Anent the first requisite, the company states that the Lanuzo heirs did not successfully counter its documentary and testimonial evidence showing that Balbino's own negligence had caused the accident. It cites the fact that Balbino was familiar with the road conditions and the re-blocking project because he had been passing there daily; and that Balbino had been driving too fast and not wearing the required helmet for motorcycle drivers, which were immediately evident because he had been thrown from his motorcycle and had landed "18 paces away" from the barricade that he had hit.

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[7] *Rollo,* pp. 19-20.

On the second requisite, the company argues that Balbino's driving and operation of his motorcycle on the day of the accident indicated that the accident was not within its exclusive management and control; and that as to the matters that were within its control, it sufficiently showed its observance of due and reasonable care and its compliance with the legally prescribed safety requirements.

Regarding the third requisite, the company reminds that Zamora and SPO1 Corporal revealed that Balbino was overtaking another motorcycle rider before hitting the barricade. The credibility of said witnesses was not challenged, and their testimonies not rebutted; hence, the CA erred in relying on the recollections of Asuncion Sandia and Ernesto Alto who were not present when the incident took place. Sandia and Alto's testimonies could not be accorded more weight than Zamora's eyewitness account, considering that the latter was believed by the trial judge who had the first-hand opportunity to observe the demeanor of the witnesses.

Whose negligence was the proximate cause of the death of Balbino?

Ruling of the Court

Inasmuch as the RTC and the CA arrived at conflicting findings of fact on who was the negligent party, the Court holds that an examination of the evidence of the parties needs to be undertaken to properly determine the issue.[8] The Court must ascertain whose evidence was preponderant, for Section 1, Rule 133 of the *Rules of Court* mandates that in civil cases, like this one, the party having the burden of proof must establish his case by a preponderance of evidence.[9]

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[8] *Sealoader Shipping Corporation v. Grand Cement Manufacturing Corporation*, G.R. Nos. 167363 & 177466, December 15, 2010, 638 SCRA 488, 509-510.

[9] Section 1, Rule 133 of the *Rules of Court* states:

Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having burden of proof must establish his case by a preponderance

Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[10] It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence.[11] Generally, the party who denies has no burden to prove.[12] In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side.[13] The burden of proof is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the *Rules of Court*, but it may rest on the defendant if he admits expressly or impliedly the essential allegations but raises affirmative defense or defenses, which if proved, will exculpate him from liability.[14]

By preponderance of evidence, according to *Raymundo v. Lunaria*:[15]

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of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which there are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[10] *People v. Macagaling*, G.R. Nos. 109131-33, October 3, 1994, 237 SCRA 299, 320.

[11] *Luxuria Homes, Inc. v. Court of Appeals*, G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325; *Coronel v. Court of Appeals*, G.R. No. 103577, October 7, 1996, 263 SCRA 15, 35.

[12] *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591, 596.

[13] *Pacific Banking Corporation Employees Organization v. Court of Appeals*, G.R. No. 109373, March 27, 1998, 288 SCRA 197, 206.

[14] *Sambar v. Levi Strauss & Co.*, G.R. No. 132604, March 3, 2002, 378 SCRA 365.

[15] G.R. No. 171036, October 17, 2008, 569 SCRA 526, 532.

> x x x is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

In addition, according to *United Airlines, Inc. v. Court of Appeals*,[16] the plaintiff must rely on the strength of his own evidence and not upon the weakness of the defendant's.

Upon a review of the records, the Court affirms the findings of the RTC, and rules that the Lanuzo heirs, the parties carrying the burden of proof, did not establish by preponderance of evidence that the negligence on the part of the company was the proximate cause of the fatal accident of Balbino.

Negligence, the Court said in *Layugan v. Intermediate Appellate Court*,[17] is "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do,[18] or as Judge Cooley defines it, '(t)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'"[19] In order that a party may be held liable for damages for any injury brought about by the negligence of another, the claimant must prove that the negligence was the immediate and proximate cause of the injury. Proximate cause is defined as "that cause, which, in natural and continuous sequence, unbroken by any

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[16] G.R. No. 124110, April 20, 2001, 357 SCRA 99, 107.

[17] G.R. No. 73998, November 14, 1988, 167 SCRA 363, 372-373.

[18] *Id*., citing *Black's Law Dictionary*, Fifth Edition, 930.

[19] *Id*., citing *Cooley On Torts*, Fourth Edition, Vol. 3, 265.

efficient intervening cause, produces the injury and without which the result would not have occurred."[20]

The test by which the existence of negligence in a particular case is determined is aptly stated in the leading case of *Picart v. Smith*,[21] as follows:

> The test by which to determine the existence of negligence in a particular case may be stated as follows: Did the defendant in doing the alleged negligent act use that reasonable care and caution which an ordinarily prudent person would have used in the same situation? If not, then he is guilty of negligence. The law here in effect adopts the standard supposed to be supplied by the imaginary conduct of the discreet *paterfamilias* of the Roman law. The existence of negligence in a given case is not determined by reference to the personal judgment of the actor in the situation before him. The law considers what would be reckless, blameworthy, or negligent in the man of ordinary intelligence and prudence and determines liability by that.
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> The question as to what would constitute the conduct of a prudent man in a given situation must of course be always determined in the light of human experience and in view of the facts involved in the particular case. Abstract speculation cannot here be of much value but this much can be profitably said: Reasonable men govern their conduct by the circumstances which are before them or known to them. They are not, and are not supposed to be, omniscient of the future. Hence they can be expected to take care only when there is something before them to suggest or warn of danger. Could a prudent man, in the case under consideration, foresee harm as a result of the course actually pursued? If so, it was the duty of the actor to take precautions to guard against that harm. Reasonable foresight of harm, followed by the ignoring of the suggestion born of this prevision, is always necessary before negligence can be held to exist. Stated in these terms, the proper criterion for determining the existence of negligence in a given case is this: Conduct is said to be negligent when a prudent man in the position of the tortfeasor would have foreseen that an effect harmful to another was sufficiently

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[20] *Allied Banking Corporation v. Lim Sio Wan*, G.R. No. 133179, March 27, 2008, 549 SCRA 504, 518.

[21] 37 Phil. 809, 813 (1918).

probable to warrant his foregoing the conduct or guarding against its consequences.

First of all, we note that the Lanuzo heirs argued in the trial and appellate courts that there was a total omission on the part of the company to place illuminated warning signs on the site of the project, especially during night time, in order to warn motorists of the project. They claim that the omission was the proximate cause of the death of Balbino.[22] In this appeal, however, they contend that the negligence of the company consisted in its omission to put up *adequate* lighting and the required signs to warn motorists of the project, abandoning their previous argument of a total omission to illuminate the project site.

During the trial, the Lanuzo heirs attempted to prove inadequacy of illumination instead of the total omission of illumination. Their first witness was Cesar Palmero, who recalled that lights had been actually installed in the site of the project. The next witness was Ernesto Alto, who stated that he had seen three light bulbs installed in the site, placed at intervals along the stretch of the road covered by the project. Alto further stated that he had passed the site on board his tricycle on October 30, 1997 prior to the accident, and had seen only a gas lamp, not light bulbs, on his approach. Another witness of the plaintiffs, Asuncion Sandia, claimed that she had also passed the site on board a bus on the night just prior to the accident, and had seen the site to be dark, with only one lane open to traffic, with no light at all. Obviously, the witnesses of the plaintiffs were not consistent on their recollections of the significant detail of the illumination of the site.

In contrast, the company credibly refuted the allegation of inadequate illumination. Zamora, its flagman in the project, rendered an eyewitness account of the accident by stating that the site had been illuminated by light bulbs and gas lamps, and that Balbino had been in the process of overtaking another motorcycle rider at a fast speed when he hit the barricade placed on the newly cemented road. On his part, SPO1 Corporal, the

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[22] Records, p. 3; CA *rollo*, pp. 31, 38.

police investigator who arrived at the scene of the accident on October 30, 1997, recalled that there were light bulbs on the other side of the barricade on the lane coming from Naga City; and that the light bulb on the lane where the accident had occurred was broken because it had been hit by the victim's motorcycle. Witnesses Gerry Alejo and Engr. Victorino del Socorro remembered that light bulbs and gas lamps had been installed in the area of the project.

Secondly, the company presented as its documentary evidence the investigation report dated December 3, 1997 of SPO1 Corporal (Annex 1), the relevant portions of which indicated the finding of the police investigator on the presence of illumination at the project site, *viz*:

SUBJECT: Investigation Report Re: Homicide Thru Reckless Imprudence (Self Accident)

x x x x x x x x x

II. MATTERS INVESTIGATED:

1. To determine how the incident happened.
2. To determine the vehicle involved.

III. FACTS OF THE CASE:

3. At 6:45 P.M. October 30, 1997, Elements of Pili Municipal Police Station led by SPO2 Melchor Estallo, SPO2 Cesar Pillarda, both members of the patrol section and SPO1 Pedro D. Corporal, investigator reported having conducted an on the spot investigation re: vehicular incident (Self Accident) that happened on or about 6:30 o'clock in the evening of October 30, 1997 along national highway, San Agustin, Pili, Camarines Sur, wherein one Balbino Lanuzo *y* Doe, of legal age, married, a public school teacher, a resident of San Jose, Pili, Camarines Sur while driving his Honda motorcycle 110 CC enroute to San Jose, Pili, Camarines Sur from Poblacion, this municipality and upon reaching at road re: blocking portion of the national highway at *barangay* San Agustin, Pili, Camarines Sur and while overtaking another motorcycle ahead incidentally side-swiped a road sign/barricade installed at the lane road re: blocking of the national highway, causing said motorcycle rider to swerved

his ridden motorcycle to the right and stumble down and fell to the concrete cemented road. Victim was rushed to Bicol Medical Center, Naga City for treatment but was pronounced dead on arrival.

4. **That upon arrival at the scene of the incident it was noted that road sign/barricade installed on the road has a light.**

5. That said road was under repair for almost a month which one lane portion of the national highway is possible of all passing vehicles from south and north bound.

6. That said motorcycle stumble down on the newly repair portion of the national highway and the driver lying down beside the motorcycle.

x x x x x x x x x

8. That one of the passerby revealed that the victim possibly be miscalculated the road block that made him to tumble down when he applied sudden brake.

IV. FINDINGS/DISCUSSION:

9. The time of the incident was at about 6:30 o'clock in the evening a time wherein dark of the night is approaching the vision of the driver is affected with the changing condition and it is all the time when driver should lights his driven vehicle, as to this case, the driver Balbino Lanuzo *y* Doe (victim has exercise all precautionary measures to avoid accident but due to self accident he incidentally sideswiped the road sign/barricade of the re: Blocking portion of the national highway resulting him to stumble down his motorcycle and fell down to the concrete cement road.

10. The driver/victim met unexpectedly (sic) along that one lane potion of the re: blocking and considering it was night time, confusion overthrew him and because of sudden impulse, he lost control on the motorcycle he was driving.

11. That the driver/victim has no crush (sic) helmet at the time of the incident considering that it should be a basic requirement as to prevent from any accident.

V. RECOMMENDATION:

12. Basing on the above discussion and facts surroundings the case was purely self accident resulting to Homicide Thru Reckless Imprudence and the case must be closed. (Emphasis ours.)[23]

Additionally, the company submitted the application for lighting permit covering the project site (Annex 7) to prove the fact of installation of the electric light bulbs in the project site.

In our view, the RTC properly gave more weight to the testimonies of Zamora and SPO1 Corporal than to those of the witnesses for the Lanuzo heirs. There was justification for doing so, because the greater probability pertained to the former. Moreover, the trial court's assessment of the credibility of the witnesses and of their testimonies is preferred to that of the appellate court's because of the trial court's unique first-hand opportunity to observe the witnesses and their demeanor as such. The Court said in *Cang v. Cullen*:[24]

> The findings of the trial court on the credibility of witnesses are accorded great weight and respect - even considered as conclusive and binding on this Court - since the trial judge had the unique opportunity to observe the witness firsthand and note his demeanor, conduct and attitude under grueling examination. Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh of a witness, or his scant or full realization of an oath - all of which are useful aids for an accurate determination of a witness' honesty and sincerity. He can thus be expected to determine with reasonable discretion which testimony is acceptable and which witness is worthy of belief.
>
> Absent any showing that the trial court's calibration of the credibility of the witnesses was flawed, we are bound by its assessment. This Court will sustain such findings unless it can be shown that the trial court ignored, overlooked, misunderstood, misappreciated, or misapplied substantial facts and circumstances, which, if considered, would materially affect the result of the case.[25]

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[23] Records, pp. 178-179.

[24] G.R. No. 163078, November 25, 2009, 605 SCRA 391, 398.

[25] *Id.* at 401-402.

The Court observes, too, that SPO1 Corporal, a veteran police officer detailed for more than 17 years at the Pili Police Station, enjoyed the presumption of regularity in the performance of his official duties.[26] The presumption, although rebuttable, stands because the Lanuzo heirs did not adduce evidence to show any deficiency or irregularity in the performance of his official duty as the police investigator of the accident. They also did not show that he was impelled by any ill motive or bias to testify falsely.

Thirdly, the CA unreasonably branded the testimonies of Zamora and SPO1 Corporal as "self-serving." They were not. Self-serving evidence refers to out-of-court statements that favor the declarant's interest;[27] it is disfavored mainly because the adverse party is given no opportunity to dispute the statement and their admission would encourage fabrication of testimony.[28] But court declarations are not self-serving considering that the adverse party is accorded the opportunity to test the veracity of the declarations by cross-examination and other methods.

There is no question that Zamora and SPO1 Corporal were thoroughly cross-examined by the counsel for the Lanuzo heirs. Their recollections remained unchallenged by superior contrary evidence from the Lanuzo heirs.

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[26] Section 3 (m), Rule 131of the *Rules of Court* states:

Section 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(m) That official duty has been regularly performed;

x x x x x x x x x

[27] *National Development Co. v. Workmen's Compensation Commission*, 19 SCRA 861, 865-866.

[28] *Hernandez v. Court of Appeals*, G.R. No. 104874, December 14, 1993, 228 SCRA 429, 436.

Fourthly, the doctrine of *res ipsa loquitur* had no application here. In *Tan v. JAM Transit, Inc.*,[29] the Court has discussed the doctrine thusly:

> *Res ipsa loquitur* is a Latin phrase that literally means "the thing or the transaction speaks for itself." It is a maxim for the rule that the fact of the occurrence of an injury, taken with the surrounding circumstances, may permit an inference or raise a presumption of negligence, or make out a plaintiff's *prima facie* case, and present a question of fact for defendant to meet with an explanation. Where the thing that caused the injury complained of is shown to be under the management of the defendant or his servants; and the accident, in the ordinary course of things, would not happen if those who had management or control used proper care, it affords reasonable evidence — in the absence of a sufficient, reasonable and logical explanation by defendant — that the accident arose from or was caused by the defendant's want of care. This rule is grounded on the superior logic of ordinary human experience, and it is on the basis of such experience or common knowledge that negligence may be deduced from the mere occurrence of the accident itself. Hence, the rule is applied in conjunction with the doctrine of common knowledge.

For the doctrine to apply, the following requirements must be shown to exist, namely: (*a*) the accident is of a kind that ordinarily does not occur in the absence of someone's negligence; (*b*) it is caused by an instrumentality within the exclusive control of the defendant or defendants; and (c) the possibility of contributing conduct that would make the plaintiff responsible is eliminated.[30]

The Court has warned in *Reyes v. Sisters of Mercy Hospital*,[31] however, that "*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."

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[29] G.R. No. 183198, November 25, 2009, 605 SCRA 659, 667-668.

[30] *Macalinao v. Ong*, G.R. No. 146635, December 14, 2005, 477 SCRA 740, 755.

[31] G.R. No. 130547, October 3, 2000, 341 SCRA 760, 772.

Based on the evidence adduced by the Lanuzo heirs, negligence cannot be fairly ascribed to the company considering that it has shown its installation of the necessary warning signs and lights in the project site. In that context, the fatal accident was not caused by any instrumentality within the exclusive control of the company. In contrast, Balbino had the exclusive control of how he operated and managed his motorcycle. The records disclose that he himself did not take the necessary precautions. As Zamora declared, Balbino overtook another motorcycle rider at a fast speed, and in the process could not avoid hitting a barricade at the site, causing him to be thrown off his motorcycle onto the newly cemented road. SPO1 Corporal's investigation report corroborated Zamora's declaration. This causation of the fatal injury went uncontroverted by the Lanuzo heirs.

Moreover, by the time of the accident, the project, which had commenced in September 1997, had been going on for more than a month and was already in the completion stage. Balbino, who had passed there on a daily basis in going to and from his residence and the school where he then worked as the principal, was thus very familiar with the risks at the project site. Nor could the Lanuzo heirs justly posit that the illumination was not adequate, for it cannot be denied that Balbino's motorcycle was equipped with headlights that would have enabled him at dusk or night time to see the condition of the road ahead. That the accident still occurred surely indicated that he himself did not exercise the degree of care expected of him as a prudent motorist.

According to Dr. Abilay, the cause of death of Balbino was the fatal depressed fracture at the back of his head, an injury that Dr. Abilay opined to be attributable to his head landing on the cemented road after being thrown off his motorcycle. Considering that it was shown that Balbino was not wearing any protective head gear or helmet at the time of the accident, he was guilty of negligence in that respect. Had he worn the protective head gear or helmet, his untimely death would not have occurred.

The RTC was correct on its conclusions and findings that the company was not negligent in ensuring safety at the project site. All the established circumstances showed that the proximate and immediate cause of the death of Balbino was his own negligence. Hence, the Lanuzo heirs could not recover damages.[32]

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on August 11, 2003 by the Court of Appeals; **REINSTATES** the decision rendered on October 8, 2001 by the Regional Trial Court, Branch 32, in Pili, Camarines Sur dismissing the complaint; and **MAKES** no pronouncements on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Brion,[*] and *Reyes, JJ.,* concur.

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[32] The *Civil Code* states:

Article 2179. **When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages**. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

[*] Vice Associate Justice Martin S. Villarama, Jr., who penned the decision under review, pursuant to the raffle of May 8, 2013.

FIRST DIVISION

[G.R. No. 164408. March 24, 2014]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ZURBARAN REALTY AND DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY REGISTRATION DECREE (R.A. NO. 1529); DISTINCTION BETWEEN A REGISTRATION PROCEEDING UNDER SECTION 14(1) OF P.D. NO. 1529 AND A REGISTRATION PROCEEDING FILED UNDER SECTION 14(2) OF P.D. NO. 1529.— An application for registration under Section14(1) of P.D. No. 1529 must establish the following requisites, namely: (*a*) the land is alienable and disposable property of the public domain; (*b*) the applicant and its predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of the land under a *bona fide* claim of ownership; and (*c*) the applicant and its predecessors-in-interest have possessed and occupied the land since June 12, 1945, or earlier. The Court has clarified in *Malabanan* that under Section14(1), it is not necessary that the land must have been declared alienable and disposable as of June 12, 1945, or earlier, because the law simply requires the property sought to be registered to be alienable and disposable *at the time the application for registration of title is filed*. The Court has explained that a contrary interpretation would absurdly limit the application of the provision "to the point of virtual inutility." The foregoing interpretation highlights the distinction between a registration proceeding filed under Section 14(1) of P.D. No. 1529 and one filed under Section 14(2) of P.D. No. 1529. According to *Malabanan*: **Section 14(1) mandates registration on the basis of possession, while Section 14(2) entitles registration on the basis of prescription. Registration under Section 14(1) is extended under the aegis of the Property Registration Decree and the Public Land Act while registration under Section 14(2) is made available both by the Property Registration Decree**

and the Civil Code. In other words, registration under Section 14(1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of the public domain since June 12, 1945 or earlier, *without regard to whether the land was susceptible to private ownership at that time*. The applicant needs only to show that the land had already been declared alienable and disposable at any time prior to the filing of the application for registration. On the other hand, an application under Section 14(2) of P.D. No. 1529 is based on acquisitive prescription and must comply with the law on prescription as provided by the *Civil Code*. In that regard, only the patrimonial property of the State may be acquired by prescription pursuant to the *Civil Code*. For acquisitive prescription to set in, therefore, the land being possessed and occupied must already be classified or declared as patrimonial property of the State. Otherwise, no length of possession would vest any right in the possessor if the property has remained land of the public dominion. *Malabanan* stresses that even if the land is later converted to patrimonial property of the State, possession of it prior to such conversion will not be counted to meet the requisites of acquisitive prescription. Thus, registration under Section 14(2) of P.D. No. 1529 requires that the land had already been converted to patrimonial property of the State at the onset of the period of possession required by the law on prescription.

2. ID.; ID.; ID.; AN APPLICATION FOR REGISTRATION BASED ON SECTION 14(2) OF P.D. NO. 1529 MUST ESTABLISH THAT THE LAND HAD ALREADY BEEN CONVERTED TO OR DECLARED AS PATRIMONIAL PROPERTY OF THE STATE AT THE BEGINNING OF THE 10-YEAR OR 30-YEAR PERIOD OF POSSESSION.— An application for registration based on Section 14(2) of P.D. No. 1529 must, therefore, establish the following requisites, to wit: (*a*) the land is an alienable and disposable, and patrimonial property of the public domain; (*b*) the applicant and its predecessors-in-interest have been in possession of the land for at least 10 years, in good faith and with just title, or for at least 30 years, regardless of good faith or just title; and (*c*) **the land had already been converted to or declared as patrimonial property of the State at the beginning of the said 10-year or 30-year period of possession**. To properly appreciate the

respondent's case, we must ascertain under what provision its application for registration was filed. If the application was filed under Section 14(1) of P.D. No. 1529, the determination of the particular date when the property was declared alienable and disposable would be unnecessary, inasmuch as proof showing that the land had already been classified as such at the time the application was filed would be enough. If the application was filed under Section 14(2) of P.D. No. 1529, the determination of the issue would not be crucial for, as earlier clarified, it was not the declaration of the land as alienable and disposable that would make it susceptible to private ownership by acquisitive prescription. x x x The respondent's application does not enlighten as to whether it was filed under Section 14(1) or Section 14(2) of P.D. No. 1529. The application alleged that the respondent and its predecessors-in-interest had been in open, continuous and exclusive possession and occupation of the property in the concept of an owner, but did not state when possession and occupation commenced and the duration of such possession. At any rate, the evidence presented by the respondent and its averments in the other pleadings reveal that the application for registration was filed based on Section 14(2), not Section 14(1) of P.D. No. 1529. The respondent did not make any allegation in its application that it had been in possession of the property since June 12, 1945, or earlier, nor did it present any evidence to establish such fact.

3. ID.; ID.; ID.; THERE IS NO SHOWING IN CASE AT BAR THAT THE LAND IN QUESTION WAS WITHIN AN AREA EXPRESSLY DECLARED BY LAW EITHER TO BE THE PATRIMONIAL PROPERTY OF THE STATE, OR TO BE NO LONGER INTENDED FOR PUBLIC SERVICE OR TO THE DEVELOPMENT OF THE PUBLIC WEALTH.— With the application of the respondent having been filed under Section 14(2) of P.D. No. 1529, the crucial query is whether the land subject of the application had already been converted to patrimonial property of the State. In short, has the land been declared by law as no longer intended for public service or the development of the national wealth? The respondent may perhaps object to a determination of this issue by the Court for the same reason that it objects to the determination of whether it established when the land was declared alienable

and disposable, that is, the issue was not raised in and resolved and by the trial court. But the objection would be futile because the issue was actually raised in the trial court, as borne out by the Republic's allegation in its opposition to the application to the effect "that the land is a portion of the public domain not subject to prescription." In any case, the interest of justice dictates the consideration and resolution of an issue that is relevant to another that was specifically raised. The rule that only theories raised in the initial proceedings may be taken up by a party on appeal refers only to independent, not concomitant, matters to support or oppose the cause of action. Here, there is no evidence showing that the land in question was within an area expressly declared by law either to be the patrimonial property of the State, or to be no longer intended for public service or the development of the national wealth. The Court is left with no alternative but to deny the respondent's application for registration.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Perpetou G. Paner for respondent.

D E C I S I O N

BERSAMIN, *J.*:

An application for original registration of land of the public domain under Section 14(2) of Presidential Decree (PD) No. 1529 must show not only that the land has previously been declared alienable and disposable, but also that the land has been declared patrimonial property of the State at the onset of the 30-year or 10-year period of possession and occupation required under the law on acquisitive prescription. Once again, the Court applies this rule—as clarified in *Heirs of Mario Malabanan v. Republic*[1]—in reviewing the decision promulgated

[1] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

on June 10, 2004,[2] whereby the Court of Appeals (CA) granted the petitioner's application for registration of land.

Antecedents

On May 28, 1993, respondent Zurbaran Realty and Development Corporation filed in the Regional Trial Court (RTC) in San Pedro, Laguna an application for original registration covering a 1,520 square meter parcel of land situated in Barrio Banlic, Municipality of Cabuyao, Province of Laguna, denominated as Lot 8017-A of Subdivision Plan CSD-04-006985-D, Cad. 455-D, Cabuyao Cadastre,[3] alleging that it had purchased the land on March 9, 1992 from Jane de Castro Abalos, married to Jose Abalos, for ₱300,000.00; that the land was declared for taxation purposes in the name of its predecessor-in-interest under Tax Declaration No. 22711; that there was no mortgage or encumbrance of any kind affecting the land, nor was there any other person or entity having any interest thereon, legal or equitable, adverse to that of the applicant; and that the applicant and its predecessors-in-interest had been in open, continuous and exclusive possession and occupation of the land in the concept of an owner.

Attached to the application were several documents, namely: (1) tracing cloth plan as approved by the Land Management Division of the Department of Environment and Natural Resources (DENR); (2) blue print copies of the tracing cloth plan; (3) copies of the technical description; (4) copies of Tax Declaration No. 2711; and (5) copies of the Deed of Sale dated March 9, 1992.

The Republic, represented by the Director of Lands, opposed the application, arguing that the applicant and its predecessors-in-interest had not been in open, continuous, exclusive and

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[2] *Rollo*, pp. 26-32; penned by Associate Justice Eliezer R. de los Santos (retired/deceased), with Associate Justice Ruben T. Reyes (later Presiding Justice, and a Member of the Court, since retired) and Associate Justice Arturo D. Brion (a Member of this Court) concurring.

[3] *Id.* at 33-35.

notorious possession and occupation of the land since June 12, 1945; that the muniments of title and tax declaration presented did not constitute competent and sufficient evidence of a *bona fide* acquisition of the land; and that the land was a portion of the public domain, and, therefore, was not subject to private appropriation.[4]

The RTC directed the Land Management Bureau, Manila; the Community Environment and Natural Resources Office (CENRO) of Los Baños, Laguna; and the Land Management Sector and Forest Management Bureau, Manila, to submit a status report on the land, particularly, on whether the land was covered by a land patent, whether it was subject of a previously approved isolated survey, and whether it was within a forest zone.[5]

In his memorandum to the DENR, Region IV (Lands Forestry Sector), and the Provincial Prosecutor of Laguna, a copy of which was furnished the trial court, CENRO Officer Arnulfo Hernandez stated that the land had been "verified to be within the Alienable and Disposable land under Land Classification Project No. 23-A of Cabuyao, Laguna, certified and declared as such pursuant to the provisions of Presidential Decree No. 705, as amended, under Forestry Administrative Order No. A-1627 dated September 28, 1981 per BFD Map LC-3004." Attached to the memorandum was the inspection report declaring that "the area is surrounded with concrete fence, three (3) buildings for employees' residence;" that the land was acquired through sale before the filing of the application; that the applicant and its predecessors-in-interest had been in "continuous, open and peaceful occupation" of the land, and that "no forestry interest is adversely affected."[6]

CENRO Land Management Inspector/Investigator Rodolfo S. Gonzales reported that: (1) the land was covered by a survey

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[4] *Id.* at 37-38.

[5] *Id.* at 41.

[6] *Id.* at 41.

plan approved by the Regional Land Director/Land Registration Authority on May 25, 1988 pursuant to PD No. 239 dated July 9, 1975; (2) it consisted of 22,773 square meters and was located in *Barangay* Banlic, Cabuyao, Laguna; (3) the area was entirely within the alienable and disposable area; (4) it had never been forfeited in favor of the government for non-payment of taxes, and had not been confiscated in connection with any civil or criminal cases; (5) it was not within a previously patented property as certified to by the Register of Deeds, Calamba, Laguna; and (6) there was no public land application filed for it by the applicant or any other persons as per verification from the records unit of his office. The report further stated that a verification at the Office of the Municipal Assessor showed that: (1) the land was declared for the first time in 1960 under Tax Declaration No. 6712 in the name of Enrique Hemedez with an area of 23,073 square meters; (2) it was now covered by Tax Declaration No. 2253 issued in the name of the respondent; (3) the real property taxes had been paid since 1968; and (4) it had not been earmarked for public or quasi-public purposes per information from the District Engineer.

After inspection, it was also found that (1) the land was residential; (2) the respondent was in the actual occupation and possession of the land; and (3) the land did not encroach upon an established watershed, riverbank/bed protection, creek, right-of-way or park site or any area devoted to general use or devoted to public service.[7]

A certification was issued by the Records Management Division of the Land Management Bureau stating that it had no record of any kind of public land applications/land patents covering the parcel of land subject of the application.[8]

The respondent presented Gloria P. Noel, its Vice President and Treasurer, who testified that the respondent had purchased the land from Jane de Castro Abalos on March 9, 1992 for

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[7] *Id.* at 41-42.

[8] *Id.*

₱300,000.00; that the land had been declared for taxation purposes in the name of Abalos under Tax Declaration No. 22711; that after the sale, a new Tax Declaration had been issued in the name of the respondent, who had meanwhile taken possession of the land by building a fence around it and introducing improvements thereon; that the respondent had paid the real property taxes thereon since its acquisition; that the respondent's possession had been continuous, open and public; and that the land was free from any lien or encumbrance; and that there was no adverse claimant to the land.[9]

Engr. Edilberto Tamis attested that he was familiar with the land because it was a portion of Lot No. 8017 of Subdivision Plan Cad-455-D of the Cabuyao Cadastre, owned by Corazon Tapalla who had acquired it from the Hemedez family; that Tapalla had sold a portion of Lot No. 8017 to Abalos and the remaining portion to him; and that he had witnessed the sale of the land to the respondent.[10]

The respondent's final witness was Armando Espela who declared that he was a retired land overseer residing in *Barangay* Banlic from birth; that he was familiar with the land which was part of a bigger parcel of land owned by the Hemedez family; that his father, Toribio Espela, with his assistance, and one Francisco Capacio worked on the land since 1960; that the entire landholding had originally been sugarland, but was later on subdivided, sold, and resold until it ceased to be agricultural land; that, in 1982, the land was sold to Corazon Tapalla who hired him as the overseer; that as the overseer, he fenced and cleared the area; that he was allowed to use the grassy portion for grazing purposes; that in 1987, Tapalla sold part of the land to Abalos and the remaining portion to Engr. Tamis; that he continued to oversee the land for the new owners; that Abalos then sold her portion to the respondent in 1992; that since then, the respondent took possession of the land, and he then ceased to be the overseer; that the possession by the Hemedez family

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[9] *Id.* at 42-43.

[10] *Id.* at 43.

and its successors-in-interest was open, continuous, public and under claim of ownership; and that he did not know any person who claimed ownership of the land other than those he and his father served as overseers.[11]

Decision of the RTC

On May 12, 1997, the RTC rendered its decision, holding that the respondent and its predecessors-in-interest had been in open, public, peaceful, continuous, exclusive and adverse possession and occupation of the land under a *bona fide* claim of ownership even prior to 1960 and, accordingly, granted the application for registration, *viz*:

> WHEREFORE, taking into consideration the evidence submitted by the applicant, this Court hereby orders the confirmation and registration of title of the land described as Lot 8017-A of subdivision plan Csd-04-006985-D, being a portion of Lot 8017 of subdivision plan Cad-455-D, Cabuyao Cadastre situated at Barangay Banlic, Cabuyao, Laguna with an area of 1,520 square meters to be entered under the name of the applicant Zurbaran Realty and Development Corporation, a corporation organized and existing under the laws of the Philippines with office address at 33 M. Viola St., San Francisco del Monte, Quezon City by the Land Registration Authority. After the decision shall become final, let an order for the issuance of a decree of title be issued in favor of said applicant.
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> SO ORDERED.[12]

Judgment of the CA

The Republic appealed, arguing that the issue of whether the applicant and its predecessors-in-interest had possessed the land within the required length of time could not be determined because there was no evidence as to when the land had been declared alienable and disposable.

On June 10, 2004, the CA promulgated its judgment affirming the RTC, and concluded that the reports made by the concerned

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[11] *Id.* at 43-44.

[12] *Id.* at 44.

government agencies and the testimonies of those familiar with the land in question had buttressed the court *a quo*'s conclusion that the respondent and its predecessors-in-interest had been in open, public, peaceful, continuous, exclusive, and adverse possession and occupation of the land under a *bona fide* claim of ownership even prior to 1960.[13]

Issue

Hence, the Republic appeals the adverse judgment of the CA upon the following ground:

THE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW WHEN IT AFFIRMED THE TRIAL COURT'S GRANT OF THE APPLICATION FOR ORIGINAL REGISTRATION DESPITE THE ABSENCE OF EVIDENCE THAT RESPONDENT AND ITS PREDECESSORS-IN-INTEREST HAVE COMPLIED WITH THE PERIOD OF POSSESSION AND OCCUPATION REQUIRED BY LAW.[14]

The Republic contends that the respondent did not establish the time when the land covered by the application for registration became alienable and disposable;[15] that such detail was crucial because the possession of the respondent and its predecessors-in-interest, for the purpose of determining whether it acquired the property by prescription, should be reckoned from the time when the land was declared alienable and disposable; and that prior to the declaration of the land of the public domain as alienable and disposable, it was not susceptible to private ownership, and any possession or occupation at such time could not be counted as part of the period of possession required under the law on prescription.[16]

The respondent counters that whether it established when the property was declared alienable and disposable and whether

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[13] *Id.* at 31.

[14] *Id.* at 13.

[15] *Id.* at 16.

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

it complied with the 30-year required period of possession should not be entertained anymore by the Court because: (*a*) these issues had not been raised in the trial court and were being raised for the first time on appeal; and (*b*) factual findings of the trial court, especially when affirmed by the CA, were binding and conclusive on this Court. At any rate, the respondent insists that it had been in open, public, peaceful, continuous, and adverse possession of the property for the prescribed period of 30 years as evidenced by the fact that the property had been declared for taxation purposes in 1960 in the name of its predecessors-in-interest, and that such possession had the effect of converting the land into private property and vesting ownership upon the respondent.[17]

In reply, the Republic asserts that it duly opposed the respondent's application for registration; that it was only able to ascertain the errors committed by the trial court after the latter rendered its decision; and that the burden of proof in land registration cases rested on the applicant who must prove its ownership of the property being registered. The Republic maintains that the Court had the authority to review and reverse the factual findings of the lower courts when the conclusion reached was not supported by the evidence on record, as in this case.[18]

Ruling

The petition for review is meritorious.

Section 14 of P.D. No. 1529 enumerates those who may file an application for registration of land based on possession and occupation of a land of the public domain, thus:

> 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:

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[17] *Id.* at 57-61.

[18] *Id.* at 84-87.

(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.

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An application for registration under Section14(1) of P.D. No. 1529 must establish the following requisites, namely: (*a*) the land is alienable and disposable property of the public domain; (*b*) the applicant and its predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of the land under a *bona fide* claim of ownership; and (*c*) the applicant and its predecessors-in-interest have possessed and occupied the land since June 12, 1945, or earlier. The Court has clarified in *Malabanan*[19] that under Section14(1), it is not necessary that the land must have been declared alienable and disposable as of June 12, 1945, or earlier, because the law simply requires the property sought to be registered to be alienable and disposable *at the time the application for registration of title is filed*. The Court has explained that a contrary interpretation would absurdly limit the application of the provision "to the point of virtual inutility."

The foregoing interpretation highlights the distinction between a registration proceeding filed under Section 14(1) of P.D. No. 1529 and one filed under Section 14(2) of P.D. No. 1529. According to *Malabanan*:

Section 14(1) mandates registration on the basis of possession, while Section 14(2) entitles registration on the basis of prescription. Registration under Section 14(1) is extended under the aegis of the Property Registration Decree and the Public Land Act while registration under Section 14(2) is made available both by the Property Registration Decree and the Civil Code.[20]

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[19] *Supra* note 1.

[20] *Id.* at 206.

In other words, registration under Section 14(1) of P.D. No. 1529 is based on possession and occupation of the alienable and disposable land of the public domain since June 12, 1945 or earlier, *without regard to whether the land was susceptible to private ownership at that time*. The applicant needs only to show that the land had already been declared alienable and disposable at any time prior to the filing of the application for registration.

On the other hand, an application under Section 14(2) of P.D. No. 1529 is based on acquisitive prescription and must comply with the law on prescription as provided by the *Civil Code*. In that regard, only the patrimonial property of the State may be acquired by prescription pursuant to the *Civil Code*.[21] For acquisitive prescription to set in, therefore, the land being possessed and occupied must already be classified or declared as patrimonial property of the State. Otherwise, no length of possession would vest any right in the possessor if the property has remained land of the public dominion. *Malabanan* stresses that even if the land is later converted to patrimonial property of the State, possession of it prior to such conversion will not be counted to meet the requisites of acquisitive prescription.[22] Thus, registration under Section 14(2) of P.D. No. 1529 requires that the land had already been converted to patrimonial property of the State at the onset of the period of possession required by the law on prescription.

An application for registration based on Section 14(2) of P.D. No. 1529 must, therefore, establish the following requisites, to wit: (*a*) the land is an alienable and disposable, and patrimonial property of the public domain; (*b*) the applicant and its predecessors-in-interest have been in possession of the land for at least 10 years, in good faith and with just title, or for at least 30 years, regardless of good faith or just title; and (*c*) **the land had already been converted to or declared as patrimonial property of the State at the beginning of the said 10-year or 30-year period of possession**.

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[21] See Article 1113 of the *Civil Code*.

[22] *Heirs of Mario Malabanan v. Republic, supra* note 1, at 205-206.

To properly appreciate the respondent's case, we must ascertain under what provision its application for registration was filed. If the application was filed under Section 14(1) of P.D. No. 1529, the determination of the particular date when the property was declared alienable and disposable would be unnecessary, inasmuch as proof showing that the land had already been classified as such at the time the application was filed would be enough. If the application was filed under Section 14(2) of P.D. No. 1529, the determination of the issue would not be crucial for, as earlier clarified, it was not the declaration of the land as alienable and disposable that would make it susceptible to private ownership by acquisitive prescription. *Malabanan* expounds thereon, thus

> …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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> 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.[23]

The respondent's application does not enlighten as to whether it was filed under Section 14(1) or Section 14(2) of P.D. No. 1529. The application alleged that the respondent and its predecessors-in-interest had been in open, continuous and exclusive possession and occupation of the property in the concept of an owner, but did not state when possession and occupation commenced and the duration of such possession. At any rate, the evidence presented by the respondent and its averments in the other pleadings reveal that the application for registration was filed based on Section 14(2), not Section 14(1) of P.D. No. 1529. The respondent did not make any allegation in its application that it had been in possession of the property since June 12, 1945, or earlier, nor did it present any evidence to establish such fact.

With the application of the respondent having been filed under Section 14(2) of P.D. No. 1529, the crucial query is whether the land subject of the application had already been converted to patrimonial property of the State. In short, has the land been declared by law as no longer intended for public service or the development of the national wealth?

The respondent may perhaps object to a determination of this issue by the Court for the same reason that it objects to the determination of whether it established when the land was declared alienable and disposable, that is, the issue was not raised in and resolved and by the trial court. But the objection would be futile because the issue was actually raised in the

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[23] *Id.* at 202-203.

trial court, as borne out by the Republic's allegation in its opposition to the application to the effect "that the land is a portion of the public domain not subject to prescription." In any case, the interest of justice dictates the consideration and resolution of an issue that is relevant to another that was specifically raised. The rule that only theories raised in the initial proceedings may be taken up by a party on appeal refers only to independent, not concomitant, matters to support or oppose the cause of action.[24]

Here, there is no evidence showing that the land in question was within an area expressly declared by law either to be the patrimonial property of the State, or to be no longer intended for public service or the development of the national wealth. The Court is left with no alternative but to deny the respondent's application for registration.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on June 10, 2004; and **DISMISSES** the respondent's application for original registration of Lot 8017-A of Subdivision Plan CSD-04-006985-D, Cad. 455-D, of the Cabuyao Cadastre.

No pronouncement on costs of suit.

SO ORDERED.

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

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[24] *Heirs of Policronio M. Ureta, Sr. v. Heirs of Liberato M. Ureta,* G.R. No. 165748, September 14, 2011, 657 SCRA 554, 594-595; *Borbon II v. Servicewide Specialists, Inc.,* G.R. No. 106418, July 11, 1996, 258 SCRA 634, 642.

SECOND DIVISION

[G.R. No. 190053. March 24, 2014]

NAVOTAS SHIPYARD CORPORATION and JESUS VILLAFLOR, *petitioners, vs.* **INNOCENCIO MONTALLANA, ALFREDO BAUTISTA, TEODORO JUDLOMAN, GUILLERMO BONGAS, ROGELIO BONGAS, DIOSDADO BUSANTE, EMILIANO BADU and ROSENDO SUBING-SUBING,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RESPONDENTS WERE NOT ILLEGALLY DISMISSED, THEY LOST THEIR EMPLOYMENT BECAUSE THE COMPANY CEASED OPERATIONS AFTER FAILING TO RECOVER FROM THEIR FINANCIAL REVERSES.— Under the circumstances, we cannot say that the company's employees were illegally dismissed; rather, they lost their employment because the company ceased operations after failing to recover from their financial reverses. The CA itself recognized what happened to the company when it observed: "The temporary shutdown has ripened into a closure or cessation of operations. In this situation[,] private respondents are definitely entitled to the corresponding benefits of separation." Even the respondents had an inkling of the company's fate when they claimed before the LA that on October 20, 2003, they were called, together with all the other employees of the company, by Villaflor; the latter allegedly told them that he would be closing the company, but would give them their separation pay. He also disclosed to them the reason – he could no longer pay their salaries due to the company's unsettled financial obligations on fuel and ice and other indebtedness. The respondents' verbal account of what happened during the meeting, particularly the company's imminent closure, to our mind, confirmed the company's dire situation. The temporary shutdown, it appears, was a last ditch effort on the part of Villaflor to make the company's operations viable but, as it turned out, the effort proved futile. The shutdown

became permanent as the CA itself acknowledged. The CA misappreciated the facts when it opined that the respondents were illegally dismissed because they were not reinstated by the petitioners after the lapse of the company's temporary shutdown. It lost sight of the fact that the company did not resume operations anymore, a situation the CA itself recognized. The respondents, therefore, had no more jobs to go back to; hence, their non-reinstatement. In these lights, the CA was not only incorrect from the point of law; it likewise disregarded, or at the very least, grossly misappreciated the evidence on record – that the petitioner was in distress and **had temporarily suspended its operations**, and duly reflected these circumstances to the DOLE. From this perspective, there was no grave abuse of discretion to justify the CA's reversal of the NLRC's findings and conclusions.

2. ID.; ID.; ID.; SINCE THERE WAS NO ILLEGAL DISMISSAL, RESPONDENTS ARE NOT ENTITLED TO BACKWAGES; IF THE DISMISSAL, HOWEVER, IS BY VIRTUE OF A JUST OR AUTHORIZED CAUSE, BUT WITHOUT DUE PROCESS, THE DISMISSED WORKERS ARE ENTITLED TO AN INDEMNITY IN THE FORM OF NOMINAL DAMAGES.— Since there was no illegal dismissal, the respondents are not entitled to backwages. The term "backwages" presupposes illegal termination of employment. It is restitution of earnings unduly withheld from the employee because of illegal termination. Hence, where there is no illegal termination, there is no basis for claim or award of backwages. The lack of basis for backwages notwithstanding, we note that the respondents claimed that they were not given individual written notices of the company's temporary shutdown or of its closure. The records support the respondents' position. Other than the Establishment Termination Report submitted by the company to the DOLE-NCR when it temporarily shut down its operations and which included the respondents' names, there is no evidence (other than the petitioner's informal talk with its employees, which did not strictly comply with the legal requirement) that they were served individual written notices at least thirty (30) days before the effectivity of the termination, as required under Section 1(iii), Rule I, Book VI of the Omnibus Rules Implementing the Labor Code. **Pursuant to existing jurisprudence, if the dismissal is by virtue of a just or**

authorized cause, but without due process, the dismissed workers are entitled to an indemnity in the form of nominal damages. In the present case, the evidence on hand substantially shows that the company closed down due to serious business reverses, an authorized cause for termination of employment. The failure to notify the respondents in writing of the closure of the company will not invalidate the termination of their employment, bit the company has to pay them nominal damages for the violation of their right to procedural due process. This amount is addressed to the sound discretion of the court, taking into account the relevant circumstances, as the Court explained in *Agabon v. NLRC.* In A*gabon*, the dismissed employees abandoned their jobs, a just cause for termination of employment. They were dismissed without notice and hearing. The Court awarded them ₱30,000.00 in nominal damages.

3. ID.; ID.; ID.; GIVEN THE CIRCUMSTANCES SURROUNDING THE COMPANY'S CLOSURE, THE COURT FIND IT REASONABLE TO AWARD RESPONDENTS ₱10,000.000 IN NOMINAL DAMAGES.— In the present case, there is no question that the company failed to resume operations anymore as it had been saddled with serious financial obligations due to unpaid debts for diesel fuel and ice and other indebtedness, and because of this it had to dispose of its fishing vessels. The respondents themselves were aware of the company's heavy financial burden since Villaflor told them about it at the meeting on October 20, 2003. Then there was Villaflor's undertaking to give them separation pay of which he also told them. Although the respondents were not individually served written notice of the termination of their employment, the company, nonetheless, filed an Establishment Termination Report which included the names of the respondents. The filing of the report indicates that the company made the *bona fide* effort to comply with the notice requirement under the law and the rules. **Given the circumstances surrounding the company's closure and guided by the ruling in *Industrial Timber,* we find it reasonable to award the respondents ₱10,000.00 in nominal damages.**

4. ID.; ID.; ID.; CONSIDERING THAT THE COMPANY'S CLOSURE WAS DUE TO SERIOUS FINANCIAL REVERSES, IT IS NOT LEGALLY BOUND TO GIVE THE SEPARATED EMPLOYEES SEPARATION PAY.— Under Article 283 of the Labor Code quoted earlier, the employer may terminate the employment of any employee due to, among other causes, the closure or cessation of operations of the establishment or undertaking. In such an eventuality, the employee may or may not be entitled to separation pay. On this point, Article 283 provides: ***in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of least six months shall be considered one (1) whole year*.** **Considering that the company's closure was due to serious financial reverses, it is not legally bound to give the separated employees separation pay**. In *Reahs Corporation v. NLRC*, the Court explained that "[t]he grant of separation pay, as an incidence of termination of employment under Article 283, is a statutory obligation on the part of the employer and a demandable right on the part of the employee, **except** only where the closure or cessation of operations was due to serious business losses or financial reverses and there is sufficient proof of this fact or condition." We note, however, that in his meeting with the employees, including the respondents, on October 20, 2003, Villaflor told them that he would be giving them separation pay as a consequence of the company's closure. He should now honor his undertaking to the respondents and grant them separation pay. Except for the petitioners' claim that "they gave the separation pays of their employees," they failed to present proof of actual payment. In this light, Villaflor's grant of separation pay to the respondents has still to be fulfilled. Finally, the petitioners did not appeal the LA's award of service incentive leave pay and 13th month pay for the year 2003 to the respondents. Accordingly, the award stands.

APPEARANCES OF COUNSEL

Antonio A. Geronimo for petitioners.
Cabio Law Office & Associates for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] that challenges the decision[2] dated July 20, 2009 and the resolution[3] dated October 7, 2009 of the Court of Appeals (*CA*) in CA-G.R. SP No. 96078.

The Antecedents

The case arose when respondents Innocencio Montallana, Alfredo Bautista, Teodoro Judloman, Guillermo Bongas, Rogelio Bongas, Diosdado Busante, Emiliano Badu and Rosendo Subing-Subing filed a complaint for illegal (constructive) dismissal, with money claims, against the petitioners, Navotas Shipyard Corporation (*company*) and its President/General Manager, Jesus Villaflor.

The respondents alleged that on October 20, 2003, the company's employees (about 100) were called to a meeting where Villaflor told them: "*Magsasara na ako ng negosyo, babayaran ko na lang kayo ng separation pay dahil wala na akong pangsweldo sa inyo. Marami akong mga utang sa krudo, yelo, at iba pa.*"[4] Since then, they were not allowed to report for work but Villaflor's promise to give them separation pay never materialized despite their persistent demands and follow-ups.

The petitioners, on the other hand, claimed that due to the "seasonal lack of fish caught and uncollected receivables[,]"[5]

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[1] *Rollo*, pp. 11-21; filed pursuant to Rule 45 of the Rules of Court.

[2] *Id*. at 97-113; penned by Associate Justice Antonio L. Villamor, and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Celia C. Librea-Leagogo.

[3] *Id*. at 122-123.

[4] *Id*. at 29.

[5] *Id*. at 33.

the company suffered financial reverses. It was thus constrained to temporarily cease operations. They projected that the company could resume operations before the end of six months or on April 22, 2004. It reported the temporary shutdown to the Department of Labor and Employment, National Capital Region (*DOLE-NCR*) and filed an Establishment Termination Report.

The Compulsory Arbitration Rulings

In a decision[6] dated September 13, 2004, Labor Arbiter (*LA*) Geobel A. Bartolabac dismissed the complaint for lack of merit, but awarded the respondents 13th month pay and service incentive leave pay for the year 2003 in the aggregate amount of ₱62,534.00. LA Bartolabac ruled that the respondents could not have been illegally dismissed. He declared that the "Notice of Temporary Closure filed before the DOLE belies complainants' unsubstantiated allegation that they were informed in a meeting on 20 October 2003 x x x that [their] services were terminated."[7] He considered the temporary shutdown as a suspension of the employment relationship between the parties.

The respondents appealed the LA's ruling. They argued before the National Labor Relations Commission (*NLRC*) that since they were not given work assignments for more than six months, they should have been considered constructively dismissed and granted backwages as well as separation pay. The NLRC dismissed the appeal for lack of merit and affirmed LA Bartolabac's decision *in toto*.[8] It also denied the respondents' subsequent motion for reconsideration.[9] The respondents sought relief from the CA by way of a petition for *certiorari*, charging the NLRC with grave abuse of discretion in upholding the dismissal of their complaint.

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[6] *Id*. at 125-131.

[7] *Id*. at 129.

[8] *Id*. at 132-138.

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

The CA Proceedings

Before the CA, the respondents maintained that the company's closure was intended to be permanent, as evidenced by Villaflor's statement during the meeting on October 20, 2003 that he was closing the company and that they would be given separation pay. In such a case, they argued that they should have been given individual notices thirty days before the intended closure; in the absence of this notice, they should be considered illegally dismissed.

The CA found merit in the respondents' submission that the company's shutdown was not temporary, but permanent. While it acknowledged that initially, the shutdown was only temporary, it "has ripened into a closure or cessation of operations"[10] after it exceeded the six months allowable period under Article 286 of the Labor Code in the manner this Court declared in *Mayon Hotel & Restaurant v. Adana.*[11] It thus became a dismissal, it pointed out that, by operation of law, when the petitioners failed to reinstate the respondents after the lapse of six months. It noted that "during the proceedings [before] the LA covering a period in excess of six months, there is no showing on record that notices to return to work were given to the petitioners or that operations have resumed."[12]

The CA declared that the NLRC committed grave abuse of discretion in upholding LA Bartolabac's ruling that no illegal dismissal took place as the LA disregarded the obtaining facts and the applicable provisions of law. It set aside the challenged NLRC decision and granted the respondents' claims for service incentive leave pay, 13th month pay, separation pay and backwages.

The Petition

The petitioners seek relief from this Court through the present Rule 45 appeal on the ground that the CA committed a reversible

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[10] *Supra* note 2, at 110.

[11] 497 Phil. 892, 916 (2005).

[12] *Supra* note 2, at 110.

error of law **when it awarded separation pay and backwages notwithstanding the closure of the company's business operations.** They argue that under the circumstances, the respondents are not entitled to backwages, pursuant to Article 283 of the Labor Code. They maintain that although they "suffered business losses that led to the disposition of their fishing vessels in order to pay their debts, diesel, salaries and others, they gave the separation pays of their employees."[13]

The Respondents' Position

In their Comment filed on March 4, 2010,[14] the respondents ask the Court to dismiss the petition considering that the issues raised by the petitioners had been squarely ruled upon by the CA. They stress that the CA committed no error in its appreciation of the established facts, as well as the application of the pertinent law and jurisprudence in the case.

The Court's Ruling

We find the petition partially meritorious.

It appears from the records that the company was compelled to shut down its operations due to serious business reverses during the period material to the case. It also appears that the petitioners initially intended the shutdown to be temporary as it expected to resume operations before the expiration of six months or on April 22, 2004, as the CA noted.[15] The company reported the shutdown to the DOLE-NCR and filed an Establishment Termination Report which contained the names of the employees to be affected.[16]

Before the lapse of the six-month period, the respondents filed a constructive dismissal case, rationalizing that they had to do so because the shutdown was merely a company ploy to

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[13] *Supra* note 1, at 16-17.

[14] *Rollo*, pp. 145-149.

[15] *Supra* note 2, at 99.

[16] *Rollo*, pp. 59-60.

remove them from the service. They were allegedly not notified to report back for work before the expiration of the six-month period; neither was there any notice of resumption of operations during the pendency of the case before the LA. The challenged CA rulings supported the respondents' position.

The applicable law

To place the case in perspective, we first examine the applicable law in view of the disagreement between the petitioners and the respondents in that respect. According to the CA, the "[p]etitioners anchor their arguments mainly on Article 283 of the Labor Code, stating that private respondents resorted to retrenchment and permanent closure of business, while private respondents maintain that what is applicable is Article 286 x x x as the closure of business was merely temporary."[17] Articles 283 and 286 of the Labor Code provide:

ART. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the [Department of Labor] and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures and cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

ART. 286. When employment not deemed terminated. — The *bona-fide* suspension of the operation of a business or undertaking

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[17] *Supra* note 2, at 106-107.

for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.[18]

As we earlier stated, the petitioners undertook a temporary shutdown. In fact, the company notified the DOLE of the shutdown and filed an Establishment Termination Report containing the names of the affected employees.[19] The petitioners expected the company to recover before the end of the six-month shutdown period, but unfortunately, no recovery took place. Thus, the shutdown became permanent. According to the petitioners, they gave the company's employees their separation pay.

We disagree with the company's position that it resorted to a retrenchment under Article 283 of the Labor Code; it was a temporary shutdown under Article 286 where the employees are considered on floating status or whose employment is temporarily suspended. Citing *Sebuguero v. National Labor Relations Commission*,[20] the CA was correct when it said that "[t]here is no specific provision of law which treats of a temporary retrenchment or lay-off."[21]

Were the respondents illegally dismissed and entitled to the CA award?

1. ***The illegal dismissal ruling***

Under the circumstances, we cannot say that the company's employees were illegally dismissed; rather, they lost their employment because the company ceased operations after

[18] Italics supplied.

[19] *Supra* note 16.

[20] G.R. No. 115394, September 27, 1995, 248 SCRA 532.

[21] *Supra* note 2, at 109.

failing to recover from their financial reverses. The CA itself recognized what happened to the company when it observed: "The temporary shutdown has ripened into a closure or cessation of operations. In this situation[,] private respondents are definitely entitled to the corresponding benefits of separation."[22] Even the respondents had an inkling of the company's fate when they claimed before the LA that on October 20, 2003, they were called, together with all the other employees of the company, by Villaflor; the latter allegedly told them that he would be closing the company, but would give them their separation pay. He also disclosed to them the reason – he could no longer pay their salaries due to the company's unsettled financial obligations on fuel and ice and other indebtedness.[23]

The respondents' verbal account of what happened during the meeting, particularly the company's imminent closure, to our mind, confirmed the company's dire situation. The temporary shutdown, it appears, was a last ditch effort on the part of Villaflor to make the company's operations viable but, as it turned out, the effort proved futile. The shutdown became permanent as the CA itself acknowledged. The CA misappreciated the facts when it opined that the respondents were illegally dismissed because they were not reinstated by the petitioners after the lapse of the company's temporary shutdown. It lost sight of the fact that the company did not resume operations anymore, a situation the CA itself recognized. The respondents, therefore, had no more jobs to go back to; hence, their non-reinstatement.

In these lights, the CA was not only incorrect from the point of law; it likewise disregarded, or at the very least, grossly misappreciated the evidence on record – that the petitioner was in distress and **had temporarily suspended its operations**, and duly reflected these circumstances to the DOLE. From this perspective, there was no grave abuse of discretion to justify the CA's reversal of the NLRC's findings and conclusions.

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[22] *Id.* at 110.

[23] *Id.* at 98.

2. *The award of backwages/nominal damages*

Since there was no illegal dismissal, the respondents are not entitled to backwages. The term "backwages" presupposes illegal termination of employment. It is restitution of earnings unduly withheld from the employee because of illegal termination. Hence, where there is no illegal termination, there is no basis for claim or award of backwages.[24]

The lack of basis for backwages notwithstanding, we note that the respondents claimed that they were not given individual written notices of the company's temporary shutdown or of its closure. The records support the respondents' position. Other than the Establishment Termination Report[25] submitted by the company to the DOLE-NCR when it temporarily shut down its operations and which included the respondents' names, there is no evidence (other than the petitioner's informal talk with its employees, which did not strictly comply with the legal requirement) that they were served individual written notices at least thirty (30) days before the effectivity of the termination, as required under Section 1(iii), Rule I, Book VI of the Omnibus Rules Implementing the Labor Code.[26] **Pursuant to existing jurisprudence, if the dismissal is by virtue of a just or authorized cause, but without due process, the dismissed workers are entitled to an indemnity in the form of nominal damages.**

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[24] C.A, Azucena, Jr., *The LABOR CODE With Comments and Cases*, Volume II, Sixth Edition, 2007, p. 827, citing *Industrial Timber Corporation-Stanply Operations v. NLRC*, 323 Phil. 754, 759 (1996).

[25] *Supra* note 16.

[26] ***For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before the effectivity of the termination, specifying the ground or grounds for the termination.***

In the present case, the evidence on hand substantially shows that the company closed down due to serious business reverses, an authorized cause for termination of employment. The failure to notify the respondents in writing of the closure of the company will not invalidate the termination of their employment, but the company has to pay them nominal damages for the violation of their right to procedural due process. This amount is addressed to the sound discretion of the court, taking into account the relevant circumstances, as the Court explained in *Agabon v. NLRC*.[27] In *Agabon*, the dismissed employees abandoned their jobs, a just cause for termination of employment. They were dismissed without notice and hearing. The Court awarded them ₱30,000.00 in nominal damages.

In *Jaka Food Processing Corp. v. Pacot*,[28] the Court made a distinction between "just" and "authorized" cause in relation to the award of nominal damages. Thus, the Court said: "*if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.*" The Court awarded ₱50,000.00 nominal damages in *Jaka*.

Further, in *Industrial Timber Corp. v. Ababon*,[29] the Court emphasized that in the determination of the amount of nominal damages, "several factors are taken into account: (1) the authorized cause invoked – whether it was a retrenchment or a closure or cessation of operation of the establishment due to serious business losses or financial reverses or otherwise; (2) the number of employees to be awarded; (3) the capacity of the employers to

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[27] 485 Phil. 248, 288 (2004).

[28] 494 Phil. 114, 121 (2005).

[29] 520 Phil. 522, 527-528 (2006); italics supplied.

satisfy the awards, taking into account their prevailing financial status as borne by the records; (4) the employer's grant of other termination benefits in favor of the employees; and (5) whether there was a *bona fide* attempt to comply with the notice requirements as opposed to giving no notice at all." In this cited case, the Court, in considering the circumstances obtaining in the case, deemed it wise and just to reduce the amount of nominal damages to be awarded to each employee, to ₱10,000.00 instead of ₱50,000.00 each.[30] Thus, the Court said:

> In the case at bar, there was valid authorized cause considering the closure or cessation of ITC's business which was done in good faith and due to circumstances beyond ITC's control. Moreover, ITC had ceased to generate any income since its closure on August 17, 1990. Several months prior to the closure, ITC experienced diminished income due to high production costs, erratic supply of raw materials, depressed prices, and poor market conditions for its wood products. It appears that ITC had given its employees all benefits in accord with the CBA upon their termination.[31]

In the present case, there is no question that the company failed to resume operations anymore as it had been saddled with serious financial obligations due to unpaid debts for diesel fuel and ice and other indebtedness, and because of this it had to dispose of its fishing vessels. The respondents themselves were aware of the company's heavy financial burden since Villaflor told them about it at the meeting on October 20, 2003. Then there was Villaflor's undertaking to give them separation pay of which he also told them. Although the respondents were not individually served written notice of the termination of their employment, the company, nonetheless, filed an Establishment Termination Report which included the names of the respondents. The filing of the report indicates that the company made the *bona fide* effort to comply with the notice requirement under the law and the rules. **Given the circumstances surrounding the company's closure and guided by the ruling in *Industrial***

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[30] *Id.* at 528.

[31] *Ibid*.

***Timber*, we find it reasonable to award the respondents ₱10,000.00 in nominal damages.**

3. ***The award of separation pay, service incentive leave pay and 13th month pay***

Under Article 283 of the Labor Code quoted earlier, the employer may terminate the employment of any employee due to, among other causes, the closure or cessation of operations of the establishment or undertaking. In such an eventuality, the employee may or may not be entitled to separation pay. On this point, Article 283 provides: ***in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or to at least one-half (½) month pay for every year of service, whichever is higher. A fraction of least six months shall be considered one (1) whole year.***

Considering that the company's closure was due to serious financial reverses, it is not legally bound to give the separated employees separation pay. In *Reahs Corporation v. NLRC*,[32] the Court explained that "[t]he grant of separation pay, as an incidence of termination of employment under Article 283, is a statutory obligation on the part of the employer and a demandable right on the part of the employee, **except** only where the closure or cessation of operations was due to serious business losses or financial reverses and there is sufficient proof of this fact or condition."[33]

We note, however, that in his meeting with the employees, including the respondents, on October 20, 2003, Villaflor told them that he would be giving them separation pay as a consequence of the company's closure. He should now honor his undertaking to the respondents and grant them separation pay. Except for the petitioners' claim that "they gave the

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[32] 337 Phil. 698, 705 (1997).

[33] Emphasis ours.

separation pays of their employees,"[34] they failed to present proof of actual payment. In this light, Villaflor's grant of separation pay to the respondents has still to be fulfilled.

Finally, the petitioners did not appeal the LA's award of service incentive leave pay and 13th month pay for the year 2003 to the respondents. Accordingly, the award stands.

WHEREFORE, premises considered, the petition is **GRANTED IN PART.** Petitioners Navotas Shipyard Corporation and Jesus Villaflor are **ORDERED** to pay, jointly and severally, respondents Innocencio Montallana, Alfredo Bautista, Teodoro Judloman, Guillermo Bongas, Rogelio Bongas, Diosdado Busante, Emiliano Badu and Rosendo Subing-Subing **nominal damages** of ₱10,000.00 each, **service incentive leave pay, 13th month pay** for the year 2003, based on the labor arbiter's computation, and **separation pay** equivalent to one (1) month pay or to at least one-half (½) month pay for every year of service, whichever is higher, with a fraction of at least six (6) months considered as one (1) whole year. The award of **backwages** is **SET ASIDE**. Let the records of the case be **REMANDED** to the labor arbiter for enforcement of this **DECISION.**

Except as above modified, the assailed decision and resolution of the Court of Appeals are **AFFIRMED.** No costs.

SO ORDERED.

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

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[34] *Supra* note 1, at 17.

[*] Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1650 dated March 13, 2014.

SECOND DIVISION

[G.R. No. 193107. March 24, 2014]

SUTHERLAND GLOBAL SERVICES (Philippines), INC. and JANETTE G. LAGAZO, *petitioners, vs.* **LARRY S. LABRADOR,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION RULES OF PROCEDURE; APPEALS; FAILURE TO STATE MATERIAL DATES IS NOT FATAL IN AN APPEAL BEFORE THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) BECAUSE TECHNICAL RULES CAN BE LIBERALLY APPLIED, AND, ALL THINGS BEING EQUAL, ANY DOUBT OR AMBIGUITY WOULD BE RESOLVED IN FAVOR OF LABOR.— Sutherland insists that the failure to state the material dates is fatal to Salvador's appeal to the NLRC and to his present position in this case. We do not find Sutherland's argument meritorious as technical rules are not necessarily fatal in labor cases; they can be liberally applied if – all things being equal – any doubt or ambiguity would be resolved in favor of labor. These technicalities and limitations can only be given their fullest effect if the case is substantively unmeritorious; otherwise, and if the defect is similar to the present one and can be verified from the records (as in this case), we have the discretion not to consider them fatal. The same reasoning applies to the failure to attach a certificate of non-forum shopping. We can likewise relax our treatment of the defect. Additionally, while the 2005 NLRC Rules specifically stated that a certificate of non-forum shopping should be attached, the 2011 NLRC Rules of Procedure no longer requires it. Jurisprudence, too, is replete with instances when the Court relaxed the rules involving the attachment of the certificate of non-forum shopping. Under these circumstances, we see no grave abuse of discretion on the part of the NLRC in admitting the petition.

2. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; THE POWER TO DISMISS AN EMPLOYEE IS A RECOGNIZED PREROGATIVE INHERENT IN THE EMPLOYER'S RIGHT TO FREELY MANAGE AND REGULATE HIS BUSINESS; THE WORKER'S RIGHT OF SECURITY OF TENURE IS NOT AN ABSOLUTE RIGHT, FOR THE LAW PROVIDES THAT HE MAY BE DISMISSED FOR CAUSE.— The CA gravely misappreciated the import of the evidence on record and can even be said to have disregarded it. The NLRC glossed over Labrador's repeated violations that led the latter to request that he be allowed to resign to preserve his reputation for future employment, rather than be dismissed from the service. In the evidence leading to Labrador's dismissal – evidence that Labrador had acknowledged to have received, thus binding him to its terms – no dispute exists that Labrador committed several infractions. In fact, the final infraction that brought on his termination was actually a repetition of the first offense. The first offense (committed on September 24, 2007) already gave rise to a "Last Written Warning" with the statement that it was a serious offense, constituting neglect of duty for deviating from the program/ department's standard operating procedures. Under this clear warning, a second similar offense would necessarily lead to his dismissal; otherwise the purpose of a "Last Written Warning" would have been negated. The NLRC, unfortunately, completely disregarded this piece of important evidence. This disregard – a gross failure to recognize undisputed evidence on record – constitutes grave abuse of discretion. We have consistently ruled that the power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. The law, however, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. The worker's right to security of tenure is not an absolute right, for the law provides that he may be dismissed for cause.

3. ID.; ID.; ID.; THE FAILURE TO FAITHFULLY COMPLY WITH COMPANY RULES AND REGULATIONS IS CONSIDERED TO BE JUST CAUSE IN TERMINATING ONE'S EMPLOYMENT.— The failure to faithfully comply with the company rules and regulations is considered to be a just cause in terminating one's employment, depending on the

nature, severity and circumstances of non-compliance. "An employer 'has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.'" Thus, it was within Sutherland's prerogative to terminate Labrador's employment when he committed a serious infraction and, despite a previous warning, repeated it. To reiterate, he opened another client account without the latter's consent, with far-reaching and costly effects on the company. For one, the repeated past infractions would have resulted in negative feedbacks on Sutherland's performance and reputation. It would likewise entail additional administrative expense since Sutherland would have to address the complaints – an effort that would entail investigation costs and the return of the doubly-delivered merchandise. As a rule, "an employer cannot be compelled to continue with the employment of workers when continued employment will prove inimical to the employer's interests."

4. ID.; ID.; ID.; RESPONDENT WAS VALIDLY DISMISSED FROM EMPLOYMENT.— To Sutherland's credit, it duly complied with the procedural requirement in dismissing an employee; it clearly observed both substantive and procedural due process. Its action was based on a just and authorized cause, and the dismissal was effected after due notice and hearing. After Labrador's subsequent infraction, Sutherland sent him a Notice to Explain and an administrative hearing was thereafter conducted. During the hearing, Labrador himself admitted his faults. These incidents were properly recorded and were properly discussed in Sutherland's recommendation. But before Sutherland could finally pronounce its verdict, Labrador submitted his resignation letter, impelled no doubt, as Sutherland alleged, by the need to protect his reputation and his future employment chances. To be sure, Sutherland's explanation was not remote, far-fetched or unbelievable given the undisputable evidence on record of infractions. Finally, we find the issue of whether the resignation letter was voluntarily executed moot. Even if Labrador had not submitted his resignation letter, Sutherland could still not be held liable for constructive dismissal given the existing just cause to terminate Labrador's employment.

APPEARANCES OF COUNSEL

Batuhan Blando Concepcion & Trillana for petitioners.

D E C I S I O N

BRION, *J.*:

This is an appeal (*via* Rule 45 of the Rules of Court) from the decision[1] dated December 18, 2009 and the resolution[2] dated July 26, 2010 of the Court of Appeals *(CA)* in CA-G.R. SP No. 110662. The appealed decision affirmed the decision dated May 21, 2009 of the National Labor Relations Commission *(NLRC)*, finding Larry S. Labrador illegally dismissed from the service.

The Antecedent Facts

Petitioner Sutherland Global Services (Philippines), Inc. *(Sutherland)* is engaged in the business of process outsourcing and technology consulting services for international clients.[3] In August 2006, Sutherland hired Labrador as one of its call center agents with the main responsibility of answering various queries and complaints through phoned-in calls.[4]

In his two years of working at Sutherland, Labrador committed several infractions.[5] But it was only on June 17, 2008 that Labrador was finally charged with violation for transgressing the "Non-Compliance Sale Attribute" policy clause stated in the Employee Handbook. Allegedly, on May 13, 2008, one of Sutherland's customers complained that Labrador

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[1] *Rollo*, pp. 36-49; penned by Associate Justice Mario Lopez, and concurred in by Associate Justices Rebecca de Guia-Salvador and Apolinario Bruselas, Jr.

[2] *Id*. at 63-67.

[3] *Id*. at 190.

[4] *Id*. at 211.

[5] *Id*. at 37.

initially asked for her credit card account, but only for purposes of verification. As it turned out, a second account was created and a new order was placed under the same customer's name. Thus, two sets of packages were shipped to the customer who had to pay twice for the same product.

Under Sutherland's Employee Handbook, Labrador's action is classified as an act of dishonesty or fraud.[6] On May 24, 2008, Sutherland sent Labrador a Notice to Explain[7] in writing why he should not be held administratively liable.

On May 28, 2008, an administrative hearing was conducted that took into consideration Labrador's past infractions, namely:

> [A]s early as 24 September 2007, a Red Flag document was issued against [sic] Labrador for not disclosing customer information appropriately and signing up the call-in client for a second account without even verifying if he already had a previous account. The offense was punishable by a Last Written Warning[;]
>
> Again[,] on 8 February 2008, Labrador committed xxx a fatal error in handling a particular customer complaint or query. He was then placed under immediate counseling under the Monitoring Improvement Program in order to improve his performance[;]
>
> On 13 May 2008, another Red Flag document was issued because Respondent created two accounts for a customer without informing the latter that she [would] be billed twice. xxx Respondent asked the Credit Card Number of the customer for the second account and xxx falsely stated that it [was] only for verification purposes. Later on, the client complained[.][8]

After investigation, a recommendation was issued finding Labrador guilty of violating the Employee Handbook due to gross or habitual neglect of duty.[9] The recommendation further stated:

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[6] *Id*. at 190-191.

[7] *Id*. at 119.

[8] *Id*. at 37.

[9] *Id*. at 123-126.

With (sic) the request of Mr. Larry Labrador (Customer Service Representative – UOLIB Sales) for resignation instead of termination, due to humanitarian purposes and his stay and contribution to the account, SGS Management allows his request of resigning from the company, ergo: he shall resign from the company effective immediately.[10]

x x x x x x x x x

On June 17, 2008, Labrador submitted his resignation letter.[11]

On October 27, 2008, Labrador filed a complaint for constructive/illegal dismissal before the NLRC.[12]

On February 27, 2009, Labor Arbiter (*LA*) Reynaldo Abdon dismissed the complaint for lack of merit.[13] He found just cause to terminate Labrador's employment, and that his resignation letter had been voluntarily executed.

Labrador filed his Memorandum on Appeal[14] with the NLRC. In Sutherland's Answer,[15] it noted that there were formal defects in Labrador's Memorandum on Appeal warranting its immediate dismissal, namely: (1) he failed to state the date of receipt of the appealed decision; and (2) he also failed to attach a certificate of non-forum shopping in accordance with the NLRC Rules of Procedure.[16]

Notwithstanding these defects, the NLRC reversed the LA's ruling on May 21, 2009.[17] The NLRC applied a liberal interpretation of the rules and admitted Labrador's Memorandum on Appeal. It further ruled that Labrador's resignation was

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[10] *Id*. at 126.

[11] *Id*. at 127.

[12] *Id*. at 38.

[13] *Id*. at 152-163.

[14] *Id*. at 164-169.

[15] *Id*. at 170-187.

[16] *Id*. at 39.

[17] *Id*. at 189-196.

involuntary. Thus, it ordered Labrador's reinstatement with payment of backwages and allowances. Sutherland filed a motion for reconsideration which the NLRC likewise denied in a resolution[18] dated July 14, 2009.

Sutherland filed a petition for *certiorari* with the CA, alleging grave abuse of discretion on the part of the NLRC. On December 18, 2009, the CA dismissed the petition, ruling that technical rules are not binding in labor cases. Thus, it concluded that the NLRC did not commit any grave abuse of discretion when it applied a liberal application of the rules since the issue involved was the legality of Labrador's dismissal.

On the substantive aspect, the CA also affirmed the NLRC's finding that Labrador had been illegally dismissed. The CA also ruled that Sutherland's decision to terminate Labrador's services was the proximate cause of his resignation; the resignation letter was submitted solely for the purpose of avoiding any derogatory record that would adversely affect his future employment. In effect, he cannot be deemed to have voluntarily resigned because he was forced to relinquish his position in order to avoid the inevitable termination of employment.

The CA denied Sutherland's motion for reconsideration, prompting the present petition for a final review.

The Issues

Sutherland raises the following assignment of errors:

I.

THE CA ERRED IN TAKING COGNIZANCE OF THE APPEAL DESPITE LABRADOR'S FAILURE TO COMPLY WITH THE NLRC'S RULES OF PROCEDURE.

II.

WHETHER THE CA ERRED IN RULING THAT LABRADOR WAS ILLEGALLY TERMINATED AND DID NOT VOLUNTARILY RESIGN.

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[18] *Id.* at 219-220.

III.

WHETHER LABRADOR'S OFFENSE CONSTITUTES GROSS NEGLIGENCE AS TO WARRANT HIS DISMISSAL FROM THE SERVICE.

Sutherland primarily argues that the NLRC committed grave abuse of discretion in taking cognizance of the appeal despite its apparent defects; that the appeal had not been perfected, thus rendering the LA's decision final and executory. Further, Sutherland stresses that there was no illegal dismissal since Labrador voluntarily resigned. More importantly, even if Labrador had been dismissed from the service, just cause to dismiss existed since Labrador's offenses amounted to gross negligence.

The Court's Ruling

We find the petition meritorious.

At the time this case was appealed to the NLRC, the then governing rule was the 2005 Revised Rules of Procedure of the NLRC (2005 NLRC Rules) whose Section 4, Rule VI provided:

> Section 4. Requisites For Perfection Of Appeal. – a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which ***shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date*** the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) ***a certificate of non-forum shopping;*** and iv) proof of service upon the other parties.[19]

Sutherland insists that the failure to state the material dates is fatal to Salvador's appeal to the NLRC and to his present position in this case.

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[19] Emphases, italics and underscores ours.

We do not find Sutherland's argument meritorious as technical rules are not necessarily fatal in labor cases; they can be liberally applied if – all things being equal – any doubt or ambiguity would be resolved in favor of labor.[20] These technicalities and limitations can only be given their fullest effect if the case is substantively unmeritorious; otherwise, and if the defect is similar to the present one and can be verified from the records (as in this case), we have the discretion not to consider them fatal.

The same reasoning applies to the failure to attach a certificate of non-forum shopping. We can likewise relax our treatment of the defect. Additionally, while the 2005 NLRC Rules specifically stated that a certificate of non-forum shopping should be attached, the 2011 NLRC Rules of Procedure[21] no longer requires it. Jurisprudence, too, is replete with instances when the Court relaxed the rules involving the attachment of the certificate of non-forum shopping.[22] Under these circumstances, we see no grave abuse of discretion on the part of the NLRC in admitting the petition.

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[20] *Government Service Insurance System v. National Labor Relations Commission,* G.R. No. 180045, November 17, 2010, 635 SCRA 251, 258.

[21] Section 4, Rule VI of the 2011 NLRC Rules of Procedure provides:

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.

[22] *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*, G.R. No. 146548, December 18, 2009, 608 SCRA 394; and *Traveño v. Bobongon Banana*

We, however, do not agree with the findings of the NLRC, as affirmed by the CA, that Labrador was illegally dismissed.

In this jurisdiction, the findings of the NLRC are generally binding and should be treated with finality. The CA only looks at the facts to determine if a tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in appreciating the facts.

Rule 45 of the Rules of Court, on the other hand, confines this Court to a review of the case solely on pure questions of law. In *Montoya v. Transmed Manila Corporation*,[23] we said that in ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the challenged NLRC decision. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case**?

We answer in the negative. The CA gravely misappreciated the import of the evidence on record and can even be said to have disregarded it. The NLRC glossed over Labrador's repeated violations that led the latter to request that he be allowed to resign to preserve his reputation for future employment, rather than be dismissed from the service.

In the evidence leading to Labrador's dismissal – evidence that Labrador had acknowledged to have received, thus binding

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Growers Multi-Purpose Cooperative, G.R. No. 164205, September 3, 2009, 598 SCRA 27.

[23] G.R. No. 183329, August 27, 2009, 597 SCRA 334.

him to its terms – no dispute exists that Labrador committed several infractions. In fact, the final infraction that brought on his termination was actually a repetition of the first offense.

The first offense (committed on September 24, 2007) already gave rise to a "Last Written Warning" with the statement that it was a serious offense, constituting neglect of duty for deviating from the program/department's standard operating procedures.[24] Under this clear warning, a second similar offense would necessarily lead to his dismissal; otherwise the purpose of a "Last Written Warning" would have been negated. The NLRC, unfortunately, completely disregarded this piece of important evidence. This disregard – a gross failure to recognize undisputed evidence on record – constitutes grave abuse of discretion.

We have consistently ruled that the power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. The law, however, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. The worker's right to security of tenure is not an absolute right, for the law provides that he may be dismissed for cause.[25] Furthermore, Article 282 of the Labor Code provides that an employee may be terminated from the service on either of the following just causes:

Art. 282. Termination by employer. - An employer may terminate an employment for any of the following causes:

1. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
2. **Gross and habitual neglect by the employee of his duties**;
3. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

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[24] *Rollo*, p. 116.

[25] *Molina v. Pacific Plans, Inc.*, 519 Phil. 475, 497 (2006).

4. Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

5. ***Other causes analogous to the foregoing***.[26]

The failure to faithfully comply with the company rules and regulations is considered to be a just cause in terminating one's employment, depending on the nature, severity and circumstances of non-compliance. "An employer 'has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers.'"[27]

Thus, it was within Sutherland's prerogative to terminate Labrador's employment when he committed a serious infraction and, despite a previous warning, repeated it. To reiterate, he opened another client account without the latter's consent, with far-reaching and costly effects on the company. For one, the repeated past infractions would have resulted in negative feedbacks on Sutherland's performance and reputation. It would likewise entail additional administrative expense since Sutherland would have to address the complaints – an effort that would entail investigation costs and the return of the doubly-delivered merchandise. As a rule, "an employer cannot be compelled to continue with the employment of workers when continued employment will prove inimical to the employer's interests."[28]

To Sutherland's credit, it duly complied with the procedural requirement in dismissing an employee; it clearly observed both substantive and procedural due process. Its action was based

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[26] Italics and emphasis ours.

[27] *Reyes-Rayel v. Philippine Luen Thai Holdings, Corporation*, G.R. No. 174893, July 11, 2012, 676 SCRA 183, 199-200; citation omitted.

[28] *Ancheta v. Destiny Financial Plans, Inc.*, G.R. No. 179702, February 16, 2010, 612 SCRA 648, 663; citation omitted.

on a just and authorized cause, and the dismissal was effected after due notice and hearing.[29] After Labrador's subsequent infraction, Sutherland sent him a Notice to Explain and an administrative hearing was thereafter conducted. During the hearing, Labrador himself admitted his faults. These incidents were properly recorded and were properly discussed in Sutherland's recommendation. But before Sutherland could finally pronounce its verdict, Labrador submitted his resignation letter, impelled no doubt, as Sutherland alleged, by the need to protect his reputation and his future employment chances. To be sure, Sutherland's explanation was not remote, far-fetched or unbelievable given the undisputable evidence on record of infractions.

Finally, we find the issue of whether the resignation letter was voluntarily executed moot. Even if Labrador had not submitted his resignation letter, Sutherland could still not be held liable for constructive dismissal given the existing just cause to terminate Labrador's employment.

WHEREFORE, the appeal is **GRANTED**. Accordingly, the decision dated December 18, 2009 and the resolution dated July 26, 2010 of the Court of Appeals in CA-G.R. SP No. 110662 are hereby **REVERSED AND SET ASIDE**. The complaint for illegal dismissal is hereby declared dismissed. No costs.

SO ORDERED.

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

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[29] *KAKAMPI v. Kingspoint Express and Logistic,* G.R. No. 194813, April 25, 2012, 671 SCRA 483, 494.

[*] Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe, per Special Order No. 1650 dated March 13, 2014.

SECOND DIVISION

[G.R. No. 193516. March 24, 2014]

VILMA MACEDONIO, *petitioner, vs.* **CATALINA RAMO, YOLANDA S. MARQUEZ, SPOUSES ROEL and OPHELIA PEDRO, SPOUSES JOEFFRY and ELIZA BALANAG, and BPI FAMILY SAVINGS BANK, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN TERMINATING OR DISMISSING CIVIL CASE NO. 5703-R FOR FAILURE OF THE PARTIES TO SUBMIT TO A COMPROMISE AGREEMENT.— The trial court in Civil Case No. 5703-R committed grave abuse of discretion in terminating or dismissing the case for failure of the parties to submit a compromise agreement. In *Goldloop Properties, Inc. v. Court of Appeals*, the Court held that dismissing the action without allowing the parties to present evidence and after ordering them to compromise is tantamount to deprivation of due process, and the "dismissal of an action for failure to submit a compromise agreement, which is not even required by any rule, is definitely a harsh action." The Court likewise held therein that ''the fact that negotiations for a compromise agreement persisted even up to the time of the dismissal of the case strongly demonstrates their earnest efforts to abide by the trial court's order to settle their dispute amicably"; thus, "dismissing an action on account of the failure of the parties to compromise, would be to render nugatory the pronounced policy of the law to encourage compromises, and thus open the floodgates to parties refusing to agree upon an amicable settlement by simply railroading their opposing parties' position, or even defeating the latter's claim by the expedient of an outright dismissal." It is understandable why the trial court in Civil Case No. 5703-R should not have precipitately dismissed the case: petitioner sought a refund of her payments but evidently, Ramo was not willing to pay her. Thus, the

compulsion for Ramo to pay what she owed could only come from the trial court, after trial on the merits is conducted. Indeed, even as Ramo made a judicial admission of her liability to petitioner - that is, in open court on June 22, 2009 - and an extrajudicial admission thereafter - *via* her June 29, 2009 letter which she and her counsel signed - she refuses to pay petitioner what she owes. It is thus clear that Ramo would by all means avoid all efforts at compromising the case in earnest, which should have prompted the court to enter trial and cancel all efforts at settlement, which Ramo used effectively to delay her final reckoning. Even as Ramo's actions patently revealed her intentions, the trial court in Civil Case No. 5703-R did not see through her stratagem.

2. ID.; ID.; THE COURT IS INCLINED TO FOREGO PETITIONER'S FAILURE TO ABIDE BY THE REQUIREMENTS OF THE 1997 RULES REGARDING CERTIFICATIONS AGAINST FORUM-SHOPPING IN FAVOR OF DECIDING THE CASE ON THE BASIS OF MERIT; A RIGID INTERPRETATION OF THE RULES WOULD RESULT IN SUBSTANTIAL INJUSTICE.— For the same reasons, the Court finds that the dismissal of Civil Case No. 7150-R was unwarranted. It is true that while it was incumbent for petitioner to have informed the trial court of Civil Case No. 5703-R and the pending DENR Protest, this Court is inclined to forego petitioner's failure to abide by the requirements of the 1997 Rules regarding certifications against forum-shopping, in favor of deciding the case on the basis of merit, seeing, as the Court does, that a rigid interpretation of the 1997 Rules would result in substantial injustice to petitioner. The circumstances require that substance must prevail over form, keeping in mind, as the Court has held countless times, that procedural rules are mere tools designed to facilitate the attainment of justice; their application should be relaxed when they hinder instead of promote substantial justice. Public policy dictates that court cases should as much as possible be resolved on the merits and not on technicalities. Besides, "the Rules of Civil Procedure on forum shopping are not always applied with inflexibility." More to the point, "the hallowed office and cardinal objective of the Rules [is] to provide, at each possible instance, an expeditious and full resolution of issues involving the respective rights and liabilities of the parties under

substantive law." "[T]he interests of truth and justice are better served where the court, giving due consideration to technical objections, goes deeper into the basic legal merits of the controversy and concentrates itself on the fundamental principles of fairness and square dealing which always outweigh technical considerations."

3. ID.; ID.; A LENIENT STANCE BY THE COURT IS IMPERATIVE AND MORE SIGNIFICANT IN LIGHT OF RESPONDENT'S ADMISSION OF LIABILITY TO PETITIONER.— A lenient stance becomes imperative and more significant in light of respondents' further admission in their Comment. x x x In her pleadings, Ramo admitted and confessed her liability to petitioner: that to this day, she owes petitioner the amount of ₱850,000.00 as a result of the botched sale. A refund of the said amount is what petitioner prays for in the alternative in her Complaint in Civil Case No. 7150-R. At the very least, this is what she is entitled to, including interest and attorney's fees for having been compelled to litigate. The trial court in Civil Case No. 7150-R should appreciate petitioner's cause this much. Indeed, if the trial court felt at any point that the DENR Protest should substantially affect the outcome of the case before it and that it should give deference to the better judgment of the DENR, it could restrict itself to petitioner's alternative prayer for a refund. In arriving at the foregoing conclusions, the Court took into consideration the evidence and Ramo's admissions that while she refuses to honor her obligations under the sale or at least return petitioner's money, she went on to subdivide and transfer or sell the property to other individuals, which is absolutely unfair if not perverse. Apparently, this injustice has been lost on the trial court, having decided the way it did by disregarding the basic facts and adhering to technicalities. Given the foregoing, if justice is to be truly served, the trial court should not have dismissed Civil Case No. 7150-R. Nonetheless, by filing a Protest with the DENR and claiming that Ramo is guilty of fraud and misrepresentation in filing her application for a sales patent, and prodding the DENR to initiate reversion proceedings so that she may apply for, bid, and acquire the property, petitioner is deemed to have admitted that Ramo is not the owner of the subject property, and was not so when the same was sold to her. This being the case, petitioner concedes that her purchase of the property is

illegal as the same belongs to the State; thus, her only recourse is to obtain a refund of what she paid.

APPEARANCES OF COUNSEL

Donna Mae B. Palengaoan-Rosario for petitioner.
Conrado P. Aoanan for BPI Family Savings Bank.
Amado Orden for Catalina Ramo, Sps. Pedro and Sps. Balanag.

D E C I S I O N

DEL CASTILLO, *J.*:

In resolving whether to dismiss a case for violation of the rules covering certifications against forum-shopping, the courts should be mindful of the facts and merits of the case, the extant evidence, the principles of justice, and the rules of fair play. They should not give in to rigidity, indifference, indolence, or lack of depth.

This Petition for Review on *Certiorari*[1] seeks to set aside the July 20, 2010 Order[2] of the Regional Trial Court of Baguio City (Baguio RTC), Branch 6, in Civil Case No. 7150-R, entitled "*Vilma Macedonio, Plaintiff, versus Catalina Ramo, Yolanda S. Marquez, Sps. Roel and Ophelia Pedro, Sps. Joeffry and Eliza Balanag, and BPI Family Savings Bank, Inc., Defendants*," which dismissed Civil Case No. 7150-R with prejudice.

Factual Antecedents

Civil Case No. 5703-R

On January 6, 2004, Vilma Macedonio (petitioner) filed with the Baguio RTC a civil case for recission of contract under Article 1191 of the Civil Code,[3] with damages, against respondent

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[1] *Rollo*, pp. 13-38.

[2] *Id.* at 39-43; penned by Presiding Judge Cleto R. Villacorta III.

[3] Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

Catalina Ramo (Ramo). Docketed as Civil Case No. 5703-R and assigned to Branch 3 of the Baguio RTC, the Complaint[4] alleged that on October 29, 2003, petitioner and Ramo entered into an agreement for the purchase by petitioner of a 240-square meter portion of Ramo's 637-square meter unregistered lot located at Brgy. Sto. Rosario Valley, Baguio City (the subject property); that Ramo assured petitioner that the subject property was free from liens and encumbrances; that of the agreed ₱1,700,000.00 sale price, petitioner paid ₱850,000.00 as earnest money; that a "Deed of Sale with Mortgage to Secure Payment of Price" (October 29, 2003 deed of sale) was executed between the parties, and Ramo handed to a petitioner a copy of the tax declaration covering the property, which indicated that it was subject to several liens and encumbrances, namely a) levy made in relation to a case before Branch 60 of the Baguio RTC and b) mortgage to ARGEM, a lending institution; that Ramo assured petitioner that she would clear the property of liens and encumbrances before petitioner pays the balance of the price on January 3, 2004 as stipulated in the October 29, 2003 deed of sale; that petitioner failed to clear the property of the ARGEM mortgage. Consequently, petitioner prayed that the October 29, 2003 deed of sale be rescinded and that she be awarded ₱850,000.00 actual damages, ₱50,000.00 moral damages, ₱25,000.00 exemplary damages, ₱25,000.00 attorney's fees, and costs.

During the course of the proceedings, the parties mutually agreed to settle. Thus, the trial court set the case for further proceedings on November 11, 2005, but on said date, the parties were unable to submit a compromise agreement. As a result,

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The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, of the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortage Law.

[4] *Rollo*, pp. 70-75.

the trial court in an Order[5] of even date dismissed Civil Case No. 5703-R for failure to prosecute, to wit:

> Although there is a motion reset filed by Atty. Johnico Alim, the parties are supposed to submit to this Court the terms of settlement before this hearing considering this case is already more than a year and they have promised in the last hearing that they will submit their compromise agreement. For failure to comply, this case is hereby dismissed for failure to prosecute.
>
> IT IS SO ORDERED.[6]

Petitioner filed a motion for reconsideration. On June 8, 2006, the trial court issued another Order,[7] stating that –

> Until the parties submit their Compromise Agreement, no incident will be taken up.
>
> IT IS SO ORDERED.[8]

On August 16, 2006, the trial court issued still another Order,[9] as follows:

> Plaintiff is given until the end of this month of August, 2006 in order to substantiate her Motion for Reconsideration, it appearing that she has been given [since] November 24, 2005 up to the present, or for a period of almost NINE (9) MONTHS to do the same.
>
> A resolution will be issued on September 4, 2006.
>
> IT IS SO ORDERED.[10]

The September 4, 2006 hearing did not push through, as petitioner's counsel filed a motion to reset which the trial court granted and reset the case for hearing on October 23, 2006.

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[5] *Id.* at 78; penned by Presiding Judge Fernando Vil Pamintuan.

[6] *Id.*

[7] *Id.* at 81.

[8] *Id.*

[9] *Id.*; Annex "N" of the Petition; no page has been assigned, but the Order is found on the page immediately following page 81.

[10] *Id.*

Meanwhile, it appears that Ramo was able to secure in her name a Sales Patent, and on October 16, 2006, a certificate of title (*Katibayan ng Orihinal na Titulo Blg.* P-3535[11] or OCT P-3535) over the subject property.

The trial court issued yet another Order[12] on October 23, 2006, viz:

> This case is considered terminated.
>
> IT IS SO ORDERED.[13]

In June 2007, Ramo caused the subject property to be subdivided into three lots,[14] which she then transferred to herein respondents, spouses Roel and Ophelia Pedro (the Pedros), Yolanda S. Marquez (Marquez), and spouses Joeffry and Elisa Balanag (the Balanags). The transfer to the Pedros and Marquez were through Acknowledgment Trusts,[15] whereby Ramo admitted that she was not the owner of the lots but merely held them in trust for the true owners – the Pedros and Marquez. On the other hand, the transfer of the remaining lot to the Balanags was through a deed of sale.[16] No part of the subject property was transferred to petitioner.

On February 11, 2008, petitioner filed a Motion[17] praying that the trial court issue an order directing the parties to comply with their oral agreement for Ramo to return petitioner's money – or the ₱850,000.00 advance she made. Ramo opposed the motion, arguing that the subject of the motion has become moot and academic for petitioner's failure to file a motion for reconsideration of the trial court's October 23, 2006 Order,

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[11] *Id.* at 83-84.

[12] *Id.* at 82.

[13] *Id.*

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

[15] *Id.* at 89, 92.

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

[17] *Id.* at 107-109.

and for failure of petitioner to comply with her obligation to pay the balance of the purchase price even after title to the property was presented in court. On the scheduled hearing of the motion, or on March 24, 2008, the trial court issued an Order[18] stating –

> Although this case is already terminated, there is nothing in the law to prevent the lawyers from exhorting their clients to comply with their obligations under an oral settlement.
>
> IT IS SO ORDERED.[19]

On June 22, 2009, it appears that Ramo agreed in open court to pay petitioner and thus settle the case, whereupon the trial court issued an Order,[20] which reads as follows:

> The parties have talked to each other in order for the plaintiff to be paid.
>
> IT IS SO ORDERED.[21]

Thereafter, petitioner received a June 29, 2009 letter[22] signed by Ramo and her counsel, admitting that Ramo received the total amount of ₱850,000.00 as downpayment for the subject property, but proposing to return to petitioner only the amount of ₱255,000.00 within a period of four years, without interest.

In October 2009, petitioner's new counsel filed a Notice of Appearance with Manifestation and Motion[23] informing the court of Ramo's June 29, 2009 letter and offer, petitioner's refusal of the offer, and praying that the case be set for pre-trial since all efforts to settle the issues between the parties failed. Ramo

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[18] *Id.* at 114.

[19] *Id.*

[20] *Id.* at 129.

[21] *Id.*

[22] *Id.* at 130.

[23] *Id.* at 131, unpaginated.

opposed the same manifestation and motion, insisting that the case has been terminated.[24] The trial court did not act on petitioner's manifestation and motion; instead, it issued another Order[25] dated December 7, 2009, to wit:

> Atty. Gregorio F. Buhangin appeared on his Formal Manifestation.
>
> IT IS SO ORDERED.[26]

On February 2, 2010, an Entry of Judgment[27] was issued by the trial court, certifying that the October 23, 2006 Order – which declared that Civil Case No. 5703-R was already terminated – became final and executory on November 17, 2006.

Department of Environment and Natural Resources (DENR) Protest

On December 2, 2009, petitioner filed a written Protest[28] with the office of the Regional Executive Director of the DENR Cordillera Administrative Region, seeking an investigation into Ramo's acquisition of the subject property, and claiming that Ramo's sales patent was issued despite her having committed multiple violations of the law. Petitioner thus prayed for the DENR to 1) nullify Ramo's sales patent as well as the subsequent original certificate of title and its derivative titles issued in the name of the other individual respondents herein, and 2) allow her to bid and acquire the subject property claiming that she possessed the qualifications that would entitle her to become a beneficiary thereof.

It appears that to this date, no action has been taken on the protest.

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

[25] *Id.* at 145.

[26] *Id.*

[27] *Id.* at 160.

[28] *Id.* at 146-159.

Civil Case No. 7150-R

On April 21, 2010, petitioner filed with the Baguio RTC another civil case against respondents for specific performance, annulment of documents and titles, with damages. Docketed as Civil Case No. 7150-R and assigned to Branch 6, petitioner prayed in the Complaint[29] that the trial court: 1) rescind and nullify the trust and sale agreements between Ramo and the other individual respondents; 2) annul the certificates of title issued in favor of the Pedros, Marquez, and the Balanags; 3) annul the mortgage contract subsequently executed by and between the Balanags and respondent BPI Family Savings Bank, Inc. (BPI Family Bank) covering the portion sold to the former; 4) nullify the subdivision plan covering the property as it did not segregate the portion sold to petitioner, and thereafter order that a new subdivision plan be made to segregate the 240 square meters sold to petitioner; 5) in the alternative, rescind petitioner and Ramo's agreements and order a refund of petitioner's payments with interest; 6) award moral and exemplary damages in the total amount of ₱100,000.00, and attorney's fees and litigation expenses in the total amount of ₱100,000.00.

Ramo filed her answer with motion to dismiss the case, claiming that in filing the case, petitioner violated the rule against forum-shopping since there had already been a prior terminated case (Civil Case No. 5703-R) and a pending Protest with the DENR. To this, petitioner filed her comment and opposition, arguing that since Civil Case No. 5703-R was not decided on the merits and no trial was conducted, Civil Case No. 7150-R is not barred.[30]

On July 20, 2010, the trial court issued the assailed Order dismissing Civil Case no. 7150-R with prejudice due to: a) violation of Section 5, Rule 7 of the 1997 Rules of Civil Procedure[31]

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[29] *Id.* at 161-174.

[30] *Id.* at 39-40.

[31] Sec. 5. Certification against forum shopping.

The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting claim for relief, or in a sworn certification

(1997 Rules), that is, for failure to inform the court of the existence of Civil Case No. 5703-R and the DENR Protest; b) forum-shopping; and c) *litis pendentia* under Section 1(e), Rule 16 of the 1997 Rules.[32] The trial court held that petitioner filed multiple cases based on the same cause of action, although with different prayers for relief; that while Civil Case No. 5703-R was for rescission and Civil Case No. 7150-R was for specific performance and annulment of documents and titles, both cases are premised on the same cause of action – Ramo's purported wrongful conduct in connection with the cancelled sale of the subject property; that rescission and specific performance could not be prayed for in two separate cases without violating the rule against splitting a cause of action; and that the pending DENR Protest which seeks to nullify the sales patent and certificates of title issued to Ramo and the other individual respondents is identical to petitioner's cause of action in Civil Case No. 7150-R for annulment of documents and titles.

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annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best if his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[32] Rule 16 – MOTION TO DISMISS

Section 1. Grounds.

x x x x x x x x x

(e) That there is another action pending between the same parties for the same cause;

Petitioner moved to reconsider, but in an August 16, 2010 Order,[33] the trial court stood its ground. Thus, petitioner instituted this direct recourse.

In a July 29, 2013 Resolution,[34] the Court resolved to give due course to the Petition.

Issues

Petitioner raises the following issues coming to this Court:

> The decision of the Honorable Regional Trial Court, Branch 6, Baguio City is sought to be reversed because the said court erred in its outright and undiscerning application of the sanction against forum[-]shopping in dismissing with prejudice the complaint filed by Petitioner. The court erred in ruling that Civil Case No. 5703-R, Civil Case No. 7150-R and the Protest case is (sic) founded on the same cause of action which is not in accord with the law or with the applicable decisions of the Supreme Court.
>
> x x x x x x x x x
>
> CIVIL CASE NO. 5703-R AND CIVIL CASE NO. 7150-R DOES (SIC) NOT INVOLVE THE SAME CAUSE OF ACTION
>
> THE FILING OF CIVIL CASE NO. 7150-R WITH RTC, BRANCH 6 DOES NOT CONSTITUTE FORUM[-]SHOPPING
>
> THE PROTEST CASE FILED BEFORE THE OFFICE OF THE DENR CONSTITUTES DIFFERENT CAUSE OF ACTION THUS *LITIS* [*PENDENTIA*] DOES NOT EXIST[35]

Petitioner's Arguments

In her Petition and Reply,[36] petitioner maintains that the first case – or Civil Case No. 5703-R – cannot bar the filing of the second case – or Civil Case No. 7150-R, because while the first case was terminated, it was not tried on the merits, and

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

[34] *Id.* at 236-237.

[35] *Id.* at 27.

[36] *Id.* at 221-223.

was dismissed solely for failure of the parties to submit their compromise agreement. For this reason, petitioner argues that the dismissal of the first case without prejudice left the parties to freely litigate the matter in the second action as though the first case had not been commenced.[37]

Next, petitioner concedes that while she failed to inform the trial court of the first case and her DENR Protest, it was not her intention to conceal the existence of these cases; she simply believed that the causes of action in the second case and the Protest were different from those in the first. Petitioner adds that the DENR Protest is not a proceeding that bars the second case she filed against Ramo, since it is not a judicial action and it involves a different cause of action, that is, reversion of the property due to Ramo's fraud and misrepresentation in filing her application for a sales patent, which does not affect the causes of action in Civil Case No. 7150-R.

Petitioner thus prays that the assailed dispositions of the trial court be reversed and that the case be remanded for further proceedings and trial on the merits.

Respondent's Arguments

Praying that the Petition be denied, the individual respondents in their Comment[38] plainly echo the assailed disquisition of the trial court, adding that petitioner's claim of good faith, omission, inadvertence or lapse in failing to mention the first case and her DENR protest is irrelevant and could not cure her violation of the 1997 Rules.

Respondent BPI Family Bank, on the other hand, argues in its Comment[39] that petitioner waived and relinquished her rights over the subject property by filing the action for rescission, or Civil Case No. 5703-R; this being the case, petitioner could

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[37] Citing *Spouses Cruz v. Spouses Caraos*, 550 Phil. 98 (2007).

[38] *Rollo*, pp. 182-192.

[39] *Id.* at 211-214.

only recover what she paid Ramo, which leaves Ramo's sale of a portion of the subject property to the Balanags valid and binding. Consequently, the mortgage executed between the Balanags and BPI Family Bank should not be disturbed as well. It adds that assuming petitioner has a cause of action to recover payments made to Ramo, she cannot seek specific performance of their sale agreement; by filing the rescision case first, petitioner waived her rights and is now precluded from resorting to an action for specific performance. Finally, it maintains that the trial court correctly dismissed Civil Case No. 7150-R on the ground of splitting a single cause of action.

Our Ruling

The Court grants the Petition.

The trial court in Civil Case No. 5703-R committed grave abuse of discretion in terminating or dismissing the case for failure of the parties to submit a compromise agreement. In *Goldloop Properties, Inc. v. Court of Appeals*,[40] the Court held that dismissing the action without allowing the parties to present evidence and after ordering them to compromise is tantamount to deprivation of due process, and the "dismissal of an action for failure to submit a compromise agreement, which is not even required by any rule, is definitely a harsh action."[41] The Court likewise held therein that "the fact that negotiations for a compromise agreement persisted even up to the time of the dismissal of the case strongly demonstrates their earnest efforts to abide by the trial court's order to settle their dispute amicably";[42] thus, "dismissing an action on account of the failure of the parties to compromise, would be to render nugatory the pronounced policy of the law to encourage compromises, and thus open the floodgates to parties refusing

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[40] G.R. No. 99431, August 11, 1992, 212 SCRA 498.

[41] *Id.* at 508.

[42] *Id.*

to agree upon an amicable settlement by simply railroading their opposing parties' position, or even defeating the latter's claim by the expedient of an outright dismissal."[43]

It is understandable why the trial court in Civil Case No. 5703-R should not have precipitately dismissed the case: petitioner sought a refund of her payments but evidently, Ramo was not willing to pay her. Thus, the compulsion for Ramo to pay what she owed could only come from the trial court, after trial on the merits is conducted. Indeed, even as Ramo made a judicial admission of her liability to petitioner – that is, in open court on June 22, 2009 – and an extrajudicial admission thereafter – *via* her June 29, 2009 letter which she and her counsel signed – she refuses to pay petitioner what she owes. It is thus clear that Ramo would by all means avoid all efforts at compromising the case in earnest, which should have prompted the court to enter trial and cancel all efforts at settlement, which Ramo used effectively to delay her final reckoning. Even as Ramo's actions patently revealed her intentions, the trial court in Civil Case No. 5703-R did not see through her stratagem.

For the same reasons, the Court finds that the dismissal of Civil Case No. 7150-R was unwarranted. It is true that while it was incumbent for petitioner to have informed the trial court of Civil Case No. 5703-R and the pending DENR Protest, this Court is inclined to forego petitioner's failure to abide by the requirements of the 1997 Rules regarding certifications against forum-shopping, in favor of deciding the case on the basis of merit, seeing, as the Court does, that a rigid interpretation of the 1997 Rules would result in substantial injustice to petitioner. The circumstances require that substance nust prevail over form, keeping in mind, as the Court has held countless times, that procedural rules are mere tools designed to facilitate the attainment of justice; their application should be relaxed when they hinder instead of promote substantial justice. Public policy dictates

[43] *Id.*

that court cases should as much as possible be resolved on the merits and not on technicalities.[44] Besides, "the Rules of Civil Procedure on forum shopping are not always applied with inflexibility."[45]

More to the point, "the hallowed office and cardinal objective of the Rules [is] to provide, at each possible instance, an expeditious and full resolution of issues involving the respective rights and liabilities of the parties under substantive law."[46] [T]he interests of truth and justice are better served where the court, giving due consideration to technical objections, goes deeper into the basic legal merits of the controversy and concentrates itself on the fundamental principles of fairness and square dealing which always outweigh technical considerations."[47]

A lenient stance becomes imperative and more significant in light of respondent's further admission in their Comment, that:

ANTECEDENTS

Respondent CATALINA RAMO was the applicant under a Townsite Sales Application (TSA) with the Department of Environment and Natural Resources-Cordillera Administrative Region (DENR-CAR) for the award of a 637 square meters [sic] lot at Res. Sec. "A", Baguio City.

On November 29, 2003, before an award from the DENR-CAR was issued, **she sold a portion of said land in the area of 240 square meters to Petitioner Vilma Macedonio for the sum of ₱1,700,000.00 paying a partial amount of ₱850,000.00.**

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[44] *Mid-Islands Power Generation Corporation v. Court of Appeals*, G.R. No. 189191, February 29, 2012, 667 SCRA 342, 354-355; *Aneco Realty and Development Corporation v. Landex Development Corporation*, 582 Phil. 183, 193 (2008); *Peñoso v. Dona*, 549 Phil. 39, 46-47 (2007); *Metro Rail Transit Corporation v. Court of Tax Appeals*, 507 Phil. 539, 543-545 (2005); *Al-Amanah Islamic Investment Bank of the Philippines v. Celebrity Travels and Tours, Inc.*, 479 Phil. 1041, 1052 (2004).

[45] *London v. Baguio Country Club Corporation*, 439 Phil. 487, 492 (2002).

[46] *Spouses Valenzuela v. Court of Appeals*, 416 Phil. 289, 300 (2001).

[47] *People v. Fuentebella*, 188 Phil. 647, 659-660 (1980).

The transaction between them was not consummated and for which reason, the Petitioner filed several cases against Respondent Catalina Ramo.[48] (Emphasis supplied)

In her pleadings, Ramo admitted and confessed her liability to petitioner: that to this day, she owes petitioner the amount of ₱850,000.00 as a result of the botched sale. A refund of the said amount is what petitioner prays for in the alternative in her Complaint in Civil Case No. 7150-R. At the very least, this is what she is entitled to, including interest and attorney's fees for having been compelled to litigate. The trial court in Civil Case No. 7150-R should appreciate petitioner's cause this much. Indeed, if the trial court felt at any point that the DENR Protest should substantially affect the outcome of the case before it and that it should give deference to the better judgment of the DENR, it could restrict itself to petitioner's alternative prayer for a refund.

In arriving at the foregoing conclusions, the Court took into consideration the evidence and Ramo's admissions that while she refuses to honor her obligations under the sale or at least return petitioner's money, she went on to subdivide and transfer or sell the property to other individuals, which is absolutely unfair if not perverse. Apparently, this injustice has been lost on the trial court, having decided the way it did by disregarding the basic facts and adhering to technicalities.

Given the foregoing, if justice is to be truly served, the trial court should not have dismissed Civil Case No. 7150-R.

Nonetheless, by filing a Protest with the DENR and claiming that Ramo is guilty of fraud and misrepresentation in filing her application for a sales patent, and prodding the DENR to initiate reversion proceedings so that she may apply for, bid, and acquire the property, petitioner is deemed to have admitted that Ramo is not the owner of the subject property, and was not so when the same was sold to her. This being the case, petitioner concedes that her purchase of the property is illegal as the same belongs

[48] *Rollo*, pp. 182-183.

to the State; thus, her only recourse is to obtain a refund of what she paid.

WHEREFORE, the Petition is **GRANTED**. Judgment is hereby rendered as follows:

1. The assailed July 20, 2010 and August 16, 2010 Orders of the Regional Trial Court of Baguio City, Branch 6, in Civil Case No. 7150-R are **SET ASIDE**;

2. The Regional Trial Court of Baguio City, Branch 6, is **ORDERED** to continue with the proceedings in Civil Case No. 7150-R.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 199687. March 24, 2014]

PACIFIC REHOUSE CORPORATION, *petitioner, vs.* **COURT OF APPEALS and EXPORT AND INDUSTRY BANK, INC.,** *respondents.*

[G.R. No. 201537. March 24, 2014]

PACIFIC REHOUSE CORPORATION, PACIFIC CONCORDE CORPORATION, MIZPAH HOLDINGS, INC., FORUM HOLDINGS CORPORATION and EAST ASIA OIL COMPANY, *petitioners, vs.* **EXPORT AND INDUSTRY BANK, INC.,** *respondent.*

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[*] Per Special Order No. 1650 dated March 13, 2014.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; COURTS WILL NOT DETERMINE QUESTIONS THAT HAVE BECOME MOOT AND ACADEMIC BECAUSE THERE IS NO LONGER ANY JUSTICIABLE CONTROVERSY TO SPEAK OF.— We hold that the opposition to the CA resolutions is already nugatory because the CA has already rendered its Decision on April 16, 2012, which disposed of the substantial merits of the case. Consequently, the petitioners' concern that the Special Division of Five should have been created to resolve cases on the merits has already been addressed by the rendition of the CA Decision dated April 16, 2012. "It is well-settled that courts will not determine questions that have become moot and academic because there is no longer any justiciable controversy to speak of. 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 such cases, there is no actual substantial relief to which the petitioners would be entitled to and which would be negated by the dismissal of the petition. Thus, it would be futile and pointless to address the issue in **G.R. No. 199687** as this has become moot and academic. The petitioners bewail that the certified true copy of the CA Decision dated April 26, 2012 along with its Certification at the bottom portion were not signed by the Chairperson of the Special Division of Five; thus, it is not binding upon the parties. The petitioners quoted this Court's pronouncement in *Limkaichong v. Commission on Elections*, that a decision must not only be signed by the Justices who took part in the deliberation, but must also be promulgated to be considered a Decision. A cursory glance on a copy of the signature page of the decision attached to the records would show that, indeed, the same was not signed by CA Associate Justice Magdangal M. De Leon. However, it must be noted that the CA, on May 7, 2012, issued a Resolution explaining that due to inadvertence, copies of the decision not bearing the signature of the Chairperson were sent to the parties on the same day of promulgation. The CA directed the Division Clerk of Court to furnish the parties with copies of the signature page with the Chairperson's signature. Consequently, as the

mistake was immediately clarified and remedied by the CA, the lack of the Chairperson's signature on the copies sent to the parties has already become a non-issue.

2. ID; ID.; JURISDICTION OVER THE PARTIES; A CORPORATION NOT IMPLEADED IN A SUIT CANNOT BE SUBJECT TO THE COURT'S PROCESS OF PIERCING THE VEIL OF ITS CORPORATE FICTION.— The Court already ruled in *Kukan International Corporation v. Reyes* that compliance with the recognized modes of acquisition of jurisdiction cannot be dispensed with even in piercing the veil of corporate fiction, to wit: The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, **a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction**. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process.

3. ID.; ID.; ID.; JURISDICTION OVER THE DEFENDANTS, HOW ACQUIRED; AS EXPORT BANK WAS NEITHER SERVED WITH SUMMONS, NOR HAS IT VOLUNTARILY APPEARED BEFORE THE COURT, THE JUDGEMENT SOUGHT TO BE ENFORCED AGAINST E-SECURITIES CANNOT BE MADE AGAINST ITS PARENT COMPANY, EXPORT BANK.— "Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, 'any judgment of the court which has no jurisdiction over the person of the defendant is null and void.'" "The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process." As Export Bank was neither served with summons, nor has it voluntarily appeared before the court, the judgment sought to be enforced against

E-Securities cannot be made against its parent company, Export Bank. Export Bank has consistently disputed the RTC jurisdiction, commencing from its filing of an Omnibus Motion by way of special appearance during the execution stage until the filing of its Comment before the Court wherein it was pleaded that "RTC [of] Makati[, Branch] 66 never acquired jurisdiction over Export [B]ank. Export [B]ank was not pleaded as a party in this case. It was never served with summons by nor did it voluntarily appear before RTC [of] Makati[, Branch] 66 so as to be subjected to the latter's jurisdiction."

4. ID.; ID.; ID.; ID.; ID.; THE RULINGS OF THE COURT IN *VIOLAGO* AND *ARCILLA* IS NOT APPLICABLE IN CASE AT BAR.— In dispensing with the requirement of service of summons or voluntary appearance of Export Bank, the RTC applied the cases of *Violago* and *Arcilla*. The RTC concluded that in these cases, the Court decided that the doctrine of piercing the veil of corporate personality can be applied even when one of the affected parties has not been brought to the Court as a party. A closer perusal on the rulings of this Court in *Violago* and *Arcilla*, however, reveals that the RTC misinterpreted the doctrines on these cases. We agree with the CA that these cases are not congruent to the case at bar. The disparity between the instant case and those of *Violago* and *Arcilla* is that in said cases, although the corporations were not impleaded as defendant, the persons made liable in the end were already parties thereto since the inception of the main case. Consequently, it cannot be said that the Court had, in the absence of fraud and/or bad faith, applied the doctrine of piercing the veil of corporate fiction to make a non-party liable. In short, liabilities attached only to those who are parties. None of the non-party corporations (VMSC and CMRI) were made liable for the judgment award against Avelino and Arcilla.

5. MERCANTILE LAW; CORPORATION CODE; PIERCING THE VEIL OF CORPORATE FICTION; ALTER EGO DOCTRINE; ELEMENTS; ALL THREE ELEMENTS SHOULD CONCUR FOR THE ALTER EGO DOCTRINE TO BE APPLICABLE.— The Court has laid down a three-pronged control test to establish when the alter ego doctrine should be operative: (1) Control, not mere majority or complete stock control, but complete domination, not only of finances

but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and (3) The aforesaid control and breach of duty must [have] proximately caused the injury or unjust loss complained of. The absence of any one of these elements prevents 'piercing the corporate veil' in applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not form, with how the corporation operated and the individual defendant's relationship to that operation. Hence, all three elements should concur for the alter ego doctrine to be applicable.

6. ID.; ID.; ID.; ID.; ID.; THERE MUST BE A PERPETUATION OF FRAUD BEHIND THE CONTROL OR AT LEAST A FRAUDULENT OR ILLEGAL PURPOSE BEHIND THE CONTROL IN ORDER TO JUSTIFY PIERCING THE VEIL OF CORPORATE FICTION; SUCH FRAUDULENT INTENT IS LACKING IN CASE AT BAR.— All the circumstances in case at bar, with the exception of the admitted stock ownership, were however not properly pleaded and proved in accordance with the Rules of Court. These were merely raised by the petitioners for the first time in their Motion for Issuance of an *Alias* Writ of Execution and Reply, which the Court cannot consider. "Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved." Albeit the RTC bore emphasis on the alleged control exercised by Export Bank upon its subsidiary E-Securities, "[c]ontrol, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case." Moreover, there was nothing on record demonstrative of Export Bank's wrongful intent in setting

up a subsidiary, E-Securities. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business. To justify treating the sole stockholder or holding company as responsible, it is not enough that the subsidiary is so organized and controlled as to make it "merely an instrumentality, conduit or adjunct" of its stockholders. It must further appear that to recognize their separate entities would aid in the consummation of a wrong. As established in the main case and reiterated by the CA, the subject 32,180,000 DMCI shares which E-Securities is obliged to return to the petitioners were originally bought at an average price of ₱0.38 per share and were sold for an average price of ₱0.24 per share. The proceeds were then used to buy back 61,100,000 KPP shares earlier sold by E-Securities. Quite unexpectedly however, the total amount of these DMCI shares ballooned to ₱1,465,799,000.00. It must be taken into account that this unexpected turnabout did not inure to the benefit of E-Securities, much less Export Bank. Furthermore, ownership by Export Bank of a great majority or all of stocks of E-Securities and the existence of interlocking directorates may serve as badges of control, but ownership of another corporation, *per se*, without proof of actuality of the other conditions are insufficient to establish an alter ego relationship or connection between the two corporations, which will justify the setting aside of the cover of corporate fiction. The Court has declared that "mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality." The Court has likewise ruled that the "existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations."

7. ID.; ID.; ID.; ID.; COURTS MUST BE CERTAIN THAT THE CORPORATE FICTION WAS MISUSED TO SUCH AN EXTENT THAT INJUSTICE, FRAUD, OR CRIME WAS COMMITTED AGAINST ANOTHER, IN DISREGARD OF ITS RIGHTS; THE WRONGDOING MUST BE CLEARLY AND CONVINCINGLY ESTABLISHED AND CANNOT BE

PRESUMED.— While the courts have been granted the colossal authority to wield the sword which pierces through the veil of corporate fiction, concomitant to the exercise of this power, is the responsibility to uphold the doctrine of separate entity, when rightly so; as it has for so long encouraged businessmen to enter into economic endeavors fraught with risks and where only a few dared to venture. Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.

APPEARANCES OF COUNSEL

Mutia Trinidad & Pantanosas Law Offices for petitioners.
Fortun Narvasa & Salazar for Export and Industry Bank, Inc.

D E C I S I O N

REYES, *J.*:

On the scales of justice precariously lie the right of a prevailing party to his victor's cup, no more, no less; and the right of a separate entity from being dragged by the ball and chain of the vanquished party.

The facts of this case as garnered from the Decision[1] dated April 26, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 120979 are as follows:

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[1] Penned by Associate Justice Mario V. Lopez, with Associate Justice Amy C. Lazaro-Javier, concurring; Associate Justice Vicente S.E. Veloso penned a Separate Concurring Opinion. Associate Justices Magdangal M. De Leon and Socorro B. Inting penned a Dissenting Opinion; *rollo* (G.R. No. 201537), pp. 47-68.

We trace the roots of this case to a complaint instituted with the Makati City Regional Trial Court (RTC), Branch 66, against EIB Securities Inc. (E-Securities) for unauthorized sale of 32,180,000 DMCI shares of private respondents Pacific Rehouse Corporation, Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation, and East Asia Oil Company, Inc. In its October 18, 2005 Resolution, the RTC rendered judgment on the pleadings. The *fallo* reads:

> WHEREFORE, premises considered, judgment is hereby rendered directing the defendant [E-Securities] **to return the plaintiffs'** [private respondents herein] **32,180,000 DMCI shares**, as of judicial demand.
>
> On the other hand, plaintiffs are directed to reimburse the defendant the amount of [₱]10,942,200.00, representing the buy back price of the 60,790,000 KPP shares of stocks at [₱]0.18 per share.
>
> SO ORDERED. x x x

The Resolution was ultimately affirmed by the Supreme Court and attained finality.

When the Writ of Execution was returned unsatisfied, private respondents moved for the issuance of an *alias* writ of execution to hold Export and Industry Bank, Inc. liable for the judgment obligation as E-Securities is "*a wholly-owned controlled and dominated subsidiary of Export and Industry Bank, Inc., and is[,] thus[,] a mere alter ego and business conduit of the latter*. E-Securities opposed the motion[,] arguing that it has a corporate personality that is separate and distinct from petitioner. On July 27, 2011, private respondents filed their (1) Reply attaching for the first time a sworn statement executed by Atty. Ramon F. Aviado, Jr., the former corporate secretary of petitioner and E-Securities, to support their alter ego theory; and (2) *Ex-Parte* Manifestation alleging service of copies of the Writ of Execution and Motion for *Alias* Writ of Execution on petitioner.

On July 29, 2011, the RTC concluded that E-Securities is a mere business conduit or alter ego of petitioner, the dominant parent corporation, which justifies piercing of the veil of corporate fiction. The trial court brushed aside E-Securities' claim of denial of due process on petitioner as "*xxx case records show that notices regarding these proceedings had been tendered to the latter, which*

refused to even receive them. Clearly, [petitioner] had been sufficiently put on notice and afforded the chance to give its side[,] yet[,] it chose not to." Thus, the RTC disposed as follows:

> WHEREFORE, xxx,
>
> Let an *Alias* Writ of Execution be issued relative to the above-entitled case and pursuant to the RESOLUTION dated October 18, 2005 and to this Order directing defendant EIB Securities, Inc., and/or **Export and Industry Bank, Inc.**, to fully comply therewith.
>
> The Branch Sheriff of this Court is directed to cause the immediate implementation of the given *alias* writ in accordance with the Order of Execution to be issued anew by the Branch Clerk of Court.
>
> SO ORDERED. x x x

With this development, petitioner filed an Omnibus Motion (*Ex Abundanti Cautela*) questioning the *alias* writ because it was not impleaded as a party to the case. The RTC denied the motion in its Order dated August 26, 2011 and directed the garnishment of ₱1,465,799,000.00, the total amount of the 32,180,000 DMCI shares at ₱45.55 per share, against petitioner and/or E-Securities.[2] x x x. (Citations omitted)

The Regional Trial Court (RTC) ratiocinated that being one and the same entity in the eyes of the law, the service of summons upon EIB Securities, Inc. (E-Securities) has bestowed jurisdiction over both the parent and wholly-owned subsidiary.[3] The RTC cited the cases of *Sps. Violago v. BA Finance Corp. et al.*[4] and *Arcilla v. Court of Appeals*[5] where the doctrine of piercing the veil of corporate fiction was applied notwithstanding that the affected corporation was not brought to the court as a party. Thus, the RTC held in its Order[6] dated August 26, 2011:

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[2] *Id.* at 48-50.

[3] *Id.* at 230.

[4] 581 Phil. 62 (2008).

[5] G.R. No. 89804, October 23, 1992, 215 SCRA 120.

[6] *Rollo* (G.R. No. 201537), pp. 329-231.

WHEREFORE, premises considered, the Motion for Reconsideration with Motion to Inhibit filed by defendant EIB Securities, Inc. is denied for lack of merit. The Omnibus Motion *Ex Abundanti C[au]tela* is likewise denied for lack of merit.

Pursuant to Rule 39, Section 10 (a) of the Rules of Court, the Branch Clerk of Court or the Branch Sheriff of this Court is hereby directed to acquire 32,180,000 DMCI shares of stock from the Philippine Stock Exchange at the cost of EIB Securities, Inc. and Export and Industry Bank[,] Inc. and to deliver the same to the plaintiffs pursuant to this Court's Resolution dated October 18, 2005.

To implement this Order, let GARNISHMENT issue against ALL THOSE HOLDING MONEYS, PROPERTIES OF ANY AND ALL KINDS, REAL OR PERSONAL BELONGING TO OR OWNED BY DEFENDANT EIB SECURITIES, INC. AND/OR EXPORT AND INDUSTRY BANK[,] INC., [sic] in such amount as may be sufficient to acquire 32,180,000 DMCI shares of stock to the Philippine Stock Exchange, based on the closing price of Php45.55 per share of DMCI shares as of August 1, 2011, the date of the issuance of the *Alias* Writ of Execution, or the total amount of PhP1,465,799,000.00.

SO ORDERED.[7]

CA-G.R. SP No. 120979

Export and Industry Bank, Inc. (Export Bank) filed before the CA a petition for *certiorari* with prayer for the issuance of a temporary restraining order (TRO)[8] seeking the nullification of the RTC Order dated August 26, 2011 for having been made with grave abuse of discretion amounting to lack or excess of jurisdiction. In its petition, Export Bank made reference to several rulings[9] of the Court upholding the separate and distinct personality of a corporation.

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[7] *Id*. at 231.

[8] *Id*. at 232-269.

[9] *Filmerco Commercial Co., Inc. v. Intermediate Appellate Court*, 233 Phil. 197 (1987); *Padilla v. CA*, 421 Phil. 883 (2001); *Kukan International Corporation v. Reyes*, G.R. No. 182729, September 29, 2010, 631 SCRA 596.

In a Resolution[10] dated September 2, 2011, the CA issued a 60-day TRO enjoining the execution of the Orders of the RTC dated July 29, 2011 and August 26, 2011, which granted the issuance of an *alias* writ of execution and ordered the garnishment of the properties of E-Securities and/or Export Bank. The CA also set a hearing to determine the necessity of issuing a writ of injunction, *viz*:

> Considering the amount ordered to be garnished from petitioner Export and Industry Bank, Inc. and the fiduciary duty of the banking institution to the public, there is grave and irreparable injury that may be caused to [Export Bank] if the assailed Orders are immediately implemented. We thus resolve to **GRANT** the Temporary Restraining Order effective for a period of sixty (60) days from notice, restraining/enjoining the Sheriff of the Regional Trial Court of Makati City or his deputies, agents, representatives or any person acting in their behalf from executing the July 29, 2011 and August 26, 2011 Orders. [Export Bank] is **DIRECTED** to **POST** a bond in the sum of fifty million pesos (₱50,000,000.00) within ten (10) days from notice, to answer for any damage which private respondents may suffer by reason of this Temporary Restraining Order; otherwise, the same shall automatically become ineffective.
>
> Let the **HEARING** be set on September 27, 2011 at 2:00 in the afternoon at the Paras Hall, Main Building, Court of Appeals, to determine the necessity of issuing a writ of preliminary injunction. The Division Clerk of Court is **DIRECTED** to notify the parties and their counsel with dispatch.
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> x x x x x x x x x
>
> **SO ORDERED**.[11]

Pacific Rehouse Corporation (Pacific Rehouse), Pacific Concorde Corporation, Mizpah Holdings, Inc., Forum Holdings Corporation and East Asia Oil Company, Inc. (petitioners) filed their Comment[12] to Export Bank's petition and proffered that

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[10] *Rollo* (G.R. No. 201537), pp. 271-272.

[11] *Id.* at 272.

[12] *Id.* at 334-362.

the cases mentioned by Export Bank are inapplicable owing to their clearly different factual antecedents. The petitioners alleged that unlike the other cases, there are circumstances peculiar only to E-Securities and Export Bank such as: 499,995 out of 500,000 outstanding shares of stocks of E-Securities are owned by Export Bank;[13] Export Bank had actual knowledge of the subject matter of litigation as the lawyers who represented E-Securities are also lawyers of Export Bank.[14] As an alter ego, there is no need for a finding of fraud or illegality before the doctrine of piercing the veil of corporate fiction can be applied.[15]

After oral arguments before the CA, the parties were directed to file their respective memoranda.[16]

On October 25, 2011, the CA issued a Resolution,[17] granting Export Bank's application for the issuance of a writ of preliminary injunction, *viz*:

WHEREFORE, finding [Export Bank's] application for the ancillary injunctive relief to be meritorious, and it further appearing that there is urgency and necessity in restraining the same, a Writ of Preliminary Injunction is hereby **GRANTED** and **ISSUED** against the Sheriff of the Regional Trial Court of Makati City, Branch 66, or his deputies, agents, representatives or any person acting in their behalf from executing the July 29, 2011 and August 26, 2011 Orders. Public respondents are ordered to CEASE and DESIST from enforcing and implementing the subject orders until further notice from this Court.[18]

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[13] *Id*. at 352.

[14] *Id*. at 353.

[15] *Id*. at 355.

[16] *See* Petitioners' Memorandum, *id*. at 405-435; *See* Export Bank's Memorandum, *id*. at 436-451.

[17] Penned by Associate Justice Mario V. Lopez, with Associate Justice Magdangal M. De Leon, concurring; Associate Justice Socorro B. Inting was on official leave; *id.* at 453-455. *See* also *rollo* (G.R. No. 199687), pp. 27-29.

[18] *Rollo* (G.R. No. 201537), p. 454; *rollo*, (G.R. No. 199687), p. 28.

The petitioners filed a Manifestation[19] and Supplemental Manifestation[20] challenging the above-quoted CA resolution for lack of concurrence of Associate Justice Socorro B. Inting (Justice Inting), who was then on official leave.

On December 22, 2011, the CA, through a Special Division of Five, issued another Resolution,[21] which reiterated the Resolution dated October 25, 2011 granting the issuance of a writ of preliminary injunction.

On January 2, 2012, one of the petitioners herein, Pacific Rehouse filed before the Court a petition for *certiorari*[22] under Rule 65, docketed as **G.R. No. 199687**, demonstrating its objection to the Resolutions dated October 25, 2011 and December 22, 2011 of the CA.

On April 26, 2012, the CA rendered the assailed Decision[23] on the merits of the case, granting Export Bank's petition. The CA disposed of the case in this wise:

We **GRANT** the petition. The Orders dated July 29, 2011 and August 26, 2011 of the Makati City Regional Trial Court, Branch 66, insofar as [Export Bank] is concerned, are **NULLIFIED**. The Writ of Preliminary Injunction (WPI) is rendered **PERMANENT**.

SO ORDERED.[24]

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[19] *Rollo* (G.R. No. 201537), pp. 487-490.

[20] *Id.* at 491-493.

[21] Penned by Associate Justice Mario V. Lopez, with Associate Justices Magdangal M. De Leon and Amy C. Lazaro-Javier, concurring; Associate Justice Socorro B. Inting penned a Dissenting Opinion with Associate Justice Vicente S.E. Veloso, concurring; *id.* at 495-497. *See* also *rollo* (G.R. No. 199687), pp. 31-33.

[22] *Rollo* (G.R. No. 199687), pp. 3-23.

[23] Penned by Associate Justice Mario V. Lopez, with Associate Justice Amy C. Lazaro-Javier, concurring; Associate Justice Vicente S.E. Veloso penned a Separate Concurring Opinion. Associate Justice Magdangal M. De Leon and Socorro B. Inting penned a Dissenting Opinion; *rollo* (G.R. No. 201537), pp. 47-68.

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

The CA explained that the alter ego theory cannot be sustained because ownership of a subsidiary by the parent company is not enough justification to pierce the veil of corporate fiction. There must be proof, apart from mere ownership, that Export Bank exploited or misused the corporate fiction of E-Securities. The existence of interlocking incorporators, directors and officers between the two corporations is not a conclusive indication that they are one and the same.[25] The records also do not show that Export Bank has complete control over the business policies, affairs and/or transactions of E-Securities. It was solely E-Securities that contracted the obligation in furtherance of its legitimate corporate purpose; thus, any fall out must be confined within its limited liability.[26]

The petitioners, without filing a motion for reconsideration, filed a Petition for Review[27] under Rule 45 docketed as **G.R. No. 201537**,[28] impugning the Decision dated April 26, 2012 of the CA.

Considering that **G.R. Nos. 199687** and **201537** originated from the same set of facts, involved the same parties and raised intertwined issues, the cases were then consolidated per Resolution dated September 26, 2012, for a thorough discussion of the merits of the case.

Issues

In précis, the issues for resolution of this Court are the following:

In **G.R. No. 199687**,

WHETHER THE CA COMMITTED GRAVE ABUSE OF DISCRETION IN GRANTING EXPORT BANK'S APPLICATION FOR THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.

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[25] *Id*. at 59-60.

[26] *Id*. at 61.

[27] *Id*. at 3-43.

[28] Raffled to a Member of the Court belonging to the Second Division. In a Minute Resolution dated September 5, 2012, the petition was denied for the petitioner's failure to show reversible error with the CA Decision.

In **G.R. No. 201537,**

I.

WHETHER THE CA COMMITTED A REVERSIBLE ERROR IN RULING THAT EXPORT BANK MAY NOT BE HELD LIABLE FOR A FINAL AND EXECUTORY JUDGMENT AGAINST E-SECURITIES IN AN *ALIAS* WRIT OF EXECUTION BY PIERCING ITS VEIL OF CORPORATE FICTION; and

II.

WHETHER THE CA COMMITTED A REVERSIBLE ERROR IN RULING THAT THE ALTER EGO DOCTRINE IS NOT APPLICABLE.

Ruling of the Court

G.R. No. 199687

The Resolution dated October 25, 2011 was initially challenged by the petitioners in its Manifestation[29] and Supplemental Manifestation[30] due to the lack of concurrence of Justice Inting, which according to the petitioners rendered the aforesaid resolution null and void.

To the petitioners' mind, Section 5, Rule VI of the Internal Rules of the CA (IRCA)[31] requires the submission of the resolution granting an application for TRO or preliminary injunction to the absent Justice/s when they report back to work for ratification, modification or recall, such that when the absent Justice/s do not agree with the issuance of the TRO or preliminary injunction, the resolution is recalled and without

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[29] *Id.* at 487-490.

[30] *Id.* at 491-493.

[31] Sec. 5. *Action by a Justice***.** – All members of the Division shall act upon an application for temporary restraining order and preliminary injunction. However, if the matter is of extreme urgency and a Justice is absent, the two other justices shall act upon the application. If only the *ponente* is present, then he/she shall act alone upon the application. The action of the two Justices or of the *ponente* shall, however, be submitted on the next working day to the absent member or members of the Division for ratification, modification or recall.

force and effect.[32] Since the resolution which granted the application for preliminary injunction appears short of the required number of consensus, owing to the absence of Justice Inting's signature, the petitioners contest the validity of said resolution.

The petitioners also impugn the CA Resolution dated December 22, 2011 rendered by the Special Division of Five. The petitioners maintain that pursuant to Batas Pambansa Bilang 129[33] and the IRCA,[34] such division is created *only* when the

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[32] *Rollo* (G.R. No. 199687), pp. 15-16.

[33] Batas Pambansa Bilang 129, as amended by Executive Order No. 33

Section 6. Section 11 of the same Act is hereby amended to read as follows:

"Sec. 11. Quorum. A majority of the actual members of the Court shall constitute a quorum for its session *en banc*. Three members shall constitute a quorum for the sessions of a division. The unanimous vote of the three members of a division shall be necessary for the pronouncement of a decision or final resolution, which shall be reached in consultation before the writing of the opinion by any member of the division. In the event that the three members do not reach a unanimous vote, the Presiding Justice shall request the Raffle Committee of the Court for the designation of two additional Justices to sit temporarily with them, forming a special division of five members and the concurrence of a majority of such division shall be necessary for the pronouncement of a decision or final resolution. The designation of such additional Justices shall be made strictly by raffle.

A motion for reconsideration of its decision or final resolution shall be resolved by the Court within ninety (90) days from the time it is submitted for resolution, and no second motion for reconsideration from the same party shall be entertained."

[34] Rule VI, Section 10. *Procedure in Case of Dissent.* – When the unanimous vote of the members of the Division cannot be attained, the following shall be observed:

(a) Within five (5) working days from the date of deliberation, the Chairperson of the Division shall refer the case in writing, together with the *rollo*, to the Raffle Committee which shall designate two (2) Justices by raffle from among the Justices in the same station to sit temporarily with the three members, forming a Special Division of Five.

A written dissenting opinion shall be submitted by a Justice to the *ponente* and the other members of the Special Division of Five within ten (10) working days from his/her receipt of the records.

If no written dissenting opinion is submitted within the period above-stated, with no additional period being agreed upon by majority of said Division, that

three members of a division cannot reach a unanimous vote in deciding a case on the merits.[35] Furthermore, for petitioner Pacific Rehouse, this Resolution is likewise infirm because the purpose of the formation of the Special Division of Five is to decide the case on the merits and not to grant Export Bank's application for a writ of preliminary injunction.[36]

We hold that the opposition to the CA resolutions is already nugatory because the CA has already rendered its Decision on April 16, 2012, which disposed of the substantial merits of the case. Consequently, the petitioners' concern that the Special Division of Five should have been created to resolve cases on the merits has already been addressed by the rendition of the CA Decision dated April 16, 2012.

"It is well-settled that courts will not determine questions that have become moot and academic because there is no longer any justiciable controversy to speak of. The judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced."[37] In such cases, there is no actual substantial relief to which the petitioners would be entitled to and which would be negated by the dismissal of the petition.[38] Thus, it would be futile and pointless to address the issue in **G.R. No. 199687** as this has become moot and academic.

Special Division shall be automatically abolished and the case shall revert to the regular Division as if no dissent has been made.

(b) The Special Division of Five shall retain the case until its final disposition regardless of reorganization, provided that all the members thereof remain in the same station. (Sec. 4, Rule 8, RIRCA [a])

x x x x x x x x x

[35] *Rollo* (G.R. No. 199687), p. 14.

[36] *Id.* at 15.

[37] *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, 597 (2007).

[38] *Soriano Vda. De Dabao v. Court of Appeals*, 469 Phil. 928, 937 (2004).

G.R. No. 201537

The petitioners bewail that the certified true copy of the CA Decision dated April 26, 2012 along with its Certification at the bottom portion were not signed by the Chairperson[39] of the Special Division of Five; thus, it is not binding upon the parties.[40] The petitioners quoted this Court's pronouncement in *Limkaichong v. Commission on Elections*,[41] that a decision must not only be signed by the Justices who took part in the deliberation, but must also be promulgated to be considered a Decision.[42]

A cursory glance on a copy of the signature page[43] of the decision attached to the records would show that, indeed, the same was not signed by CA Associate Justice Magdangal M. De Leon. However, it must be noted that the CA, on May 7, 2012, issued a Resolution[44] explaining that due to inadvertence, copies of the decision not bearing the signature of the Chairperson were sent to the parties on the same day of promulgation. The CA directed the Division Clerk of Court to furnish the parties with copies of the signature page with the Chairperson's signature. Consequently, as the mistake was immediately clarified and remedied by the CA, the lack of the Chairperson's signature on the copies sent to the parties has already become a non-issue.

It must be emphasized that the instant cases sprang from *Pacific Rehouse Corporation v. EIB Securities, Inc.*[45] which was decided by this Court last October 13, 2010. Significantly, Export Bank was not impleaded in said case but was unexpectedly included during the execution stage, in addition to E-Securities,

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[39] CA Associate Justice Magdangal M. De Leon.

[40] *Rollo* (G.R. No. 201537), p. 18.

[41] G.R. Nos. 178831-32, July 30, 2009, 594 SCRA 434.

[42] *Id*. at 447-448; *rollo* (G.R. No. 201537), pp. 18-19.

[43] *Rollo* (G.R. No. 201537), p. 68.

[44] *Id*. at 810-811.

[45] G.R. No. 184036, October 13, 2010, 633 SCRA 214.

against whom the writ of execution may be enforced in the Order[46] dated July 29, 2011 of the RTC. In including Export Bank, the RTC considered E-Securities as a mere business conduit of Export Bank.[47] Thus, one of the arguments interposed by the latter in its Opposition[48] that it was never impleaded as a defendant was simply set aside.

This action by the RTC begs the question: may the RTC enforce the *alias* writ of execution against Export Bank?

The question posed before us is not novel.

The Court already ruled in *Kukan International Corporation v. Reyes*[49] that compliance with the recognized modes of acquisition of jurisdiction cannot be dispensed with even in piercing the veil of corporate fiction, to wit:

> The principle of piercing the veil of corporate fiction, and the resulting treatment of two related corporations as one and the same juridical person with respect to a given transaction, is basically applied only to determine established liability; it is not available to confer on the court a jurisdiction it has not acquired, in the first place, over a party not impleaded in a case. Elsewise put, **a corporation not impleaded in a suit cannot be subject to the court's process of piercing the veil of its corporate fiction**. In that situation, the court has not acquired jurisdiction over the corporation and, hence, any proceedings taken against that corporation and its property would infringe on its right to due process. Aguedo Agbayani, a recognized authority on Commercial Law, stated as much:
>
> "23. Piercing the veil of corporate entity applies to determination of liability not of jurisdiction. x x x
>
> **This is so because the doctrine of piercing the veil of corporate fiction comes to play only during the trial of the case after the court has already acquired jurisdiction over the corporation.** Hence, before this doctrine can be

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[46] *Rollo* (G.R. No. 201537), pp. 170-172.

[47] *Id.* at 171.

[48] *Id.* at 137-156.

[49] *Supra* note 9.

> applied, based on the evidence presented, it is imperative that the court must first have jurisdiction over the corporation. x x x"[50] (Citations omitted)

From the preceding, it is therefore correct to say that the court must first and foremost acquire jurisdiction over the parties; and only then would the parties be allowed to present evidence for and/or against piercing the veil of corporate fiction. If the court has no jurisdiction over the corporation, it follows that the court has no business in piercing its veil of corporate fiction because such action offends the corporation's right to due process.

"Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. When the defendant does not voluntarily submit to the court's jurisdiction or when there is no valid service of summons, 'any judgment of the court which has no jurisdiction over the person of the defendant is null and void.'"[51] "The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process."[52]

As Export Bank was neither served with summons, nor has it voluntarily appeared before the court, the judgment sought to be enforced against E-Securities cannot be made against its parent company, Export Bank. Export Bank has consistently disputed the RTC jurisdiction, commencing from its filing of an Omnibus Motion[53] by way of special appearance during the execution stage until the filing of its Comment[54] before the Court wherein it was pleaded that "RTC [of] Makati[, Branch] 66

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[50] *Id.* at 618-619.

[51] *Pascual v. Pascual*, G.R. No. 171916, December 4, 2009, 607 SCRA 288, 304.

[52] *Manotoc v. CA*, 530 Phil. 454, 462 (2006).

[53] *Rollo* (G.R. No. 201537), pp. 189-209.

[54] *Id.* at 724-800.

never acquired jurisdiction over Export [B]ank. Export [B]ank was not pleaded as a party in this case. It was never served with summons by nor did it voluntarily appear before RTC [of] Makati[, Branch] 66 so as to be subjected to the latter's jurisdiction."[55]

In dispensing with the requirement of service of summons or voluntary appearance of Export Bank, the RTC applied the cases of *Violago* and *Arcilla*. The RTC concluded that in these cases, the Court decided that the doctrine of piercing the veil of corporate personality can be applied even when one of the affected parties has not been brought to the Court as a party.[56]

A closer perusal on the rulings of this Court in *Violago* and *Arcilla*, however, reveals that the RTC misinterpreted the doctrines on these cases. We agree with the CA that these cases are not congruent to the case at bar. In *Violago*, Spouses Pedro and Florencia Violago (Spouses Violago) filed a third party complaint against their cousin Avelino Violago (Avelino), who is also the president of Violago Motor Sales Corporation (VMSC), for selling them a vehicle which was already sold to someone else. VMSC was not impleaded as a third party defendant. Avelino contended that he was not a party to the transaction personally, but VMSC. The Court ruled that "[t]he fact that VMSC was not included as defendant in [Spouses Violago's] third party complaint does not preclude recovery by Spouses Violago from Avelino; neither would such non-inclusion constitute a bar to the application of the piercing-of-the-corporate-veil doctrine."[57] It should be pointed out that although VMSC was not made a third party defendant, the person who was found liable in *Violago*, Avelino, was properly made a third party defendant in the first instance. The present case could not be any more poles apart from *Violago*, because Export Bank, the parent company which was sought to be accountable for the judgment against E-Securities, is not a party to the main case.

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[55] *Id.* at 777.

[56] *Id.* at 230.

[57] *Supra* note 4, at 76.

In *Arcilla*, meanwhile, Calvin Arcilla (Arcilla) obtained a loan in the name of Csar Marine Resources, Inc. (CMRI) from Emilio Rodulfo. A complaint was then filed against Arcilla for non-payment of the loan. CMRI was not impleaded as a defendant. The trial court eventually ordered Arcilla to pay the judgment creditor for such loan. Arcilla argued that he is not personally liable for the adjudged award because the same constitutes a corporate liability which cannot even bind the corporation as the latter is not a party to the collection suit. The Court made the succeeding observations:

> [B]y no stretch of even the most fertile imagination may one be able to conclude that the challenged Amended Decision directed Csar Marine Resources, Inc. to pay the amounts adjudged. By its clear and unequivocal language, it is the petitioner who was declared liable therefor and consequently made to pay. x x x, even if We are to assume *arguendo* that the obligation was incurred in the name of the corporation, the petitioner would still be personally liable therefor because for all legal intents and purposes, he and the corporation are one and the same. Csar Marine Resources, Inc. is nothing more than his business conduit and alter ego. The fiction of a separate juridical personality conferred upon such corporation by law should be disregarded. x x x.[58] (Citation omitted)

It is important to bear in mind that although CMRI was not a party to the suit, it was Arcilla, the defendant himself who was found ultimately liable for the judgment award. CMRI and its properties were left untouched from the main case, not only because of the application of the alter ego doctrine, but also because it was never made a party to that case.

The disparity between the instant case and those of *Violago* and *Arcilla* is that in said cases, although the corporations were not impleaded as defendant, the persons made liable in the end were already parties thereto since the inception of the main case. Consequently, it cannot be said that the Court had, in the absence of fraud and/or bad faith, applied the doctrine of piercing the veil of corporate fiction to make a non-party liable. In

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[58] *Supra* note 5, at 129.

short, liabilities attached only to those who are parties. None of the non-party corporations (VMSC and CMRI) were made liable for the judgment award against Avelino and Arcilla.

The Alter Ego Doctrine is not applicable

"The question of whether one corporation is merely an alter ego of another is purely one of fact. So is the question of whether a corporation is a paper company, a sham or subterfuge or whether petitioner adduced the requisite quantum of evidence warranting the piercing of the veil of respondent's corporate entity."[59]

As a rule, the parties may raise only questions of law under Rule 45, because the Supreme Court is not a trier of facts. Generally, we are not duty-bound to analyze again and weigh the evidence introduced in and considered by the tribunals below.[60] However, justice for all is of primordial importance that the Court will not think twice of reviewing the facts, more so because the RTC and the CA arrived in contradicting conclusions.

"It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise

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[59] *China Banking Corp. v. Dyne-Sem Electronics Corporation*, 527 Phil. 74, 80 (2006).

[60] *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.,* G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660, citing Rule 45 of the Rules of Court.

when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation."[61]

"Where one corporation is so organized and controlled and its affairs are conducted so that it is, in fact, a mere instrumentality or adjunct of the other, the fiction of the corporate entity of the "instrumentality" may be disregarded. The control necessary to invoke the rule is not majority or even complete stock control but such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal. It must be kept in mind that the control must be shown to have been exercised at the time the acts complained of took place. Moreover, the control and breach of duty must proximately cause the injury or unjust loss for which the complaint is made."[62]

The Court has laid down a three-pronged control test to establish when the alter ego doctrine should be operative:

(1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;

(2) Such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and

(3) The aforesaid control and breach of duty must [have] proximately caused the injury or unjust loss complained of.[63]

The absence of any one of these elements prevents 'piercing the corporate veil' in applying the 'instrumentality' or 'alter ego' doctrine, the courts are concerned with reality and not

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[61] *Concept Builders, Inc. v. National Labor Relations Commission,* 326 Phil. 955, 964-965 (1996).

[62] *Id.* at 965-966.

[63] *Id.* at 966.

form, with how the corporation operated and the individual defendant's relationship to that operation.[64] Hence, all three elements should concur for the alter ego doctrine to be applicable.

In its decision, the RTC maintained that the subsequently enumerated factors betray the true nature of E-Securities as a mere alter ego of Export Bank:

> 1. Defendant EIB Securities, a subsidiary corporation 100% totally owned by Export and Industry Bank, Inc., was only re-activated by the latter in 2002-2003 and the continuance of its operations was geared for no other reason tha[n] **to serve as the securities brokerage arm of said parent corporation bank;**
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> 2. It was the parent corporation bank that provided and infused the fresh working cash capital needed by defendant EIB Securities which prior thereto was non-operating and severely cash-strapped. [This was so attested by the then Corporate Secretary of both corporations, Atty. Ramon Aviado, Jr., in his submitted Sworn Statement which is deemed allowable "evidence on motion," under Sec. 7, Rule 133, Rules on Evidence; *Bravo vs. Borja*, 134 SCRA 438];
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> 3. For effective control purposes, defendant EIB Securities and its operating office and staff are all housed in Exportbank Plaza located at Chino Roces cor. Sen. Gil Puyat Avenue, Makati City which is the same building w[h]ere the bank parent corporation has its headquarters;
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> 4. As shown in the General Information Sheets annually filed with the S.E.C. from 2002 to 2011, both defendant EIB Securities and the bank parent corporation share common key Directors and corporate officers. Three of the 5-man Board of Directors of defendant EIB Securities are Directors of the bank parent corporation, namely: Jaime C. Gonzales, Pauline C. Tan and Dionisio E. Carpio, Jr. In addition, Mr. Gonzales is Chairman of the Board of both corporations, whereas Pauline C. Tan is concurrently President/General Manager of EIB Securities, and Dionisio Carpio Jr., is not only director of the bank, but also Director Treasurer of defendant EIB Securities;

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[64] *Philippine National Bank v. Hydro Resources Contractors Corporation*, G.R. No. 167530, March 13, 2013, 693 SCRA 294, 309-310.

5. As admitted by the bank parent corporation in its consolidated audited financial statements[,] EIB Securities is a **CONTROLLED SUBSIDIARY**, and for which reason its financial condition and results of operations are included and integrated as part of the group's consolidated financial statements, examined and audited **by the same auditing firm**;

6. The lawyers handling the suits and legal matters of defendant EIB Securities are the same lawyers in the Legal Department of the bank parent corporation. The Court notes that in [the] above-entitled suit, the lawyers who at the start represented said defendant EIB Securities and filed all the pleadings and filings in its behalf are also the lawyers in the Legal Services Division of the bank parent corporation. They are Attys. Emmanuel A. Silva, Leonardo C. Bool, Riva Khristine E. Maala and Ma. Esmeralda R. Cunanan, all of whom worked at the Legal Services Division of Export Industry Bank located at 36/F, Exportbank Plaza, Don Chino Roces Avenue, cor. Sen. Gil Puyat Avenue, Makati City.

7. Finally[,] and this is very significant, the control and sway that the bank parent corporation held over defendant EIB Securities was prevailing in June 2004 when the very act complained of in plaintiff's Complaint took place, namely the unauthorized disposal of the 32,180,000 DMCI shares of stock. Being then under the direction and control of the bank parent corporation, the unauthorized disposal of those shares by defendant EIB Securities is attributable to, and the responsibility of the former.[65]

All the foregoing circumstances, with the exception of the admitted stock ownership, were however not properly pleaded and proved in accordance with the Rules of Court.[66] These were merely raised by the petitioners for the first time in their Motion for Issuance of an *Alias* Writ of Execution[67] and Reply,[68] which the Court cannot consider. "Whether the separate

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[65] *Rollo* (G.R. No. 201537), pp. 170-171.

[66] *Id.* at 59.

[67] *Id.* at 121-125.

[68] *Id.* at 157-169.

personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved."[69]

Albeit the RTC bore emphasis on the alleged control exercised by Export Bank upon its subsidiary E-Securities, "[c]ontrol, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case."[70]

Moreover, there was nothing on record demonstrative of Export Bank's wrongful intent in setting up a subsidiary, E-Securities. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.[71] To justify treating the sole stockholder or holding company as responsible, it is not enough that the subsidiary is so organized and controlled as to make it "merely an instrumentality, conduit or adjunct" of its stockholders. It must further appear that to recognize their separate entities would aid in the consummation of a wrong.[72]

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[69] *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*, G.R. No. 170689, March 17, 2009, 581 SCRA 598, 614.

[70] *NASECO Guards Association-PEMA (NAGA-PEMA) v. National Service Corporation (NASECO)*, G.R. No. 165442, August 25, 2010, 629 SCRA 90, 101.

[71] *Philippine National Bank v. Ritratto Group Inc.*, 414 Phil. 494, 503 (2001).

[72] Henry W. Ballantine, *Separate Entity of Parent and Subsidiary Corporations*, p. 20, California Law Review Volume 14 (1925), citing *Erkenbrecher v. Grant*, 187 Cal. 7, 200 Pac. 641, (1921); *Minifie v. Rowlev*, 187 Cal. 481, 202 Pac. 673, (1921); <http://scholarship.law.berkeley.edu/californialawreview/ vol14/iss1/1> (visited January 20, 2013).

As established in the main case[73] and reiterated by the CA, the subject 32,180,000 DMCI shares which E-Securities is obliged to return to the petitioners were originally bought at an average price of ₱0.38 per share and were sold for an average price of ₱0.24 per share. The proceeds were then used to buy back 61,100,000 KPP shares earlier sold by E-Securities. Quite unexpectedly however, the total amount of these DMCI shares ballooned to ₱1,465,799,000.00.[74] It must be taken into account that this unexpected turnabout did not inure to the benefit of E-Securities, much less Export Bank.

Furthermore, ownership by Export Bank of a great majority or all of stocks of E-Securities and the existence of interlocking directorates may serve as badges of control, but ownership of another corporation, *per se,* without proof of actuality of the other conditions are insufficient to establish an alter ego relationship or connection between the two corporations, which will justify the setting aside of the cover of corporate fiction. The Court has declared that "mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality." The Court has likewise ruled that the "existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of corporate fiction in the absence of fraud or other public policy considerations."[75]

While the courts have been granted the colossal authority to wield the sword which pierces through the veil of corporate fiction, concomitant to the exercise of this power, is the responsibility to uphold the doctrine of separate entity, when rightly so; as it has for so long encouraged businessmen to enter into economic endeavors fraught with risks and where only a few dared to venture.

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[73] *Pacific Rehouse Corporation v. EIB Securities, Inc., supra* note 45.

[74] *Rollo* (G.R. No. 201537), p. 62.

[75] *Philippine National Bank v. Hydro Resources Contractors Corporation, supra* note 64, at 311.

Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.[76]

In closing, we understand that the petitioners are disgruntled at the turnout of this case—that they cannot enforce the award due them on its entirety; however, the Court cannot supplant a remedy which is not sanctioned by our laws and prescribed rules.

WHEREFORE, the petition in **G.R. No. 199687** is hereby **DISMISSED** for having been rendered moot and academic. The petition in **G.R. No. 201537**, meanwhile, is hereby **DENIED** for lack of merit. Consequently, the Decision dated April 26, 2012 of the Court of Appeals in CA-G.R. SP No. 120979 is **AFFIRMED**.

SO ORDERED.

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

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[76] *Philippine National Bank v. Andrada Electric & Engineering Company*, 430 Phil. 882, 894-895 (2002).

SECOND DIVISION

[G.R. No. 199740. March 24, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JERRY OBOGNE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE; QUALIFICATION OF WITNESSES; MENTAL RETARDATION *PER SE* DOES NOT AFFECT A WITNESS' CREDIBILITY; CASE AT BAR.— In this case, "AAA" is totally qualified to take the witness stand notwithstanding her mental condition. As correctly observed by the trial court: When "AAA" was presented on November 14, 2006, defense counsel manifested his objection and called the Court's attention to Rule 130, Section 21 of the Rules of Court, which lists down persons who cannot be witnesses; *i.e.* those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others x x x. During the continuation of AAA's testimony x x x she was able to recall what [appellant] did to her x x x. "AAA" recalled that while she was playing, [appellant] saw her and asked her to go with him because he would give her a sugar cane. [Appellant] brought "AAA" to his house and while inside, 'he removed her panty, and then inserted his penis into her vagina and he got the knife and then he took a sugar cane and then he gave it to her and then she went home.' x x x This Court finds "AAA" a very credible witness, even in her mental condition. Contrary to defense counsel's objection that "AAA" was not capable of intelligently making known her perception to others, "AAA" managed to recount the ordeal she had gone through in the hands of the accused, though in a soft voice and halting manner x x x. "AAA's" simple account of her ordeal clearly reflects sincerity and truthfulness. In the same vein, the appellate court found "AAA" qualified to take the witness stand. x x x Private complainant "AAA" provided a clear, convincing and competent testimonial evidence to prove the guilt of the accused-appellant of the crime of rape beyond reasonable doubt. As found by the trial court, the testimony

of "AAA" was replete with consistent details, negating the probability of fabrication. We stress that, contrary to accused-appellant's assertions, mental retardation *per se* does not affect a witness' credibility. A mental retardate may be a credible witness.

2. ID.; ID.; DEFENSE OF ALIBI; REJECTED; IT WAS NOT PHYSICALLY IMPOSSIBLE FOR THE ACCUSED TO BE PRESENT AT THE CRIME SCENE AT THE TIME OF ITS COMMISSION.— Appellant's assertion that the trial court and the appellate court should have considered his alibi must likewise fail. For alibi to prosper, it must not only be shown that appellant was at another place at the time of the commission of the crime but that it was also impossible for him to be present at the crime scene. In this case, appellant attempted to show that he was at *barangay* Ananong at the time of the rape incident. However, as found by the trial court, the distance between *barangay* Ananong and *barangay* Ogbong is only four kilometers and could be traversed in one hour or even less.

3. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES; THE VICTIM'S MENTAL DISABILITY COULD NOT BE CONSIDERED AS A QUALIFYING CIRCUMSTANCE BECAUSE THE INFORMATION FAILED TO ALLEGE THAT APPELLANT KNEW OF SUCH MENTAL CONDITION AT THE TIME OF THE COMMISSION OF THE CRIME.— Finally, the trial court and the Court of Appeals correctly found appellant guilty of simple rape and properly imposed upon him the penalty of *reclusion perpetua* pursuant to Article 266-B, par. 1 of the Revised Penal Code. The trial court correctly ruled that "AAA's" mental disability could not be considered as a qualifying circumstance because the Information failed to allege that appellant knew of such mental condition at the time of the commission of the crime.

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.*:

Appellant Jerry Obogne was charged with the crime of rape in an Information that reads as follows:

That on or about the 29th day of July 2002, in the afternoon, in *barangay* Ogbong, municipality of Viga, province of Catanduanes, Philippines, within the jurisdiction of the Honorable Court, the said accused by means of force and intimidation, willfully, unlawfully and feloniously x x x succeeded in having carnal knowledge of "AAA,"[1] a 12-year old mentally retarded person, to the damage and prejudice of the said "AAA."[2]

When arraigned on December 17, 2004, appellant entered a plea of not guilty.[3] On March 13, 2008, the Regional Trial Court of Virac, Catanduanes, Branch 43, rendered a Judgment,[4] *viz*:

WHEREFORE, judgment is, hereby, rendered finding Jerry Obogne guilty beyond reasonable doubt of the crime of simple rape committed against "AAA" and, hereby, sentences him to suffer a penalty of *reclusion perpetua* and to indemnify "AAA" the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages; and to pay the costs.

SO ORDERED.[5]

The trial court did not consider "AAA's" mental retardation as a qualifying circumstance considering that the Information failed to allege that appellant knew of "AAA's" mental disability.

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[1] "The real names of the victim and of the members of her immediate family are withheld pursuant to Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act) and Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004.)" *People v. Teodoro*, G.R. No. 175876, February 20, 2013, 691 SCRA 324, 326.

[2] Records, p. 4.

[3] *Id*. at 20.

[4] *Id*. at 172-179; penned by Judge Lelu P. Contreras.

[5] *Id.* at 179.

Aggrieved, appellant appealed to the Court of Appeals.[6] In its Decision[7] of March 28, 2011, the appellate court affirmed the trial court's ruling with modifications, *viz*:

> WHEREFORE, the appeal is DISMISSED. The Judgment, dated March 13, 2008, of the Regional Trial Court of Virac, Catanduanes, Branch 34,[8] in Criminal Case No. 3303, is AFFIRMED with MODIFICATION that accused-appellant is further ordered to pay "AAA" the additional amount of ₱50,000.00 as civil indemnity apart from the award of ₱50,000.00 as moral damages and of ₱25,000.00 as exemplary damages.
>
> SO ORDERED.[9]

Hence, this appeal.

In a Resolution[10] dated February 15, 2012, we required both parties to file their Supplemental Briefs. However, they opted to adopt the briefs they filed before the Court of Appeals as their Supplemental Briefs.[11]

Appellant argues that the testimony of "AAA" deserves no credence because she was incapable of intelligently making known her perception to others by reason of her mental disability.

We are not persuaded.

Sections 20 and 21, Rule 130 of the Rules of Court provide:

> Sec. 20. *Witnesses; their qualifications.* - Except as provided in the next succeeding section, all persons who can perceive, and

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[6] CA *rollo*, p. 30.

[7] *Id*. at 125-139; penned by Associate Justice Noel G. Tijam and concurred in by Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba.

[8] Should be 43.

[9] *Id*. at 138-139. It would appear that the Court of Appeals mistakenly thought that the trial court did not award civil indemnity in the amount of ₱50,000.00. Perusal of the dispositive portion of the trial court's Judgment would show that it awarded civil indemnity of ₱50,000.00.

[10] *Rollo*, p. 23.

[11] *Id*. at 25, 29.

perceiving, can make known their perception to others, may be witnesses.

x x x x x x x x x

Sec. 21. *Disqualification by reason of mental incapacity or immaturity*. - The following persons cannot be witnesses:

(a) Those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others;

(b) Children whose mental maturity is such as to render them incapable of perceiving the facts respecting which they are examined and of relating them truthfully.

In this case, "AAA" is totally qualified to take the witness stand notwithstanding her mental condition. As correctly observed by the trial court:

When "AAA" was presented on November 14, 2006, defense counsel manifested his objection and called the Court's attention to Rule 130, Section 21 of the Rules of Court, which lists down persons who cannot be witnesses; *i.e.* those whose mental condition, at the time of their production for examination, is such that they are incapable of intelligently making known their perception to others x x x.

During the continuation of AAA's testimony x x x she was able to recall what [appellant] did to her x x x.

"AAA" recalled that while she was playing, [appellant] saw her and asked her to go with him because he would give her a sugar cane. [Appellant] brought "AAA" to his house and while inside, 'he removed her panty, and then inserted his penis into her vagina and he got the knife and then he took a sugar cane and then he gave it to her and then she went home.'

x x x x x x x x x

This Court finds "AAA" a very credible witness, even in her mental condition. Contrary to defense counsel's objection that "AAA" was not capable of intelligently making known her perception to others, "AAA" managed to recount the ordeal she had gone through in the hands of the accused, though in a soft voice and halting manner x x x.

"AAA's" simple account of her ordeal clearly reflects sincerity and truthfulness.

While it is true that, on cross-examination, "AAA" faltered in the sequence of events x x x this is understandable because even one with normal mental condition would not be able to recall, with a hundred percent accuracy, events that transpired in the past. But "AAA" was certain that 'it was a long time x x x after the incident' when it was reported to the police. Likewise, she was very certain that the accused inserted his penis into her vagina x x x.[12]

In the same vein, the appellate court found "AAA" qualified to take the witness stand, *viz*:

Our own evaluation of the records reveals that "AAA" was shown to be able to perceive, to make known her perception to others and to remember traumatic incidents. Her narration of the incident of rape given in the following manner is worthy of note:

x x x x x x x x x

Private complainant "AAA" provided a clear, convincing and competent testimonial evidence to prove the guilt of the accused-appellant of the crime of rape beyond reasonable doubt. As found by the trial court, the testimony of "AAA" was replete with consistent details, negating the probability of fabrication.

We stress that, contrary to accused-appellant's assertions, mental retardation *per se* does not affect a witness' credibility. A mental retardate may be a credible witness.[13]

Appellant's assertion that the trial court and the appellate court should have considered his alibi must likewise fail. For alibi to prosper, it must not only be shown that appellant was at another place at the time of the commission of the crime but that it was also impossible for him to be present at the crime scene. In this case, appellant attempted to show that he was at *barangay* Ananong at the time of the rape incident. However, as found by the trial court, the distance between *barangay*

[12] Records, pp. 173-177.

[13] CA *rollo*, pp. 132-134.

Ananong and *barangay* Ogbong is only four kilometers and could be traversed in one hour or even less.[14]

Finally, the trial court and the Court of Appeals correctly found appellant guilty of simple rape and properly imposed upon him the penalty of *reclusion perpetua* pursuant to Article 266-B, par. 1 of the Revised Penal Code. The trial court correctly ruled that "AAA's" mental disability could not be considered as a qualifying circumstance because the Information failed to allege that appellant knew of such mental condition at the time of the commission of the crime. As held in *People v. Limio*:[15]

> By itself, the fact that the offended party in a rape case is a mental retardate does not call for the imposition of the death penalty, unless knowledge by the offender of such mental disability is specifically alleged and adequately proved by the prosecution.
>
> For the Anti-Rape Law of 1997, now embodied in Article 266-B of the Revised Penal Code (RPC) expressly provides that the death penalty shall also be imposed if the crime of rape is committed with the qualifying circumstance of '(10) when the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.' Said knowledge x x x qualifies rape as a heinous offense. Absent said circumstance, which must be proved by the prosecution beyond reasonable doubt, the conviction of appellant for qualified rape under Art. 266-B (10), RPC, could not be sustained, **although the offender may be held liable for simple rape and sentenced to *reclusion perpetua***.[16]
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> x x x x x x x x x
>
> [T]he mere fact that the rape victim is a mental retardate does not automatically merit the imposition of the death penalty. Under Article 266-B (10) of the Revised Penal Code, knowledge by the offender of the mental disability, emotional disorder, or physical handicap at the time of the commission of the rape is the qualifying

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[14] Records, p. 177.

[15] 473 Phil. 659 (2004).

[16] *Id*. at 661-662. Emphasis supplied.

circumstance that sanctions the imposition of the death penalty. As such this circumstance must be formally alleged in the information and duly proved by the prosecution.

Rule 110 of the 2000 Rules of Criminal Procedure requires both qualifying and aggravating circumstances to be alleged with specificity in the information. x x x But in the absence of a specific or particular allegation in the information that the appellant knew of her mental disability or retardation, as well as lack of adequate proof that appellant knew of this fact, Article 266-B (10), RPC, could not be properly applied x x x

Hence, the appellant can only be convicted of simple rape, as defined under Article 266-A of the [Revised] Penal Code, for which the imposable penalty is *reclusion perpetua*.[17]

However, it must be mentioned that appellant is not eligible for parole pursuant to Section 3[18] of Republic Act No. 9346.[19]

The awards of ₱50,000.00 as moral damages and ₱50,000.00 as civil indemnity are likewise proper. However, the award of exemplary damages must be increased to ₱30,000.00 in line with prevailing jurisprudence.[20] Also, interest at the rate of 6% *per annum* shall be imposed from date of finality of this judgment until fully paid.

WHEREFORE, the March 28, 2011 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 03270 finding appellant Jerry Obogne guilty beyond reasonable doubt of the crime of simple rape and sentencing him to suffer the penalty of *reclusion perpetua* and to pay "AAA" civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 is **AFFIRMED**

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[17] *Id.* at 675-676.

[18] Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[19] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Approved June 24, 2006.

[20] *People v. Vergara*, G.R. No. 199226, January 25, 2014.

with **MODIFICATIONS** that appellant is not eligible for parole; the amount of exemplary damages is increased to ₱30,000.00; and all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

SO ORDERED.

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

EN BANC

[G.R. No. 168539. March 25, 2014]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HENRY T. GO,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); THE REQUIREMENT BEFORE A PRIVATE PERSON MAY BE INDICTED FOR VIOLATION OF SECTION 3(G) OF R.A. 3019, AMONG OTHERS, IS THAT SUCH PERSON MUST BE ALLEGED TO HAVE ACTED IN CONSPIRACY WITH A PUBLIC OFFICER, NOT THAT SUCH PERSON MUST, IN ALL INSTANCES, BE INDICTED TOGETHER WITH THE PUBLIC OFFICER.— In the instant case, respondent is being charged for violation of Section 3(g) of R.A. 3019, in conspiracy with then Secretary Enrile. Ideally, under the law, both respondent and Secretary Enrile should have been charged before and tried jointly by the Sandiganbayan. However, by reason of the death of the latter, this can no longer be done. Respondent contends

[*] Per Special Order No. 1650 dated 13 March 2014.

that by reason of the death of Secretary Enrile, there is no public officer who was charged in the Information and, as such, prosecution against respondent may not prosper. The Court is not persuaded. It is true that by reason of Secretary Enrile's death, there is no longer any public officer with whom respondent can be charged for violation of R.A. 3019. It does not mean, however, that the allegation of conspiracy between them can no longer be proved or that their alleged conspiracy is already expunged. The only thing extinguished by the death of Secretary Enrile is his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and private respondent. Stated differently, the death of Secretary Enrile does not mean that there was no public officer who allegedly violated Section 3 (g) of R.A. 3019. In fact, the Office of the Deputy Ombudsman for Luzon found probable cause to indict Secretary Enrile for infringement of Sections 3 (e) and (g) of R.A. 3019. Were it not for his death, he should have been charged. The requirement before a private person may be indicted for violation of Section 3(g) of R.A. 3019, among others, is that such private person must be alleged to have acted in conspiracy with a public officer. The law, however, does not require that such person must, in all instances, be indicted together with the public officer. If circumstances exist where the public officer may no longer be charged in court, as in the present case where the public officer has already died, the private person may be indicted alone. Indeed, it is not necessary to join all alleged co-conspirators in an indictment for conspiracy. If two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them and it makes no difference whether the actual actor is alive or dead, sane or insane at the time of trial. The death of one of two or more conspirators does not prevent the conviction of the survivor or survivors.

2. ID.; ID.; ID.; THE AVOWED POLICY OF THE STATE AND THE LEGISLATIVE INTENT TO REPRESS ACTS OF PUBLIC OFFICERS AND PRIVATE PERSONS ALIKE,

WHICH CONSTITUTE GRAFT AND CORRUPT PRACTICES ACT, WOULD BE FRUSTRATED IF THE DEATH OF A PUBLIC OFFICER WOULD BAR THE PROSECUTION OF A PRIVATE PERSON WHO CONSPIRED WITH SUCH PUBLIC OFFICER IN VIOLATING THE ANTI-GRAFT LAW.— [T]he Court agrees with petitioner that the avowed policy of the State and the legislative intent to repress "acts of public officers and private persons alike, which constitute graft or corrupt practices," would be frustrated if the death of a public officer would bar the prosecution of a private person who conspired with such public officer in violating the Anti-Graft Law. In this regard, this Court's disquisition in the early case of *People v. Peralta* as to the nature of and the principles governing conspiracy, as construed under Philippine jurisdiction, is instructive.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION OVER THE PERSON OF THE ACCUSED; THE ACT OF THE ACCUSED IN POSTING BAIL OR IN FILING MOTION SEEKING AFFIRMATIVE RELIEF IS TANTAMOUNT TO SUBMISSION OF HIS PERSON TO THE JURISDICTION OF THE COURT.— Respondent should be reminded that prior to this Court's ruling in *G.R. No. 168919*, he already posted bail for his provisional liberty. In fact, he even filed a Motion for Consolidation in *Criminal Case No. 28091*. The Court agrees with petitioner's contention that private respondent's act of posting bail and filing his Motion for Consolidation vests the SB with jurisdiction over his person. The rule is well settled that the act of an accused in posting bail or in filing motions seeking affirmative relief is tantamount to submission of his person to the jurisdiction of the court. Thus, it has been held that: When a defendant in a criminal case is brought before a competent court by virtue of a warrant of arrest or otherwise, in order to avoid the submission of his body to the jurisdiction of the court he must raise the question of the court's jurisdiction over his person at the very earliest opportunity. ***If he gives bail,* demurs to the complaint or files any dilatory plea or pleads to the merits, he thereby gives the court jurisdiction over his person.** (State ex rel. John Brown vs. Fitzgerald, 51 Minn., 534) x x x. In the instant case, respondent did not make any special appearance to question the jurisdiction of the SB over his person prior to his posting

of bail and filing his Motion for Consolidation. In fact, his Motion to Quash the Information in *Criminal Case No. 28090* only came after the SB issued an Order requiring the prosecution to show cause why the case should not be dismissed for lack of jurisdiction over his person.

APPEARANCES OF COUNSEL

Office of the Special Prosecutor for petitioner.
Cirilo E. Doronilla for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* assailing the Resolution[1] of the Third Division[2] of the Sandiganbayan (*SB*) dated June 2, 2005 which quashed the Information filed against herein respondent for alleged violation of Section 3 (g) of Republic Act No. 3019 (*R.A. 3019*), otherwise known as the Anti-Graft and Corrupt Practices Act.

The Information filed against respondent is an offshoot of this Court's Decision[3] in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.* which nullified the various contracts awarded by the Government, through the Department of Transportation and Communications (*DOTC*), to Philippine Air Terminals, Co., Inc. (*PIATCO*) for the construction, operation and maintenance of the Ninoy Aquino International Airport International Passenger Terminal III (*NAIA IPT III*). Subsequent to the above Decision, a certain Ma. Cecilia L. Pesayco filed a complaint with the Office of the Ombudsman against several individuals for alleged violation of R.A. 3019. Among those

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[1] Annex "A" to petition, *rollo*, p. 59.

[2] Composed of Associate Justice Godofredo L. Legaspi as Chairman, with Associate Justices Efren N. De La Cruz and Norberto Y. Geraldez (now deceased), as members.

[3] G.R. Nos. 155001, 155547 and 155661, May 5, 2003, 402 SCRA 612.

charged was herein respondent, who was then the Chairman and President of PIATCO, for having supposedly conspired with then DOTC Secretary Arturo Enrile (*Secretary Enrile*) in entering into a contract which is grossly and manifestly disadvantageous to the government.

On September 16, 2004, the Office of the Deputy Ombudsman for Luzon found probable cause to indict, among others, herein respondent for violation of Section 3(g) of R.A. 3019. While there was likewise a finding of probable cause against Secretary Enrile, he was no longer indicted because he died prior to the issuance of the resolution finding probable cause.

Thus, in an Information dated January 13, 2005, respondent was charged before the SB as follows:

> On or about July 12, 1997, or sometime prior or subsequent thereto, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the late ARTURO ENRILE, then Secretary of the Department of Transportation and Communications (DOTC), committing the offense in relation to his office and taking advantage of the same, in conspiracy with accused, **HENRY T. GO**, Chairman and President of the Philippine International Air Terminals, Co., Inc. (PIATCO), did then and there, willfully, unlawfully and criminally enter into a Concession Agreement, after the project for the construction of the Ninoy Aquino International Airport International Passenger Terminal III (NAIA IPT III) was awarded to Paircargo Consortium/PIATCO, which Concession Agreement substantially amended the draft Concession Agreement covering the construction of the NAIA IPT III under Republic Act 6957, as amended by Republic Act 7718 (BOT law), specifically the provision on Public Utility Revenues, as well as the assumption by the government of the liabilities of PIATCO in the event of the latter's default under Article IV, Section 4.04 (b) and (c) in relation to Article 1.06 of the Concession Agreement, which terms are more beneficial to PIATCO while manifestly and grossly disadvantageous to the government of the Republic of the Philippines.[4]

The case was docketed as *Criminal Case No. 28090*.

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[4] Annex "B" to petition, *rollo*, pp. 61-62.

On March 10, 2005, the SB issued an Order, to wit:

> The prosecution is given a period of ten (10) days from today within which to show cause why this case should not be dismissed for lack of jurisdiction over the person of the accused considering that the accused is a private person and the public official Arturo Enrile, his alleged co-conspirator, is already deceased, and not an accused in this case.[5]

The prosecution complied with the above Order contending that the SB has already acquired jurisdiction over the person of respondent by reason of his voluntary appearance, when he filed a motion for consolidation and when he posted bail. The prosecution also argued that the SB has exclusive jurisdiction over respondent's case, even if he is a private person, because he was alleged to have conspired with a public officer.[6]

On April 28, 2005, respondent filed a Motion to Quash[7] the Information filed against him on the ground that the operative facts adduced therein do not constitute an offense under Section 3(g) of R.A. 3019. Respondent, citing the show cause order of the SB, also contended that, independently of the deceased Secretary Enrile, the public officer with whom he was alleged to have conspired, respondent, who is not a public officer nor was capacitated by any official authority as a government agent, may not be prosecuted for violation of Section 3(g) of R.A. 3019.

The prosecution filed its Opposition.[8]

On June 2, 2005, the SB issued its assailed Resolution, pertinent portions of which read thus:

> Acting on the Motion to Quash filed by accused Henry T. Go dated April 22, 2005, and it appearing that Henry T. Go, the lone accused in this case is a private person and his alleged co-conspirator-

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[5] Annex "C" to petition, *id.* at 64.

[6] See Annex "F" to petition, *id.* at 74-82.

[7] Annex "G" to petition, *id.* at 84-88.

[8] Annex "H" to petition, *id.* at 90-101.

public official was already deceased long before this case was filed in court, for lack of jurisdiction over the person of the accused, the Court grants the Motion to Quash and the Information filed in this case is hereby ordered quashed and dismissed.[9]

Hence, the instant petition raising the following issues, to wit:

I

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW OR APPLICABLE JURISPRUDENCE IN GRANTING THE DEMURRER TO EVIDENCE AND IN DISMISSING CRIMINAL CASE NO. 28090 ON THE GROUND THAT IT HAS NO JURISDICTION OVER THE PERSON OF RESPONDENT GO.

II

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED AND DECIDED A QUESTION OF SUBSTANCE IN A MANNER NOT IN ACCORD WITH LAW OR APPLICABLE JURISPRUDENCE, IN RULING THAT IT HAS NO JURISDICTION OVER THE PERSON OF RESPONDENT GO DESPITE THE IRREFUTABLE FACT THAT HE HAS ALREADY POSTED BAIL FOR HIS PROVISIONAL LIBERTY

III

WHETHER OR NOT THE COURT *A QUO* GRAVELY ERRED WHEN, IN COMPLETE DISREGARD OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION, IT QUASHED THE INFORMATION AND DISMISSED CRIMINAL CASE NO. 28090[10]

The Court finds the petition meritorious.

Section 3 (g) of R.A. 3019 provides:

Sec. 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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[9] Annex "A" to petition, *id.* at 59.

[10] *Rollo*, p. 27.

x x x x x x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The elements of the above provision are:

(1) that the accused is a public officer;

(2) that he entered into a contract or transaction on behalf of the government; and

(3) that such contract or transaction is grossly and manifestly disadvantageous to the government.[11]

At the outset, it bears to reiterate the settled rule that private persons, when acting in conspiracy with public officers, may be indicted and, if found guilty, held liable for the pertinent offenses under Section 3 of R.A. 3019, in consonance with the avowed policy of the anti-graft law to repress certain acts of public officers and private persons alike constituting graft or corrupt practices act or which may lead thereto.[12] This is the controlling doctrine as enunciated by this Court in previous cases, among which is a case involving herein private respondent.[13]

The only question that needs to be settled in the present petition is whether herein respondent, a private person, may be indicted for conspiracy in violating Section 3(g) of R.A. 3019 even if the public officer, with whom he was alleged to have conspired, has died prior to the filing of the Information.

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[11] *Go v. Fifth Division, Sandiganbayan*, 549 Phil. 783, 799 (2007).

[12] *Gregorio Singian, Jr. v. Sandiganbayan, et al.*, G.R. Nos. 195011-19, September 30, 2013; *Santillano v. People*, G.R. Nos. 175045-46, March 3, 2010, 614 SCRA 164; *Go v. Fifth Division, Sandiganbayan*, *supra*; *Singian, Jr. v. Sandiganbayan*, 514 Phil. 536 (2005); *Domingo v. Sandiganbayan*, G.R. No. 149175, October 25, 2005, 474 SCRA 203; *Luciano v. Estrella*, G.R. No. L-31622, August 31, 1970, 34 SCRA 769.

[13] See *Go v. Fifth Division, Sandiganbayan*, *supra* note 11.

Respondent contends that by reason of the death of Secretary Enrile, there is no public officer who was charged in the Information and, as such, prosecution against respondent may not prosper.

The Court is not persuaded.

It is true that by reason of Secretary Enrile's death, there is no longer any public officer with whom respondent can be charged for violation of R.A. 3019. It does not mean, however, that the allegation of conspiracy between them can no longer be proved or that their alleged conspiracy is already expunged. The only thing extinguished by the death of Secretary Enrile is his criminal liability. His death did not extinguish the crime nor did it remove the basis of the charge of conspiracy between him and private respondent. Stated differently, the death of Secretary Enrile does not mean that there was no public officer who allegedly violated Section 3 (g) of R.A. 3019. In fact, the Office of the Deputy Ombudsman for Luzon found probable cause to indict Secretary Enrile for infringement of Sections 3 (e) and (g) of R.A. 3019.[14] Were it not for his death, he should have been charged.

The requirement before a private person may be indicted for violation of Section 3(g) of R.A. 3019, among others, is that such private person must be alleged to have acted in conspiracy with a public officer. The law, however, does not require that such person must, in all instances, be indicted together with the public officer. If circumstances exist where the public officer may no longer be charged in court, as in the present case where the public officer has already died, the private person may be indicted alone.

Indeed, it is not necessary to join all alleged co-conspirators in an indictment for conspiracy.[15] If two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them

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[14] Records, vol. 1, p. 106.

[15] 15 C.J.S. Conspiracy § 82, p. 1115.

and they are jointly responsible therefor.[16] This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them and it makes no difference whether the actual actor is alive or dead, sane or insane at the time of trial.[17] The death of one of two or more conspirators does not prevent the conviction of the survivor or survivors.[18] Thus, this Court held that:

> x x x [a] conspiracy is in its nature a joint offense. One person cannot conspire alone. The crime depends upon the joint act or intent of two or more persons. **Yet, it does not follow that one person cannot be convicted of conspiracy. So long as the acquittal or death of a co-conspirator does not remove the bases of a charge for conspiracy, one defendant may be found guilty of the offense.**[19]

The Court agrees with petitioner's contention that, as alleged in the Information filed against respondent, which is deemed hypothetically admitted in the latter's Motion to Quash, he (respondent) conspired with Secretary Enrile in violating Section 3 (g) of R.A. 3019 and that in conspiracy, the act of one is the act of all. Hence, the criminal liability incurred by a co-conspirator is also incurred by the other co-conspirators.

Moreover, the Court agrees with petitioner that the avowed policy of the State and the legislative intent to repress "acts of public officers and private persons alike, which constitute graft or corrupt practices,"[20] would be frustrated if the death of a public officer would bar the prosecution of a private person who conspired with such public officer in violating the Anti-Graft Law.

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[16] §14 16 Am Jur 2d, pp. 134-135.

[17] *Id.*

[18] §19 16 Am Jur 2d, pp. 137-138.

[19] *Villa v. Sandiganbayan*, G.R. Nos. 87186, 87281, 87466 and 87524, April 24, 1992, 208 SCRA 283, 297-298, citing *U.S. v. Remigio*, 37 Phil. 599 (1918). (Emphasis supplied)

[20] See R.A. 3019, Sec. 1.

In this regard, this Court's disquisition in the early case of *People v. Peralta*[21] as to the nature of and the principles governing conspiracy, as construed under Philippine jurisdiction, is instructive, to wit:

x x x A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Generally, conspiracy is not a crime except when the law specifically provides a penalty therefor as in treason, rebellion and sedition. The crime of conspiracy known to the common law is not an indictable offense in the Philippines. An agreement to commit a crime is a reprehensible act from the view-point of morality, but as long as the conspirators do not perform overt acts in furtherance of their malevolent design, the sovereignty of the State is not outraged and the tranquility of the public remains undisturbed. However, **when in resolute execution of a common scheme, a felony is committed by two or more malefactors, the existence of a conspiracy assumes pivotal importance in the determination of the liability of the perpetrators.** In stressing the significance of conspiracy in criminal law, this Court in *U.S. vs. Infante and Barreto* opined that

> While it is true that the penalties cannot be imposed for the mere act of conspiring to commit a crime unless the statute specifically prescribes a penalty therefor, nevertheless the existence of a conspiracy to commit a crime is in many cases a fact of vital importance, when considered together with the other evidence of record, in establishing the existence, of the consummated crime and its commission by the conspirators.

Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law *the act of one is the act of all*. The foregoing rule is anchored on the sound principle that "when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone." Although it is axiomatic that no one is liable

[21] G.R. No. L-19069, October 29, 1968, 25 SCRA 759.

for acts other than his own, "when two or more persons agree or conspire to commit a crime, each is responsible for all the acts of the others, done in furtherance of the agreement or conspiracy." The imposition of collective liability upon the conspirators is clearly explained in one case where this Court held that

> x x x it is impossible to graduate the separate liability of each (conspirator) without taking into consideration the close and inseparable relation of each of them with the criminal act, for the commission of which they all acted by common agreement x x x. The crime must therefore in view of the solidarity of the act and intent which existed between the x x x accused, be regarded as the act of the band or party created by them, and they are all equally responsible x x x

Verily, the moment it is established that the malefactors conspired and confederated in the commission of the felony proved, collective liability of the accused conspirators attaches by reason of the conspiracy, and the court shall not speculate nor even investigate as to the actual degree of participation of each of the perpetrators present at the scene of the crime. Of course, as to any conspirator who was remote from the *situs* of aggression, he could be drawn within the enveloping ambit of the conspiracy if it be proved that through his moral ascendancy over the rest of the conspirators the latter were moved or impelled to carry out the conspiracy.

In fine, the convergence of the wills of the conspirators in the scheming and execution of the crime amply justifies the imputation to all of them the act of any one of them. It is in this light that conspiracy is generally viewed not as a separate indictable offense, but a rule for collectivizing criminal liability.

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x x x A time-honored rule in the *corpus* of our jurisprudence is that once conspiracy is proved, all of the conspirators who acted in furtherance of the common design are liable as co-principals. This rule of collective criminal liability emanates from the ensnaring nature of conspiracy. The concerted action of the conspirators in consummating their common purpose is a patent display of their evil partnership, and for the consequences of such criminal enterprise they must be held solidarily liable.[22]

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[22] *Id.* at 771-777. (Italics in the original; emphasis supplied)

This is not to say, however, that private respondent should be found guilty of conspiring with Secretary Enrile. It is settled that the absence or presence of conspiracy is factual in nature and involves evidentiary matters.[23] Hence, the allegation of conspiracy against respondent is better left ventilated before the trial court during trial, where respondent can adduce evidence to prove or disprove its presence.

Respondent claims in his Manifestation and Motion[24] as well as in his Urgent Motion to Resolve[25] that in a different case, he was likewise indicted before the SB for conspiracy with the late Secretary Enrile in violating the same Section 3 (g) of R.A. 3019 by allegedly entering into another agreement (Side Agreement) which is separate from the Concession Agreement subject of the present case. The case was docketed as *Criminal Case No. 28091*. Here, the SB, through a Resolution, granted respondent's motion to quash the Information on the ground that the SB has no jurisdiction over the person of respondent. The prosecution questioned the said SB Resolution before this Court via a petition for review on *certiorari*. The petition was docketed as *G.R. No. 168919*. In a minute resolution dated August 31, 2005, this Court denied the petition finding no reversible error on the part of the SB. This Resolution became final and executory on January 11, 2006. Respondent now argues that this Court's resolution in *G.R. No. 168919* should be applied in the instant case.

The Court does not agree. Respondent should be reminded that prior to this Court's ruling in *G.R. No. 168919*, he already posted bail for his provisional liberty. In fact, he even filed a Motion for Consolidation[26] in *Criminal Case No. 28091*. The

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[23] *People v. Dumlao*, G.R. No. 168918, March 2, 2009, 580 SCRA 409, 432; *Heirs of the late Nestor Tria v. Obias*, G.R. No. 175887, November 24, 2010, 636 SCRA 91, 116.

[24] *Rollo*, pp. 176-180.

[25] *Id.* at 186-192.

[26] Annex "J" to petition, *id.* at 112.

Court agrees with petitioner's contention that private respondent's act of posting bail and filing his Motion for Consolidation vests the SB with jurisdiction over his person. The rule is well settled that the act of an accused in posting bail or in filing motions seeking affirmative relief is tantamount to submission of his person to the jurisdiction of the court.[27]

Thus, it has been held that:

> When a defendant in a criminal case is brought before a competent court by virtue of a warrant of arrest or otherwise, in order to avoid the submission of his body to the jurisdiction of the court he must raise the question of the court's jurisdiction over his person at the very earliest opportunity. ***If he gives bail,*** **demurs to the complaint or files any dilatory plea or pleads to the merits, he thereby gives the court jurisdiction over his person.** (State ex rel. John Brown vs. Fitzgerald, 51 Minn., 534)
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> As ruled in *La Naval Drug vs. CA* [236 SCRA 78, 86]:
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> > "[L]ack of jurisdiction over the person of the defendant may be waived either expressly or impliedly. When a defendant voluntarily appears, he is deemed to have submitted himself to the jurisdiction of the court. If he so wishes not to waive this defense, he must do so seasonably by motion for the purpose of objecting to the jurisdiction of the court; otherwise, he shall be deemed to have submitted himself to that jurisdiction."
>
> Moreover, "[w]here the appearance is by motion for the purpose of objecting to the jurisdiction of the court over the person, it must be for the sole and separate purpose of objecting to said jurisdiction. **If the appearance is for any other purpose, the defendant is deemed to have submitted himself to the jurisdiction of the court. Such an appearance gives the court jurisdiction over the person.**"

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[27] *Miranda v. Tuliao*, 520 Phil. 907, 918 (2006), citing *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 643; *Cojuangco v. Sandiganbayan*, 360 Phil. 559, 581 (1998); *Velasco v. Court of Appeals*, 315 Phil. 757, 770 (1995).

Verily, petitioner's participation in the proceedings before the Sandiganbayan was not confined to his opposition to the issuance of a warrant of arrest but also covered other matters which called for respondent court's exercise of its jurisdiction. Petitioner may not be heard now to deny said court's jurisdiction over him. x x x.[28]

In the instant case, respondent did not make any special appearance to question the jurisdiction of the SB over his person prior to his posting of bail and filing his Motion for Consolidation. In fact, his Motion to Quash the Information in *Criminal Case No. 28090* only came after the SB issued an Order requiring the prosecution to show cause why the case should not be dismissed for lack of jurisdiction over his person.

As a recapitulation, it would not be amiss to point out that the instant case involves a contract entered into by public officers representing the government. More importantly, the SB is a special criminal court which has exclusive original jurisdiction in all cases involving violations of R.A. 3019 committed by certain public officers, as enumerated in P.D. 1606 as amended by R.A. 8249. This includes private individuals who are charged as co-principals, accomplices or accessories with the said public officers. In the instant case, respondent is being charged for violation of Section 3(g) of R.A. 3019, in conspiracy with then Secretary Enrile. Ideally, under the law, both respondent and Secretary Enrile should have been charged before and tried jointly by the Sandiganbayan. However, by reason of the death of the latter, this can no longer be done. Nonetheless, for reasons already discussed, it does not follow that the SB is already divested of its jurisdiction over the person of and the case involving herein respondent. To rule otherwise would mean that the power of a court to decide a case would no longer be based on the law defining its jurisdiction but on other factors, such as the death of one of the alleged offenders.

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[28] *Cojuangco v. Sandiganbayan*, *supra*, at 582-583. (Emphasis supplied; citations omitted)

Lastly, the issues raised in the present petition involve matters which are mere incidents in the main case and the main case has already been pending for over nine (9) years. Thus, a referral of the case to the Regional Trial Court would further delay the resolution of the main case and it would, by no means, promote respondent's right to a speedy trial and a speedy disposition of his case.

WHEREFORE, the petition is **GRANTED**. The Resolution of the Sandiganbayan dated June 2, 2005, granting respondent's Motion to Quash, is hereby **REVERSED** and **SET ASIDE**. The Sandiganbayan is forthwith **DIRECTED** to proceed with deliberate dispatch in the disposition of Criminal Case No. 28090.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, and *Reyes, JJ.*, concur.

Sereno, C.J., no part. Former counsel in related cases.

Del Castillo, J., no part.

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

SECOND DIVISION

[A.M. No. P-09-2648. March 26, 2014]
(Formerly A.M. No. 09-4-181-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. LEAH ESPERA MIRANDA, CLERK OF COURT V; and MS. JOCELYN H. DIVINAGRACIA, CLERK III, both of the RTC, Br. 38, Iloilo City,** *respondents.*

[A.M. No. P-13-3174. March 26, 2014]
(Formerly OCA I.P.I. No. 09-3128-P)

ATTY. REX G. RICO, *complainant, vs.* **CLERK OF COURT V LEAH ESPERA MIRANDA and CLERK III JOCELYN H. DIVINAGRACIA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; GRAVE MISCONDUCT; EXPLAINED AND DISTINGUISHED FROM SIMPLE MISCONDUCT.— As defined, misconduct is a transgression of some established or definite rules of action, or more particularly, an unlawful behavior on the part of a public officer or employee. Grave misconduct implies wrongful intention and not a mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifested. Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others. x x x Grave misconduct is classified as a grave offense punishable by

dismissal even for the first offense, pursuant to Section 52(A) of the Uniform Rules on Administrative Cases in the Civil Service.

2. ID.; ID.; ID.; ID.; KNOWINGLY ALLOWING THE TAMPERING OF THE RECORDS OF A CASE TO MAKE IT APPEAR THAT THE NOTICE OF APPEAL HAS COMPLIED WITH THE REQUIREMENTS OF THE RULES CONSTITUTES GRAVE MISCONDUCT.— We find no merit in Miranda and Divinagracia's explanation. Their involvement was not confined to the routinary process of receiving the Notice of Appeal and checking if it complied with the requirements. ***They knowingly allowed the tampering of the Notice of Appeal to make it appear that it complied with Section 11, Rule 13 of the 1997 Rules of Civil Procedure.*** Moreover, during the proceedings on Atty. Rico's Motion to Expunge the Notice of Appeal, neither Miranda nor Divinagracia informed Judge Patricio about the circumstances leading to the insertion of the written explanation on the Notice of Appeal. Their silence on the matter casts doubts on the veracity of their statements. x x x Miranda and Divinagracia's act of allowing the tampering of the records of Special Civil Action No. 02-27326 to make it appear that the Notice of Appeal filed by private respondents complied with the requirements constitutes grave misconduct.

3. ID.; ID.; ID.; ID.; CULPABILITY WAS MITIGATED FOR LACK OF EVIDENCE OF MALICE; FINE, IMPOSED.— [I]n the absence of evidence showing that the tampering of the records was done with malice or for financial consideration, we consider their culpability mitigated. x x x [T]he Court finds respondents Atty. Leah Espera Miranda, Clerk of Court V, and Jocelyn H. Divinagracia, Clerk III, both of the Regional Trial Court, Branch 38, Iloilo City, **GUILTY** of **GRAVE MISCONDUCT**. They are individually fined the amount of ₱40,000.00, with **WARNING** that their repetition of the same or similar offense in the future shall be dealt with more severely.

D E C I S I O N

BRION, *J.*:

This decision relates to administrative matters arising from the letter-complaint dated October 5, 2004 that Atty. Rex G. Rico (counsel for the plaintiffs in Special Civil Action No. 02-27326) filed with the Regional Trial Court (*RTC*), Branch 38, Iloilo City. The complainant asked the Office of the Court Administrator (*OCA*) to conduct an investigation on the alleged tampering of case records by personnel of that court. Atty. Rico likewise file a complaint dated March 30, 2009, arising from the same incident, against Clerk of Court V Leah Espera Miranda and Clerk III Jocelyn H. Divinagracia, both of the same court.

In a Resolution[1] dated July 8, 2009, the two complaints were consolidated, since both cases involved the same parties and the same matter.

The complaints trace their roots from the decision[2] dated May 26, 2003 of Judge Roger B. Patricio of the RTC of Iloilo City, Branch 38, declaring null and void the order dated August 1, 2002 issued by the Municipal Trial Court in Cities, Iloilo City, in Civil Case No. 99 (109) for Unlawful Detainer (entitled *Ledesma Do, et al. v. Avenido Paderna, et al.*). The questioned order allowed the private respondents, Avenido Paderna, *et al*., to redeem the property involved in that case, which property had been levied and sold at public auction to satisfy the judgment in favor of the petitioners, Valerie Ledesma-Do, *et al.*

On June 11, 2003, the private respondents, through their counsel Atty. Roberto F. Castillon, filed a Notice of Appeal.[3] On June 24, 2003, the RTC approved the appeal and directed

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[1] *Rollo* (A.M. No. P-13-3174), pp. 618-619.

[2] *Id.* at 23-29.

[3] *Id.* at 30.

the forwarding of the records of the case to the Court of Appeals.[4] On the same date, the petitioners, through Atty. Rico, moved to expunge the Notice of Appeal from the records of the case and to declare the decision final and executory, on the ground that a petition for review, not an appeal, is the proper remedy.[5]

On July 8, 2003, Atty. Castillon filed his comment on Atty. Rico's motion to expunge, arguing that the proper remedy from the RTC decision is an ordinary appeal to the Court of Appeals under Section 2, Rule 41 of the 1997 Rules of Civil Procedure, not a petition for review.[6]

On July 21, 2003, Atty. Rico filed a supplement to his motion to expunge, this time alleging that the Notice of Appeal should, just the same, be expunged from the records as it lacked a written explanation why its service or filing was not done personally,[7] as required by Section 11, Rule 13 of the 1997 Rules of Civil Procedure.

On September 23, 2003, Atty. Rico filed a Second Supplement to the motion to expunge notice of appeal and to declare the decision of May 26, 2003 final and executory.[8] He insisted that compliance with the requirement of Section 11, Rule 13 of the 1997 Rules of Civil Procedure is mandatory. In an order dated October 22, 2003, Judge Patricio found Atty. Rico's contention meritorious and declared the decision of May 26, 2003 final and executory.[9]

On November 5, 2003, Atty. Castillon filed a motion for reconsideration, admitting that indeed he committed an error when the second page of the Notice of Appeal, containing the written explanation, was omitted during printing due to

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[4] See Order dated October 22, 2003; *id.* at 43.

[5] *Id.* at 31-33.

[6] *Id.* at 35-37.

[7] *Id.* at 38-40.

[8] *Id.* at 41-42.

[9] *Id.* at 43-46.

inadvertence. He prayed that the appeal be allowed on grounds of equity and justice.[10]

On November 10, 2003, another motion for reconsideration[11] was filed by the private respondents, through another lawyer, Atty. Felix O. Loredo, Jr., who claimed that Atty. Castillon had withdrawn as counsel for the private respondents on July 16, 2003 and that he filed his Notice of Appearance as the private respondents' counsel on August 11, 2003. He alleged that the private respondents were consolidating the two motions for reconsideration and that they were not inconsistent with, but were supplementary or complimentary to, each other.[12]

Atty. Lodero further alleged that a perusal of the private respondents' one-page Notice of Appeal shows that it has a written explanation at the right-hand corner below that reads, "[c]opy of this Notice of Appeal was served upon counsel for plaintiff by reg. mail due to distance."[13] He asserted that Atty. Rico's supplement and second supplement were misleading, were "based on fallacious assertion,"[14] and that Judge Patricio's ruling (that the Notice of Appeal failed to comply with Section 11, Rule 13 of the 1997 Rules of Civil Procedure) was arbitrary, capricious, whimsical or a despotic exercise of judgment.[15]

Atty. Rico filed an Opposition dated November 19, 2003 to the motion for reconsideration filed by Atty. Lodero, alleging that the copy of the Notice of Appeal attached to his motion for reconsideration was a "clearly falsified document." He had checked with the records of the court shortly after he filed his Motion to Expunge Notice of Appeal and found that the required explanation did not exist and did not appear in the Notice of

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[10] *Id*. at 47-50.

[11] *Id*. at 51-64.

[12] *Id*. at 53-54.

[13] *Id*. at 116.

[14] *Ibid*.

[15] *Id*. at 67-72.

Appeal attached to the court records. He further pointed out the "so called explanation" is a typewriter imprint, while the rest of the pleading is a computer printer imprint, showing that the explanation was printed/intercalated much later, not by the same computer printer that printed the Notice of Appeal but by a typewriter. He prayed that Atty. Lodero be required to show cause why he should not be punished for contempt for submitting a falsified document in evidence.[16]

Atty. Lodero filed a Manifestation and Reply dated January 20, 2004, explaining that Atty. Castillon prepared the Notice of Appeal dated June 11, 2003 legally complete and in order, but when his secretary went to the post office on June 17, 2003 to furnish counsel for the petitioners a copy and to file in court the Notice of Appeal, she inadvertently left behind the 2nd page thereof with the written explanation. When the secretary tendered the Notice of Appeal for filing, the court personnel noticed that it had no written explanation. The secretary called up Atty. Castillon, who pointed out that the 2nd page had been left behind and, pursuant to his direction, a written explanation was typed on the Notice of Appeal at the lower right hand side. Immediately thereafter, the court personnel accepted and duly received the Notice of Appeal which is now part of the record of the case at page 230.[17]

On March 27, 2004, Judge Patricio resolved both motions for reconsideration and issued an order setting aside his order dated October 22, 2003 (that expunged from the records of the case the Notice of Appeal and declaring the decision dated May 26, 2003 final and executory). He held that the typewritten explanation on the Notice of Appeal existed at the time of its filing but that he "overlooked it due to grave oversight" because it was written on the lower extreme right portion of the Notice of Appeal and was "covered by Registry Receipt No. 0092 showing that a copy of the Notice of Appeal was sent by registered mail to Atty. Rex Rico, stapled to the Notice of Appeal but

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[16] Manifestation and Reply to Petitioners' Opposition; *id.* at 73-76.

[17] *Ibid*. The Notice of Appeal was signed by Atty. Castillon.

incidentally covering the subject explanation[.]" He ordered the reinstatement of his June 24, 2003 order giving due course to the private respondents' Notice of Appeal.[18]

Initially, the OCA referred Atty. Rico's letter of October 5, 2004 to the National Bureau of Investigation (*NBI*) for the discreet investigation of the alleged tampering of the records in Special Civil Action No. 02-27326. In a letter dated November 23, 2004, the NBI Western Visayas Regional Office identified the court personnel involved in the alleged tampering as Miranda and Divinagracia. However, the NBI found no misconduct or irregularity sufficient to establish a cause of action and to warrant criminal or administrative charges against them.[19]

Not satisfied with the NBI's report, the OCA referred the complaint to then Executive Judge Jose D. Azarraga, RTC, Iloilo City, for further investigation,[20] and the judge subsequently submitted his Report and Recommendation.

In a Resolution dated July 1, 2009, the Court redocketed the complaints as regular administrative matters and required the parties to manifest whether they were willing to submit the matter for resolution based on the pleadings filed.[21]

On July 29, 2009, Atty. Rico filed his compliance, manifesting his willingness to submit the cases for resolution on the basis of the pleadings filed.[22] Miranda and Divinagracia likewise complied in a joint manifestation[23] dated August 7, 2009.

Judge Azarraga, in his Report and Recommendation[24] dated April 10, 2007, confirmed that there had indeed been tampering

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[18] *Id.* at 116-117.

[19] *Id.* at 147-149.

[20] *Rollo* (A.M. No. P-09-2648), p. 297.

[21] *Id.* at 299-300.

[22] *Id.* at 301-302.

[23] *Id.* at 306-309.

[24] *Id.* at 11-32.

of the records in Special Civil Action No. 02-27326. This was done through the intercalation of the explanation in the Notice of Appeal filed by the private respondents in the case. He found that Divinagracia had actively participated by causing the explanation to be typed by Arlene Baesa, Atty. Castillon's secretary. Divinagracia admitted calling Baesa's attention by pointing out to her the absence of the written explanation on the Notice of Appeal. She even provided Baesa with a typewriter for her use in typing the explanation.

Judge Azarraga further reported that Miranda was aware that the lacking written explanation was supplied while at her office using the court's facilities. During the investigation, Miranda confirmed that she saw Divinagracia receive the Notice of Appeal and take the records of the case from their record room. She attached a copy of the Notice of Appeal with the written explanation to the records of the case and handed it to her. Miranda admitted that the copy sent to Atty. Rico did not contain a written explanation.

Judge Azarraga concluded that, "The facts on record – the admission of the parties, particularly in the documents which are the pleadings attached to the record, the transcript of the investigation proceedings as well as the arguments in their respective memoranda provided substantial evidence to establish that Mrs. Jocelyn Divinagracia, Clerk III of Branch 38, Regional Trial Court, Iloilo City, allowed and abetted the tampering and falsification of court records, for which disciplinary sanctions are in order."[25] He recommended that Miranda and Divinagracia be reprimanded for falsification and dishonesty.

In an Agenda Report[26] dated April 17, 2009, the OCA emphasized that when a pleading is filed in court, the main concern of a receiving clerk is to receive it. She has no authority or discretion to determine whether or not the pleading complied with the Rules of Court as this authority belongs to the presiding

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[25] *Id*. at 32.

[26] *Id*. at 1-6.

judge. The fact that the Notice of Appeal sent to the petitioners was different from that filed in court was not the concern of Miranda and Divinagracia. The OCA recommended that they be admonished to be more circumspect in the discharge of their functions as court employees.

We find sufficient evidence to conclude that the tampering of the Notice of Appeal was made after the Notice had already been filed on June 17, 2003 and had been made part of the records of Special Civil Action No. 02-27326. The evidence and the conflicting statements of the parties involved, including Judge Patricio, clearly show that there was no written explanation in the Notice of Appeal at the time it was filed, specifically:

1. According to Atty. Rico, the copy of the Notice of Appeal served upon him did not contain the required written explanation. After he filed his motion to expunge the Notice of Appeal,[27] he went to the court and looked at the records of the case and saw for himself that there was no written explanation in the Notice of Appeal[28] on file.

2. Atty. Castillon, in his motion for reconsideration of the order dated October 22, 2003, admitted that indeed there was no written explanation at the time the Notice of Appeal was filed as it was omitted during printing. He asked for "the indulgence of this Honorable Court, for the lapses in the observance of the required explanation under Sec. 11 of Rule 13 of the 1997 Rules of Civil Procedure, by reason of inadvertence and excusable lapses of memory, thus the failure to comply with the required formality in the service of the pleadings."[29] However, during the investigation, Atty. Castillon testified that the Notice of Appeal was filed on "that very day" he prepared it and that the written explanation was also typed on "that very day" which was June 11, 2003. Records show that the Notice of Appeal was dated

[27] *Id.* at 67.

[28] *Id.* at 54.

[29] *Id.* at 166.

June 11, 2003 but it was filed on June 17, 2003, or six days after it was prepared.[30]

On the other hand, Atty. Lodero, in his motion for reconsideration of the resolution of November 10, 2003, presented to the court a one-page copy of the Notice of Appeal with a written explanation at the lower right-hand corner that reads, "[c]opy of this Notice of Appeal was served upon counsel for plaintiffs by reg. mail due to distance."[31]

3. Judge Patricio, in his order dated October 22, 2003 granting Atty. Rico's Motion to Expunge the Notice of Appeal, found that the Notice of Appeal did not contain the required written explanation. However, in his order[32] dated March 27, 2004, Judge Patricio reversed and set aside his order of October 22, 2003, this time ruling that the typewritten explanation existed at the time the Notice of Appeal was filed but he overlooked it due to oversight.

4. The Notice of Appeal itself shows that it was computerized but the written explanation was typewritten.

In their joint manifestation filed in compliance with the Court's Resolution dated July 1, 2009, Miranda and Divinagracia denied conniving with the secretary of Atty. Castillon in completing the Notice of Appeal. They claimed that it has been a long standing court procedure for them to examine any pleading being filed with their court to see if the pleading complies with the necessary requisites in the filing of pleadings. Whenever there are lacking requisites, they call the attention of the persons filing so they can completely comply with the requirements. All pleadings in all cases filed in their court are first examined before being received. Miranda further states that she acted in good faith in allowing the secretary to use the office typewriter. It was her belief that being in a public office, it is her duty to

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[30] TSN, February 5, 2004, pp. 17-20.

[31] *Supra* note 12.

[32] *Supra* note 18.

serve the public "in whatever way and to whoever."[33] It never entered her mind that giving the secretary the permission to use her typewriter involved giving favor, showing bias to the defendants or doing any injustice to the plaintiffs.

We find no merit in Miranda and Divinagracia's explanation. Their involvement was not confined to the routinary process of receiving the Notice of Appeal and checking if it complied with the requirements. ***They knowingly allowed the tampering of the Notice of Appeal to make it appear that it complied with Section 11, Rule 13 of the 1997 Rules of Civil Procedure.*** Moreover, during the proceedings on Atty. Rico's Motion to Expunge the Notice of Appeal, neither Miranda nor Divinagracia informed Judge Patricio about the circumstances leading to the insertion of the written explanation on the Notice of Appeal. Their silence on the matter casts doubts on the veracity of their statements.

The Code of Conduct for Court Personnel reminds court personnel, in performing their duties and responsibilities, to serve as sentinels of justice. Any act of impropriety they commit immeasurably affects the honor and dignity of the Judiciary and the people's confidence in the Judiciary.[34] "They are, therefore, expected to act and behave in a manner that should uphold the honor and dignity of the Judiciary, if only to maintain the people's confidence in the Judiciary."[35] A court employee is not prohibited from helping individuals in the course of performing his official duties, but his actions cannot be left unchecked when the help extended places the integrity of the Judiciary in a bad light. Indeed, court employees are strictly instructed not to use their official duties to secure unwarranted benefits, privileges or exemptions for themselves or for others.

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[33] *Supra* note 23.

[34] 4th Whereas Clause.

[35] *Guerrero v. Ong*, A.M. No. P-09-2676, December 16, 2009, 608 SCRA 257, 263.

"The evident purpose of the instruction is precisely to free the court from suspicion of misconduct."[36]

As defined, misconduct is a transgression of some established or definite rules of action, or more particularly, an unlawful behavior on the part of a public officer or employee.[37] Grave misconduct implies wrongful intention and not a mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifested.[38] Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefit for herself or for another, contrary to the rights of others.[39] Miranda and Divinagracia's act of allowing the tampering of the records of Special Civil Action No. 02-27326 to make it appear that the Notice of Appeal filed by private respondents complied with the requirements constitutes grave misconduct.

Grave misconduct is classified as a grave offense punishable by dismissal even for the first offense, pursuant to Section 52(A) of the Uniform Rules on Administrative Cases in the Civil Service. However, in the absence of evidence showing that the tampering of the records was done with malice or for financial consideration, we consider their culpability mitigated.

While we could not presume that Judge Patricio had any knowledge or tried to cover-up the tampering of the records committed by his employees, we cannot at this point take any further action against him as he had already been separated

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[36] *Id.* at 264.

[37] *Ibid.*; and *Mendoza, Jr. v. Navarro,* 533 Phil. 8, 17 (2006).

[38] *Guerrero v. Ong, supra* note 28, at 264-265.

[39] *Id.* at 265.

from the service when he filed his disability retirement on June 3, 2008.

The Attorney's Oath mandates a lawyer, among other duties: (a) to do no falsehood; (b) nor consent to the doing of the same in court; and (c) to conduct himself as a lawyer to the best of his knowledge and discretion with all good fidelity to the court. ***Having this in mind, Atty. Castillon and Atty. Lodero's involvement in the tampering of the records, and in the filing of a falsified document, should be fully investigated to determine if their actions merit disciplinary action.***

WHEREFORE, the Court finds respondents Atty. Leah Espera Miranda, Clerk of Court V, and Jocelyn H. Divinagracia, Clerk III, both of the Regional Trial Court, Branch 38, Iloilo City, **GUILTY** of **GRAVE MISCONDUCT**. They are individually fined the amount of ₱40,000.00, with **WARNING** that their repetition of the same or similar offense in the future shall be dealt with more severely.

The Court further resolves to **DIRECT** the **Integrated Bar of the Philippines** to determine whether the involvement of **Atty. Roberto F. Castillon** and **Atty. Felix O. Lodero, Jr**. in the tampering of the records of Special Civil Action No. 02-27326 merits disciplinary action. The Office of the **Bar Confidant** is hereby directed to docket the matter as an administrative complaint against Atty. Roberto F. Castillon and Atty. Felix O. Lodero, Jr.

SO ORDERED.

Carpio (Chairperson), Peralta,[*] *del Castillo,* and *Reyes,*[**] *JJ.,* concur

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[*] Designated as Acting Member in lieu of Associate Justice Estela M. Perlas-Bernabe per Special Order No. 1650-A dated March 13, 2014.

[**] Designated as Acting Member in lieu of Associate Justice Jose Portugal Perez per Raffle dated March 17, 2014.

FIRST DIVISION

[A.M. No. P-12-3055. March 26, 2014]
(O.C.A. IPI No. 10-3509-P)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JOHNI GLENN D. RUNES,**[1] *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; AN ADMINISTRATIVE CASE FOR CASE-FIXING SHOULD BE DISMISSED FOR INSUFFICIENCY OF EVIDENCE.— Pursuant to Section 8, Rule II of the Revised Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules): "No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which case the person complained of may be required to comment." Indeed, the investigating team was able to gather information from various sources, but these sources failed to particularly identify respondent as the perpetrator of case-fixing in the processing of motions or applications for the reduction of bail. These informants refused to be identified and were reluctant to execute written testimonies, thus, making the information gathered from them inadmissible as evidence for being hearsay. Even the lone witness who was willing to disclose her identity did not directly identify respondent as the one responsible for case-fixing. Also, the author of the anonymous complaint never came out in the open to testify on his or her claim that respondent was engaged in illegal activity. An accusation is not synonymous with guilt. One who alleges a fact has the burden of proving it, since mere allegation is not evidence. Reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on. Therefore, due to the absence of either testimonial or documentary evidence to prove the culpability of respondent in the charge of case-fixing, the case cannot be given due course for insufficiency of evidence.

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[1] In his Comment received on 20 December 2010, respondent referred to himself as "John Glenn D. Runes"; however, at times, the record refers to him as "Johni Glenn D. Runes."

2. ID.; ID.; ID.; LOAFING, DEFINED.— *Loafing* is defined under the Civil Service rules as "frequent unauthorized absences from duty during office hours." The word "frequent" connotes that the employees absent themselves from duty more than once.

3. ID.; ID.; ID.; AN EMPLOYEE WHO WAS FOUND TO BE ABSENT FROM HIS POST TWICE DURING OFFICE HOURS WITHOUT AUTHORITY IS GUILTY OF LOAFING.— Respondent's two absences from his post, being without authority, can already be characterized as frequent. It constitutes inefficiency and dereliction of duty, which adversely affect the prompt delivery of justice. Substantial evidence shows that respondent is guilty of loafing. The investigation conducted by the investigating lawyers of the OCA revealed at least two (2) instances when he was out of his assigned post/station during regular office hours. He failed to sufficiently refute these findings.

4. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY; EMPLOYEE'S LENGTH OF SERVICE AND THE FACT THAT IT WAS HIS FIRST INFRACTION CONSIDERED AS MITIGATING CIRCUMSTANCES; SUSPENSION, IMPOSED.— Section 52(A)(17), Rule IV of the Uniform Rules penalizes "frequent unauthorized absences, or tardiness in reporting for duty, **loafing** or frequent unauthorized absences from duty during regular office hours" at the first offense with a suspension from six (6) months and one (1) day to one (1) year. The presence of mitigating facts is recognized in several administrative cases. Section 53(j), Rule IV of the Uniform Rules allows length of service in the government to be considered as a mitigating circumstance in the determination of the penalty to be imposed. In this case, respondent has been in the service of the judiciary for eight (8) years and eight (8) months, and this is his first infraction. Hence, said circumstances should be considered as mitigating circumstances in the determination of the penalty to be imposed. Although we recognize a mitigating circumstance in favor of respondent, we cannot impose a lower penalty than that prescribed under the Uniform Rules. Thus, Section 54(a) of the same rule provides that, when applicable, "[t]he minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present." Therefore, the minimum penalty for the offense of loafing which is six (6) months and

one (1) day suspension pursuant to Section 52(A)(17), Rule IV of the Uniform Rules shall be imposed against respondent.

D E C I S I O N

SERENO, *C.J.*:

At bench is an administrative case that involves respondent Johni Glenn D. Runes, Clerk III of the Metropolitan Trial Court (MeTC), Branch 58, San Juan City.

In a letter dated 20 February 2009, the Office of the Ombudsman, Field Investigation Office, General Investigation Bureau-C, through acting Director Joselito Fangon, endorsed a Complaint received through ephemeral electronic communication (text message) to the Office of the Court Administrator (OCA). The text message reads:

In San Juan courts, maraming fixers, si Glen Runez of MTC 58 and Conrado Gonzales of PAO, mahilig mangotong sa clients, the address is PNP Building Santolan San Juan. Marami sila.

On 25 March 2009, then Court Administrator Jose P. Perez[2] referred the matter to then Executive Judge Amelia C. Manalastas[3] for investigation and report.

On 22 May 2009, then Executive Judge Manalastas submitted a Confidential Report of Atty. Pablita M. Migriño, Clerk of Court. Atty. Migriño's findings are as follows:

The complaint against subjects Mr. Glen Runez and Mr. Conrado Gonzales being "fixers" in the San Courts is factual. The impression that these two (2) employees give is that their actions are condoned and tolerated by the Court since the motions for reduction of bail are usually granted. They have been at this illegal activity for a long time since no one has dared to openly prevent them from doing so for fear that their employment or their cases be jeopardized.

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[2] Now Associate Justice of the Supreme Court.

[3] Now Associate Justice of the Court of Tax Appeals.

On 31 July 2009, the matter was referred to the National Bureau of Investigation (NBI) for entrapment operations. Failing to get a response from the NBI, the OCA organized sometime in January 2010, an investigating team composed of lawyers. The team was asked to conduct a discreet investigation to determine the veracity of an anonymous Complaint on alleged case fixing in the MeTC of San Juan City.

The OCA investigating team interviewed several persons. However, it noted that, except for a single witness who was willing to be identified, all the other informants were not. Those who were unwilling to execute sworn statements on the alleged case-fixing activities were afraid that to do so would prejudice their cases. The lone witness claimed that case-fixing was indeed conducted through the processing of motions or applications to reduce bail in exchange for monetary consideration. Nevertheless, she did not identify respondent as the facilitator of these case-fixing activities.

Thus, in a Memorandum addressed to Court Administrator Jose Midas Marquez dated 9 September 2010, Wilhelmina Geronga, Chief, OCA Legal Office, recommended that the alleged case fixing be denied due course for insufficiency of evidence.

In the course of the investigation, however, the investigating team found that respondent had the habit of loafing during office hours. He was found loafing in two (2) instances: (1) on 26 January 2010 when he was nowhere to be found in his station; and (2) on 26 April 2010 wherein he left his post at 1:45 p.m. and was caught leaving the parking area in a Toyota Corolla sedan bearing plate number JLL 933. In both instances, he declared in his Daily Time Records (DTRs) complete working hours of 8:00 a.m. to 4:30 p.m.

In his letter of explanation received by the OCA on 20 December 2010, respondent firmly and vehemently denied the allegations of loafing and raised the defense of mistake in identity. He asserted that he never left his post on 26 January 2010 or 26 April 2010 as evidenced by his DTRs which were signed by

him and certified as true and correct by the Clerk of Court of MeTC Branch 58. Lastly, he posited that if he was seen leaving the area, it could have been for some errands.

In a Memorandum dated 21 February 2012, the OCA recommended that respondent be found guilty of the offense of loafing with the penalty of suspension for three (3) months without pay.

THE COURT'S RULING

The Complaint for case-fixing should be dismissed.

We agree with the recommendation of the OCA that the Complaint regarding case-fixing should be dismissed for lack of testimonial or documentary evidence.

Pursuant to Section 8, Rule II of the Revised Uniform Rules on Administrative Cases in the Civil Service (Uniform Rules): "No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which case the person complained of may be required to comment."

Indeed, the investigating team was able to gather information from various sources, but these sources failed to particularly identify respondent as the perpetrator of case-fixing in the processing of motions or applications for the reduction of bail. These informants refused to be identified and were reluctant to execute written testimonies, thus, making the information gathered from them inadmissible as evidence for being hearsay. Even the lone witness who was willing to disclose her identity did not directly identify respondent as the one responsible for case-fixing. Also, the author of the anonymous complaint never came out in the open to testify on his or her claim that respondent was engaged in illegal activity.

An accusation is not synonymous with guilt. One who alleges a fact has the burden of proving it, since mere allegation is not evidence. Reliance on mere allegations, conjectures and

suppositions will leave an administrative complaint with no leg to stand on.[4] Therefore, due to the absence of either testimonial or documentary evidence to prove the culpability of respondent in the charge of case-fixing, the case cannot be given due course for insufficiency of evidence.

This Court has often reiterated the rule pertaining to anonymous complaints,[5] to wit:

> At the outset, the Court stresses that an anonymous complaint is always received with great caution, originating as it does from an unknown author. However, a complaint of such sort does not always justify its outright dismissal for being baseless or unfounded for such complaint may be easily verified and may, without much difficulty, be substantiated and established by other competent evidence.[6]

Respondent is guilty of loafing

As to the charge of loafing, the Court likewise adopts the OCA's finding of guilt.

Loafing is defined under the Civil Service rules as "frequent unauthorized absences from duty during office hours."[7] The word "frequent" connotes that the employees absent themselves from duty more than once.[8] Respondent's two absences from his post, being without authority, can already be characterized as frequent.[9] It constitutes inefficiency and dereliction of duty, which adversely affect the prompt delivery of justice.[10]

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[4] *Concerned Citizen v. Divina*, A.M. No. P-07-2369, 16 November 2011, 660 SCRA 167, 176.

[5] *Anonymous Complaint against Pershing T.Yared*, 500 Phil. 130 (2005).

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

[7] SEC. 22, Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292.

[8] *Office of the Court Administrator v. Mallare*, 461 Phil. 18, 26 (2003).

[9] *Grutas v. Madolaria*, A.M. No. P-06-2142, 16 April 2008, 551 SCRA 379, 387.

[10] *Anonymous v. Grande*, 539 Phil. 1, 8 (2006).

Substantial evidence shows that respondent is guilty of loafing. The investigation conducted by the investigating lawyers of the OCA revealed at least two (2) instances when he was out of his assigned post/station during regular office hours. He failed to sufficiently refute these findings.

First, the defense of mistaken identity proffered by respondent has no basis. His claim that there was a mistake in identity cannot prevail over the positive identification of the investigating team. It is standard procedure in the OCA that before it conducts a discreet investigation, the members of the team familiarize themselves with the profiles of the persons to be investigated—mainly by examining all available records, including the physical appearance of the subject. The OCA's investigating team was composed of lawyers, who were expected to know the basic procedure for the conduct of a discreet investigation. The team was certain about the identity of respondent based on his 201 files and upon verification from other members of the staff of Branch 58.[11] In this case, he was unable to come forward with the requisite quantum of proof that the proper procedure had not been followed. He did not even make any allegation or offer a theory about how the team could have committed a mistake in his identity.

Second, the assertion of respondent that he was doing errands during the times he was out of his station is likewise untenable. He did not present any proof, other than his self-serving claims, to support his claim in order to be exonerated from the charge. He did not even mention the purpose of the alleged errands or whose instruction or order he was following. One who alleges something must prove it; as a mere allegation is not evidence.[12]

It is imperative that as Clerk III, respondent should always be at his station during office hours; hence, if his absence were indeed because of some errand, he has yet again failed to provide sufficient proof that those errands were official in nature. As

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[11] Memorandum dated 21 February 2012 from the OCA.

[12] *Gateway Electronics Corp. v. Asianbank Corp.*, G.R. No. 172041, 18 December 2008, 574 SCRA 698, 718.

previously mentioned, he had not filed any application for leave, nor did he possess any written authority to travel to justify his absence. Absent such proof, his absence remains indubitably unauthorized.

In *Lopena v. Saloma*,[13] this Court ruled:

> Respondent is reminded that all judicial employees must devote their official time to government service. Public officials and employees must see to it that they follow the Civil Service Law and Rules. Consequently, they must observe the prescribed office hours and the efficient use of every moment thereof for public service if only to recompense the government and ultimately the people who shoulder the cost of maintaining the judiciary. To inspire public respect for the justice system, court officials and employees are at all times behooved to strictly observe official time. This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the last and lowest of its employees. Thus, court employees must exercise at all times a high degree of professionalism and responsibility, as service in the judiciary is not only a duty; it is a mission.[14]

Likewise, *Roman v. Fortaleza*,[15] has enunciated:

> Court personnel must devote every moment of official time to public service. The conduct and behavior of court personnel should be characterized by a high degree of professionalism and responsibility, as they mirror the image of the court. Specifically, court personnel must strictly observe official time to inspire public respect for the justice system. Section 1, Canon IV of the Code of Conduct for Court Personnel mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours. Loafing results in inefficiency and non-performance of duty, and adversely affects the prompt delivery of justice.[16]

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[13] A.M. No. P-06-2280, 31 January 2008, 543 SCRA 228.

[14] *Id.* at 236-237.

[15] A.M. No. P-10-2865, 22 November 2010, 635 SCRA 465.

[16] *Id.* at 469.

He maintains that his DTRs, which were signed by him and certified as true and correct by the Clerk of Court, support his claim that he never left his station. He cannot rely on the certification made by the Clerk of Court in his DTR because, as clearly shown therein, the latter's verification pertains to the prescribed office hours, and not to the correctness of the entries therein.[17]

Imposable Penalty

As regards the penalty, this Court does not agree with the recommendations of the OCA, which imposed a penalty of suspension for three (3) months without pay.

Section 52(A)(17), Rule IV of the Uniform Rules penalizes "frequent unauthorized absences, or tardiness in reporting for duty, **loafing** or frequent unauthorized absences from duty during regular office hours" at the first offense with a suspension from six (6) months and one (1) day to one (1) year.

The presence of mitigating facts is recognized in several administrative cases. Section 53(j), Rule IV of the Uniform Rules allows length of service in the government to be considered as a mitigating circumstance in the determination of the penalty to be imposed.

In this case, respondent has been in the service of the judiciary for eight (8) years and eight (8) months, and this is his first infraction. Hence, said circumstances should be considered as mitigating circumstances in the determination of the penalty to be imposed.

Although we recognize a mitigating circumstance in favor of respondent, we cannot impose a lower penalty than that prescribed under the Uniform Rules. Thus, Section 54(a) of the same rule provides that, when applicable, "[t]he minimum

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[17] *Time Card* for 1-31 January and 1-30 April 2010 of Johni Glenn D. Runes, both containing the entries "Verified as to the prescribed office hours (sgd.) Clerk of Court."

of the penalty shall be imposed where only mitigating and no aggravating circumstances are present."

Therefore, the minimum penalty for the offense of loafing which is six (6) months and one (1) day suspension pursuant to Section 52(A)(17), Rule IV of the Uniform Rules shall be imposed against respondent.

We emphasize that all court employees, being public servants in an office dispensing justice, must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. To maintain the people's respect and faith in the judiciary, court employees should be models of uprightness, fairness and honesty. They should avoid any act or conduct that would diminish public trust and confidence in the courts.[18]

WHEREFORE, respondent **Johni Glenn D. Runes** is found **GUILTY** of loafing. Accordingly, he is hereby **SUSPENDED** for six (6) months and one (1) day, with a very **STERN WARNING** that a repetition of the same or a similar offense will be dealt with more severely.

SO ORDERED.

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

[18] *Tan v. Quitorio*, A.M. No. P-11-2919, 30 May 2011, 649 SCRA 12, 25.

FIRST DIVISION

[A.M. No. P-12-3093. March 26, 2014]
(Formerly OCA I.P.I. No. 12-3845-P)

ANONYMOUS COMPLAINT AGAINST OTELIA LYN G. MACEDA, COURT INTERPRETER, MUNICIPAL TRIAL COURT, PALAPAG, NORTHERN SAMAR

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE COURT CAN FREELY ACCESS EMPLOYEE'S DAILY TIME RECORDS (DTRs) EVEN WITHOUT HER CONSENT; TECHNICAL RULES OF EVIDENCE ARE NOT STRICTLY APPLICABLE.— Maceda's opposition to the documentary evidence against her was grounded on how the documents were obtained, but not on the falsity of the said documents or their contents. Maceda argues that her consent was necessary for the release of copies of the documents attached to the letter-complaint but she did not specifically cite the relevant court and school rules to this effect. In so far as Maceda's DTRs are concerned, these formed part of her employee records, which the OCA and the Court can freely access even without her consent. Moreover, proceedings in administrative investigation are not strictly governed by the technical rules of evidence. They are summary in nature.

2. ID.; ID.; ID.; NO VIOLATION OF THE RIGHT TO DUE PROCESS WHERE THE EMPLOYEE WAS GIVEN OPPORTUNITY TO BE HEARD AND ADDUCE EVIDENCE IN HER DEFENSE.— Maceda cannot claim that the admission and consideration of the documentary evidence attached to the letter-complaint violated her right to due process. She undeniably had the opportunity to contest the truth of the documents and/or submit controverting evidence to the same, but she failed to do so. *Lastly*, Maceda prays for additional time before resolution of this administrative matter so she can engage the services of a lawyer to represent her. She points out that she was not assisted by counsel in the earlier proceedings. Maceda has knowingly and voluntarily

participated in the administrative investigation conducted by Judge Falcotelo, by the OCA, and finally, by this Court. The administrative investigation began as early as November 10, 2010, but it was only in Maceda's Manifestation dated February 5, 2012 before this Court that she insisted on engaging the services of a legal counsel. We can no longer accommodate Maceda's request this far along into the proceedings. Being a court employee and law student, Maceda is capable of understanding the charges against her and adducing her defenses herself. x x x Maceda was accorded her right to due process during the administrative investigation conducted in the instant case. She was given an opportunity to answer and be heard on the charges against her, and that, it has often been said, is the essence of procedural due process.

3. ID.; ID.; COURT PERSONNEL; FALSIFICATION OF DTRs CONSTITUTES DISHONESTY.— Maceda only offered a general denial of any wrongdoing and asserted that someone at the MTC was just trying to destroy her reputation. She did not offer a clear explanation on how she could have attended her 5:30 p.m. classes in UEP on time even when she supposedly left the MTC at only 5:00 p.m. Maceda's repeated assertion that she continued her law school classes for self-improvement and with the permission of the MTC Presiding Judge does little to exculpate her of administrative liability. These are not acceptable excuses for not properly declaring the time she logged-off from work in her DTRs. Time and again, the OCA and this Court have underscored the importance of court employees truthfully and accurately recording in their DTRs the time of their arrival in and departure from office. Maceda's falsification of her DTRs is dishonesty.

4. ID.; ID.; ID.; ID.; DISHONESTY, DEFINED AND CLASSIFIED. — Dishonesty is defined as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Resolution No. 06-0538 dated April 4, 2006 of the Civil Service Commission, also known as the Rules on the Administrative Offense of Dishonesty, further classifies the offense into Serious Dishonesty, Less Serious Dishonesty, and Simple Dishonesty, depending on the attendant circumstances.

5. ID.; ID.; ID.; ID.; LESS SERIOUS DISHONESTY, COMMITTED IN CASE AT BAR; CIRCUMSTANCES CONSIDERED IN CLASSIFYING THE DISHONEST ACT AS LESS SERIOUS.— The presence of any of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Less Serious Dishonesty: 1. The dishonest act caused damage and prejudice to the government which is not so serious as to qualify under the immediately preceding classification. 2. The respondent did not take advantage of his/her position in committing the dishonest act. 3. Other analogous circumstances. Less Serious Dishonesty is deemed a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense. Considering that Maceda has not been previously charged with an administrative offense in her eleven (11) years in government service and that there is no proof of her being remiss in the performance of her duties as court interpreter or causing specific damage or prejudice to the court for her dishonest act, we find Maceda to be guilty of Less Serious Dishonesty, for which the penalty of suspension for six (6) months and one (1) day is proper.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

An anonymous complainant, claiming to be a student at the University of Eastern Philippines (UEP), filed a letter-complaint[1] dated June 28, 2010 before the Office of the Court Administrator (OCA) charging Otelia Lyn G. Maceda (Maceda), Court Interpreter, Municipal Trial Court (MTC), Palapag, Northern Samar, of falsifying her attendance in court so she could attend her law classes at UEP in Catarman, Norther Samar. The complainant wrote:

I am questioning her status now because she is enjoying the privilege of a regular employee and at the same time a regular student at the College of Law. She's been going to school for more than 4 years now, for this is just being tolerated by the Clerk of Court.

[1] *Rollo*, p. 6.

She has been habitually tardy and absent from her office because she leaves the office everyday before 3:00 p.m. to catch up her classes, since the travel time from her office to her school is more or less 3 hours. The mode of transportation in going to her school is by means of water and land vehicles with a distance of about 50 to 70 kilometers away from Palapag, Northern Samar, where the court is to the University of Eastern Philippines in Catarman, Northern Samar.

Your honors, is this allowed in our esteemed Highest Court that an employee is leaving the office early everyday and makes it appear in her Daily Time Records that she is still in office until 5:00 p.m. when in fact she is already in school? Under Civil Service Law and Rules, falsification of DTR is an act of dishonesty a grave offense, we know. With all due respect we believe that this act or conduct would dissipate and diminish public trust and confidence in the courts.

In a 1st Indorsement[2] dated November 10, 2010, the OCA referred the aforementioned letter-complaint to Executive Judge Jose F. Falcotelo (Judge Falcotelo), Regional Trial Court (RTC), Branch 22 of Laoang, Northern Samar, for investigation and report.

Judge Falcotelo submitted his Report[3] dated April 5, 2011.

According to the Report, Judge Falcotelo personally spoke to Maceda. Maceda admitted that she has been enrolled at UEP since 2004 and that she is an irregular student. She also averred that she requested permission to continue her law studies from then MTC Presiding Judge Eustaquio C. Lagrimas (Judge Lagrimas), and that Judge Lagrimas granted her request.

Judge Falcotelo reported further that UEP in Catarman is about 70 kilometers away from the MTC in Palapag. From Palapag, one has to ride a motorboat to *Barangay* (Brgy.) Rawis in Laoang, Northern Samar, where the terminal for all passenger vehicles going to Catarman is located. From Brgy. Rawis, it will still take a one-hour jeepney ride to get to UEP, excluding the waiting time for the jeepney to fill up with passengers before

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[2] *Id*. at 13.

[3] *Id*. at 26-27.

leaving the terminal. Judge Falcotelo calculated that Maceda would have to leave Palapag at 4:00 p.m. or earlier to be able to attend her 5:30 p.m. classes at UEP.

In the end, Judge Facoltelo recommended the dismissal of the letter-complaint against Maceda, considering that Maceda pursued her law studies for self-improvement and that Maceda merely relied on Judge Lagrimas's permission for her to attend her classes at UEP.

Upon receipt of Judge Falcotelo's Report, the OCA directed Maceda to file her comment on the letter-complaint against her.

In her letter-comment[4] dated May 3, 2012, Maceda made a general denial of any wrongdoing in the performance of her job and reporting of her official time. She had properly reported her daily attendance to the extent that she had already consumed all of her leave credits and she experienced working without pay/salary. Her only intention was to enrich her knowledge in relation to her work in the judiciary by pursuing her law studies, for which she was granted permission by the presiding judge of her court.

The OCA submitted its Report[5] dated August 16, 2012 with the following recommendations:

RECOMMENDATION: It is respectfully submitted for the consideration of the Honorable Court that:

1. the instant administrative matter be **RE-DOCKETED** as a regular complaint for Dishonesty against O[t]elia Lyn G. Maceda, Court Interpreter, Municipal Trial Court, Palapag, Northern Samar; and

2. respondent Ms. Maceda be found **GUILTY** of Dishonesty and be **SUSPENDED** for six (6) months without pay, effective immediately, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

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[4] *Id*. at 47-50.

[5] *Id*. at 51-55.

On October 15, 2012, the Court issued a Resolution[6] re-docketing the case as a regular administrative matter and requiring the parties to manifest within ten (10) days from notice if they are willing to submit the matter for resolution based on the pleadings filed.

Maceda filed her Manifestation[7] dated February 5, 2012, stating that she was not willing to submit the instant case for decision or resolution by the Court based on the records/pleadings filed, for the reasons quoted below:

a. The anonymity of the complainant supposedly a college student of the University of Eastern Philippines is a mere façade devised to conceal its (sic) true identity and thus avoid or elude from the disciplining power of this Court, as this scheming anonymous complainant may turn out to be a staff of the Municipal Trial Court of Palapag, N. Samar who has been interested in the position of the Branch Clerk of Court held at that time by a retirable officer which is now declared vacant but still not posted in the court's bulletin board or any public place for no reason at all;

   Respondent had been recommended by the former Branch Clerk of Court to such position as the most qualified next in rank officer. However, the presiding judge has withheld his recommendation for the respondent as he favors another employee who is not qualified and should be disqualified;

b. The Annexes attached to the complaint, namely: **1)** a photocopy of respondent's Certificate of Registration (COR) from the UEP Registrar's Office for the 2nd semester of school year 2009-2010; **2)** a photocopy of respondent's Student Grades Evaluation from the Office of the Registrar of UEP for the 1st, 2nd and 3rd year subjects, and **3)** photocopies of respondent's Daily Time Record from the Offices of the Branch Clerk of Court and/or of the Presiding Judge which may have apparently been the basis for initiating an investigation. These documents obtained by a supposed anonymous college student of UEP were definitely in violation of the rules of the Registrar's Office

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[6] *Id.* at 56.

[7] *Id.* at 59-61.

of UEP and the Office of the Clerk of Court and/or of the presiding judge of MTC of Palapag, N. Samar who have custody thereof, respectively, because respondent did not and has not authorized anybody to procure for said personal records neither did said respective officers in custody of said documents officially allowed such releases unless these officers or a member of their staff had assisted or conspired with the scheming anonymous complainant;

c. During the investigation of this case conducted under the Office of the Court Administrator, respondent was not represented by counsel. In the instant case, respondent invokes her right to counsel as this regular administrative matter has and will still affect her present employment with the Judiciary, her law studies, her future and her very own life and that of her relatives. For this, respondent prays to this Honorable Court to give her sufficient time to engage the services of a counsel.

In a Resolution dated June 17, 2013, the Court required the OCA to comment on Maceda's foregoing Manifestation.

The OCA filed its Memorandum[8] dated September 4, 2013 recommending as follows: (1) Maceda's Manifestation be noted, and (2) Maceda be found guilty of Less Serious Dishonesty and be suspended for six (6) months and one (1) day without pay, effective immediately, with a stern warning that a repetition of the same or similar offense will be dealt with more severely.

We first address Maceda's arguments in her Manifestation.

First, Maceda questions the anonymity of the complainant and suspects that the complainant is not really a student at UEP but another court employee, who is Maceda's rival for the same vacant Clerk of Court position. The complainant is concealing his/her true identity to avoid the disciplining authority of the Court.

At the outset, we stress that an anonymous complaint is always received with great caution, originating as it does from an unknown author. However, a complaint of such sort does not always

[8] *Id*. at 63-68.

justify its outright dismissal for being baseless or unfounded for such complaint may be easily verified and may, without much difficulty, be substantiated and established by other competent evidence.[9] As this Court ruled in *Anonymous Complaint Against Gibson A. Araula*:[10]

> Although the Court does not as a rule act on anonymous complaints, cases are accepted in which the charge could be fully borne by public records of indubitable integrity, thus needing no corroboration by evidence to be offered by complainant, whose identity and integrity could hardly be material where the matter involved is of public interest. x x x.

Indeed, 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 would diminish or even just tend to diminish the faith of the people in the Judiciary cannot be countenanced.[11] Hence, anonymous complaints of this nature should be acted upon by this Court.

Second, Maceda contests the admissibility of the documentary evidence attached to the letter-complaint, particularly, the photocopies of her certificate of registration at UEP; her grades for the 1st, 2nd and 3rd year law subjects; and her Daily Time Records (DTRs) filed with the court, for said documents were obtained without her authorization/consent or that of the officers who are in custody of the documents. Maceda even insinuates the possibility of a conspiracy between the complainant and the custodian of the said documents.

Maceda's opposition to the documentary evidence against her was grounded on how the documents were obtained, but not on the falsity of the said documents or their contents. Maceda

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[9] *Anonymous Complaint Against Peshing T. Yared, Sheriff IV, Municipal Trial Court in Cities, Canlaon City,* 500 Phil. 130, 136-137 (2005); *Anonymous v. Geverola,* 344 Phil. 688, 696-697 (1997).

[10] 171 Phil. 427 (1978).

[11] *RTC Makati Movement Against Graft and Corruption v. Dumlao,* 317 Phil. 128, 148 (1995).

argues that her consent was necessary for the release of copies of the documents attached to the letter-complaint but she did not specifically cite the relevant court and school rules to this effect. In so far as Maceda's DTRs are concerned, these formed part of her employee records, which the OCA and the Court can freely access even without her consent.

Moreover, proceedings in administrative investigation are not strictly governed by the technical rules of evidence. They are summary in nature.[12] As we have declared in *Office of the Court Administrator v. Indar*:[13]

> It is settled that "technical rules of procedure and evidence are not strictly applied to administrative proceedings. Thus, administrative due process cannot be fully equated with due process in its strict judicial sense." It is enough that the party is given the chance to be heard before the case against him is decided. Otherwise stated, in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard. (Citations omitted.)

Maceda cannot claim that the admission and consideration of the documentary evidence attached to the letter-complaint violated her right to due process. She undeniably had the opportunity to contest the truth of the documents and/or submit controverting evidence to the same, but she failed to do so.

Lastly, Maceda prays for additional time before resolution of this administrative matter so she can engage the services of a lawyer to represent her. She points out that she was not assisted by counsel in the earlier proceedings.

Maceda has knowingly and voluntarily participated in the administrative investigation conducted by Judge Falcotelo, by the OCA, and finally, by this Court. The administrative investigation began as early as November 10, 2010, but it was only in Maceda's Manifestation dated February 5, 2012 before this Court that she insisted on engaging the services of a legal

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[12] *Burgos v. Aquino,* 319 Phil. 622, 628 (1995).

[13] A.M. No. RTJ-10-2232, April 10, 2012, 669 SCRA 24, 37-38.

counsel. We can no longer accommodate Maceda's request this far along into the proceedings. Being a court employee and law student, Maceda is capable of understanding the charges against her and adducing her defenses herself.

We already clarified in *Carbonel v. Civil Service Commission*[14] the extent of the right to counsel, thus:

> However, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation. Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation.
>
> While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that, under existing laws, a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of petitioner's capacity to represent herself, and no duty rests on such body to furnish the person being investigated with counsel. **The right to counsel is not always imperative in administrative investigations** because such inquiries are conducted merely to determine whether there are facts that merit the imposition of disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service. (Emphasis ours, citations omitted.)

Maceda was accorded her right to due process during the administrative investigation conducted in the instant case. She was given an opportunity to answer and be heard on the charges against her, and that, it has often been said, is the essence of procedural due process.[15]

Now, we proceed to determining Maceda's liability for falsification of her DTRs.

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[14] G.R. No. 187689, September 7, 2010, 630 SCRA 202, 207-208.

[15] *Re: Pilferage of supplies in the stockroom of the Property Division, OCA committed by Teodoro L. Saquin, Clerk II*, 389 Phil. 45, 49-40 (2000).

We see no reason to disturb the finding of the OCA that Maceda did indeed falsify her DTRs and is, therefore, guilty of dishonesty.

Judge Falcotelo stated in his Report that for Maceda to make it on time to her law classes at UEP, she would have to leave the MTC at 4:00 p.m. or even earlier. Maceda's Summary of Scholastic Records, submitted by UEP College Secretary Alfredo D. Tico, showed that Maceda had law school subjects for the school years 2009-2010 and 2010-2011 which started at 5:30 p.m. Hence, it was impossible for Maceda to have left the MTC only at 5:00 p.m. as she had consistently logged in her DTRs during the months she was also attending her classes.

Specifically, Maceda's Summary of Scholastic Records for the Second Semester of school year 2009-2010 stated that her Criminal Law II class was scheduled every Friday, from 5:30 p.m. to 8:30 p.m. However, according to Maceda's DTRs, she logged out at 5:00 p.m. for the following Fridays of the said time period: October 23, 2009; November 6, 2009; November 13, 2009; November 20, 2009; November 27, 2009;[16] December 4, 2009; December 11, 2009; December 18, 2009; January 8, 2010;[17] February 5, 2010; February 12, 2010; February 19, 2010; February 26, 2010; March 5, 2010; and March 12, 2010.[18] It can hardly be believed that Maceda could have traversed the 70-kilometer distance between the MTC and UEP, which would have necessitated a boat ride and a jeepney ride, in just 30 minutes.

Maceda only offered a general denial of any wrongdoing and asserted that someone at the MTC was just trying to destroy her reputation. She did not offer a clear explanation on how she could have attended her 5:30 p.m. classes in UEP on time even when she supposedly left the MTC at only 5:00 p.m.

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[16] *Rollo*, p. 16.

[17] *Id*. at 17.

[18] *Id*. at 18.

Maceda's repeated assertion that she continued her law school classes for self-improvement and with the permission of the MTC Presiding Judge does little to exculpate her of administrative liability. These are not acceptable excuses for not properly declaring the time she logged-off from work in her DTRs. Time and again, the OCA and this Court have underscored the importance of court employees truthfully and accurately recording in their DTRs the time of their arrival in and departure from office.

Maceda's falsification of her DTRs is dishonesty. Dishonesty is defined as the "(d)isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[19]

Resolution No. 06-0538 dated April 4, 2006 of the Civil Service Commission, also known as the Rules on the Administrative Offense of Dishonesty, further classifies the offense into Serious Dishonesty, Less Serious Dishonesty, and Simple Dishonesty, depending on the attendant circumstances.

The presence of any of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Less Serious Dishonesty:

1. The dishonest act caused damage and prejudice to the government which is not so serious as to qualify under the immediately preceding classification.
2. The respondent did not take advantage of his/her position in committing the dishonest act.
3. Other analogous circumstances.[20]

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[19] *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court*, 502 Phil. 264, 277 (2005).

[20] Section 4 of CSC Resolution No. 06-0538.

Less Serious Dishonesty is deemed a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense.[21]

Considering that Maceda has not been previously charged with an administrative offense in her eleven (11) years in government service and that there is no proof of her being remiss in the performance of her duties as court interpreter or causing specific damage or prejudice to the court for her dishonest act, we find Maceda to be guilty of Less Serious Dishonesty, for which the penalty of suspension for six (6) months and one (1) day is proper.

WHEREFORE, we find Otelia Lyn G. Maceda **GUILTY** of the offense of Less Serious Dishonesty and impose upon her the penalty of **SUSPENSION for SIX (6) MONTHS AND ONE (1) DAY**, effective immediately. We further issue a **STERN WARNING** to Maceda that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

[21] Section 2(b) of CSC Resolution No. 06-0538; eventually incorporated as Rule 10, Section 46(B)(1) of the Revised Rules on Administrative Cases in the Civil Service, promulgated on November 18, 2011.

FIRST DIVISION

[G.R. No. 157485. March 26, 2014]

REPUBLIC OF THE PHILIPPINES represented by AKLAN NATIONAL COLLEGE OF FISHERIES (ANCF) and DR. ELENITA R. ANDRADE, in her capacity as ANCF Superintendent, *petitioner, vs.* **HEIRS OF MAXIMA LACHICA SIN, namely: SALVACION L. SIN, ROSARIO S. ENRIQUEZ, FRANCISCO L. SIN, MARIA S. YUCHINTAT, MANUEL L. SIN, JAIME CARDINAL SIN, RAMON L. SIN, and CEFERINA S. VITA,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; REQUISITES FOR JUDICIAL CONFIRMATION OF IMPERFECT TITLE.— This Court has thus held that there are two requisites for judicial confirmation of imperfect or incomplete title under CA No. 141, namely: (1) open, continuous, exclusive, and notorious possession and occupation of the subject land by himself or through his predecessors-in-interest under a *bona fide* claim of ownership since time immemorial or from June 12, 1945; and (2) the classification of the land as alienable and disposable land of the public domain.

2. ID.; ID.; ID.; FAILURE OF THE REPUBLIC TO SHOW PROOF THAT THE SUBJECT LAND WAS DECLARED TIMBERLAND DOES NOT LEAD TO THE PRESUMPTION THAT SAID LAND WAS ALIENABLE AND DISPOSABLE.— [T]the failure of petitioner Republic to show competent evidence that the subject land was declared a timberland before its formal classification as such in 1960 does not lead to the presumption that said land was alienable and disposable prior to said date. On the contrary, the presumption is that unclassified lands are inalienable public lands.

3. ID.; ID.; ID.; ID.; THE CLAIMANTS HAVE THE BURDEN TO IDENTIFY A POSITIVE ACT OF THE GOVERNMENT DECLASSIFYING INALIENABLE PUBLIC LAND INTO

DISPOSABLE LAND.— The requirements for judicial confirmation of imperfect title in Section 48(b) of the Public Land Act, as amended, and the equivalent provision in Section 14(1) of the Property Registration Decree was furthermore painstakingly debated upon by the members of this Court in *Heirs of Mario Malabanan v. Republic*. In *Malabanan*, the members of this Court were in disagreement as to whether lands declared alienable or disposable after June 12, 1945 may be subject to judicial confirmation of imperfect title. There was, however, no disagreement that there must be a declaration to that effect. In the case at bar, it is therefore the respondents which have the burden to identify a **positive act of the government**, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. Since respondents failed to do so, the alleged possession by them and by their predecessors-in-interest is inconsequential and could never ripen into ownership.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

Benjamin C. Santos & Ray Montri C. Santos Law Offices for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review assailing the Decision[1] of the Court of Appeals in CA-G.R. SP No. 65244 dated February 24, 2003, which upheld the Decisions of the Regional Trial Court (RTC) of Kalibo, Aklan in Civil Case No. 6130 and the First Municipal Circuit Trial Court (MCTC) of New Washington and Batan, Aklan in Civil Case No. 1181, segregating from the Aklan National College of Fisheries (ANCF) reservation the portion of land being claimed by respondents.

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[1] *Rollo*, pp. 38-47; penned by Associate Justice Rodrigo V. Cosico with Associate Justices Rebecca de Guia-Salvador and Regalado E. Maambong, concurring.

Petitioner in this case is the Republic of the Philippines, represented by ANCF and Dr. Elenita R. Andrade, in her capacity as Superintendent of ANCF. Respondents claim that they are the lawful heirs of the late Maxima Lachica Sin who was the owner of a parcel of land situated at *Barangay* Tambac, New Washington, Aklan, and more particularly described as follows:

> A parcel of cocal, nipal and swampy land, located at *Barangay* Tambac, New Washington, Aklan, containing an approximate area of FIFTY[-]EIGHT THOUSAND SIX HUNDRED SIX (58,606) square meters, more or less, as per survey by Geodetic Engineer Reynaldo L. Lopez. Bounded on the North by Dumlog Creek; on the East by Adriano Melocoton; on the South by Mabilo Creek; and on the West by Amado Cayetano and declared for taxation purposes in the name of Maxima L. Sin (deceased) under Tax Declaration No. 10701 (1985) with an assessed value of Php1,320.00.[2]

On August 26, 1991, respondent heirs instituted in the RTC of Kalibo, Aklan a complaint against Lucio Arquisola, in his capacity as Superintendent of ANCF (hereinafter ANCF Superintendent), for recovery of possession, quieting of title, and declaration of ownership with damages. Respondent heirs claim that a 41,231-square meter-portion of the property they inherited had been usurped by ANCF, creating a cloud of doubt with respect to their ownership over the parcel of land they wish to remove from the ANCF reservation.

The ANCF Superintendent countered that the parcel of land being claimed by respondents was the subject of Proclamation No. 2074 of then President Ferdinand E. Marcos allocating 24.0551 hectares of land within the area, which included said portion of private respondents' alleged property, as civil reservation for educational purposes of ANCF. The ANCF Superintendent furthermore averred that the subject parcel of land is timberland and therefore not susceptible of private ownership.

Subsequently, the complaint was amended to include ANCF as a party defendant and Lucio Arquisola, who retired from the

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[2] *Id.* at 56.

service during the pendency of the case, was substituted by Ricardo Andres, then the designated Officer-in-Charge of ANCF.

The RTC remanded the case to the MCTC of New Washington and Batan, Aklan, in view of the enactment of Republic Act No. 7659 which expanded the jurisdiction of first-level courts. The case was docketed as Civil Case No. 1181 (4390).

Before the MCTC, respondent heirs presented evidence that they inherited a bigger parcel of land from their mother, Maxima Sin, who died in the year 1945 in New Washington, Capiz (now Aklan). Maxima Sin acquired said bigger parcel of land by virtue of a Deed of Sale (Exhibit "B"), and then developed the same by planting coconut trees, banana plants, mango trees and nipa palms and usufructing the produce of said land until her death in 1945.

In the year 1988, a portion of said land respondents inherited from Maxima Sin was occupied by ANCF and converted into a fishpond for educational purpose. Respondent heirs of Maxima Sin asserted that they were previously in possession of the disputed land in the concept of an owner. The disputed area was a swampy land until it was converted into a fishpond by the ANCF. To prove possession, respondents presented several tax declarations, the earliest of which was in the year 1945.

On June 19, 2000, the MCTC rendered its Decision in favor of respondents, the dispositive portion of which reads:

> WHEREFORE, judgment is rendered declaring plaintiffs [respondent heirs herein] the owner and possessor of the land in question in this case and for the defendants to cause the segregation of the same from the Civil Reservation of the Aklan National College of Fisheries, granted under Proclamation No. 2074 dated March 31, 1981.
>
> It is further ordered, that defendants jointly and severally pay the plaintiffs actual damages for the unearned yearly income from nipa plants uprooted by the defendants [on] the land in question when the same has been converted by the defendants into a fishpond, in the amount of Php3,500.00 yearly beginning the year 1988 until plaintiffs are fully restored to the possession of the land in question.

It is finally ordered, that defendants jointly and severally pay the plaintiffs the sum of Php10,000.00 for attorney's fees and costs of this suit.[3]

According to the MCTC, the sketch made by the Court Commissioner in his report (Exh. "LL") shows that the disputed property is an alienable and disposable land of the public domain. Furthermore, the land covered by Civil Reservation under Proclamation No. 2074 was classified as timberland only on December 22, 1960 (Exh. "4-D"). The MCTC observed that the phrase "Block II Alien or Disp. LC 2415" was printed on the Map of the Civil Reservation for ANCF established under Proclamation No. 2074 (Exh. "6"), indicating that the disputed land is an alienable and disposable land of the public domain.

The MCTC likewise cited a decision of this Court in the 1976 case of *Republic v. Court of Appeals*[4] where it was pronounced that:

Lands covered by reservation are not subject to entry, and no lawful settlement on them can be acquired. The claims of persons who have settled on, occupied, and improved a parcel of public land which is later included in a reservation are considered worthy of protection and are usually respected, but where the President, as authorized by law, issues a proclamation reserving certain lands, and warning all persons to depart therefrom, this terminates any rights previously acquired in such lands by a person who has settled thereon in order to obtain a preferential right of purchase. And patents for lands which have been previously granted, reserved from sale, or appropriated are void. (Underscoring from the MCTC, citations omitted.)

Noting that there was no warning in Proclamation No. 2074 requiring all persons to depart from the reservation, the MCTC concluded that the reservation was subject to private rights if there are any.

The MCTC thus ruled that the claim of respondent heirs over the disputed land by virtue of their and their predecessors'

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[3] *Id.* at 71.

[4] 165 Phil. 142, 155-156 (1976).

open, continuous, exclusive and notorious possession amounts to an imperfect title, which should be respected and protected.

Petitioner, through the Solicitor General, appealed to the RTC of Kalibo, Aklan, where the case was docketed as Civil Case No. 6130.

On May 2, 2001, the RTC rendered its Decision affirming the MCTC judgment with modification:

> WHEREFORE, premises considered, the assailed decision is modified absolving Appellant Ricardo Andres from the payment of damages and attorney's fees. All other details of the appealed decision are affirmed *in toto*.[5]

The RTC stressed that Proclamation No. 2074 recognizes vested rights acquired by private individuals prior to its issuance on March 31, 1981.

The RTC added that the findings of facts of the MCTC may not be disturbed on appeal unless the court below has overlooked some facts of substance that may alter the results of its findings. The RTC, however, absolved the Superintendent of the ANCF from liability as there was no showing on record that he acted with malice or in bad faith in the implementation of Proclamation No. 2074.[6]

Petitioner Republic, represented by the ANCF and Dr. Elenita R. Andrade, in her capacity as the new Superintendent of the ANCF, elevated the case to the Court of Appeals through a Petition for Review. The petition was docketed as CA-G.R. SP No. 65244.

On February 24, 2003, the Court of Appeals rendered its Decision dismissing the petition for lack of merit. In addition to the findings of the MCTC and the RTC, the Court of Appeals held:

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[5] *Rollo*, p. 55.

[6] *Id.* at 54.

Moreover, petitioner had not shown by competent evidence that the subject land was likewise declared a timberland before its formal classification as such in 1960. Considering that lands adjoining to that of the private respondents, which are also within the reservation area, have been issued original certificates of title, the same affirms the conclusion that the area of the subject land was agricultural, and therefore disposable, before its declaration as a timberland in 1960.

It should be noted that Maxima Lachica Sin acquired, through purchase and sale, the subject property from its previous owners spouses Sotera Melocoton and Victor Garcia on January 15, 1932, or 28 years before the said landholding was declared a timberland on December 22, 1960. Tacking, therefore, the possession of the previous owners and that of Maxima Lachica Sin over the disputed property, it does not tax ones imagination to conclude that the subject property had been privately possessed for more than 30 years before it was declared a timberland. This being the case, the said possession has ripened into an ownership against the State, albeit an imperfect one. Nonetheless, it is our considered opinion that this should come under the meaning of "private rights" under Proclamation No. 2074 which are deemed segregated from the mass of civil reservation granted to petitioner.[7] (Citation omitted.)

Hence, this Petition for Review, anchored on the following grounds:

I

THE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN UPHOLDING RESPONDENTS' CLAIM TO SUPPOSED "PRIVATE RIGHTS" OVER SUBJECT LAND DESPITE THE DENR CERTIFICATION THAT IT IS CLASSIFIED AS TIMBERLAND.

II

THE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN AFFIRMING THE DECISIONS OF THE REGIONAL TRIAL COURT AND THE MUNICIPAL CIRCUIT TRIAL COURTS RELEASING THE SUBJECT LAND BEING CLAIMED BY RESPONDENTS FROM THE MASS OF PUBLIC DOMAIN AND AWARDING DAMAGES TO THEM.[8]

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[7] *Id*. at 46-47.

[8] *Id*. at 18.

The central dispute in the case at bar is the interpretation of the first paragraph of Proclamation No. 2074:

> Upon recommendation of the Director of Forest Development, approved by the Minister of Natural Resources and by virtue of the powers vested in me by law, I, FERDINAND E. MARCOS, President of the Philippines, do hereby set aside as Civil Reservation for Aklan National College of Fisheries, subject to private rights, if any there be, parcels of land, containing an aggregate area of 24.0551 hectares, situated in the Municipality of New Washington, Province of Aklan, Philippines, designated Parcels I and II on the attached BFD Map CR-203, x x x [.][9]

The MCTC, the RTC and the Court of Appeals unanimously held that respondents retain private rights to the disputed property, thus preventing the application of the above proclamation thereon. The *private right* referred to is an alleged *imperfect title*, which respondents supposedly acquired by possession of the subject property, through their predecessors-in-interest, for 30 years before it was declared as a timberland on December 22, 1960.

At the outset, it must be noted that respondents have not filed an application for *judicial confirmation of imperfect title* under the Public Land Act or the Property Registration Decree. Nevertheless, the courts *a quo* apparently treated respondents' complaint for recovery of possession, quieting of title and declaration of ownership as such an application and proceeded to determine if respondents complied with the requirements therefor.

The requirements for judicial confirmation of imperfect title are found in Section 48(b) of the Public Land Act, as amended by Presidential Decree No. 1073, as follows:

> 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

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[9] *Id*. at 74.

issuance of a certificate of title therefor, under the Land Registration Act, to wit:

x x x x x x x x x

(b) Those who by themselves or through their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, 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.

An equivalent provision is found in Section 14(1) of the Property Registration Decree, which provides:

SECTION 14. *Who may apply*.— The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

This Court has thus held that there are two requisites for judicial confirmation of imperfect or incomplete title under CA No. 141, namely: (1) open, continuous, exclusive, and notorious possession and occupation of the subject land by himself or through his predecessors-in-interest under a *bona fide* claim of ownership since time immemorial or from June 12, 1945; and (2) the classification of the land as alienable and disposable land of the public domain.[10]

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[10] *Del Rosario-Igtiben v. Republic,* 484 Phil. 145, 154 (2004); *Secretary of the Department of Environment and Natural Resources v. Yap,* 589 Phil. 156, 197 (2008).

With respect to the second requisite, the courts *a quo* held that the disputed property was alienable and disposable before 1960, citing petitioner's failure to show competent evidence that the subject land was declared a timberland before its formal classification as such on said year.[11] Petitioner emphatically objects, alleging that under the Regalian Doctrine, all lands of the public domain belong to the State and that lands not appearing to be clearly within private ownership are presumed to belong to the State.

After a thorough review of the records, we agree with petitioner. As this Court held in the fairly recent case of *Valiao v. Republic*:[12]

> Under the Regalian doctrine, which is embodied in our Constitution, all lands of the public domain belong to the State, which is the source of any asserted right to any ownership of land. All lands not appearing to be clearly within private ownership are presumed to belong to the State. Accordingly, public lands not shown to have been reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable public domain. Unless public land is shown to have been reclassified as alienable or disposable to a private person by the State, it remains part of the inalienable public domain. Property of the public domain is beyond the commerce of man and not susceptible of private appropriation and acquisitive prescription. Occupation thereof in the concept of owner no matter how long cannot ripen into ownership and be registered as a title. The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable.
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> There must be a positive act declaring land of the public domain as alienable and disposable. To prove that the land subject of an application for registration is alienable, the applicant must establish

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[11] *Rollo*, p. 46.

[12] G.R. No. 170757, November 28, 2011, 661 SCRA 299, 306-307.

the existence of a positive act of the government, such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable. (Citations omitted.)

This Court reached the same conclusion in *Secretary of the Department of Environment and Natural Resources v. Yap*,[13] which presents a similar issue with respect to another area of the same province of Aklan. On November 10, 1978, President Marcos issued Proclamation No. 1801 declaring Boracay Island, among other islands, caves and peninsulas of the Philippines, as tourist zones and marine reserves under the administration of the Philippine Tourism Authority (PTA). On September 3, 1982, PTA Circular 3-82 was issued to implement Proclamation No. 1801. The respondents-claimants in said case filed a petition for declaratory relief with the RTC of Kalibo, Aklan, claiming that Proclamation No. 1801 and PTA Circular 3-82 precluded them from filing an application for judicial confirmation of imperfect title or survey of land for titling purposes. The respondents claim that through their predecessors-in-interest, they have been in open, continuous, exclusive and notorious possession and occupation of their lands in Boracay since June 12, 1945 or earlier since time immemorial.

On May 22, 2006, during the pendency of the petition for review of the above case with this Court, President Gloria Macapagal-Arroyo issued Proclamation No. 1064 classifying Boracay Island into four hundred (400) hectares of reserved forest land (protection purposes) and six hundred twenty-eight and 96/100 (628.96) hectares of agricultural land (alienable and disposable). Petitioner-claimants and other landowners in Boracay filed with this Court an original petition for prohibition, *mandamus* and nullification of Proclamation No. 1064, alleging

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[13] *Supra* note 10.

that it infringed on their "prior vested right" over portions of Boracay which they allege to have possessed since time immemorial. This petition was consolidated with the petition for review concerning Proclamation No. 1801 and PTA Circular 3-82.

This Court, discussing the Regalian Doctrine *vis-à-vis* the right of the claimants to lands they claim to have possessed since time immemorial, held:

> ***A positive act declaring land as alienable and disposable is required***. In keeping with the presumption of State ownership, the Court has time and again emphasized that there must be a **positive act of the government**, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. In fact, Section 8 of CA No. 141 limits alienable or disposable lands only to those lands which have been "officially delimited and classified."
>
> The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable. To overcome this presumption, incontrovertible evidence must be established that the land subject of the application (or claim) is alienable or disposable. There must still be a positive act declaring land of the public domain as alienable and disposable. To prove that the land subject of an application for registration is alienable, the applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or a statute. The applicant may also secure a certification from the government that the land claimed to have been possessed for the required number of years is alienable and disposable.
>
> In the case at bar, no such proclamation, executive order, administrative action, report, statute, or certification was presented to the Court. The records are bereft of evidence showing that, prior to 2006, the portions of Boracay occupied by private claimants were subject of a government proclamation that the land is alienable and

disposable. Absent such well-nigh incontrovertible evidence, the Court cannot accept the submission that lands occupied by private claimants were already open to disposition before 2006. Matters of land classification or reclassification cannot be assumed. They call for proof.[14] (Emphases in the original; citations omitted.)

Accordingly, in the case at bar, the failure of petitioner Republic to show competent evidence that the subject land was declared a timberland before its formal classification as such in 1960 does not lead to the presumption that said land was alienable and disposable prior to said date. On the contrary, the presumption is that unclassified lands are inalienable public lands. Such was the conclusion of this Court in *Heirs of the Late Spouses Pedro S. Palanca and Soterranea Rafols v. Republic*,[15] wherein we held:

> **While it is true that the land classification map does not categorically state that the islands are public forests, the fact that they were unclassified lands leads to the same result**. In the absence of the classification as mineral or timber land, the land remains unclassified land until released and rendered open to disposition. x x x. (Emphasis supplied, citation deleted.)

The requirements for judicial confirmation of imperfect title in Section 48(b) of the Public Land Act, as amended, and the equivalent provision in Section 14(1) of the Property Registration Decree was furthermore painstakingly debated upon by the members of this Court in *Heirs of Mario Malabanan v. Republic*.[16] In *Malabanan*, the members of this Court were in disagreement as to whether lands declared alienable or disposable after June 12, 1945 may be subject to judicial confirmation of imperfect title. There was, however, no disagreement that there must be a declaration to that effect.

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[14] *Id.* at 182-183.

[15] 531 Phil. 602, 616 (2006).

[16] G.R. No. 179987, April 29, 2009, 587 SCRA 172.

In the case at bar, it is therefore the respondents which have the burden to identify a **positive act of the government**, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. Since respondents failed to do so, the alleged possession by them and by their predecessors-in-interest is inconsequential and could never ripen into ownership. Accordingly, respondents cannot be considered to have *private rights* within the purview of Proclamation No. 2074 as to prevent the application of said proclamation to the subject property. We are thus constrained to reverse the rulings of the courts *a quo* and grant the prayer of petitioner Republic to dismiss Civil Case No. 1181 (4390) for lack of merit.

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP No. 65244 dated February 24, 2003, which upheld the Decisions of the Regional Trial Court of Kalibo, Aklan in Civil Case No. 6130 and the First Municipal Circuit Trial Court of New Washington and Batan, Aklan in Civil Case No. 1181 (4390), segregating from the Aklan National College of Fisheries reservation the portion of land being claimed by respondents is **REVERSED** and **SET ASIDE**. Civil Case No. 1181 (4390) of the First Municipal Circuit Trial Court of New Washington and Batan, Aklan is hereby **DISMISSED**.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 160689. March 26, 2014]

RAUL H. SESBREÑO, *petitioner, vs.* **HONORABLE COURT OF APPEALS, JUAN I. COROMINA (SUBSTITUTED BY ANITA COROMINA, ELIZABETH COROMINA and ROSIEMARIE COROMINA), VICENTE E. GARCIA (SUBSTITUTED BY EDGAR JOHN GARCIA), FELIPE CONSTANTINO, RONALD ARCILLA, NORBETO ABELLANA, DEMETRIO BALICHA, ANGELITA LHUILLIER, JOSE E. GARCIA, and VISAYAN ELECTRIC COMPANY (VECO),** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; GUARANTY AGAINST UNLAWFUL SEARCHES AND SEIZURES; ENTRY AND INSPECTION OF THE PREMISES BY THE INSPECTORS AND AUTHORIZED REPRESENTATIVE OF AN ELECTRIC COMPANY DID NOT CONSTITUTE A VIOLATION OF THE GUARANTY.— The constitutional guaranty against unlawful searches and seizures is intended as a restraint against the Government and its agents tasked with law enforcement. It is to be invoked only to ensure freedom from arbitrary and unreasonable exercise of State power. x x x It is worth noting that the VOC inspectors decided to enter the main premises only after finding the meter of Sesbreño turned upside down, hanging and its disc not rotating. Their doing so would enable them to determine the unbilled electricity consumed by his household. The circumstances justified their decision, and their inspection of the main premises was a continuation of the authorized entry. There was no question then that their ability to determine the unbilled electricity called for them to see for themselves the usage of electricity inside. Not being agents of the State, they did not have to first obtain a search warrant to do so. Balicha's presence participation in the entry did not make the inspection a search by an agent of the State within the ambit of the guaranty.

As already mentioned, Balicha was part of the team by virtue of his mission order authorizing him to assist and escort the team during its routine inspection. Consequently, the entry into the main premises of the house by the VOC team did not constitute a violation of the guaranty.

2. CIVIL LAW; CIVIL CODE; ABUSE OF RIGHTS; CONCEPT, EXPLAINED; STANDARDS TO BE OBSERVED IN THE EXERCISE OF ONE'S RIGHT.— [T]he concept of abuse of rights prescribes that a person should not use his right unjustly or in bad faith; otherwise, he may be liable to another who suffers injury. The rationale for the concept is to present some basic principles to be followed for the rightful relationship between human beings and the stability of social order. Moreover, according to a commentator, "the exercise of right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others[;] [i]t cannot be said that a person exercises a right when he unnecessarily prejudices another." Article 19 of the *Civil Code* sets the standards to be observed in the exercise of one's rights and in the performance of one's duties, namely: (*a*) to act with justice; (*b*) to give everyone his due; and (*c*) to observe honesty and good faith. The law thereby recognizes the primordial limitation on all rights – that in the exercise of the rights, the standards under Article 19 must be observed.

3. ID.; ID.; ID.; ELEMENTS THAT MUST CONCUR FOR LIABILITY TO ARISE UNDER THE CONCEPT OF ABUSE OF RIGHTS.— Although the act is not illegal, liability for damages may arise should there be an abuse of rights, like when the act is performed without prudence or in bad faith. In order that liability may attach under the concept of abuse of rights, the following elements must be present, to wit: (*a*) the existence of a legal right or duty, (*b*) which is exercised in bad faith, and (*c*) for the sole intent of prejudicing or injuring another. There is no hard and fast rule that can be applied to ascertain whether or not the principle of abuse of rights is to be invoked. The resolution of the issue depends on the circumstances of each case.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS CANNOT BE REVIEWED BY

THIS COURT.— The assertion of Sesbreño is improper for consideration in this appeal. The RTC and the CA unanimously found the testimonies of Sesbreño's witnesses implausible because of inconsistencies on material points; and even declared that the non-presentation of Garcia as a witness was odd if not suspect. Considering that such findings related to the credibility of the witnesses and their testimonies, the Court cannot review and undo them now because it is not a trier of facts, and is not also tasked to analyze or weigh evidence all over again. Verily, a review that may tend to supplant the findings of the trial court that had the first-hand opportunity to observe the demeanor of the witnesses themselves should be undertaken by the Court with prudent hesitation. Only when Sesbreño could make a clear showing of abuse in their appreciation of the evidence and records by the trial and the appellate courts should the Court do the unusual review of the factual findings of the trial and appellate courts. Alas, that showing was not made here.

APPEARANCES OF COUNSEL

Lorete Durano for respondents.

D E C I S I O N

BERSAMIN, *J.*:

This case concerns the claim for damages of petitioner Raul H. Sesbreño founded on abuse of rights. Sesbreño accused the violation of contract (VOC) inspection team dispatched by the Visayan Electric Company (VECO) to check his electric meter with conducting an unreasonable search in his residential premises. But the Regional Trial Court (RTC), Branch 13, in Cebu City rendered judgment on August 19, 1994 dismissing the claim;[1] and the Court of Appeals (CA) affirmed the dismissal on March 10, 2003.[2]

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[1] CA *rollo*, pp. 234-285.

[2] *Rollo*, 26-42; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justice Ruben T. Reyes (later Presiding Justice, and Member of the Court/retired) and Associate Justice Edgardo F. Sundiam (retired/deceased).

Hence, this appeal by Sesbreño.

Antecedents

At the time material to the petition, VECO was a public utility corporation organized and existing under the laws of the Philippines. VECO engaged in the sale and distribution of electricity within Metropolitan Cebu. Sesbreño was one of VECO's customers under the metered service contract they had entered into on March 2, 1982.[3] Respondent Vicente E. Garcia was VECO's President, General Manager and Chairman of its Board of Directors. Respondent Jose E. Garcia was VECO's Vice-President, Treasurer and a Member of its Board of Directors. Respondent Angelita Lhuillier was another Member of VECO's Board of Directors. Respondent Juan Coromina was VECO's Assistant Treasurer, while respondent Norberto Abellana was the Head of VECO's Billing Section whose main function was to compute back billings of customers found to have violated their contracts.

To ensure that its electric meters were properly functioning, and that none of it meters had been tampered with, VECO employed respondents Engr. Felipe Constantino and Ronald Arcilla as violation of contract (VOC) inspectors.[4] Respondent Sgt. Demetrio Balicha, who belonged to the 341st Constabulary Company, Cebu Metropolitan Command, Camp Sotero Cabahug, Cebu City, accompanied and escorted the VOC inspectors during their inspection of the households of its customers on May 11, 1989 pursuant to a mission order issued to him.[5]

The CA summarized the antecedent facts as follows:

x x x. Reduced to its essentials, however, the facts of this case are actually simple enough, although the voluminous records might indicate otherwise. It all has to do with an incident that occurred at around 4:00 o'clock in the afternoon of May 11, 1989. On that

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[3] Records, Vol. 2, p. 1186.

[4] *Id.* at 1185.

[5] *Id.* at 1185-1186; 1198.

day, the Violation of Contracts (VOC) Team of defendants-appellees Constantino and Arcilla and their PC escort, Balicha, conducted a routine inspection of the houses at La Paloma Village, Labangon, Cebu City, including that of plaintiff-appellant Sesbreño, for illegal connections, meter tampering, seals, conduit pipes, jumpers, wiring connections, and meter installations. After Bebe Baledio, plaintiff-appellant Sesbreño's maid, unlocked the gate, they inspected the electric meter and found that it had been turned upside down. Defendant-appellant Arcilla took photographs of the upturned electric meter. With Chuchie Garcia, Peter Sesbreño and one of the maids present, they removed said meter and replaced it with a new one. At that time, plaintiff-appellant Sesbreño was in his office and no one called to inform him of the inspection. The VOC Team then asked for and received Chuchie Garcia's permission to enter the house itself to examine the kind and number of appliances and light fixtures in the household and determine its electrical load. Afterwards, Chuchie Garcia signed the Inspection Division Report, which showed the condition of the electric meter on May 11, 1989 when the VOC Team inspected it, with notice that it would be subjected to a laboratory test. She also signed a Load Survey Sheet that showed the electrical load of plaintiff-appellant Sesbreño.

But according to plaintiff-appellant Sesbreño there was nothing routine or proper at all with what the VOC Team did on May 11, 1989 in his house. Their entry to his house and the surrounding premises was effected without his permission and over the objections of his maids. They threatened, forced or coerced their way into his house. They unscrewed the electric meter, turned it upside down and took photographs thereof. They then replaced it with a new electric meter. They searched the house and its rooms without his permission or a search warrant. They forced a visitor to sign two documents, making her appear to be his representative or agent. Afterwards, he found that some of his personal effects were missing, apparently stolen by the VOC Team when they searched the house.[6]

Judgment of the RTC

On August 19, 1994, the RTC rendered judgment dismissing the complaint.[7] It did not accord credence to the testimonies of

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[6] *Rollo*, pp. 37-38.

[7] *Supra* note 1.

Sesbreño's witnesses, Bebe Baledio, his housemaid, and Roberto Lopez, a part-time salesman, due to inconsistencies on material points in their respective testimonies. It observed that Baledio could not make up her mind as to whether Sesbreño's children were in the house when the VOC inspection team detached and replaced the electric meter. Likewise, it considered unbelievable that Lopez should hear the exchanges between Constantino, Arcilla and Balicha, on one hand, and Baledio, on the other, considering that Lopez could not even hear the conversation between two persons six feet away from where he was seated during the simulation done in court, the same distance he supposedly had from the gate of Sesbreño's house during the incident. It pointed out that Lopez's presence at the gate during the incident was even contradicted by his own testimony indicating that an elderly woman had opened the gate for the VECO personnel, because it was Baledio, a lady in her 20s, who had repeatedly stated on her direct and cross examinations that she had let the VECO personnel in. It concluded that for Lopez to do nothing at all upon seeing a person being threatened by another in the manner he described was simply contrary to human experience.

In contrast, the RTC believed the evidence of the respondents showing that the VOC inspection team had found the electric meter in Sesbreño's residence turned upside down to prevent the accurate registering of the electricity consumption of the household, causing them to detach and replace the meter. It held as unbelievable that the team forcibly entered the house through threats and intimidation; that they themselves turned the electric meter upside down in order to incriminate him for theft of electricity, because the fact that the team and Sesbreño had not known each other before then rendered it unlikely for the team to fabricate charges against him; and that Sesbreño's non-presentation of Chuchie Garcia left her allegation of her being forced to sign the two documents by the team unsubstantiated.

Decision of the CA

Sesbreño appealed, but the CA affirmed the RTC on March 10, 2003,[8] holding thusly:

x x x. plaintiff-appellant Sesbreño's account is simply too implausible or far-fetched to be believed. For one thing, the inspection on his household was just one of many others that the VOC Team had conducted in that subdivision. Yet, none but plaintiff-appellant Sesbreño complained of the alleged acts of the VOC Team. Considering that there is no proof that they also perpetrated the same illegal acts on other customers in the guise of conducting a Violation of Contracts inspection, plaintiff-appellant Sesbreño likewise failed to show why he alone was singled out. It is also difficult to believe that the VOC Team would be brazen enough to want to antagonize a person such as plaintiff-appellant Sesbreño. There is no evidence that the VOC Team harbored any evil motive or grudge against plaintiff-appellant Sesbreño, who is a total stranger to them. Until he came along, they did not have any prior criminal records to speak of, or at least, no evidence thereof was presented. It is equally difficult to believe that their superiors would authorize or condone their alleged illegal acts. Especially so since there is no indication that prior to the incident on May 11, 1989, there was already bad blood or animosity between plaintiff-appellant Sesbreño and defendant-appellees to warrant such a malevolent response. In fact, since availing of defendant-appellee VECO's power services, the relationship between them appears to have been uneventful.

It becomes all the more apparent that the charges stemming from the May 11, 1989 incident were fabricated when taken together with the lower court's evaluation of the alleged theft of plaintiff-appellant Sesbreño's personal effects. It stated that on August 8, 1989, plaintiff-appellant Sesbreño wrote the *barangay* captain of Punta Princesa and accused Chuchie Garcia and Victoria Villarta *alias* Victoria Rocamora of theft of some of his things that earlier he claimed had been stolen by members of the VOC Team. When he was confronted with these facts, plaintiff-appellant Sesbreño further claimed that the items allegedly stolen by Chuchie Garcia were part of the loot taken by defendants-appellees Constantino and Arcilla. Yet not once

[8] *Supra* note 1.

did plaintiff-appellant Sesbreño or any of his witnesses mention that a conspiracy existed between these people. Clearly, much like his other allegations, it is nothing more than an afterthought by plaintiff-appellant Sesbreño.

All in all, the allegations against defendants-appellees appear to be nothing more than a put-on to save face. For the simple truth is that the inspection exposed plaintiff-appellant Sesbreño as a likely cheat and thief.

x x x x x x x x x

Neither is this Court swayed by the testimonies of Baledio and Lopez. The lower court rightly described their testimonies as fraught by discrepancies and inconsistencies on material points and even called Lopez a perjured witness. On the other hand, it is odd that plaintiff-appellant Sesbreño chose not to present the witness whose testimony was very crucial. But even though Chuchie Garcia never testified, her absence speaks volumes. Whereas plaintiff-appellant Sesbreño claimed that the VOC Team forced her to sign two documents that made her appear to be his authorized agent or representative, the latter claimed otherwise and that she also gave them permission to enter and search the house. The person most qualified to refute the VOC Team's claim is Chuchie Garcia herself. It is axiomatic that he who asserts a fact or claim must prove it. He cannot transfer that burden to the person against whom he asserts such fact or claim. When certain evidence is suppressed, the presumption is that it will adversely affect the cause of the party suppressing it, should it come to light. x x x[9]

Upon denial of his motion for reconsideration,[10] Sesbreño appealed.

Issue

Was Sesbreño entitled to recover damages for abuse of rights?

Ruling

The appeal has no merit.

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[9] *Id.* at 39-41.

[10] CA *rollo*, pp. 446-460.

Sesbreño's main contention is that the inspection of his residence by the VOC team was an unreasonable search for being carried out without a warrant and for being allegedly done with malice or bad faith.

Before dealing with the contention, we have to note that two distinct portions of Sesbreño's residence were inspected by the VOS team – the garage where the electric meter was installed, and the main premises where the four bedrooms, living rooms, dining room and kitchen were located.

Anent the inspection of the garage where the meter was installed, the respondents assert that the VOC team had the continuing authority from Sesbreño as the consumer to enter his premises at all reasonable hours to conduct an inspection of the meter without being liable for trespass to dwelling. The authority emanated from paragraph 9 of the metered service contract entered into between VECO and each of its consumers, which provided as follows:

> 9. The CONSUMER agrees to allow properly authorized employees or representatives of the COMPANY to enter his premises at all reasonable hours without being liable to trespass to dwelling for the purpose of inspecting, installing, reading, removing, testing, replacing or otherwise disposing of its property, and/or removing the COMPANY'S property in the event of the termination of the contract for any cause.[11]

Sesbreño contends, however, that paragraph 9 did not give Constantino, Arcilla and Balicha the blanket authority to enter at will because the only property VECO owned in his premises was the meter; hence, Constantino and Arcilla should enter only the garage. He denies that they had the right to enter the main portion of the house and inspect the various rooms and the appliances therein because those were not the properties of VECO. He posits that Balicha, who was not an employee of VECO, had no authority whatsoever to enter his house and conduct a search. He concludes that their search was

[11] *Supra* note 4, at 1199.

unreasonable, and entitled him to damages in light of their admission that they had entered and inspected his premises without a search warrant.[12]

We do not accept Sesbreño's conclusion. Paragraph 9 clothed the entire VOC team with unquestioned authority to enter the garage to inspect the meter. The members of the team obviously met the conditions imposed by paragraph 9 for an authorized entry. Firstly, their entry had the objective of conducting the routine inspection of the meter.[13] Secondly, the entry and inspection were confined to the garage where the meter was installed.[14] Thirdly, the entry was effected at around 4 o'clock p.m., a reasonable hour.[15] And, fourthly, the persons who inspected the meter were duly authorized for the purpose by VECO.

Although Balicha was not himself an employee of VECO,[16] his participation was to render police assistance to ensure the personal security of Constantino and Arcilla during the inspection, rendering him a necessary part of the team as an authorized representative. Under the circumstances, he was authorized to enter considering that paragraph 9 expressly extended such authority to "properly authorized employees or representatives" of VECO.

It is true, as Sesbreño urges, that paragraph 9 did not cover the entry into the main premises of the residence. Did this necessarily mean that any entry by the VOS team into the main premises required a search warrant to be first secured?

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[12] *Id.* at 12-17, 81.

[13] TSN, Vol. 9, September 12, 1990, pp. 24-25; Vol. 8, September 13, 1990, pp. 56-57, 63, 65.

[14] TSN, Vol. 3, June 5, 1990, pp. 27, 36.

[15] TSN, Vol. 7, April 30, 1990, p. 4; Vol. 9, September 12, 1990, pp. 35-36; Vol. 8, September 13, 1990, p. 57.

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

Sesbreño insists so, citing Section 2, Article III of the 1987 Constitution, the clause guaranteeing the right of every individual against unreasonable searches and seizures, *viz*:

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

He states that a violation of this constitutional guaranty rendered VECO and its VOS team liable to him for damages by virtue of Article 32 (9) of the *Civil Code*, which pertinently provides:

> Article 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
>
> x x x x x x x x x
>
> (9) The right to be secured in one's person, house, papers, and effects against unreasonable searches and seizures;
>
> x x x x x x x x x.

Sesbreño's insistence has no legal and factual basis.

The constitutional guaranty against unlawful searches and seizures is intended as a restraint against the Government and its agents tasked with law enforcement. It is to be invoked only to ensure freedom from arbitrary and unreasonable exercise of State power. The Court has made this clear in its pronouncements, including that made in *People v. Marti*,[17] *viz*:

> If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. **However, if the search is made at the behest**

[17] G.R. No. 81561, January 18, 1991, 193 SCRA 57, 67.

or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure cannot be invoked for only the act of private individual, not the law enforcers, is involved. In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.[18]

It is worth noting that the VOC inspectors decided to enter the main premises only after finding the meter of Sesbreño turned upside down, hanging and its disc not rotating. Their doing so would enable them to determine the unbilled electricity consumed by his household. The circumstances justified their decision, and their inspection of the main premises was a continuation of the authorized entry. There was no question then that their ability to determine the unbilled electricity called for them to see for themselves the usage of electricity inside. Not being agents of the State, they did not have to first obtain a search warrant to do so.

Balicha's presence participation in the entry did not make the inspection a search by an agent of the State within the ambit of the guaranty. As already mentioned, Balicha was part of the team by virtue of his mission order authorizing him to assist and escort the team during its routine inspection.[19] Consequently, the entry into the main premises of the house by the VOC team did not constitute a violation of the guaranty.

Our holding could be different had Sesbreño persuasively demonstrated the intervention of malice or bad faith on the part of Constantino and Arcilla during their inspection of the main premises, or any excessiveness committed by them in the course of the inspection. But Sesbreño did not. On the other

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[18] *Id.* at 67-68 (bold emphasis supplied). See also *People v. Bongcarawan*, G.R. No. 143944, July 11, 2002, 384 SCRA 525, 531; *Tolentino v. Mendoza*, Adm. Case No. 5151, October 19, 2004, 440 SCRA 519, 530-531.

[19] *Supra* note 5, at 1187.

hand, the CA correctly observed that the inspection did not zero in on Sesbreño's residence because the other houses within the area were similarly subjected to the routine inspection.[20] This, we think, eliminated any notion of malice or bad faith.

Clearly, Sesbreño did not establish his claim for damages if the respondents were not guilty of abuse of rights. To stress, the concept of abuse of rights prescribes that a person should not use his right unjustly or in bad faith; otherwise, he may be liable to another who suffers injury. The rationale for the concept is to present some basic principles to be followed for the rightful relationship between human beings and the stability of social order.[21] Moreover, according to a commentator, [22] "the exercise of right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others[;] [i]t cannot be said that a person exercises a right when he unnecessarily prejudices another." Article 19 of the *Civil Code*[23] sets the standards to be observed in the exercise of one's rights and in the performance of one's duties, namely: (*a*) to act with justice; (*b*) to give everyone his due; and (*c*) to observe honesty and good faith. The law thereby recognizes the primordial limitation on all rights – that in the exercise of the rights, the standards under Article 19 must be observed.[24]

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[20] *Supra* note 13.

[21] Paras, *Persons and Family Relations*, 2013, p. 122.

[22] Pineda, *Persons and Human Relations*, 2010, p. 76.

[23] Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[24] According to *Albenson Enterprises Corp. v. Court of Appeals* (G.R. No. 88694, January 11, 1993, 217 SCRA 16, 25), Article 20 of the *Civil Code*, which prescribes that every person who, contrary to law, wilfully or negligently causes damage to another shall indemnify the latter for the same, speaks of a general sanction for violation of all other provisions of law that do not provide their own sanction. Article 21 of the *Civil Code* deals with acts *contra bonus mores*, and has the following elements, to wit; (1) there is an act that is legal; (2) but is contrary to morals, good custom, public order, or public policy; and (3) it is done with intent to injure. The common element

Although the act is not illegal, liability for damages may arise should there be an abuse of rights, like when the act is performed without prudence or in bad faith. In order that liability may attach under the concept of abuse of rights, the following elements must be present, to wit: (*a*) the existence of a legal right or duty, (*b*) which is exercised in bad faith, and (*c*) for the sole intent of prejudicing or injuring another.[25] There is no hard and fast rule that can be applied to ascertain whether or not the principle of abuse of rights is to be invoked. The resolution of the issue depends on the circumstances of each case.

Sesbreño asserts that he did not authorize Baledio or Chuchie Garcia to let anyone enter his residence in his absence; and that Baledio herself confirmed that the members of the VOC team had intimidated her into letting them in.

The assertion of Sesbreño is improper for consideration in this appeal. The RTC and the CA unanimously found the testimonies of Sesbreño's witnesses implausible because of inconsistencies on material points; and even declared that the non-presentation of Garcia as a witness was odd if not suspect. Considering that such findings related to the credibility of the witnesses and their testimonies, the Court cannot review and undo them now because it is not a trier of facts, and is not also tasked to analyze or weigh evidence all over again.[26] Verily, a review that may tend to supplant the findings of the trial court that had the first-hand opportunity to observe the demeanor of the witnesses themselves should be undertaken by the Court with prudent hesitation. Only when Sesbreño could make a clear showing of abuse in their appreciation of the evidence and records by the trial and the appellate courts should the

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under Article 19 and Article 21 is that the act is intentional. But Article 20 does not distinguish whether the act is willful or negligent. Under any of the three provisions of law, an act that causes injury to another may be made the basis for an award of damages.

[25] *Far East Bank and Trust Company v. Pacilan Jr.*, G.R. No. 157314, July 29, 2005, 465 SCRA 372, 282.

[26] *Heirs of Margarito Pabaus v. Heirs of Amanda Yutiamco,* G.R. No. 164356, July 27, 2011, 654 SCRA 521, 531-532.

Court do the unusual review of the factual findings of the trial and appellate courts.[27] Alas, that showing was not made here.

Nor should the Court hold that Sesbreño was denied due process by the refusal of the trial judge to inhibit from the case. Although the trial judge had issued an order for his voluntary inhibition, he still rendered the judgment in the end in compliance with the instruction of the Executive Judge, whose exercise of her administrative authority on the matter of the inhibition should be respected.[28] In this connection, we find to be apt the following observation of the CA, to wit:

> x x x. Both Judge Paredes and Judge Priscila Agana serve the Regional Trial Court and are therefore of co-equal rank. The latter has no authority to reverse or modify the orders of Judge Paredes. But in ordering Judge Paredes to continue hearing the case, Judge Agana did not violate their co-equal status or unilaterally increased her jurisdiction. It is merely part of her administrative responsibilities as Executive Judge of the Regional Trial Court of Cebu City, of which Judge Paredes is also a member.[29]

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[27] There are several exceptions to the rule against the Court not reviewing the factual findings of the CA, namely: (1) when the factual findings of the CA and those of the trial court are contradictory; (2) when the findings are grounded entirely on speculation, surmises, or conjectures; (3) when the inference made by the CA from its findings of fact is manifestly mistaken, absurd, or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the CA, in making its findings, went beyond the issues of the case, and such findings were contrary to the admissions of both appellant and appellee; (6) when the judgment of the CA was premised on a misapprehension of facts; (7) when the CA failed to notice certain relevant facts that, if properly considered, would justify a different conclusion; (8) when the findings of facts are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the CA were premised on the absence of evidence but such findings are contradicted by the evidence on record (*E.Y. Industrial Sales, Inc. v. Shen Dar Electricity and Machinery Co., Ltd.*, G.R. No. 184850, October 20, 2010, 634 SCRA 363, 382).

[28] Records, Vol. 5, p. 2479 (Order dated October 18, 1990).

[29] *Rollo*, p. 41.

Lastly, the Court finds nothing wrong if the writer of the decision in the CA refused to inhibit from participating in the resolution of the motion for reconsideration filed by Sesbreño. The motion for her inhibition was grounded on suspicion of her bias and prejudice,[30] but suspicion of bias and prejudice were not enough grounds for inhibition.[31] Suffice it to say that the records are bereft of any indication that even suggested that the Associate Justices of the CA who participated in the promulgation of the decision were tainted with bias against him.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on March 10, 2003; and **DIRECTS** the petitioner to pay the costs of suit.

SO ORDERED.

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

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[30] *Id.* at 20, 72-73.

[31] See *Dumo v. Espinas*, G.R. No. 141962, January 25, 2006, 480 SCRA 53, 65-66; *Barnes v. Reyes*, G.R. No. 179583, September 3, 2009, 598 SCRA 107, 112; *Pagoda Philippines., Inc. v. Universal Canning, Inc.*, G.R. No. 160966, October 11, 2005, 472 SCRA 355, 362.

[*] Vice Associate Justice Bienvenido L. Reyes, who inhibited from participation, per the raffle of March 10, 2014.

THIRD DIVISION

[G.R. No. 162299. March 26, 2014]

SAINT LOUIS UNIVERSITY, INC., DEAN ELIZABETH FE-DACANAY, ATTY. ARNULFO SORIANO, DR. ROBERTO LEGASPI, DR. ANASTACIO AQUINO, LOURDES JACINTO, DR. JOHN ANTHONY DOMANTAY, and NORA PONOC, *petitioners, vs.* **BABY NELLIE M. OLAIREZ, SHIERYL A. REBUCAL, JENNY RIZA A. BANTA, BRANDO B. BADECAO, and COURT OF APPEALS,** *respondents.*

[G.R. No. 174758. March 26, 2014]

BABY NELLIE M. OLAIREZ, SHIERYL A. REBUCAL, JENNY RIZA A. BANTA, and BRANDO B. BADECAO, *petitioners, vs.* **SAINT LOUIS UNIVERSITY, INC., DEAN ELIZABETH FE-DACANAY, ATTY. ARNULFO SORIANO, DR. ROBERTO LEGASPI, DR. ANASTACIO AQUINO, LOURDES JACINTO, DR. JOHN ANTHONY DOMANTAY, and NORA PONOC,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FILING OF A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON*; EXCEPTIONS.— The general rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. It is not, however, an ironclad rule. There are recognized exceptions such as (a) where the order is a patent nullity, as where the court *a quo* had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed

upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte*, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

2. ID.; ID.; ID.; ID.; EXCEPTIONS, NOT APPLICABLE; LIBERALITY IN THE APPLICATION OF THE RULES MAY NOT BE INVOKED.— Under the circumstances, the Court is not convinced that SLU's explanation constitutes sufficient ground for the application of the exception to the rule. In the same vein, petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not. It should be emphasized that procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are, thus, enjoined to abide strictly by the rules. Although the Court, in some cases, permits a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. It is true that litigation is not a game of technicalities, but it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice. In this case, a liberality in the application of the rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice. For it is equally settled that, except for the most persuasive of reasons, strict compliance is enjoined to facilitate the orderly administration of justice.

3. ID.; ID.; CONTEMPT; CONCEPT, EXPLAINED.— In contempt, the intent goes to the gravamen of the offense. Thus, the good faith or lack of it, of the alleged contemnor is considered. Where the act complained of is ambiguous or does not clearly

show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights. To constitute contempt, the act must be done wilfully and for an illegitimate or improper purpose.

4. ID.; ID.; ID.; WHERE THE INACTION OF THE SCHOOL OFFICIALS ON THE DISPUTED WRIT OF EXECUTION DOES NOT CONSTITUTE CONTUMACIOUS CONDUCT.— The supposed inaction of the SLU and its officials when the Olairez group visited the school on July 17, 2003 to demand their compliance with the decision was not borne out of a contumacious conduct tending, directly or indirectly, to hinder the implementation of a judgment. A conduct, to be contumacious, implies willfulness, bad faith or with deliberate intent to cause injustice, which is clearly not the case here. On the contrary, SLU was well within its rights to appeal the decision and not immediately heed the demand of the Olairez group. x x x Under the attendant circumstances, there was no substantial compliance with procedural due process because although the hearing on the said motion was reset to July 22, 2003, the disputed writ of execution was actually issued on July 18, 2003 and served on SLU and its officials on July 19, 2003 *before the rescheduled hearing date*, while their counsels on record received their copies on July 21, 2003. In due process, the parameter required is the presence of an opportunity to be heard, as well as the time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. This was not properly afforded to SLU. x x x Thus, the Court finds no cogent reason to deviate from the CA decision to absolve SLU and its officials from the contempt charges filed against them.

5. ID.; ID.; ID.; RATIONALE BEHIND THE GRANT OF THE CONTEMPT POWER.— The power to declare a person in contempt of court and in dealing with him accordingly is an inherent power lodged in courts of justice, to be used as a means to protect and preserve the dignity of the court, the

solemnity of the proceedings therein and the administration of justice from callous misbehavior, offensive personalities and contumacious refusal to comply with court orders. This contempt power, plenary it may seem, however, must be exercised judiciously and sparingly with highest self-restraint with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retribution or vindication. It should not be availed of unless necessary in the interest of justice.

APPEARANCES OF COUNSEL

Ricardo N. Olairez & Nellie M. Olairez Law Office for petitioners in G.R. No. 174758.

Tomas Gorospe for St. Louis University, *et al.*

Miguel Liceralde, Sr. and *Rigoberto Gallardo* for Dean Dacanay.

D E C I S I O N

MENDOZA, *J.*:

For assessment and disposition before the Court are the following consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court.

In **G.R. No. 162299**, Saint Louis University *(SLU)*, along with co-petitioners Dean Elizabeth Fe-Dacanay *(Dean Dacanay)*, Rev. Father Paul Van Parijs, Dr. Robert Legaspi, Dr. Anastacio Aquino, Lourdes Jacinto, Dr. John Anthony Domantay, and Nora Ponoc, are challenging the Resolutions, dated November 18, 2003[1] and February 10, 2004,[2] of the Court of Appeals *(CA)*, in CA-G.R. No. SP. 78127, dismissing SLU's petition for *certiorari* under Rule 65 which sought the reversal of the orders of the Regional Trial Court, Branch 1, Baguio City *(RTC)*,

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[1] *Rollo* (G.R. No. 162299), pp. 114-116. Penned by Associate Justice Regalado E. Maambong, with Associate Justice Buenaventura J. Guerrero and Associate Justice Andres B. Reyes, Jr., concurring.

[2] *Id.* at 118-120.

to wit: 1] Order,[3] dated July 18, 2003, directing the petitioners to show cause why they should not be held in contempt of court; 2] Order,[4] dated June 6, 2003,[5] directing compliance with the July 16, 2003 RTC decision; 3] Writ of Execution,[6] dated July 18, 2003, signed by the Branch Clerk of Court, without any motion for its issuance; and 4] Order,[7] dated July 18, 2003, signed by Judge Ayson directing the issuance of a writ of execution pursuant to Section 4, Rule 39 of the Rules of Court, for the reason that no motion for reconsideration was filed before the RTC.

In **G.R. No. 174758**, Baby Nellie Olairez, Shieryl A. Rebucal, Jenny Riza A. Banta, and Brando B. Badecao *(Olairez group)* are assailing the April 7, 2006 Decision[8] and the September 11, 2006 Resolution[9] of the CA, in CA-G.R. CR No. 27861, setting aside the July 23, 2003 RTC Order and dismissing the contempt charges against SLU.

The Factual Antecedents

SLU is an educational institution based in Baguio City offering various diploma courses in different fields of study.

Baby Nellie M. Olairez *(Olairez)*, Shieryl A. Rebucal *(Rebucal)*, Jenny Riza Banta *(Banta)*, and Brando Badecao *(Badecao)*, were fourth-year graduating students of SLU's College of Medicine Batch 2002. On March 18, 2002, Olairez and Rebucal filed their Complaint for Mandatory Injunction with Damages and Preliminary Injunction and Temporary Restraining Order

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[3] *Id.* at 157-160.

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

[5] The date of the order was erroneously dated as June 06, 2013, but was corrected in the Amended Order of July 21, 2003 (that the Order dated June 6, 2013 should have been July 18, 2003), Records, pp. 1556-1557.

[6] *Rollo* (G.R. No. 162299), pp. 163-165.

[7] *Id.* at 166-167.

[8] *Rollo* (G.R. No. 174758), pp. 29-52.

[9] *Id.* at 54-55.

before the RTC, against Dean Dacanay, a certain April Lily Bangaoet and other unidentified individuals, referred to as "John Does," challenging the implementation of the revised version of the Comprehensive Oral and Written Examination *(COWE),* a prerequisite for graduation from SLU's medicine course.[10] The case was docketed as Civil Case No. 5191-R.

In their complaint, Olairez and Rebucal alleged that as a condition for graduation, SLU required their students to complete and pass the COWE and, and if a student would fail, the student concerned may take another remedial exam.[11] Olairez alleged that the then newly designated Dean Dacanay, suddenly devised and revised the COWE by further subjecting the graduating students to additional requirements such as completing Orals 1 and Orals 2, along with added months of medical clerkship *(Revised COWE).*[12] Contending that the implementation of the Revised COWE was contrary to SLU's Student Handbook and would arbitrarily delay their graduation, they sought injunctive relief from the trial court.

Thereafter, Jenny Riza Banta and Brando B. Badecao intervened in the same proceedings.[13]

In the meantime, on April 2, 2002, after submitting their applications for graduation with waiver, the Olairez group was allowed to attend the graduation rites.

After a few days or on April 9, 2002, the RTC granted the Writ of Preliminary Injunction preventing SLU and Dean Dacanay from enforcing the Revised COWE.[14]

In their Fourth Amended Complaint,[15] the Olairez group disclosed that they had completed, passed and received their

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[10] Records, Volume I, pp. 16-40.

[11] *Id.* at 17.

[12] *Id.* at 22.

[13] *Id.* at 184-188.

[14] *Id.* at 246-262.

[15] Records, Volume II, pp. 997-1067.

final grades in all the subjects required for the conferment of the degree of doctor of medicine. They were allowed to march and attend the commencement exercises. They received the symbolic diploma and were eventually conferred with the degree, Doctor of Medicine. Similarly, the Association of Philippine Medical Colleges permitted them to attend the twelve-month post graduate internship at the Baguio General Hospital. Subsequently, they obtained clearances from various departments except for two departments, the Administrative Secretary and the Training Officer of SLU. Still, Dean Dacanay refused to issue certifications in their favor. To them, it was unacceptable.

Thus, the Olairez group prayed that Dean Dacanay and SLU be ordered to forward their final grades (SLU Form No. 4) to the Registrar's Office for recording; to issue their clearances, certificate of graduation, diploma and include them in the SLU Registry of Graduates; to cease and desist from exerting pressure on the Association of Philippine Medical Colleges (APMC) to recall their certifications granting their internship and on Baguio General Hospital to pull them out from their internship; to declare the Revised COWE as moot and academic insofar as they were concerned; and to pay them ₱2,000,000.00 as moral damages, ₱100,000.00 as nominal damages, ₱250,000.00 as exemplary damages and ₱50,000.00 as attorney's fees.[16]

Decision of the RTC

On July 16, 2003, the RTC rendered a decision declaring the Olairez group as graduates of the College of Medicine, SLU.[17] It explained that the Revised COWE became moot and academic for the following reasons: 1] the Regional Director of the Commission on Higher Education *(CHED)* issued a certification that the Olairez group had completed all the requirements for the Degree of Medicine, notwithstanding the grant of autonomy to SLU by the CHED; and 2] SLU allowed the Olairez group to participate in the graduation rites. The decretal portion of the RTC decision reads:

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[16] *Id.* at 1064-1066.

[17] *Rollo* (G.R. No. 162299), pp. 121-154; (G.R. No. 174758), pp. 63-96.

WHEREFORE, premises considered, Judgment is hereby rendered in favor of plaintiffs Baby Nellie Olairez and Shieryl Rebucal and intervenors Jenny Rizza Banta and Brando Badecao and against the defendants, as follows:

1. Ordering the Administrative Secretary, Training Officer, Hospital Administrator and Medical Director of Saint Louis University Hospital to sign the clearance of plaintiffs and intervenors.

2. Ordering defendants Dean Elizabeth Fe Dacanay and Saint Louis University to issue the Certificate of Graduation to plaintiffs and intervenors;

3. Ordering defendant Dean Dacanay to forward the Final Grades (SLU Form No. 4) of plaintiffs and intervenors submitted to her office to the Office of the Registrar of Saint Louis University for proper recording in the Transcript of Records;

4. Ordering defendants Dean Dacanay and Saint Louis University and all those acting for and in their behalf to issue the diploma and transcript of records of plaintiffs and intervenors and include them in the SLU Registry of Graduates (ROG);

5. Ordering defendants Dean Dacanay and Saint Louis University and all those acting for and in their behalf to cease and desist permanently from exercising pressure on the Association of Philippine Medical Colleges (APMC) to recall the permit issued by it to plaintiffs and intervenors for their internship.

6. Ordering defendants Dean Dacanay and Saint Louis University and all those acting for and in their behalf to cease and desist permanently from exerting pressure on the Baguio General Hospital (BGH) to pull out plaintiffs and intervenors from their internship at BGH or from recalling the same.

7. Declaring the plaintiffs and intervenors as having graduated with the Degree of Doctor of Medicine having completed all the requirements leading to the Degree of Doctor of Medicine as certified to by the Commission on Higher Education (CHED) Director Joseph de los Santos;

8. Declaring the Revised COWE with Orals 1 and 2 with additional two to four months of medical clerkship as moot and academic insofar as plaintiffs and intervenors are concerned since they have already graduated with the Degree of Doctor of Medicine as certified to by the CHED Director Joseph de los Santos;

9. Declaring that the matter of the writ of preliminary injunction (mandatory) prayed for which was agreed upon by the parties to be resolved together with the judgment on the merits of the case in [view] of time constraints is actually deemed resolved herein as, in effect, a final writ of injunction (mandatory) is issued by the Court ordering defendants Dean Dacanay and the Saint Louis University and all those acting for and in their behalf to issue immediately the plaintiffs' and intervenors' clearances, final grades, certificate of graduation, diploma and transcript of records and include them in their Registry of Graduates and certify them as graduates qualified to take the Board examination for Medicine this August, 2003.

10. Dismissing all claims and counterclaims for damages, actual damages, moral damages, nominal damages, exemplary damages and attorney's fees, considering that both the plaintiffs and intervenors on the one hand and the defendants on the other hand acted in good faith in pursuing and advocating with vigor and zeal their respective positions and were not in bad faith.

Furnish a copy of this judgment not only to the counsels of defendants but also to the defendants themselves, Dean Elizabeth Dacanay, Saint Louis University and those acting for and in their behalf such as Dr. John Domantay, the Administrative Secretary, Hospital Administrator, Training Officer and Medical Director of the Saint Louis University Hospital of the Sacred Heart for their immediate compliance of the Final Writ of Injunction (Mandatory) issued herein.

SO ORDERED.[18]

The next day or, on July 17, 2003, the Olairez group trooped to SLU and insisted on its immediate compliance with the RTC ruling. Unable to get a favorable reply from SLU, the Olairez group filed, on the same day, a "Very Urgent Motion to Cite Defendants in Contempt" setting the hearing of the motion for July 18, 2003.[19] Meanwhile, SLU filed its Notice of Appeal[20] before the RTC.

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[18] *Id.* at 152-154; *id.* at 94-96.

[19] *Rollo* (G.R. No. 174758), p. 97.

[20] Records, Volume III, pp. 1535-1536.

In its Order, dated July 18, 2003, the RTC cited Section 4, Rule 39 of the Rules of Court specifying that a judgment in an action for injunction was immediately executory, but reset the hearing on the motion to cite SLU in contempt of court to July 22, 2003 to allow compliance with a technical defect in the motion.[21] In the order[22] read in open court, it was mentioned that SLU had already filed a notice of appeal. The RTC, however, stressed that its judgment of injunction was immediately enforceable even though SLU interposed an appeal.

On that same day, the Olairez group submitted their "Compliance," by providing the required verification.[23] Thus, in another Order, dated July 18, 2003, the RTC ordered the issuance of a writ of execution.[24] Afterwards, the Branch Clerk of Court issued a writ of execution.[25]

On July 19, 2003, the RTC sheriff served SLU with the said writ of execution.

On July 21, 2003, SLU moved for the inhibition of Presiding Judge Ayson,[26] but its motion was denied in the Order, dated July 22, 2003.[27] Thereafter, the hearing of the motion to cite SLU in contempt proceeded on the same day without any participation of SLU and its officials.

On the next day, or on July 23, 2003, the RTC found SLU guilty of indirect contempt.[28] The decretal portion of the order reads:

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[21] *Rollo* (G.R. No. 174758), pp. 105-108.

[22] Erroneously dated as June 06, 2013, *rollo* (G.R. No. 162299), pp. 161-162.

[23] *Rollo* (G.R. No. 174758), pp. 99-103.

[24] Records, Volume III, pp. 1551-1552.

[25] *Rollo* (G.R. No. 162299), pp. 163-165; (G.R. No. 174758), pp. 109-111.

[26] Records, Volume III, pp. 1558-1565.

[27] *Id.* at 1573-1582.

[28] *Id.* at 1583-1600.

WHEREFORE, the Court finds defendant Dean Elizabeth Dacanay guilty of Indirect Contempt of Court under Sections 3 letter (b) and 7 of Rule 71 in relation to Section 4 and 11 of Rule 39 of the Rules of Court and sentences her to pay a Fine of Thirty Thousand (₱30,000.00) Pesos.

Likewise, the Court finds those acting for and in behalf of Dean Elizabeth Dacanay, namely, Administrative Secretary Nora Ponoc, Hospital Administrator Lourdes Jacinto, Training Officer Dr. Anastacio Aquino and Medical Director Dr. Roberto Legaspi, Dr. John Domantay and Acting President Atty. Arnulfo Soriano guilty of Indirect Contempt of Court under Sections 3 letter (b) and 7 of Rule 71 in relation to Sections 4 and 11 of Rule 39 of the Rules of Court and hereby sentences them to pay a fine of One Thousand Pesos (₱1,000.00) each.

The Professional Regulation Commission and the Board of Medicine are likewise ordered to conditionally allow if feasible plaintiffs Baby Nellie Olairez, Shieryl Rebucal, Jenny Rizza Banta and Brando Badecao to take the Medical Board Examination scheduled on August 2003 until the Judgment (Decision) of the Court dated July 16, 2003 is finally enforced.[29]

The Petition for certiorari

Thereafter, SLU filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA, docketed as C.A. G.R. SP No. 78127, questioning the following trial court issuances:

1. Order, dated July 18, 2003, directing the defendants (SLU) to show cause why they should not be cited in contempt;

2. Order, dated June 6, 2003, directing compliance with the July 16, 2003 decision of the RTC;

3. Writ of Execution, dated July 18, 2003, signed by the Branch Clerk of Court without any motion for its issuance; and

4. Order, dated July 18, 2003, signed by Judge Ayson directing the issuance of a writ of execution pursuant to Section 4, Rule 39 of the Rules of Court.

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[29] *Id.* at 1600.

On November 18, 2003, the CA dismissed SLU's petition outright for its failure to file a prior motion for reconsideration.[30] The CA explained that "a special civil action for *certiorari* will not lie unless the aggrieved party has no other plain, speedy and adequate remedy in the ordinary course of law, such as a timely filed motion for reconsideration so as to allow the lower court to correct the alleged error."[31]

SLU moved for reconsideration, but the CA denied the same in its Resolution,[32] dated February 10, 2004.

Unsatisfied, SLU elevated the disputed CA resolutions before the Court *via* a petition for review on *certiorari* under Rule 45, docketed as **G.R. No. 162299**.[33]

The Appeal Proper

Meanwhile, SLU appealed the order of the RTC finding it guilty of indirect contempt before the CA, which was docketed as CA-G.R. CR No. 27861.

Regarding the merits of the appeal in the indirect contempt case, the CA *reversed* the July 23, 2003 Order of the RTC in its April 7, 2006 Decision.[34] Citing Rule 71 of the Rules of Court, the CA opined that to comply with the procedural requirements of indirect contempt, there must be: (1) a complaint in writing which may either be a motion for contempt filed by a party or an order issued by the court requiring a person to appear and explain his conduct; and, (2) an opportunity for the person charged to appear and explain his conduct.[35]

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[30] *Rollo* (G.R. No. 162299), pp. 114-116. Penned by Associate Justice Regalado E. Maambong, with Associate Justice Buenaventura J. Guerrero and Associate Justice Andres B. Reyes, Jr., concurring.

[31] *Id.* at 115.

[32] *Id.* at 118-120.

[33] *Id.* at 71-112.

[34] *Rollo* (G.R. No. 174758), pp. 29-52. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justice Mariano C. Del Castillo and Associate Justice Magdangal M. De Leon, concurring.

[35] *Id.* at 44.

The CA observed that the second element was lacking as there was haste in the conduct of the proceedings and in issuing orders which deprived SLU of the opportunity to explain the reason for not complying with the mandatory injunction. The CA then stated that "in order for a party to be guilty of indirect contempt, the rules require that he be given enough and reasonable opportunity to explain his side against the alluded contemptuous act. Deprive the party of such opportunity would be to deprive him of due process of law. It is in that non-observance of the constitutional right to due process that we find the order citing the appellants in contempt to be unsustainable due to the unprocedural process and the precipitate issuance of the contempt order." [36] The dispositive portion of the April 7, 2006 CA decision reads:

> IN VIEW OF ALL FOREGOING, THE INSTANT APPEAL is hereby **GRANTED**, the challenged order dated July 23, 2003 in Civil Case No. 5191-R, **RECALLED** and **SET ASIDE**, and a new one entered **DISMISSING** the assailed contempt charge against herein appellants. No pronouncement as to cost.
>
> SO ORDERED.[37]

Unperturbed, the Olairez group moved for a reconsideration of the said ruling.[38] On September 11, 2006, the CA denied their motion for reconsideration.[39]

Thus, the Olairez group filed a petition review on *certiorari* under Rule 45, docketed as **G.R. No. 174758**.[40]

In the Resolution of April 16, 2007, the Court resolved to consolidate the two cases.[41]

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[36] *Id.* at 45-47.

[37] *Id.* at 51.

[38] *Id.* at 56-62.

[39] *Id.* at 54-55.

[40] *Id.* at 5-27.

[41] *Rollo* (G.R. No. 162299), p. 253.

The Issues

G.R. No. 162299

THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* ON THE GROUND THAT THE PENDENCY OF AN APPEAL EXCLUDES THE REMEDY OF *CERTIORARI.*

THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* ON THE GROUND THAT THE PETITIONERS FAILED TO FILE A MOTION FOR RECONSIDERATION OF THE ASSAILED ORDERS OF THE TRIAL COURT.[42]

G.R. No. 174758

I.

THE HONORABLE COURT OF APPEALS FORMER THIRD DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AND IT SERIOUSLY ERRED IN ITS FINDING THAT THE THREE-DAY NOTICE RULE WAS VIOLATED, DESPITE THE FACT THAT PRIVATE RESPONDENTS AND THE LEAD COUNSEL ATTY. ARNULFO SORIANO, IN HIS CAPACITY AS THE SLU VICE-PRESIDENT FOR ADM[I]NISTRATION AND ALSO THEN ACTING PRESIDENT OF THE PRINCIPAL RESPONDENT SAINT LOUIS UNIVERSITY, INC., WERE PERSONALLY SERVED COPIES ON JULY 19, 2003 OF THE NOTICE OF HEARING SET ON JULY 22, 2003 AT 8:30 A.M.

II.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ITS FINDING THAT THE PRIVATE RESPONDENTS WERE DENIED DUE PROCESS OF LAW WHEREIN ALLEGEDLY THEY "WERE FOUND NOT TO HAVE BEEN AFFORDED REASONABLE OPPORTUNITY FOR THE APPELLANTS TO APPEAR AND EXPLAIN THEIR CONDUCT"—AS A GROUND FOR REVERSING THE ORDER OF THE REGIONAL TRIAL COURT WHICH FOUND RESPONDENTS GUILTY OF CONTEMPT.

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[42] *Id.* at 92.

III.

THAT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ITS FINDING THAT THE INITIATORY PLEADING COULD NOT BE TREATED AS A MOTION FOR EXECUTION.[43]

The Court's Ruling

G.R. No. 162299

SLU contends that the CA erred in dismissing its petition for *certiorari* for filing it without a prior motion for reconsideration which, according to it, constituted a fatal infirmity.

The petition is bereft of merit.

The general rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.[44] Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[45] It is not, however, an ironclad rule. There are recognized exceptions such as (a) where the order is a patent nullity, as where the court a *quo* had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the

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[43] *Rollo* (G.R. No. 174758), p. 15.

[44] *Office of the Ombudsman v. Laja*, 522 Phil. 532, 538-539 (2006).

[45] *Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez*, 503 Phil. 736, 743 (2005); *National Housing Authority v. Court of Appeals*, 413 Phil. 58, 64 (2001).

proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte*, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[46]

Under the circumstances, the Court is not convinced that SLU's explanation constitutes sufficient ground for the application of the exception to the rule. In the same vein, petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not.[47] It should be emphasized that procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are, thus, enjoined to abide strictly by the rules. Although the Court, in some cases, permits a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. It is true that litigation is not a game of technicalities, but it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.[48]

In this case, a liberality in the application of the rules of procedure may not be invoked if it will result in the wanton disregard of the rules or cause needless delay in the administration of justice. For it is equally settled that, except for the most persuasive of reasons, strict compliance is enjoined to facilitate the orderly administration of justice.[49]

G.R. No. 174758

The Olairez group argues that the CA erred in ruling that SLU and its officials were denied of due process as they were

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[46] *Metro Transit Organization, Inc. v. Court of Appeals*, 440 Phil. 743, 751 (2002).

[47] *Cervantes v. Court of Appeals*, 512 Phil. 210, 217 (2005).

[48] *Asian Spirit Airlines v. Spouses Bautista*, 491 Phil. 476, 483-484 (2005).

[49] *El Reyno Homes, Inc. v. Ong*, 445 Phil. 621, 618 (2003).

not given the opportunity to comment and be heard on the contempt charges against them.[50]

The group's petition is bereft of merit.

Indirect contempt is defined by and punished under Section 3, Rule 71 of the *Rules of Court*, which provides:

> 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:
>
> (a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;
>
> (b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;
>
> (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;
>
> (e) Assuming to be an attorney or an officer of a court, and acting as such without authority;
>
> (f) Failure to obey a subpoena duly served;
>
> (g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.
>
> But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings. (3a)

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[50] *Rollo* (G.R. No. 174758), p. 17.

In contempt, the intent goes to the gravamen of the offense.[51] Thus, the good faith or lack of it, of the alleged contemnor is considered.[52] Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character.[53] A person should not be condemned for contempt where he contends for what he believes to be right and in good faith institutes proceedings for the purpose, however erroneous may be his conclusion as to his rights.[54] To constitute contempt, the act must be done wilfully and for an illegitimate or improper purpose.[55]

The supposed inaction of the SLU and its officials when the Olairez group visited the school on July 17, 2003 to demand their compliance with the decision was not borne out of a contumacious conduct tending, directly or indirectly, to hinder the implementation of a judgment. A conduct, to be contumacious, implies willfulness, bad faith or with deliberate intent to cause injustice, which is clearly not the case here. On the contrary, SLU was well within its rights to appeal the decision and not immediately heed the demand of the Olairez group.

Records reveal that the Olairez group violated the three-day notice rule on hearing of motions as provided in Section 4,[56]

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[51] *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*, G.R. No. 155849, August 31, 2011, 656 SCRA 331, 349, citing *In Re People in the Interest of Murley*, 239 P. 2d 706; 124 Colo. 581.

[52] *Id.*, citing *Hoffmeister v. Tod*, 349 S. W. 2d 5.

[53] *Id.*, citing *N. L. R. B. v. Whittier Mills Co.*, C. C. A. 5, 123 F. 2d 725; *In Re Cottingham*, 182 P. 2, 66 Colo. 335.

[54] *Id.* at 349-350, citing *Bender v. Young*, 252 S.W. 691, 693.

[55] *Id.* at 350, citing *General Motors Corporation v. United Elec. Radio & Mach. Workers of America*, C.I.O., Local 717, 17 Ohio Supp. 19.

[56] SECTION 4. *Hearing of motion.* – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Rule 15 of the Rules of Court when they scheduled the hearing on their "Very Urgent Motion to Cite Defendants In Contempt" on July 18, 2003 or just one day after they filed the said pleading on July 17, 2003. As a rule, any motion that does not comply with the requirements of Rule 15 should not be received for filing[57] and, if filed, is not entitled to judicial cognizance,[58] subject only to some exceptions, such as where a rigid application of the rule will result in a manifest failure or miscarriage of justice[59] or if there was substantial compliance.[60]

Under the attendant circumstances, there was no substantial compliance with procedural due process because although the hearing on the said motion was reset to July 22, 2003, the disputed writ of execution was actually issued on July 18, 2003 and served on SLU and its officials on July 19, 2003 *before the rescheduled hearing date*, while their counsels on record received their copies on July 21, 2003. In due process, the parameter required is the presence of an opportunity to be heard, as well as the time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.[61] This was not properly afforded to SLU.

The power to declare a person in contempt of court and in dealing with him accordingly is an inherent power lodged in

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Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[57] *Pallada v. Regional Trial Court of Kalibo Aklan Br. 1*, 364 Phil. 81, 89 (1999).

[58] *Cruz v. Court of Appeals*, 436 Phil. 641, 651 (2002).

[59] *People v. Leviste*, 325 Phil. 525, 535 (1996).

[60] *Presyler, Jr. v. Manila Southcoast Development Corporation*, G.R. No. 171872, June 28, 2010, 621 SCRA 636, 642, citing *Somera Vda. De Navarro v. Navarro*, CA No. 501, February 11, 1946. See also *Jehan Shipping Corporation v. National Food Authority*, 514 Phil. 166, 174 (2005).

[61] *Jehan Shipping Corporation v. National Food Authority*, 514 Phil. 166, 174 (2005).

courts of justice, to be used as a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein and the administration of justice from callous misbehavior, offensive personalities and contumacious refusal to comply with court orders.[62] This contempt power, plenary it may seem, however, must be exercised judiciously and sparingly with highest self-restraint with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retribution or vindication.[63] It should not be availed of unless necessary in the interest of justice.[64]

Thus, the Court finds no cogent reason to deviate from the CA decision to absolve SLU and its officials from the contempt charges filed against them.

WHEREFORE, in **G.R. No. 162299**, the petition is **DENIED**. Accordingly, the Resolutions, dated November 18, 2003 and February 10, 2004, of the Court of Appeals, in CA-G.R. No. SP 78127, are **AFFIRMED**.

In **G.R. No. 174758**, the petition is **DENIED**. Accordingly, the April 7, 2006 Decision and the September 11, 2006 Resolution of the Court of Appeals (CA), in CA-G.R. CR No. 27861, are **AFFIRMED**.

SO ORDERED.

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

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[62] *Office of the Court Administrator v. Paderanga*, 505 Phil. 143, 157 (2005).

[63] *Commissioner Rodriguez v. Judge Bonifacio*, 398 Phil. 441, 468 (2000).

[64] *Quinio v. Court of Appeals*, 390 Phil. 852, 861 (2000).

[*] Designated Acting Member in lieu of Associate Justice Marvic Mario Victor F. Leonen, per Special Order No. 1653 dated March 21, 2014.

SECOND DIVISION

[G.R. No. 189420. March 26, 2014]

RAUL V. ARAMBULO and TERESITA A. DELA CRUZ, *petitioners, vs.* **GENARO NOLASCO and JEREMY SPENCER NOLASCO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; CO-OWNERSHIP; CO-OWNERS CANNOT BE ORDERED TO SELL THEIR PORTION OF THE CO-OWNED PROPERTIES.— The ultimate authorities in civil law, recognized as such by the Court, agree that co-owners such as respondents have over their part, the right of full and absolute ownership. Such right is the same as that of individual owners which is not diminished by the fact that the entire property is co-owned with others. That part which ideally belongs to them, or their mental portion, may be disposed of as they please, independent of the decision of their co-owners. So we rule in this case. The respondents cannot be ordered to sell their portion of the co-owned properties. In the language of *Rodriguez v. Court of First Instance of Rizal*, "each party is the sole judge of what is good for him." x x x Indeed, the respected commentaries suggest the conclusion that, insofar as the sale of co-owned properties is concerned, there is no common interest that may be prejudiced should one or more of the co-owners refuse to sell the co-owned property, which is exactly the factual situation in this case. When respondents disagreed to the sale, they merely asserted their individual ownership rights. Without unanimity, there is no common interest.

2. ID.; ID.; ID.; ID; THE REMEDY OF THE PREJUDICED CO-OWNERS IS TO BRING AN ACTION FOR PARTITION.— Petitioners who project themselves as prejudiced co-owners may bring a suit for partition, which is one of the modes of extinguishing co-ownership. Article 494 of the Civil Code provides that no co-owner shall be obliged to remain in the co-ownership, and that each co-owner may demand at any time partition of the thing owned in common insofar as his share

is concerned. Corollary to this rule, Article 498 of the Civil Code states that whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds accordingly distributed. This is resorted to (a) when the right to partition the property is invoked by any of the co-owners but because of the nature of the property, it cannot be subdivided or its subdivision would prejudice the interests of the co-owners, and (b) the co-owners are not in agreement as to who among them shall be allotted or assigned the entire property upon proper reimbursement of the co-owners. This is the result obviously aimed at by petitioners at the outset. As already shown, this cannot be done while the co-ownership exists. Essentially, a partition proceeding accords all parties the opportunity to be heard, the denial of which was raised as a defense by respondents for opposing the sale of the subject properties.

APPEARANCES OF COUNSEL

Tagumpay B. Ponce for petitioners.
Miguel B. Larida for respondents.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review of the 7 October 2008 Decision[1] and 30 July 2009 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 76449, which reversed and set aside the Decision[3] of the Regional Trial Court (RTC) of Manila, Branch 51, dated 19 September 2002.

Petitioners Raul V. Arambulo and Teresita A. Dela Cruz, along with their mother Rosita *Vda. De* Arambulo, and siblings

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[1] Penned by Associate Justice Isaias Dicdican with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring. *Rollo*, pp. 35-41.

[2] *Id.* at 43-44.

[3] Presided by Judge Rustico V. Panganiban. *Id.* at 86-91.

Primo V. Arambulo, Ma. Lorenza A. Lopez, Ana Maria V. Arambulo, Maximiano V. Arambulo, Julio V. Arambulo and Iraida Arambulo Nolasco (Iraida) are co-owners of two (2) parcels of land located in Tondo, Manila, with an aggregate size of 233 square meters. When Iraida passed away, she was succeeded by her husband, respondent Genaro Nolasco and their children, Iris Abegail Nolasco, Ingrid Aileen Arambulo and respondent Jeremy Spencer Nolasco.

On 8 January 1999, petitioners filed a petition for relief under Article 491 of the Civil Code with the RTC of Manila, alleging that all of the co-owners, except for respondents, have authorized petitioners to sell their respective shares to the subject properties; that only respondents are withholding their consent to the sale of their shares; that in case the sale pushes through, their mother and siblings will get their respective 1/9 share of the proceeds of the sale, while respondents will get ¼ share each of the 1/9 share of Iraida; that the sale of subject properties constitutes alteration; and that under Article 491 of the Civil Code, if one or more co-owners shall withhold their consent to the alterations in the thing owned in common, the courts may afford adequate relief.[4]

In their Answer, respondents sought the dismissal of the petition for being premature. Respondents averred that they were not aware of the intention of petitioners to sell the properties they co-owned because they were not called to participate in any negotiations regarding the disposition of the property.[5]

After the pre-trial, two (2) issues were submitted for consideration:

1. Whether or not respondents are withholding their consent in the sale of the subject properties; and
2. In the affirmative, whether or not withholding of consent of sale by the respondents is prejudicial to the petitioners.[6]

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[4] *Id*. at 60-63.

[5] *Id*. at 67-69.

[6] *Id*. at 89.

On 19 September 2002, the trial court ruled in favor of petitioners and ordered respondents to give their consent to the sale. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the petitioners and against the respondents:

1. Directing respondents Genaro Nolasco and Jeremy Spencer A. Nolasco to give their consent to the sale of their shares on the subject properties;

2. Allowing the sale of the aforementioned properties;

3. Directing the petitioners and the co-owners, including the respondents herein to agree with the price in which the subject properties are to be sold and to whom to be sold; and

4. Directing the distribution of the proceeds of the sale of the aforementioned properties in the following proportion:

a.)	Rosita V. *Vda. De* Arambulo	-1/9
b.)	Primo V. Arambulo	-1/9
c.)	Maximiano V. Arambulo	-1/9
d.)	Ana Maria V. Arambulo	-1/9
e.)	Ma. Lorenza A. Lopez	-1/9
f.)	Julio V. Arambulo	-1/9
g.)	Raul V. Arambulo	-1/9
h.)	Teresita A. dela Cruz	-1/9
i.)	Genaro Nolasco, Jr.	-1/4 of 1/9
j.)	Jeremy Spencer A. Nolasco	-1/4 of 1/9
k.)	Iris Abegail A. Nolasco	-1/4 of 1/9
l.)	Ingrid Aileen Arambulo	-1/4 of 1/9[7]

Going along with petitioners' reliance on Article 491 of the Civil Code, the trial court found that respondents' withholding of their consent to the sale of their shares is prejudicial to the common interest of the co-owners.

Respondents filed a Notice of Appeal and the trial court gave due course to the appeal and the entire records of the case were elevated to the Court of Appeals.

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

In a Decision dated 7 October 2008, the Court of Appeals granted the appeal and reversed the trial court's decision. The Court of Appeals held that the respondents had the full ownership of their undivided interest in the subject properties, thus, they cannot be compelled to sell their undivided shares in the properties. It referred to the provisions of Article 493 of the Civil Code. However, the Court of Appeals, implying applicability of Article 491 also observed that petitioners failed to show how respondents' withholding of their consent would prejudice the common interest over the subject properties.

Hence, the instant petition seeking the reversal of the appellate court's decision and praying for the affirmance of the trial court's decision that ordered respondents to give their consent to the sale of the subject properties. Petitioners emphasize that under Article 491 of the Civil Code, they may ask the court to afford them adequate relief should respondents refuse to sell their respective shares to the co-owned properties. They refute the appellate court's finding that they failed to show how the withholding of consent by respondents becomes prejudicial to their common interest. Citing the testimony of petitioner Teresita A. Dela Cruz, they assert that one of the two subject properties has an area of 122 square meters and if they decide to partition, instead of selling the same, their share would be reduced to a measly 30-square meter lot each. The other property was testified to as measuring only 111 square meters. Petitioners reiterate that all the other co-owners are willing to sell the property and give respondents their share of the proceeds of the sale.

At the core of this petition is whether respondents, as co-owners, can be compelled by the court to give their consent to the sale of their shares in the co-owned properties. Until it reached this Court, the discussion of the issue moved around Article 491 of the Civil Code. We have to remove the issue out of the coverage of Article 491. It does not apply to the problem arising out of the proposed sale of the property co-owned by the parties in this case.

The Court of Appeals correctly applied the provision of Article 493 of the Civil Code, which states:

> Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Upon the other hand, Article 491 states:

> Art. 491. None of the co-owners shall, without the consent of the others, make alterations in the thing owned in common, even though benefits for all would result therefrom. However, if the withholding of the consent by one or more of the co-owners is clearly prejudicial to the common interest, the courts may afford adequate relief.

As intimated above, the erroneous application of Article 491 is, in this case, an innate infirmity. The very initiatory pleading below was captioned Petition For Relief Under Article 491 of the New Civil Code. Petitioners, likewise petitioners before the RTC, filed the case on the submission that Article 491 covers the petition and grants the relief prayed for, which is to compel the respondent co-owners to agree to the sale of the co-owned property. The trial court took up all that petitioners tendered, and it favored the pleading with the finding that:

> x x x To this court, the act of respondents of withholding consent to the sale of the properties is not only prejudicial to the common interest of the co-owners but is also considered as an alteration within the purview of Article 491 of the New Civil Code. x x x. Hence, it is deemed just and proper to afford adequate relief to herein petitioners under Article 491 of the New Civil Code.[8]

That a sale constitutes an alteration as mentioned in Article 491 is an established jurisprudence. It is settled that alterations include any act of strict dominion or ownership and any

[8] *Id*. at 90.

encumbrance or disposition has been held implicitly to be an act of alteration.[9] Alienation of the thing by sale of the property is an act of strict dominion.[10] However, the ruling that alienation is alteration does not mean that a sale of commonly owned real property is covered by the second paragraph of Article 491, such that if a co-owner withholds consent to the sale, the courts, upon a showing of a clear prejudice to the common interest, may, as adequate relief, order the grant of the withheld consent. Such is the conclusion drawn by the trial court, and hinted at, if not relied upon, by the appellate court.

Ruling that the trial court erred in its conclusion, the Court of Appeals correctly relied on Article 493 in support of the finding that respondents cannot be compelled to agree with the sale. We affirm the reversal by the Court of Appeals of the judgment of the trial court.

1. There is co-ownership whenever, as in this case, the ownership of an undivided thing, belongs to different persons.[11] Article 493 of the Code defines the ownership of the co-owner, clearly establishing that each co-owner shall have full ownership of his part and of its fruits and benefits.

Pertinent to this case, Article 493 dictates that each one of the parties herein as co-owners with full ownership of their parts can sell their fully owned part. The sale by the petitioners of their parts shall not affect the full ownership by the respondents of the part that belongs to them. Their part which petitioners will sell shall be that which may be apportioned to them in the division upon the termination of the co-ownership. With the full ownership of the respondents remaining unaffected by petitioners' sale of their parts, the nature of the property, as co-owned, likewise stays. In lieu of the petitioners, their

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[9] *Cruz v. Catapang*, G.R. No. 164110, 12 February 2008, 544 SCRA 512, 519 citing *Gala v. Rodriguez*, 70 Phil. 124 (1940).

[10] De Leon and De Leon, Jr., *COMMENTS AND CASES ON PROPERTY*, Third Edition 1998, p. 243.

[11] Civil Code, Article 484.

vendees shall be co-owners with the respondents. The text of Article 493 says so.

2. Our reading of Article 493 as applied to the facts of this case is a reiteration of what was pronounced in *Bailon-Casilao v. Court of Appeals.*[12] The rights of a co-owner of a certain property are clearly specified in Article 493 of the Civil Code. Thus:

> Art. 493. Each co-owner shall have the *full ownership of his part* and of the fruits and benefits pertaining thereto, and he may therefore *alienate, assign or mortgage* it[,] and even substitute another person in its enjoyment, except when personal rights are involved. *But the effect of the alienation or* [*the*] *mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership*.

As early as 1923, this Court has ruled that even if a co-owner sells the whole property as his, the sale will affect only his own share but not those of the other co-owners who did not consent to the sale.[13] This is because under the aforementioned *codal* provision, the sale or other disposition affects only his undivided share and the transferee gets only what would correspond to his grantor in the partition of the thing owned in common.[14] Consequently, by virtue of the sales made by Rosalia and Gaudencio Bailon which are valid with respect to their proportionate shares, and the subsequent transfers which culminated in the sale to private respondent Celestino Afable, the said Afable thereby became a co-owner of the disputed parcel of land as correctly held by the lower court since the sales produced the effect of *substituting* the buyers in the enjoyment thereof.[15]

From the foregoing, it may be deduced that since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void. However, only the rights of the co-owner-seller are

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[12] 243 Phil. 888 (1988).

[13] *Punsalan v. Boon Liat,* 44 Phil. 320, 324 (1923).

[14] *Ramirez v. Bautista,* 14 Phil. 528, 532-533 (1909).

[15] *Mainit v. Bandoy,* 14 Phil. 730, 733 (1910).

transferred, thereby making the buyer a co-owner of the property.[16] (Italics theirs).

Nearer to the dispute at hand are the pronouncements in the 1944 case of *Lopez v. Vda. De Cuaycong.*[17] Citing *Manresa* on Article 399 which is the present Article 493 of the Civil Code, the Court said:

> x x x Article 399 shows the essential integrity of the right of each co-owner in the mental portion which belongs to him in the ownership or community.
>
> x x x x x x x x x
>
> To be a co-owner of a property does not mean that one is deprived of every recognition of the disposal of the thing, of the free use of his right within the circumstantial conditions of such judicial status, nor is it necessary, for the use and enjoyment, or the right of free disposal, that the previous consent of all the interested parties be obtained.[18] (Underscoring supplied).

The Court in *Lopez* further cited *Scaevola*:

> 2nd. Absolute right of each co-owner with respect to his part or share. – With respect to the latter, each co-owner is the same as an individual owner. He is a singular owner, with all the rights inherent in such condition. The share of the co-owner, that is, the part which ideally belongs to him in the common thing or right and is represented by a certain quantity, is his and he may dispose of the same as he pleases, because it does not affect the right of the others. Such quantity is equivalent to a credit against the common thing or right and is the private property of each creditor (co-owner). The various shares ideally signify as many units of thing or right, pertaining individually to the different owners; in other words, a unit for each owner.[19] (Underscoring supplied).

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[16] *Bailon-Casilao v. Court of Appeals, supra* note 12 at 892-893.

[17] *Lopez v. Vda. De Cuaycong,* 74 Phil. 601 (1944).

[18] *Id.* at 605-606.

[19] *Id.* at 606.

The ultimate authorities in civil law, recognized as such by the Court, agree that co-owners such as respondents have over their part, the right of full and absolute ownership. Such right is the same as that of individual owners which is not diminished by the fact that the entire property is co-owned with others. That part which ideally belongs to them, or their mental portion, may be disposed of as they please, independent of the decision of their co-owners. So we rule in this case. The respondents cannot be ordered to sell their portion of the co-owned properties. In the language of *Rodriguez v. Court of First Instance of Rizal*,[20] "each party is the sole judge of what is good for him."[21]

3. Indeed, the respected commentaries suggest the conclusion that, insofar as the sale of co-owned properties is concerned, there is no common interest that may be prejudiced should one or more of the co-owners refuse to sell the co-owned property, which is exactly the factual situation in this case. When respondents disagreed to the sale, they merely asserted their individual ownership rights. Without unanimity, there is no common interest.

Petitioners who project themselves as prejudiced co-owners may bring a suit for partition, which is one of the modes of extinguishing co-ownership. Article 494 of the Civil Code provides that no co-owner shall be obliged to remain in the co-ownership, and that each co-owner may demand at any time partition of the thing owned in common insofar as his share is concerned. Corollary to this rule, Article 498 of the Civil Code states that whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds accordingly distributed. This is resorted to (a) when the right to partition the property is invoked by any of the co-owners but because of the nature of the property, it cannot be subdivided or its subdivision would prejudice the interests of the co-owners, and (b) the co-owners are not in agreement as to who among

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[20] 88 Phil. 417 (1951).

[21] *Id.* at 421.

them shall be allotted or assigned the entire property upon proper reimbursement of the co-owners.[22] This is the result obviously aimed at by petitioners at the outset. As already shown, this cannot be done while the co-ownership exists.

Essentially, a partition proceeding accords all parties the opportunity to be heard, the denial of which was raised as a defense by respondents for opposing the sale of the subject properties.

The necessity of partition could not be more emphasized than in *Rodriguez v. Court of First Instance of Rizal*,[23] to wit:

> x x x That this recourse would entail considerable time, trouble and expense, unwarranted by the value of the property from the standpoint of the [respondents], is no legal justification for the apportionment of the property not agreeable to any of the co-owners. Disagreements and differences impossible of adjustment by the parties themselves are bound to arise, and it is precisely with such contingency in view that the law on partition was evolved.[24]

WHEREFORE, based on the foregoing, the petition is **DENIED** without prejudice to the filing of an action for partition. The Decision of the Court of Appeals in CA-G.R. CV No. 76449 is **AFFIRMED**.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Reyes,*[*] *JJ.,* concur.

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[22] *Aguilar v. Court of Appeals*, G.R. No. 76351, 29 October 1993, 227 SCRA 472, 479-480 citing *Reyes v. Concepcion,* G.R. No. 56550, 1 October 1990, 190 SCRA 171, 181.

[23] *Supra* note 20.

[24] *Id.* at 422.

[*] Per Special Order No. 1650 dated 13 March 2014.

SECOND DIVISION

[G.R. No. 195031. March 26, 2014]

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., *petitioner, vs.* **CELESTE M. CHUA**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED IN A RULE 45 PETITION; EXCEPTION THERETO, APPLICABLE IN CASE AT BAR.— [I]t must be pointed out that it is clear from petitioner's assignment of errors that what the instant petition for review is challenging are the findings of fact and the appreciation of evidence made by the trial court which were affirmed by the Court of Appeals. While it is well-settled that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court, it is equally well-settled that the rule admits of exceptions, one of which is when the trial court or the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion. In this case, the records contain evidence which justify the application of the exception.

2. CIVIL LAW; DAMAGES; DOCTRINE OF *RES IPSA LOQUITOR*, EXPLAINED AND APPLIED.— With respect to the issue of negligence, there is no doubt that, under the circumstances of this case, petitioner is liable to respondent for damages on account of the loss of the contents of her container van. Petitioner itself admitted during the pre-trial of this case that respondent's container van caught fire while stored within its premises. Absent any justifiable explanation on the part of petitioner on the cause of the fire as would absolve it from liability, the presumption that there was negligence on its part comes into play. The situation in this case, therefore, calls for the application of the doctrine of *res ipsa loquitur*. The doctrine of *res ipsa loquitur* is "based on the theory that the defendant either knows the cause of the accident or has the best opportunity of ascertaining it and the plaintiff, having no knowledge thereof, is compelled to allege negligence in

general terms. In such instance, the plaintiff relies on proof of the happening of the accident alone to establish negligence." The principle, furthermore, provides a means by which a plaintiff can hold liable a defendant who, if innocent, should be able to prove that he exercised due care to prevent the accident complained of from happening. It is, consequently, the defendant's responsibility to show that there was no negligence on his part. The doctrine, however, "can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available." Here, there was no evidence as to how or why the fire in the container yard of petitioner started; hence, it was up to petitioner to satisfactorily prove that it exercised the diligence required to prevent the fire from happening. This it failed to do. Thus, the trial court and the Court of Appeals acted appropriately in applying the principle of *res ipsa loquitur* to the case at bar.

3. ID.; ID.; ACTUAL DAMAGES; CONCEPT; CLAIM FOR ACTUAL DAMAGES MUST BE PROVEN WITH REASONABLE CERTAINTY.— Article 2199 of the Civil Code states that "[e]xcept as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages." "Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and **susceptible of measurement**. Except as provided by law or by stipulation, a party is entitled to adequate compensation only for such pecuniary loss as is duly proven. Basic is the rule that **to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty**, premised upon competent proof or the best evidence obtainable." x x x This Court has, time and again, emphasized that actual damages cannot be presumed and courts, in making an award, must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne. An award of actual damages is "dependent upon competent proof of the damages suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof."

4. ID.; ID.; ID.; CLAIM FOR ACTUAL DAMAGES, NOT ESTABLISHED IN CASE AT BAR.— In the case before us, respondent failed to adduce evidence adequate enough to satisfactorily prove the amount of actual damages claimed. The receipts she submitted cannot be considered competent proof since she failed to prove that the items listed therein are indeed the items that were in her container van and vice versa. As pointed out above, there are discrepancies between the items listed in the submitted receipts and those contained in the respective inspection reports of the marine surveyors. Hence, the said receipts cannot be made the basis for the grant of actual damages.

5. ID.; ID.; LIMITATION ON THE LIABILITY FOR DAMAGES UNDER THE MANAGEMENT CONTRACT MAY NOT BE AVAILED OF IN CASE AT BAR.— [P]etitioner x x x cannot rely on PPA Administrative Order No. 10-81 (its Management Contract with the Philippine Ports Authority) as basis of its liability for damages. This administrative order limits petitioner's liability to not more than Three Thousand Five Hundred Pesos (₱3,500.00) for each package (for import cargo) if the value of the cargo is not specified or communicated to the arrastre operator in writing. Contrary to petitioner's claim, there is no contractual relationship between it and respondent since the latter did not avail herself of petitioner's services; hence, she cannot be bound by the said management contract. The cases cited by petitioner wherein the Supreme Court applied the provision of the Management Contract and limited the arrastre operator's liability to the amount stated therein are not applicable to the case at bar because in all of those cited cases, the consignee either availed of the services of the arrastre operator or is otherwise bound by the Management Contract – despite non-availment of the services of the arrastre operator – as a result of the consignee's acceptance of the delivery of the cargo from the arrastre operator. This absence of a contractual relationship is precisely also the reason why respondent is not bound by petitioner's Terms of Business which requires a claimant to commence any action for damages against petitioner within 12 months from the occurrence of the cause of the claim. Thus, respondent's action against petitioner cannot be said to have been barred by prescription or laches.

6. ID.; ID.; TEMPERATE DAMAGES; AWARD THEREOF DEEMED PROPER AND EQUITABLE IN THE ABSENCE OF COMPETENT PROOF OF ACTUAL DAMAGES.— In the absence of competent proof on the amount of actual damages suffered, a party is entitled to receive temperate damages. Article 2224 of the New Civil Code provides that: "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." The amount thereof is usually left to the sound discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be "more than nominal but less than compensatory." Considering the concomitant circumstances prevailing in this case, temperate damages in the amount of ₱350,000.00 is deemed equitable.

7. ID.; ID.; MORAL DAMAGES; MUST BE DISALLOWED IN THE ABSENCE OF A CLEAR SHOWING THAT THE CLAIMANT ACTUALLY EXPERIENCED EMOTIONAL AND MENTAL SUFFERINGS.— [A]n award of moral damages must be anchored on a clear showing that the party claiming the same **actually** experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury. In the case herein under consideration, the records are bereft of any proof that respondent in fact suffered moral damages as contemplated in the afore-quoted provision of the Civil Code. The ruling of the trial court provides simply that: "[Petitioner's] outright denial and unjust refusal to heed [respondent's] claim for payment of the value of her lost/damaged shipment caus[ed] the latter to suffer serious anxiety, mental anguish and wounded feelings warranting the award of moral damages x x x." The testimony of respondent, on the other hand, merely states that when she failed to recover damages from petitioner, she "was saddened, had sleepless nights and anxiety" without providing specific details of the suffering she allegedly went through. "Since an award of moral damages is predicated on a **categorical** showing by the claimant that she actually experienced emotional and mental sufferings, it must be disallowed absent any evidence thereon."

8. ID.; ID.; ATTORNEY'S FEES; JUSTIFICATION FOR THE AWARD OF ATTORNEY'S FEES, NOT PRESENT.— An award of attorney's fees has always been the exception rather than the rule and there must be some compelling legal reason to bring the case within the exception and justify the award. In this case, none of the exceptions applies. "Attorney's fees are not awarded every time a party prevails in a suit. The policy of the Court is that no premium should be placed on the right to litigate." "Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still, attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause." The trial court refused to award exemplary damages and denied respondent's claim therefore. It was, therefore, error for it and the Court of Appeals to award attorney's fees after rejecting respondent's prayer for exemplary damages as the latter might have served as basis for awarding attorney's fees.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioner.
H. Fabre Luna for respondent.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[1] dated 14 September 2010 and Resolution[2] dated 3 January 2011 of the Court of Appeals in CA-G.R. CV No. 78315. The challenged Decision denied herein International Container Terminal Services, Inc.'s (petitioner) appeal and affirmed the Decision of the Regional Trial Court (RTC) of Quezon City, Branch 76.

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[1] *Rollo*, pp. 72-81; Penned by Associate Justice Normandie B. Pizarro with Associate Justices Amelita G. Tolentino and Ruben C. Ayson concurring.

[2] *Id*. at 83-84.

As found by the Court of Appeals, the antecedent facts are as follows:

On April 2, 1997, the twenty (20)-feet container van loaded with the personal effects of [respondent] Celeste M. Chua arrived at the North Harbor, Manila, from Oakland, California, x x x. On even date, it was unloaded from the vessel and was placed in the depot belonging to [petitioner] for safekeeping pending the customs inspection.

On April 6, 1997, the container van was stripped and partially inspected by custom authorities. Further inspection thereof was scheduled on May 8, 1997. However, on the date scheduled, [petitioner's] depot was gutted by fire and [respondent's] container van, together with forty-four (44) others, were burned. In the survey conducted thereafter, seventy percent (70%) of the contents of the van was found to be totally burnt while thirty percent (30%) thereof was wet, dirty, and unusable. [Respondent] demanded reimbursement for the value of the goods. However, her demands fell on deaf ears.

On August 23, 1999, [respondent] filed the suit below alleging, in essence, that the proximate cause of the fire that engulfed [petitioner's] depot was the combustible chemicals stored threreat; and, that [petitioner], in storing the said flammable chemicals in its depot, failed to exercise due diligence in the selection and supervision of its employees and/or of their work. She also claims that, while the value of the goods destroyed is x x x (US$87,667.00) x x x, she has in her possession only the machine-copies of receipts showing an aggregate value of only x x x (US$67,535.61) because, pursuant to [petitioner's] request, she gave to the latter's representative the original receipts. x x x.

In its *Answer*, [petitioner] admits that it accepted, in good order, [respondent's] container van for storage and safekeeping at its depot but denies that there was negligence on its part or that of its employees. It asserts that the fire that gutted its depot was due to a fortuitous event because it exercised the due diligence required by law. It maintains that [respondent] is not entitled to her claim because she did not declare the true and correct value of the goods, as the Bill of Lading indicates that the contents of the van have no commercial value. Asserting that [respondent] has no cause of action or that [respondent's] cause of action, if any, has already prescribed

because the complaint was not filed within twelve (12) months from the time of damage or loss, it prays for the dismissal of the complaint. x x x.[3]

After the issues were joined, pre-trial ensued, during which, the parties failed to settle amicably. The court thereafter conducted trial.

On 16 December 2002, the trial court rendered a decision ordering herein petitioner to pay respondent actual damages in the amount of US$67,535.61 or its equivalent in Philippine Peso at the time of the filing of the complaint; moral damages in the amount of ₱50,000.00; and attorney's fees of ₱50,000.00.[4]

Aggrieved, petitioner filed an appeal to the Court of Appeals alleging that the trial court erred in holding it liable for actual and moral damages, as well as for attorney's fees considering, among others, that: (1) respondent failed to prove negligence on the part of petitioner; (2) the fire that caused the damage to and/or loss of respondent's cargo was a fortuitous event; and (3) petitioner did not act in bad faith in denying respondent's claim for reimbursement of the value of the loss/damaged cargo. Petitioner added that, assuming that it is liable to pay damages to respondent, the same should not exceed the liability provided for in Philippine Ports Authority (PPA) Administrative Order No. 10-81.

In affirming the Decision of the trial court, the Court of Appeals declared that:

> There is no dispute that the van containing [respondent's] cargo was in [petitioner's] depot for safekeeping when the depot caught fire on May 8, 1997. There is, therefore, no denying that, at that time, the subject van was under the custody and control of [petitioner]. There is likewise no dispute that the fire started inside the depot. Ergo, the RTC correctly ruled in applying the doctrine of *res ipsa loquitur* and in placing upon [petitioner] the burden of proving lack of negligence. This is so because the fire that occurred would not

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[3] *Id.* at 73-75.

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

have happened in the ordinary course of things if reasonable care and diligence had been exercised. Simply put, the fire started because some negligence must have occurred. x x x.

x x x x x x x x x

Also not convincing is [petitioner's] assertion that the fire that razed its depot was a *force majeure* and/or beyond its control considering that ***[i]n our jurisprudence, fire may not be considered a natural disaster or calamity since it almost always arises from some act of man or by human means. It cannot be an act of God unless caused by lightning or a natural disaster or casualty not attributable to human agency.***

x x x x x x x x x

On [petitioner's] argument that [respondent's] cause of action has prescribed under its Terms of Business and the amount of its liability cannot exceed x x x (PhP3,500.00) per package as provided under PPA Administrative Order No. 10-81, suffice it to say that a person who is not privy to any contract is not bound thereby. It bears reiterating the RTC's finding that x x x ***the [respondent] has not signed any contract with [petitioner] wherein she agreed that the liability of the latter shall be limited only to a certain amount.*** (Emphasis and italics supplied)

x x x x x x x x x

[Petitioner's] contention that [respondent] is not entitled to moral damages and attorney's fees as there was no finding that it acted in bad faith is belied by the assailed disposition. Emphasis must be made that the RTC found that:

> [Petitioner's] outright denial and unjust refusal to heed [respondent's] claim for payment of the value of her lost/damaged shipment causing the latter to suffer serious anxiety, mental anguish[,] and wounded feelings, warranting the award or moral damages in the amount of ₱50,000.00 in favor of [respondent]. For having been compelled to litigate due to [petitioner's] omission, the Court determines that [respondent] may recover attorney's fees of ₱50,000.00, x x x.[5]

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[5] *Rollo*, pp. 19-22.

Its motion for reconsideration having been denied by the Court of Appeals in a Resolution dated 3 January 2011, petitioner is now before us on the following assignment of errors:

1. THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE COURT *A QUO*, HOLDING HEREIN PETITIONER LIABLE FOR ACTUAL DAMAGES IN THE AMOUNT OF US$67,535.61 OR ITS EQUIVALENT IN PHILIPPINE PESO, CONSIDERING THAT:
   - A. RESPONDENT FAILED TO PROVE BY PREPONDERANCE OF EVIDENCE HER AFFIRMATIVE ALLEGATION THAT THE DAMAGE TO AND/OR LOSS OF HER CARGO WAS DIRECTLY AND EXCLUSIVELY BROUGHT ABOUT BY PETITIONER'S FAULT OR NEGLIGENCE;
   - B. FIRE, WHICH CAUSED THE DAMAGE OR LOSS, HAS BEEN HELD AS A FORTUITOUS EVENT, *FORCE MAJEURE*, AND/OR EVENT BEYOND THE CONTROL OF MAN, HENCE, PETITIONER SHOULD BE ABSOLVED FROM ANY LIABILITY;
   - C. RESPONDENT'S CAUSE OF ACTION HAS PRESCRIBED AND/OR IS BARRED BY LACHES;
   - D. RESPONDENT FAILED TO PROVE ACTUAL DAMAGES OF US$67,535.61; AND
   - E. ASSUMING, WITHOUT ADMITTING, THAT PETITIONER IS LIABLE, THE LIABILITY SHOULD NOT EXCEED THE LIMIT PROVIDED FOR IN PPA ADMINISTRATIVE ORDER NO. 10-81;
2. THE COURT OF APPEALS ERRED IN AFFIRMING THE AWARD OF ₱50,000.00 AS MORAL DAMAGES AND ₱50,000.00 AS ATTORNEY'S FEES IN VIEW OF THE ABSENCE OF BAD FAITH ON THE PART OF PETITIONER IN DENYING RESPONDENT'S CLAIM; AND
3. THE COURT OF APPEALS ERRED IN NOT GRANTING PETITIONER'S COUNTERCLAIM CONSIDERING RESPONDENT'S BASELESS, EXCESSIVE AND UNJUSTIFIED CLAIMS.[6]

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

The Ruling of the Court

The petition is partly meritorious.

At the outset, it must be pointed out that it is clear from petitioner's assignment of errors that what the instant petition for review is challenging are the findings of fact and the appreciation of evidence made by the trial court which were affirmed by the Court of Appeals.[7] While it is well-settled that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court, it is equally well-settled that the rule admits of exceptions,[8] one of which is when the trial court or the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion.[9] In this case, the records contain evidence which justify the application of the exception.

This Court will no longer delve on the issue of whether or not the fire which caused the loss of and/or damage to respondent's personal effects is a fortuitous event since both the trial court and the Court of Appeals correctly ruled that the fire which occurred in this case cannot be considered an act of God since the same was not caused by lightning or a natural disaster or other calamity not attributable to human agency.

With respect to the issue of negligence, there is no doubt that, under the circumstances of this case, petitioner is liable to respondent for damages on account of the loss of the contents of her container van. Petitioner itself admitted during the pre-trial of this case that respondent's container van caught fire while stored within its premises.[10] Absent any justifiable explanation on the part of petitioner on the cause of the fire as

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[7] *Phil. Home Assurance Corp. v. CA*, 327 Phil. 255, 265 (1996).

[8] *Id*. at 264.

[9] *Eastern Shipping Lines, Inc. v. Prudential Guarantee and Assurance, Inc.*, G.R. No. 174116, 11 September 2009, 599 SCRA 565, 572 citing *Philippine Charter Insurance Corporation v. Unknown Owner of the Vessel M/V "National Honor,"* G.R. No. 161833, 8 July 2005, 463 SCRA 202, 215.

[10] Records, Vol. I, p. 140.

would absolve it from liability, the presumption that there was negligence on its part comes into play. The situation in this case, therefore, calls for the application of the doctrine of *res ipsa loquitur*.

The doctrine of *res ipsa loquitur* is "based on the theory that the defendant either knows the cause of the accident or has the best opportunity of ascertaining it and the plaintiff, having no knowledge thereof, is compelled to allege negligence in general terms. In such instance, the plaintiff relies on proof of the happening of the accident alone to establish negligence."[11] The principle, furthermore, provides a means by which a plaintiff can hold liable a defendant who, if innocent, should be able to prove that he exercised due care to prevent the accident complained of from happening. It is, consequently, the defendant's responsibility to show that there was no negligence on his part.[12] The doctrine, however, "can be invoked when and only when, under the circumstances involved, direct evidence is absent and not readily available."[13] Here, there was no evidence as to how or why the fire in the container yard of petitioner started; hence, it was up to petitioner to satisfactorily prove that it exercised the diligence required to prevent the fire from happening. This it failed to do. Thus, the trial court and the Court of Appeals acted appropriately in applying the principle of *res ipsa loquitur* to the case at bar.

As the findings and conclusions of the lower courts on this point are properly supported by the evidence on record, we submit thereto, there being no basis to disturb the same. We diverge, however, with respect to the award of damages.

Both the trial court and the Court of Appeals found that the liability of petitioner to respondent amounts to US$67,535.61

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[11] *Perla Compania De Seguros, Inc. v. Sps. Sarangaya III*, 510 Phil. 676, 686 (2005) citing 57B Am Jur 2d, Negligence § 1819.

[12] *Id.* at 687 citing 57B Am Jur 2d, Negligence § 1819.

[13] *Rodriguez v. CA*, G.R. No. 121964, 17 June 1997, 272 SCRA 607, 621 citing *Batiquin v. Court of Appeals*, G.R. No. 118231, 5 July 1996, 258 SCRA 334, 344-345.

as actual damages. This amount purportedly represents the value of respondent's shipment that was lost or destroyed as a result of the fire in petitioner's container yard where the van holding the said shipment was in storage at that time. The value was computed based on the receipts – marked as Exhibits "K" to "K-63"[14] – submitted by respondent, which receipts allegedly cover the items that were in the container van.

A painstaking examination of Exhibits "K" to "K-63" ("the receipts") reveals, however, that the items specified therein do not exactly tally or coincide with the items listed in the respective inspection reports submitted by the different marine surveyors which conducted an inventory of the contents of respondent's van after the fire. Thus, the receipts contain articles which consist of grocery items, including perishables such as green onions, chicken, honey dew,[15] Coffee Mate packets (bought way back in 1995), asparagus, turkey breast,[16] grapes,[17] bananas,[18] fresh meat,[19] shrimps,[20] bread,[21] *etc*. which definitely could not have been included in the shipment to Manila. The inventoried items, on the other hand, primarily consist of electronics and electrical

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[14] Records, Vol. I, pp. 155-218.

[15] *Id*. at 160; Exhibit "K-5", receipt dated 9 November 1995.

[16] *Id*. at 161; Exhibit "K-6", receipt dated 12 September 1995.

[17] *Id*. at 168, 173, and 177; Exhibits "K-13", receipt dated 18 August 1996, "K-18", date of receipt unreadable and "K-22", receipt dated 26 September 1995, respectively.

[18] *Id*. at 160 and 208; Exhibits "K-5", receipt dated 9 November 1995 and "K-53", receipt dated 16 February 1997, respectively.

[19] *Id*. at 161 and 169; Exhibits "K-6", receipt dated 12 September 1995 and "K-14", receipt dated 15 February 1996, respectively.

[20] *Id*. at 161, 169 and 208; Exhibits "K-6", dated 12 September 1995, "K-14", receipt dated 15 February 1996, and "K-53", receipt dated 16 February 1997, respectively.

[21] *Id*. at 161, 173, 177, 207 and 208; Exhibits "K-6", receipt dated 12 September 1995 "K-18", date of receipt unreadable "K-22", receipt dated 26 September 1995, "K-52", receipt dated 25 October 1996, and "K-53", receipt dated 9 January 1997, respectively.

appliances, such as: electric fans, chandeliers, microwave ovens, jet skis, television sets, cassette players, speakers and computers.[22]

It is also significant to note that Exhibits "K" to "K-63" include receipts covering baby products or items like baby bottle nipples, feeding bottles, baby lotion, baby oil, stretch mark creams, baby wipes, crib blanket, pacifier,[23] *etc*., as well as automobile oils/ lubricants, carburetor cleaners, engine degreasers and oil filters,[24] used Vivitar cameras,[25] a Christmas tree[26] and washers and dryers[27] – which items do not, however, appear in any of the inspection reports of the four marine surveyors which conducted the inventory of the burned container van. In the same way, the inspection reports include items which are not covered by the receipts submitted by respondent, including microwave ovens, intercom telephones and a coffee maker.[28]

Also, some receipts are so poorly photocopied[29] that the items listed therein can no longer be properly read and only the total amount paid is visible. Still, others were issued in the name of persons other than respondent, such as Exhibits "K-3", "K-10", "K-41", "K-50", and "K-59" to "K-63", in the name of "Patrick Vidamo,"[30] Exhibit "K-8", ("The Bombay Company"

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[22] *Id*. at 7-21; Exhibits "A" to "D-2".

[23] *Id*. at 157, 173, and 217; Exhibits "K-2", receipt dated 31 October 1996, "K-18", receipt dated 2 November 1995, and "K-62", receipt dated 23 January 1997, respectively.

[24] *Id*. at 159, 170, and 172; Exhibits "K-4", date of receipt unreadable, "K-15", receipt dated 10 February 1996, and "K-17", receipt dated 10 November 1995, respectively.

[25] *Id*. at 157, 158 and 169; Exhibits "K-2", receipt dated 10 October 1995, "K-3", receipt dated 17 October 1995 and "K-14", receipt dated 17 October 1995, respectively.

[26] *Id*. at 167; Exhibit "K-12", receipt dated 12 December 1996.

[27] *Id*. at 204; Exhibit "K-49", receipt dated 11 January 1997.

[28] *Id*. at 7-21; Exhibits "A" to "D-2".

[29] *Id*. at 163, 164, 172 and 174; Exhibits "K-8", "K-9", "K-17" and "K-19", respectively.

[30] *Id*. at 158, 165, 196, 205, and 214-218.

receipt, date unreadable) issued to "Tanya Vidamo,"[31] Exhibit "K-33", receipt issued to "Jane Santos"[32] and Exhibits "K-34" and "K-44", receipts in the name of "Ronny Santos."[33]

Exhibit "K-25",[34] on the other hand, appears to be a credit card billing statement but the name of the credit card holder does not appear thereon. More importantly, it includes a charge of US$338.97 for "BA auto repair" which, clearly, should not have been included in the computation of the amount of actual damages due respondent. Finally, Exhibit "K-40"[35] shows a receipt for a total of 50 cartons of "commercial garlic" and "giant garlic" valued at US$877.50 with a total weight of 1,600 (unit of measure not specified). In the computation of the amount of actual damages, however, what was indicated as the value of the items was "$1,600.00"[36] which is actually the weight of the garlics purchased, instead of US$877.50, which is the amount of the purchase.

Considering all the foregoing, this Court is, therefore, at a loss as to how the trial court and the Court of Appeals arrived at the conclusion that the items in both lists (Exhibits "K" to "K-63" and the inspection reports) are identical, so as to justify the award of US$67,535.61 – the alleged total value of the receipts – as actual damages. On the contrary, all the foregoing actually prove that the submitted receipts do not accurately reflect the items in the container van and, therefore, cannot be the basis for a grant of actual damages. Furthermore, the award of the trial court failed to take into consideration that since most of the contents of respondent's container van are electronics or electrical items, the same are subject to depreciation. The trial court and the Court of Appeals awarded actual damages

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[31] *Id*. at 163.

[32] *Id*. at 188.

[33] *Id*. at 189 and 199, respectively.

[34] *Id*. at 180.

[35] *Id*. at 195.

[36] *Id*. at 154; Item No. 41.

based on the value of the items at the time they were bought, which was around two years prior to their shipment to the Philippines.

Article 2199 of the Civil Code states that "[e]xcept as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has **duly proved**. Such compensation is referred to as actual or compensatory damages."[37] "Actual damages are compensation for an injury that will put the injured party in the position where it was before the injury. They pertain to such injuries or losses that are actually sustained and **susceptible of measurement**. Except as provided by law or by stipulation, a party is entitled to adequate compensation only for such pecuniary loss as is duly proven. Basic is the rule that **to recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty**, premised upon competent proof or the best evidence obtainable."[38]

In the case before us, respondent failed to adduce evidence adequate enough to satisfactorily prove the amount of actual damages claimed. The receipts she submitted cannot be considered competent proof since she failed to prove that the items listed therein are indeed the items that were in her container van and vice versa. As pointed out above, there are discrepancies between the items listed in the submitted receipts and those contained in the respective inspection reports of the marine surveyors. Hence, the said receipts cannot be made the basis for the grant of actual damages.

This Court has, time and again, emphasized that actual damages cannot be presumed and courts, in making an award, must point out specific facts which could afford a basis for measuring

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[37] Emphasis supplied.

[38] *Manila Electric Company (MERALCO) v. Castillo*, G.R. No. 182976, 14 January 2013, 688 SCRA 455, 478 citing *Manila Electric Company v. T.E.A.M. Electronics Corporation*, G.R. No. 131723, 13 December 2007, 540 SCRA 62, 79. Emphasis supplied.

whatever compensatory or actual damages are borne.[39] An award of actual damages is "dependent upon competent proof of the damages suffered and the actual amount thereof. The award must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and unsubstantial proof."[40]

The foregoing notwithstanding, petitioner, nevertheless, cannot rely on PPA Administrative Order No. 10-81 (its Management Contract with the Philippine Ports Authority) as basis of its liability for damages. This administrative order limits petitioner's liability to not more than three Thousand Five Hundred Pesos (₱3,500.00) for each package (for import cargo) if the value of the cargo is not specified or communicated to the arrastre operator in writing.[41] Contrary to petitioner's claim, there is no contractual

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[39] *Canada v. All Commodities Marketing Corporation*, 590 Phil. 345, 350 (2008) citing *B.F. Metal (Corporation) v. Sps. Rolando M. Lomotan*, G.R. No. 170813, 16 April 2008, 551 SCRA 618.

[40] *Manila Electric Company (MERALCO) v. Castillo*, supra note 38 at 481-482 citing *Quisumbing v. Manila Electric Company*, G.R. No. 142943, 3 April 2002, 380 SCRA 195, 211-212.

[41] Article VI, Section 6.01 of PPA Administrative Order No. 10-81 dated 13 April 1981 provides:

ARTICLE VI. CLAIMS AND LIABILITY FOR LOSSES AND DAMAGES

Section 6.01. Responsibility and Liability for Losses and Damages, Exceptions – The CONTRACTOR shall, at its own expense handle all merchandise in all work undertaken by it hereunder diligently and in a skilful, workman-like and efficient manner, the CONTRACTOR shall be solely responsible as an independent CONTRACTOR, and hereby agrees to accept liability and to promptly pay to the shipping company consignees, consignors or other interested party or parties for the loss, damage or non-delivery of cargoes to the extent of the actual invoice value of each package which in no case shall be more than THREE THOUSAND FIVE HUNDRED PESOS (₱3,500.00) (for import cargo) and ONE THOUSAND PESOS (₱1,000.00) (for domestic cargo) for each package unless the value of the cargo importation is otherwise specified or manifested or communicated in writing together with the declared bill of lading value and supported by a certified packing list to the CONTRACTOR by the interested party or parties before the discharge or loading unto vessel of the goods, as well as all damage that may be suffered

relationship between it and respondent since the latter did not avail herself of petitioner's services; hence, she cannot be bound by the said management contract. The cases cited by petitioner wherein the Supreme Court applied the provision of the Management Contract and limited the arrastre operator's liability to the amount stated therein are not applicable to the case at bar because in all of those cited cases, the consignee either availed of the services of the arrastre operator[42] or is otherwise bound by the Management Contract – despite non-availment of the services of the arrastre operator – as a result of the consignee's acceptance of the delivery of the cargo from the arrastre operator.[43]

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on account of loss, damage or destruction of any merchandise while in the custody or under the control of the CONTRACTOR in any pier, shed, warehouse facility or other designated place under the supervision of the AUTHORITY but the CONTRACTOR shall not be responsible for the condition of the contents of any package received, nor for the weight nor for any loss, injury or damage to the said cargo before or while the goods are being received or remains in the piers, sheds, warehouses or facility, if the loss, injury or damage is caused by force majeure or other causes beyond the CONTRACTOR's control or capacity to prevent or remedy, PROVIDED, that a formal claim together with the necessary copies of Bill of Lading, Invoice, Certified Packing List and computation arrived at covering the loss, injury or damage or non-delivery of such goods shall have been filed with the CONTRATOR within fifteen (15) days from date of issuance by the CONTRACTOR of a certificate of non-delivery, PROVIDED, However, that if said CONTRACTOR fails to issue such certification within fifteen (15) days from the receipt of a written request by the shipper/consignee or his duly authorized representative or any interested party, said certification shall be deemed to have been issued, and thereafter, the fifteen (15) days period within which to file the claim commence, PROVIDED, Finally, that the request for certification of loss shall be made within thirty (30) days from the date of delivery of the last package to the consignee.

[42] *E. Razon, Inc. v. Court of Appeals*, 244 Phil. 375 (1988) and *Northern Motors, Inc. v. Prince Line, et al.*, 107 Phil 253, 256-257 (1960) cited in the Petition, *rollo*, pp. 55-56, respectively.

[43] "In the performance of its job, an arrastre operator is bound by the management contract it had executed with the Bureau of Customs. However, a management contract, which is a sort of a stipulation *pour autrui* within the meaning of Article 1311 of the Civil Code, is also binding on a consignee

This absence of a contractual relationship is precisely also the reason why respondent is not bound by petitioner's Terms of Business which requires a claimant to commence any action for damages against petitioner within 12 months from the occurrence of the cause of the claim. Thus, respondent's action against petitioner cannot be said to have been barred by prescription or laches.

In the absence of competent proof on the amount of actual damages suffered, a party is entitled to receive temperate damages.[44] Article 2224 of the New Civil Code provides that: "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty." The amount thereof is usually left to the sound discretion of the courts but the same should be reasonable, bearing in mind that temperate damages should be "more than nominal but less than compensatory."[45] Considering the concomitant circumstances prevailing in this case, temperate damages in the amount of ₱350,000.00 is deemed equitable.

Finally, we delete the award of moral damages and attorney's fees, there being no basis therefor.

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because it is incorporated in the gate pass and delivery receipt which must be presented by the consignee before delivery can be effected to it. x x x. Indeed, upon taking delivery of the cargo, a consignee x x x tacitly accepts the provisions of the management contract, including those which are intended to limit the liability of one of the contracting parties, the arrastre operator.

However, a consignee who does not avail of the services of the arrastre operator is not bound by the management contract. Such an exception to the rule does not obtain here as the consignee did in fact accept delivery of the cargo from the arrastre operator." (*Summa Insurance Corporation v. Court of Appeals*, 323 Phil. 214, 223-224 (1996) cited in the Petition, *rollo*, p. 54.

[44] *Manila Electric Company (MERALCO) v. Castillo, supra* note 38 at 482 citing *Dueñas v. Guce-Africa*, G.R. No. 165679, 5 October 2009, 603 SCRA 11, 22.

[45] *Manila Electric Company (MERALCO) v. Castillo, supra.*

Article 2217 of the New Civil Code provides:

> Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.

Certainly, an award of moral damages must be anchored on a clear showing that the party claiming the same **actually** experienced mental anguish, besmirched reputation, sleepless nights, wounded feelings, or similar injury.[46] In the case herein under consideration, the records are bereft of any proof that respondent in fact suffered moral damages as contemplated in the afore-quoted provision of the Civil Code.[47] The ruling of the trial court provides simply that: "[Petitioner's] outright denial and unjust refusal to heed [respondent's] claim for payment of the value of her lost/damaged shipment caus[ed] the latter to suffer serious anxiety, mental anguish and wounded feelings warranting the award of moral damages x x x."[48] The testimony of respondent, on the other hand, merely states that when she failed to recover damages from petitioner, she "was saddened, had sleepless nights and anxiety"[49] without providing specific details of the suffering she allegedly went through. "Since an award of moral damages is predicated on a **categorical** showing by the claimant that she actually experienced emotional and mental sufferings, it must be disallowed absent any evidence thereon."[50]

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[46] *De Guzman v. Tumolva*, G.R. No. 188072, 19 October 2011, 659 SCRA 725, 734.

[47] *Id*.

[48] Records, Vol. I, pp. 418-419.

[49] *Id.*, Vol. III, p. 41; TSN dated 25 August 2000, Direct Examination of respondent.

[50] *De Guzman v. Tumolva*, *supra* note 46 at 735 citing *Metropolitan Bank and Trust Co. v. Perez*, G.R. No. 181842, 5 February 2010, 611 SCRA 740, 746 further citing *Bank of Commerce v. Sps. San Pablo*, G.R. No. 167848, 27 April 2007, 522 SCRA 713, 715. Emphasis supplied.

As to the award of attorney's fees, Article 2208 of the Civil Code provides:

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

1. When exemplary damages are awarded;
2. When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
3. In criminal cases of malicious prosecution against the plaintiff;
4. In case of a clearly unfounded civil action or proceeding against the plaintiff;
5. Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
6. In actions for legal support;
7. In actions for the recovery of wages of household helpers, laborers and skilled workers;
8. In actions for indemnity under workmen's compensation and employer's liability laws;
9. In a separate civil action to recover civil liability arising from a crime;
10. When at least double judicial costs are awarded; and
11. In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

An award of attorney's fees has always been the exception rather than the rule and there must be some compelling legal reason to bring the case within the exception and justify the award.[51] In this case, none of the exceptions applies. "Attorney's

[51] *Espino v. Spouses Bulut*, G.R. No. 183811, 30 May 2011, 649 SCRA 453, 462 citing *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, G.R. Nos. 169408 and 170144, 30 April 2008, 553 SCRA 541.

fees are not awarded every time a party prevails in a suit. The policy of the Court is that no premium should be placed on the right to litigate."[52] "Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still, attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause."[53]

The trial court refused to award exemplary damages and denied respondent's claim therefore.[54] It was, therefore, error for it and the Court of Appeals to award attorney's fees after rejecting respondent's prayer for exemplary damages as the latter might have served as basis for awarding attorney's fees.[55]

Moreover, contrary to the findings of the trial court and the Court of Appeals, petitioner did not outrightly deny and unjustly refuse the claim of respondent for reimbursement of the value of her cargo that was lost in the fire. The records of this case disclose that respondent sent a letter, dated 31 May 1997,[56] to the Legal and Claims Department of petitioner demanding the payment of US$87,667.00 – the alleged value of her shipment. Petitioner responded to this communication by sending a letter, dated 25 June 1997,[57] addressed to respondent's broker, requesting the submission of documents, such as the itemized list of the

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[52] *Manila Electric Company (MERALCO) v. Castillo, supra*, note 38 citing *National Power Corporation v. Heirs of Macabangkit Sangkay*, G.R. No. 165828, 24 August 2011, 656 SCRA 60, 92.

[53] *Development Bank of the Philippines v. Traverse Development Corporation*, G.R. No. 169293, 5 October 2011, 658 SCRA 614, 624 citing *ABS-CBN Broadcasting Corporation v. Court of Appeals*, 361 Phil. 499, 528 (1999).

[54] Records, Vol. I, p. 418.

[55] See *Espino v. Spouses Bulut, supra* note 51.

[56] Records, Vol. I, p. 22; Exhibit "E".

[57] *Id*. at 23; Exhibit "F".

damaged goods, packing list and commercial invoices, in support of the claim of US$87,667.00. The claim of respondent was eventually denied through a letter dated 25 March 1999[58] prepared by petitioner's counsel and coursed through respondent's counsel. The letter outlined the reasons for the denial of respondent's claim.

Under the foregoing circumstances, it cannot be said that petitioner unjustly refused to heed respondent's claim for damages. Petitioner immediately responded to the initial demand for reimbursement and it subsequently denied the claim after evaluation thereof. Petitioner clearly did not act in bad faith, especially since it explained to respondent the reasons for the denial of her claim. The lower courts, therefore, erred in finding that petitioner acted in bad faith, thereby further negating the wisdom of awarding moral damages and attorney's fees to respondent.

WHEREFORE, PREMISES CONSIDERED, the petition is **PARTIALLY GRANTED**. The Decision of the Court of Appeals in CA-G.R. CV No. 78315 dated 14 September 2010 is **MODIFIED** in that the award of actual damages, moral damages and attorney's fees are **DELETED**. However, petitioner is ordered to pay respondent **TEMPERATE DAMAGES** in the amount of ₱350,000.00.

SO ORDERED.

Carpio (Chairperson), Brion, del Castillo, and *Reyes,*[*] *JJ.,* concur.

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[58] *Id.* at 133.

[*] Per Special Order No. 1650 dated 13 March 2014.

SECOND DIVISION

[G.R. No. 196142. March 26, 2014]

VENUS B. CASTILLO, LEAH J. EVANGELISTA, DITAS M. DOLENDO, DAWN KAREN S. SY and PRUDENTIAL PLANS, INC. EMPLOYEES UNION - FEDERATION OF FREE WORKERS (PPEU-FFW), *petitioners, vs.* **PRUDENTIALIFE PLANS, INC., and/or JOSE ALBERTO T. ALBA, ATTY. CEFERINO A. PATIÑO, JR., and ROSEMARIE DE LEMOS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSPIRACY TO DEFRAUD THE EMPLOYER, EXISTS IN CASE AT BAR.— [I]t appears that there was a conspiracy to defraud Prudentialife using the optical benefit provision in the CBA to unduly enrich the availing employee, and possibly Alavera Optical, through overpricing of the latter's eyeglasses and appropriation of the difference between the bloated price and the actual cost. Employees who participated in the scheme knew, as they were informed by the proponents of the scheme – namely Elvie Villaviaje and Alavera Optical, of the fact that if they participated and underwent eye examination through Alavera Optical, they would be issued a prescription and official receipt indicating that they paid up to ₱2,600.00 for the frames and lenses that were prescribed, which documents they could then use to obtain reimbursements of up to ₱2,500.00 from Prudentialife – even if they did not actually pay for them, and though the cost of the eyeglasses was less than ₱2,500.00. Any employee who, knowing of the scheme, yet participates therein, becomes a co-conspirator to the fraud. It is elementary that "when there is a conspiracy, the act of one is the act of all the conspirators, and a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are

considered co-principals since the degree or character of the individual participation of each conspirator in the commission of the crime becomes immaterial." In proving complicity, direct evidence is not necessary, as it can be clearly deduced from the acts of the conspirators; it may be proved through a series of acts done in pursuance of a common unlawful purpose.

2. ID.; ID.; ID.; FRAUDULENT SCHEME AMONG THE EMPLOYEES CONSTITUTING DISHONESTY, SUFFICIENTLY SHOWN.— From the evidence on record, it has been sufficiently shown that petitioners actually took part in the commission of the acts complained of, which makes them co-conspirators to the scheme. For sure, it cannot be said that they are exceptions to the rule simply because they categorically denied participation, or that there is no direct evidence of their complicity. Quite the contrary, there is evidence pointing to their participation in the fraudulent scheme. First of all, they all knew that even though they were not paying for the eyeglasses, Alavera Optical would issue, as it did issue, an official receipt falsely showing that the eyeglasses have been paid for, which they would then use, as they did use, to obtain reimbursement from Prudentialife. By presenting the false receipt to their employer to obtain reimbursement for an expense which they did not in fact incur, this constituted dishonesty. Secondly, it was discovered that Dolendo's and Sy's eyeglasses had no grade, while Evangelista's eyeglass lens did not match the prescription issued to her. An eyeglass without graded lenses could only indicate that the wearer thereof has no vision problems, which does away with the necessity of availing of the optical benefit provision under the CBA which is understandably reserved for those employees who have developed vision problems in the course of employment. By availing of the benefit, the employee represents to Prudentialife that he has developed vision problems. If this is not true, then he has committed an act of dishonesty as well. Given the circumstances then obtaining, the same principle holds true with respect to eyeglasses whose lenses do not match the corresponding prescription.

3. ID.; ID.; ID.; ID.; DISHONESTY IS A SERIOUS OFFENSE AND A SUFFICIENT GROUND FOR EMPLOYEES' DISMISSAL.— For their dishonesty, the penalty of dismissal is justified pursuant to Section 2.6 (i) of the Prudentialife

Personnel Manual which prescribes the penalty of dismissal for acts of padding receipts for reimbursement or liquidation of advances or expenses. Dishonesty is a serious offense, and "no employer will take to its bosom a dishonest employee." Dishonesty implies a "[d]isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity[; l]ack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Acts of dishonesty have been held to be sufficient grounds for dismissal as a measure of self-protection on the part of the employer.

4. ID.; ID.; ID.; ID.; ADMISSIONS OF CO-EMPLOYEES REGARDING THEIR PARTICIPATION IN THE SCHEME ARE ADMISSIBLE TO ESTABLISH THE PLAN TO DEFRAUD THE EMPLOYER.— The written statements of petitioners' co-employees admitting their participation in the scheme are admissible to establish the plan or scheme to defraud Prudentialife; the latter had the right to rely on them for such purpose. The argument that the said statements are hearsay because the authors thereof were not presented for cross-examination does not persuade; the rules of evidence are not strictly observed in proceedings before the NLRC, which are summary in nature and decisions may be made on the basis of position papers. Besides, these written declarations do not bear directly on petitioners' participation in the scheme; their guilt has been established by evidence other than these statements. Petitioners' reliance on *Garcia v. Malayan Insurance Co., Inc.* is misplaced. Far from declaring that the statement of a co-employee may not be used to prove the guilt of an employee accused of theft of company property, the Court held therein that the affidavit of the co-employee cannot serve as basis for the finding that said petitioner conspired in the theft because it was so lacking in crucial details. The opposite is thus true: the affidavit or statement of a co-employee in a labor case may prove an employee's guilt or wrongdoing if it recites crucial details of his involvement.

5. REMEDIAL LAW; APPEALS; A PARTY WHO DOES NOT APPEAL MAY NOT OBTAIN ANY AFFIRMATIVE RELIEF; PRINCIPLE, APPLIED.— [P]etitioners' argument and prayer for an award of damages and attorney's fees may not be allowed, since they did not question the NLRC's denial

thereof in its December 8, 2008 Decision. Only respondents went up to the CA on *certiorari*. "It is well-settled that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court whose decision is brought up on appeal. The exceptions to this rule, such as where there are (1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors, do not apply in this case." "[A] party who did not appeal cannot assign such errors as are designed to have the judgment modified. All that he can do is to make a counter-assignment of errors or to argue on issues raised below only for the purpose of sustaining the judgment in his favor."

APPEARANCES OF COUNSEL

FFW Legal Center for petitioners.
Picazo Buyco Tan Fider and Santos for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In a labor case, the written statements of co-employees admitting their participation in a scheme to defraud the employer are admissible in evidence. The argument by an employee that the said statements constitute hearsay because the authors thereof were not presented for their cross-examination does not persuade, because the rules of evidence are not strictly observed in proceedings before the National Labor Relations Commission (NLRC), which are summary in nature and decisions may be made on the basis of position papers.

This Petition for Review on *Certiorari*[1] assails the January 14, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 111981 which reversed and set aside the dispositions

[1] *Rollo*, pp. 8-55.

[2] *Id*. at 572-586; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Rosmari D. Carandang and Ramon R. Garcia.

of the NLRC, as well as the CA's March 16, 2011 Resolution[3] denying reconsideration thereof.

Factual Antecedents

Individual petitioners Venus B. Castillo (Castillo), Leah J. Evangelista (Evangelista), Ditas M. Dolendo (Dolendo), and Dawn Karen S. Sy (Sy) were regular employees of respondent Prudentialife Plans, Inc. (Prudentialife), to wit:

Employee Name	Position	Date Employed
Venus B. Castillo	CFP Clerk	November 27, 1995
Leah J. Evangelista	Data Encoder	October 16, 2000
Ditas M. Dolendo	Data Control Clerk	February 2002
Dawn Karen S. Sy	Data Control Clerk	October 1999

Prudential Plans Employees Union – FFW (PPEU-FFW), on the other hand, is a local chapter of the Federation of Free Workers and is the authorized bargaining agent of Prudentialife's rank-and-file employees. The individual petitioners are members of PPEU-FFW.

Respondent Prudentialife is an insurance company, while respondents Jose Alberto T. Alba (Alba), Atty. Ceferino A. Patiño, Jr. (Patiño) and Rosemarie de Lemos (de Lemos) are its President, First Vice-President for Corporate Services Group, and Assistant Vice-President for Human Resources, respectively.

Under Section 4, Article X of the parties' Collective Bargaining Agreement (CBA), Prudentialife employees were granted an optical benefit allowance of ₱2,500.00 to subsidize prescription eyeglasses for those who have developed vision problems in the course of employment. The pertinent CBA provision states:

> Section 4. Optical benefit. – The Company shall provide an amount not to exceed ₱2,500.00 inclusive of VAT to any covered employee to defray the cost of eyeglasses that may be prescribed by the accredited HMO physician or employee's personal optometrist. The benefit can be availed of only once every two (2) years.[4]

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[3] *Id*. at 612-613.

[4] *Id*. at 14, 330, 574, 625.

Many Prudentialife employees – petitioners included – availed thereof and Prudentialife was flooded with requests for reimbursement for eyeglasses the employees supposedly purchased from a single outfit/supplier, Alavera Optical. Suspecting fraud, Prudentialife began an investigation into the matter, and on February 22, 2006, it sent individual written Notices to Explain[5] to petitioners and other employees who availed of the benefit. The notices revealed its initial findings – that the given address and telephone number of Alavera Optical were fictitious; that the official receipts and prescriptions issued by Alavera Optical appear to have been forged; that the eyeglasses were grossly overpriced; and that Prudentialife was being required to pay for the eyeglasses even though they have not been released as yet. The notices required the recipients thereof to submit their written explanation relative to acts of dishonesty and fraud which they may have committed in connivance with Alavera Optical.

Petitioners and the other availing employees submitted their respective written explanations. Prudentialife brought the subject eyeglasses to reputable optical shops – particularly Sure Vision and Sarabia Optical – for comparative examination as to quality and price. The eyeglasses of Evangelista and Dolendo were brought to Sure Vision Optical, Star Mall branch, Mandaluyong City, and Sy's were brought to Sarabia Optical, Greenbelt I branch, Makati City. The two optical shops found that Dolendo and Sy's eyeglasses had no grade, while the grade on Evangelista's eyeglasses did not match the prescription issued to her. It was likewise discovered that the cost of petitioners' eyeglasses, as declared in their respective official receipts and reimbursement requests, was excessive compared to similar frames and lenses being sold by Sure Vision and Sarabia Optical.[6]

In her written explanation, Castillo claimed that she acted in good faith in availing of the optical benefit allowance; that she did not conspire with Alavera Optical in the overpricing of her eyeglasses; that she was made to believe that her transaction

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[5] *Id*. at 253-256.

[6] *Id*. at 213-214.

with Alavera Optical – whereby the latter would issue an official receipt for the eyeglasses even without actual payment thereof, which Castillo would then claim from Prudentialife – was regular; that she was unaware that Alavera Optical was using a fictitious address and telephone number; and that she had no intention to defraud Prudentialife.[7]

Evangelista wrote that on January 27, 2006, a certain Dr. Simeona Alavera of Alavera Optical offered to prepare her eyeglasses which she could pay later, or after the release of her optical benefit allowance to which she agreed; that on January 30, 2006, her eyeglasses, together with the prescription and official receipt, were delivered to her, and she submitted the same to Prudentialife to claim reimbursement; that on February 1, 2006, she obtained a ₱2,500.00 reimbursement for her eyeglasses, which she used to pay Dr. Simeona Alavera; and that she acted in good faith and pursuant to company policy.[8]

For her part, Dolendo stated that she met Dr. Simeona Alavera through her colleague at work; that she heard that the doctor was conducting eye examinations at the third floor of their building, thus she had her eyes examined as well; that on January 30, 2006, she received the official receipt for her eyeglasses in the amount of ₱2,500.00 and the doctor's prescription therefor, which she forwarded to Prudentialife; and that she had no knowledge of any dishonesty or overpricing of the eyeglasses relative to the optical benefit allowance.[9]

Petitioner Sy explained that Dr. Simeona Alavera arrived at the Prudentialife office on January 27, 2006, complete with eye examination equipment and charts; that she subjected herself to examination; that thereafter, Dr. Simeona Alavera offered to give her the official receipt and prescription for eyeglasses even before actual payment thereof; that she did not bother to investigate the authenticity, qualifications or integrity of Dr. Simeona Alavera

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[7] *Id*. at 16, 259.

[8] *Id*. at 16-17, 260.

[9] *Id*. at 18-19, 261.

or Alavera Optical, but was confident of her diagnosis; that she was not aware of the market value of the eyeglasses but was satisfied of the price at which she bought them; and that she believed that the refraction grade of her eyeglasses was the same as that written on the prescription issued by Alavera Optical.[10]

Other Prudentialife employees admitted that the eyeglasses they obtained cost only so much, yet were overpriced for purposes of reimbursement. Thus, employees Roselle Marquez, Edgardo Cayanan, Jennifer Garcia, Nerissa Rivera, Orlando Labicane, Michael Arceo, Jennifer Fronda and Leopoldo Padlan acknowledged that the true cost of their respective eyeglasses ranged from only ₱1,200.00 – ₱1,800.00, and yet Alavera Optical issued official receipts for a greater amount ranging from ₱2,500.00 – ₱2,600.00 with their full knowledge and consent, which latter amounts were actually reimbursed to them by Prudentialife even before the eyeglasses were released or paid for; that the fraudulent scheme was spearheaded by a certain "Elvie of Head Office"; and that Elvie and Dr. Simeona Alavera told them that the scheme was being carried out in other departments/offices within Prudentialife.[11]

Prudentialife discovered that the employees who availed of the optical benefit allowance obtained their eyeglasses from Alavera Optical, based on the employees' reimbursement requests/petty cash vouchers and the official receipts[12] that the prescriptions[13] for the eyeglasses were issued by a certain Dr. Alan Alavera, yet the address, telephone number and Tax Identification Number of Alavera Optical were fictitious; that it was Prudentialife employee Elvie Villaviaje who arranged with Alavera Optical for the conduct of eye examinations within company premises; that to entice the employees, Alavera Optical

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[10] *Id.* at 17-18, 262.

[11] *Id.* at 211-213, 242-252.

[12] *Id.* at 230-235.

[13] *Id.* at 236-239.

offered to release the eyeglasses and issue the prescriptions and official receipts even before actual payment is made; and that the reimbursements sought for the eyeglasses were more or less the same, or averaged at ₱2,500.00, yet they cost much less. Likewise, Prudentialife found that some of the eyeglass purchases were fictitious; that some of the eyeglasses purchased had no lens or grade; and that Alavera Optical issued prescriptions, released the eyeglasses, and issued the official receipts therefor even though they have not been paid for.

Thus, Prudentialife concluded that petitioners and other employees knowingly availed of the optical benefit allowance to obtain a refund of the maximum ₱2,500.00 benefit even though they did not have vision problems, or that their eyeglasses were worth less than ₱2,500.00.

On April 10, 2006, Prudentialife issued individual Notices of Termination[14] to petitioners and other employees. The notices, signed by respondent Patiño, stated in part that –

> In sum, we find that your explanation consisted mainly of bare denials and professions of innocence. We regret to inform you that we find your explanation to be not acceptable on the following grounds:
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> 1. Based on the statements made by the other employees involved in this case, our investigation reveals that you are aware of the scheme by which the attending optometrist, Mrs. Simeona Alavera, would issue to you an Official Receipt for an amount grossly in excess of the real cost of your eyeglasses to enable you to collect the excess amount for your personal use.
> 2. You and the other employees were examined by Mrs. Alavera in the presence of one another and you were apprised of the scheme during the examination/checkup.
> 3. During the investigation, we confirmed that there was never any actual delivery of the eyeglasses to you, yet you submitted a reimbursement request. You therefore submitted an O.R. for an item which you have not actually received.

[14] *Id.* at 265-272.

4. Your failure and refusal to divulge the whole truth shows your lack of any effort to come clean and help in the investigation of the case. In fact, it displays an attempt on your part to mislead the investigation and further confirms our findings of your dishonesty.

After careful and thorough evaluation, we find you culpable of DISHONESTY which, under Section 2.6 (i) of the Personnel Manual is punishable by Dismissal, to wit:

2.6 DISHONESTY

The disciplinary actions for offenses on Dishonesty shall be the following but not limited to:

x x x x x x x x x

(i) Padding receipt for reimbursement or liquidation of advances or expenses

1st Offense – Dismissal

Hence, you are terminated effective immediately upon receipt hereof and your separation benefits under the Company's Optional Retirement Program are hereby forfeited.

Furthermore, please be informed that your termination is without prejudice to whatever legal action which the Company may pursue to protect its interests.[15]

Ruling of the Labor Arbiter

On May 5, 2006, petitioners filed a Complaint for illegal dismissal, money claims and damages (illegal dismissal case) against respondents, docketed as NLRC-NCR Case No. 00-05-03815-06.[16] Another case was filed for unfair labor practice, docketed as NLRC-NCR Case No. 00-07-05882-06, which was later on consolidated with the illegal dismissal case.

In their Position Paper,[17] petitioners mainly contended that they were illegally dismissed based on a charge of dishonesty

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[15] *Id.* at 265-266.

[16] National Labor Relations Commission National Capital Region Arbitration Branch, Quezon City.

[17] *Rollo*, pp. 284-315.

that was not proved, but was mainly founded on suspicion, conjecture and suppositions. They claimed that they did not commit any padding of the cost of the eyeglasses they bought from Alavera Optical; nor did they commit any act detrimental to Prudentialife's interests. They argued that quite the contrary, their transactions with Alavera Optical were valid and done in the ordinary course of business; that their right to due process was violated as they were not given ample time and opportunity to defend themselves; that they were deprived of their right to counsel; and that their bargaining agent PPEU-FFW was not informed of the case against them. For these reasons, petitioners argued that they should be awarded their money claims and damages.

In their Position Paper[18] seeking dismissal of the Complaint, respondents cited Prudentialife's emphasis on promoting integrity and honesty among its ranks, which policy is embodied in its Personnel Manual, the pertinent provision of which was precisely utilized in indicting petitioners. They insisted that petitioners were dishonest in knowingly claiming reimbursement for overpriced or padded eyeglasses, in falsifying the official receipts and other documents relative to the optical benefit allowance, and in obtaining reimbursement for eyeglasses which they did not pay for or receive. They charged that petitioners' bare denials are drowned by overwhelming evidence gathered – which include confessions by other employees – proving their knowledge, complicity, and participation in the fraudulent scheme. Respondents pointed out that when the fraudulent scheme was carried out on January 27, 2006, petitioners – except for Castillo – were all present in one room where the eye examinations were conducted, together with the employees who confessed to the scheme; they were all issued official receipts on the same day, and claimed reimbursement at the same time on January 30, 2006. Respondents added that Alavera Optical applied the same *modus operandi* to all the employees it dealt with in regard to the optical benefit program; that petitioners could not have been excepted, and that their eyeglasses were similarly priced

[18] *Id*. at 205-229.

and within the range of the eyeglasses of those who confessed to the scheme; and that having committed falsification of company documents, petitioners were guilty of serious misconduct and dishonesty, which merit dismissal and denial of respondents' monetary claims and prayer for an award of damages.

On the issue of due process, respondents argued that the twin notice requirements were satisfied: the notices to explain apprised the recipients thereof of their supposed acts and the rule violated, as well as the penalty prescribed for such violations. Moreover, notices of termination were duly sent to petitioners. All in all, petitioners were afforded due process and given the opportunity to defend themselves. Finally, respondents took exception to the inclusion of Prudentialife officers as respondents to the Complaint, claiming that their acts were done pursuant to their duties and in furtherance of the corporate objective, which should thus exempt them from personal liability.

On April 30, 2007, Labor Arbiter Fe S. Cellan issued a Decision[19] in the illegal dismissal case, decreeing as follows:

> WHEREFORE, in view of the foregoing, the instant consolidated complaints are hereby DISMISSED for lack of merit.
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> SO ORDERED.[20]

The Labor Arbiter held that there was ground to dismiss petitioners, finding that there was a concerted and premeditated scheme to defraud Prudentialife, using the optical benefit provision in the CBA to enrich the availing employees by declaring overpriced eyeglasses, obtaining reimbursement therefor, and pocketing the difference between the amount reimbursed and the actual cost or selling price of the spectacles. This constituted dishonesty.

The Labor Arbiter added that respondents took pains to investigate and substantiate the charges against the guilty employees, submitting the subject eyeglasses to other optical

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[19] *Id.* at 379-391.

[20] *Id.* at 391.

shops for examination and comparison instead of merely relying upon the written explanations of the employees and the admissions obtained from some of them. Having established breach of trust through a scheme perpetrated to defraud Prudentialife, the Labor Arbiter held that the company possessed the right to dismiss the guilty employees as a measure of self-protection.

The Labor Arbiter held further that the dismissal of an estafa charge[21] against the guilty employees does not necessarily result in a finding of illegal dismissal. Conversely, the filing of a subsequently dismissed estafa charge cannot constitute unfair labor practice, as this is a right granted to Prudentialife as a party injured by the fraudulent scheme; the filing of criminal charges could not have the effect of preventing petitioners from filing the illegal dismissal case, nor were the latter cowed into fear as a result of the filing of the charges.

The Labor Arbiter found baseless petitioners' monetary claims, prayer for damages, and their effort to hold the individual respondents liable, stating that petitioners have not substantiated these claims and it has not been shown that the individual respondents exceeded their authority in the performance of their functions, or that they acted in bad faith.

Ruling of the National Labor Relations Commission

Respondents filed an appeal with the NLRC. In a December 8, 2008 Decision,[22] the NLRC reversed the Labor Arbiter, decreeing thus:

> CONFORMABLY WITH ALL THE FOREGOING, the present appeal is partly Granted in that complainants-appellants were illegally dismissed and hence, should be reinstated and be paid their full backwages from the time they were illegally dismissed up to the finality of this decision.

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[21] Previously filed against employees who took part in the optical benefit program, including petitioners.

[22] *Rollo*, pp. 113-123; penned by Commissioner Victoriano R. Calaycay and concurred in by Commissioner Raul T. Aquino.

All other claims of complainants-appellants are dismissed for lack of merit.

SO ORDERED.[23]

In sum, the NLRC held that petitioners' liability has not been substantiated, it not having been shown that petitioners were privy to the fraudulent scheme. The NLRC believed that the admissions of the other employees do not prove petitioners' complicity and participation in the scheme. It declared that respondents failed to submit independent evidence to show the petitioners' guilt, and that petitioners were not given the opportunity to meet and cross-examine respondents' witnesses – or those employees who submitted written explanations admitting the presence of an illegal scheme to profit by the optical benefit provision in the CBA, namely Roselle Marquez, Edgardo Cayanan, Jennifer Garcia, Nerissa Rivera, Orlando Labicane, Michael Arceo, Jennifer Fronda and Leopoldo Padlan; thus, their statements are inadmissible.

Nonetheless, the NLRC declared that there was no denial of procedural due process, since petitioners were afforded the opportunity to meet the charges against them and respondents were not remiss in their duty to accord them this right during the process. Regarding the charge of unfair labor practice, the NLRC was convinced that respondents are not guilty of undue discrimination in initiating criminal charges against petitioners for their perceived violation of the Revised Penal Code.

Respondents moved for reconsideration, but in an August 8, 2009 Resolution,[24] the NLRC stood its ground.

Ruling of the Court of Appeals

Respondents went up to the CA via an original Petition for *Certiorari*,[25] insisting that there was just cause to dismiss the

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[23] *Id.* at 122.

[24] *Id.* at 124-126; penned by Commissioner Teresita D. Castillon-Lora and concurred in by Commissioners Raul T. Aquino and Angelita A. Gacutan.

[25] *Id.* at 61-112.

petitioners for serious misconduct. On January 14, 2011, the CA issued the assailed Decision, decreeing as follows:

> WHEREFORE, the foregoing considered, the petition is GRANTED.
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> The assailed Decision dated 08 December 2008 of public respondent NLRC as well as its assailed Resolution dated 28 August 2009 are REVERSED and SET ASIDE, and the Decision dated 30 April 2007 of Labor Arbiter Fe S. Cellan is hereby REINSTATED.
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> SO ORDERED.[26]

In reversing the NLRC, the CA found that there was indeed cause to dismiss petitioners, the evidence indicating that petitioners and the other employees knew, assented and took part in the scheme to profit by pocketing the difference between the declared cost and actual cost of the eyeglasses; that based on the written statements of the other participants to the scheme, petitioners are guilty of serious misconduct, dishonesty, fraud and breach of trust, which rendered them unfit to continue working for Prudentialife. The appellate court cited particularly the fact that the eyeglasses purchased by petitioners from Alavera Optical did not have any grade.

The CA added that since the instant case is a labor case, only substantial evidence – and not guilt beyond reasonable doubt – is required in establishing petitioners' liability; that due process was observed by respondents, as petitioners were furnished with the requisite twin notices before their services were terminated; and that petitioners were afforded the opportunity to be heard on their defense through their respective written explanations, and no hearing was required before a decision on their case could be properly arrived at.

Petitioners moved to reconsider, reiterating that the CA based its Decision on conjecture; that the evidence against them was not substantial; and that due process was not observed. In a March 16, 2011 Resolution,[27] however, the CA stood its ground. Thus, the instant Petition.

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[26] *Id.* at 585.

[27] *Id.* at 612-613.

Issues

Petitioners submit the following assignment of errors:

I

THE COURT OF APPEALS SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RENDERED ITS DECISION NOT IN ACCORD WITH LAW AND JURISPRUDENCE AS ALREADY DETERMINED BY THIS HONORABLE COURT;

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT REVERSED THE DECISION RENDERED BY THE NATIONAL LABOR RELATIONS COMMISSION WHICH DETERMINED THAT:

1. While the affidavits offered in evidence by respondents-appellees indeed recounted how the fraudulent scheme is being undertaken by Alavera Optical and some employees who availed of their services, it cannot however, escape our attention the fact that there is nothing in the said affidavits that categorically implicate complainants-appellants to the subject transactions;

2. Let it be emphasized that in labor cases, substantial evidence is required to establish one's case. By substantial evidence, it means such relevant evidence which a reasonable mind might accept to support a conclusion. x x x this Commission would not be amiss to state that time and again it held that unsubstantiated accusation no matter how sincerely felt is nothing but hearsay that deserves no probative value;

3. Be it noted that in the cases of *Aniceto W. Naguit Jr. v. NLRC,* 408 SCRA 617 and the case of *Mario Hornales v. NLRC,* 364 SCRA 778, it has been settled that for an affidavit to be given evidentiary weight, the affiants must testify on [their] statements therein to attest [to] the veracity of [their] testimony and; the opposing party must be given the opportunity to meet and cross-examine the affiants in order for them to test the truthfulness of their statements. x x x it is palpably clear complainants-appellants were not afforded

> by respondents-appellees the opportunity to meet the affiants and to cross-examine them. Likewise, neither were these affiants testified [sic] on the veracity of their statements either during the administrative investigation conducted by the respondents-appellees nor before the Labor Arbiter. x x x[28]

Petitioners' Arguments

In their Petition and Reply,[29] petitioners urge a judicious review of the case given the conflicting decisions of the labor tribunals and the appellate court. They add that it was improper for the CA to adjudge them guilty of wrongdoing based on the written admissions of their co-employees and not on evidence pointing to their wrongdoing, and it is unfair for the CA to sweepingly rule that the acts of some employees were attributable to all who availed of the optical benefit allowance.

Petitioners further cite that while Prudentialife supposedly found that the eyeglasses they purchased had no grade, they were not afforded the opportunity to meet and contest this finding; that this finding was not included in the written notice to explain which they received, and thus could not be a valid basis for their dismissal since they were unable to explain their side on such issue. Petitioners reiterate the NLRC findings that the other employees who admitted to the illegal scheme did not implicate them, nor can these employees' statements be used to show petitioners' guilt or privity to the illegal scheme since these written statements are inadmissible in evidence as they were not given the opportunity to contest them, nor were they allowed to cross-examine the employees who prepared and submitted them; that in *Garcia v. Malayan Insurance Co., Inc.*,[30] it was held that the statement of a co-employee may not be used to prove the guilt of an employee accused of theft of company property; and that there can be no other conclusion

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

[29] *Id*. at 552-568.

[30] 572 Phil. 230 (2008).

than that their dismissal was based on mere conjecture and suspicion, and for this reason, the burden of proof – which falls on Prudentialife – has not been properly discharged.

Additionally, petitioners claim that they did not unduly profit from availing of the optical benefit provision under the CBA, since they did not claim or receive anything other than the eyeglasses; that no evidence was shown to support respondents' claim that their eyeglasses were overpriced, and any variation in prices of eyeglasses between the various optical shops merely shows that free market forces were in operation – not that the particular eyeglasses they obtained from Alavera Optical were overpriced; and that their categorical denial was sufficient to negate any accusation or suspicion of involvement in the scheme or conspiracy surrounding the optical benefit provision in the CBA.

Petitioners thus pray for the reversal of the assailed dispositions and the reinstatement of the December 8, 2008 NLRC Decision. In addition, they seek an award of damages and attorney's fees.

Respondents' Arguments

In their Comment,[31] respondents pray for the denial of the Petition, arguing against a departure from the CA pronouncement and insisting that the appellate court's disposition of the issues was sound and based on substantial evidence. They contest the NLRC Decision, claiming that it is gravely erroneous and based on a misapprehension of the facts. They insist on the validity of petitioners' dismissal, which according to them was based on adequate documentary evidence; and that the fact that not all who were involved in the illegal scheme were dismissed does not affect the liability of petitioners. Besides, some of them resigned or left Prudentialife right after the incident occurred while others have shown that their availment of the optical benefit was genuine. They hold that the petitioners' dismissal was based on substantial evidence gathered in an investigation duly conducted, and on the findings of reputable

[31] *Rollo*, pp. 622-650.

optical shops which made an examination and comparison of the petitioners' eyeglasses; that overall, petitioners are guilty of dishonesty; that they did not violate petitioners' right to due process; and finally, that petitioners are not entitled to their money claims, damages, and attorney's fees given that their dismissal was for cause and no bad faith attended the same.

Our Ruling

The Court affirms.

When there is a divergence between the findings of facts of the labor tribunals and the CA, there is a need to refer to the record. "It is an established rule that the jurisdiction of the Supreme Court in cases brought before it from the CA via Rule 45 of the 1997 Rules of Civil Procedure is generally limited to reviewing errors of law. This Court is not a trier of facts. In the exercise of its power of review, the findings of fact of the CA are conclusive and binding and consequently, it is not our function to analyze or weigh evidence all over again. There are, however, recognized exceptions to this rule such as when there is a divergence between the findings of facts of the NLRC and that of the CA."[32]

The evidence on record suggests that, with the aim in view of availing the optical benefit provision under the CBA, Prudentialife employee Elvie Villaviaje initiated a company-wide scheme with Alavera Optical whereby the latter, through its optometrists, conducted eye examinations within company premises and issued prescriptions on January 27, 2006, and subsequently prepared and released eyeglasses to the participating Prudentialife employees. In turn, these employees claimed reimbursement for the cost of their eyeglasses through the optical benefit provision, to the allowable extent of ₱2,500.00. The evidence shows that even before they could pay for the cost of their eyeglasses, Alavera Optical offered to issue, as it did issue, official receipts in advance to the availing employees,

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[32] *Best Wear Garments v. de Lemos*, G.R. No. 191281, December 5, 2012, 687 SCRA 355, 363-364.

which they used to secure reimbursements from Prudentialife ahead of the actual payment of the eyeglasses; the petitioners acknowledged this fact in their individual and respective written explanations. Likewise, some of the availing employees[33] – except petitioners – admitted that they knew that the true cost of their respective eyeglasses ranged from only ₱1,200.00 – ₱1,800.00; that Alavera Optical deliberately issued official receipts for a greater amount ranging from ₱2,500.00 – ₱2,600.00 with their full knowledge and consent; that they used these official receipts to claim reimbursement; and that Prudentialife actually reimbursed them to the extent of ₱2,500.00.

It as well appears that after some of the subject eyeglasses were submitted to other optical shops for inspection, comparison and examination, it turned out that these did not have any grade, or that the grade did not match the prescription issued for the eyeglasses. Specifically, Dolendo and Sy's eyeglasses had no grade, while the grade on Evangelista's eyeglasses did not match the prescription issued to her. It was likewise found that the cost of the eyeglasses – including petitioners', as declared in the respective official receipts and reimbursement requests covering them, was excessive compared to similar frames and lenses being sold or offered by other optical shops.

For its part, Alavera Optical submitted a fictitious address, telephone number and Tax Identification Number, using these in the written prescriptions it issued. And to entice Prudentialife employees into participating in the scheme, Alavera Optical offered to release the eyeglasses and issue the prescriptions and official receipts even before actual payment therefor is made – which meant that participating employees need not pay for the cost of their eyeglasses from their own pockets, but could use the documents to obtain immediate reimbursement from Prudentialife.

It likewise appears that based on the reimbursement requests/ petty cash vouchers and official receipts, the cost of the eyeglasses

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[33] Roselle Marquez, Edgardo Cayanan, Jennifer Garcia, Nerissa Rivera, Orlando Labicane, Michael Arceo, Jennifer Fronda and Leopoldo Padlan.

is more or less the same, or at an average of ₱2,500.00, which coincidentally is the maximum reimbursable amount under the optical benefit provision in the CBA.

From the above, it appears that there was a conspiracy to defraud Prudentialife using the optical benefit provision in the CBA to unduly enrich the availing employee, and possibly Alavera Optical, through overpricing of the latter's eyeglasses and appropriation of the difference between the bloated price and the actual cost. Employees who participated in the scheme knew, as they were informed by the proponents of the scheme – namely Elvie Villaviaje and Alavera Optical, of the fact that if they participated and underwent eye examination through Alavera Optical, they would be issued a prescription and official receipt indicating that they paid up to ₱2,600.00 for the frames and lenses that were prescribed, which documents they could then use to obtain reimbursements of up to ₱2,500.00 from Prudentialife – even if they did not actually pay for them, and though the cost of the eyeglasses was less than ₱2,500.00. Any employee who, knowing of the scheme, yet participates therein, becomes a co-conspirator to the fraud.

It is elementary that "when there is a conspiracy, the act of one is the act of all the conspirators, and a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the individual participation of each conspirator in the commission of the crime becomes immaterial."[34] In proving complicity, direct evidence is not necessary, as it can be clearly deduced from the acts of the conspirators;[35] it may be proved through a series of acts done in pursuance of a common unlawful purpose.[36]

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[34] *People v. Medina*, 354 Phil. 447, 460 (1998).

[35] *People v. Hong Yen E*, G.R. No. 181826, January 9, 2013, 688 SCRA 309, 316.

[36] *People v. Alvarez*, 251 Phil. 666, 675 (1989), citing *People v. Cadag*,

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy need not be proved by direct evidence and may be inferred from the conduct of the accused before, during and after the commission of the crime, which are indicative of a joint purpose, concerted action and concurrence of sentiments. In conspiracy, the act of one is the act of all. Conspiracy is present when one concurs with the criminal design of another, indicated by the performance of an overt act leading to the crime committed. It may be deduced from the mode and manner in which the offense was perpetrated.[37]

From the evidence on record, it has been sufficiently shown that petitioners actually took part in the commission of the acts complained of, which makes them co-conspirators to the scheme. For sure, it cannot be said that they are exceptions to the rule simply because they categorically denied participation, or that there is no direct evidence of their complicity. Quite the contrary, there is evidence pointing to their participation in the fraudulent scheme. First of all, they all knew that even though they were not paying for the eyeglasses, Alavera Optical would issue, as it did issue, an official receipt falsely showing that the eyeglasses have been paid for, which they would then use, as they did use, to obtain reimbursement from Prudentialife. By presenting the false receipt to their employer to obtain reimbursement for an expense which they did not in fact incur, this constituted dishonesty.

Secondly, it was discovered that Dolendo's and Sy's eyeglasses had no grade, while Evangelista's eyeglass lens did not match the prescription issued to her. An eyeglass without graded lenses could only indicate that the wearer thereof has no vision problems, which does away with the necessity of availing of the optical benefit provision under the CBA which is understandably reserved for those employees who have developed vision problems in the course of employment. By availing of the benefit, the employee represents to Prudentialife

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112 Phil. 314, 320 (1961); *People v. Cruz*, 114 Phil. 1055, 1061-1062 (1962); *People v. Alcantara*, 144 Phil. 623, 635 (1970).

[37] *Candao v. People*, G.R. Nos.186659-710, October 19, 2011, 659 SCRA 696, 719-720.

that he has developed vision problems. If this is not true, then he has committed an act of dishonesty as well. Given the circumstances then obtaining, the same principle holds true with respect to eyeglasses whose lenses do not match the corresponding prescription.

For their dishonesty, the penalty of dismissal is justified pursuant to Section 2.6 (i) of the Prudentialife Personnel Manual which prescribes the penalty of dismissal for acts of padding receipts for reimbursement or liquidation of advances or expenses. Dishonesty is a serious offense, and "no employer will take to its bosom a dishonest employee."[38] Dishonesty implies a "[d]isposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity[; l]ack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[39] Acts of dishonesty have been held to be sufficient grounds for dismissal as a measure of self-protection on the part of the employer.[40]

The written statements of petitioners' co-employees admitting their participation in the scheme are admissible to establish the plan or scheme to defraud Prudentialife; the latter had the right to rely on them for such purpose. The argument that the said statements are hearsay because the authors thereof were not presented for cross-examination does not persuade; the rules of evidence are not strictly observed in proceedings before the NLRC, which are summary in nature and decisions may be made on the basis of position papers.[41] Besides, these written declarations do not bear directly on petitioners' participation in the scheme; their guilt has been established by evidence other than these statements.

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[38] *Maneja v. National Labor Relations Commission*, 353 Phil. 45, 64 (1998).

[39] *Philippine Amusement and Gaming Corporation v. Rilloraza*, 412 Phil. 114, 133 (2001), citing *Black's Law Dictionary*, Sixth Ed., p. 468, 1990.

[40] *Auxilio, Jr. v. National Labor Relations Commission*, G.R. No. 82189, August 2, 1990, 188 SCRA 263, 267.

[41] *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 844 (2003).

Petitioners' reliance on *Garcia v. Malayan Insurance Co., Inc.*[42] is misplaced. Far from declaring that the statement of a co-employee may not be used to prove the guilt of an employee accused of theft of company property, the Court held therein that the affidavit of the co-employee cannot serve as basis for the finding that said petitioner conspired in the theft because it was so lacking in crucial details. The opposite is thus true: the affidavit or statement of a co-employee in a labor case may prove an employee's guilt or wrongdoing if it recites crucial details of his involvement.

Furthermore, petitioners' contention that they were not apprised of the fact that it has been discovered that their eyeglasses had no grade comes as a surprise. The truth or falsity of this fact or allegation is readily ascertainable by the petitioners themselves; the answer is literally right before their very eyes. If their eyeglasses indeed had a grade, then they would have said so outright – and not relegate the matter to a mere due process issue. They are presumed to wear these very spectacles each and every day. Besides, as early as in the respondents' Position Paper below, it was raised as an issue that petitioners' eyeglasses either had no grade or did not match the prescription issued therefor; indeed, petitioners have been given sufficient opportunity to meet such accusation in the Labor Arbiter stage.

Finally, petitioners' argument and prayer for an award of damages and attorney's fees may not be allowed, since they did not question the NLRC's denial thereof in its December 8, 2008 Decision. Only respondents went up to the CA on *certiorari*. "It is well-settled that a party who does not appeal from the decision may not obtain any affirmative relief from the appellate court other than what he has obtained from the lower court whose decision is brought up on appeal. The exceptions to this rule, such as where there are (1) errors affecting the lower court's jurisdiction over the subject matter, (2) plain errors not specified, and (3) clerical errors, do not apply in this

[42] See note 30.

case."[43] "[A] party who did not appeal cannot assign such errors as are designed to have the judgment modified. All that he can do is to make a counter-assignment of errors or to argue on issues raised below only for the purpose of sustaining the judgment in his favor."[44]

WHEREFORE, the Petition is **DENIED**. The January 14, 2011 Decision and March 16, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 111981 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 197204. March 26, 2014]

DANILO O. GARCIA and JOVEN SD. BRIZUELA, *petitioners, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019); THREE ESSENTIAL ELEMENTS FOR VIOLATION OF SECTION 3(e) OF R.A. 3019.— The three essential elements for violation of Section 3(e) of RA 3019 are: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused

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[43] *Bank of the Philippine Islands v. Lifetime Marketing Corporation*, 578 Phil. 354, 363 (2008).

[44] *Daabay v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 199890, August 19, 2013.

[*] Per Special Order No. 1650 dated March 13, 2014.

acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

2. ID.; ID.; ID.; THREE ESSENTIAL ELEMENTS, DULY PROVEN IN CASE AT BAR.— On the first element, the records show that at the time the procurement of the CCIE occurred, petitioners Garcia and Brizuela were public officers discharging their officials functions in the Philippine National Police as Assistant Regional Director for Comptrollership and Disbursing Officer, respectively. In the course of the trial, the Sandiganbayan issued a Pre-Trial Order dated 17 May 2005 which contained the stipulation of fact that "all the accused were public officers, occupying their respective positions as described in the Information, at the time the matters of this case allegedly occurred." Thus, petitioners were public officials holding positions in the PNP on the questioned dates as clearly stipulated in the Amended Information filed by the Ombudsman. Indisputably, the first element was met. With regard to the second element, that the public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence[.] x x x In this case, the Amended Information filed by the Ombudsman specifically states "evident bad faith" as the mode by which the crime has been committed. As defined in *Albert*, **evident bad faith** connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self interest or ill will or for ulterior purposes.

3. REMEDIAL LAW; APPEALS; ISSUES NOT RAISED BEFORE THE COURT *A QUO* CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; PRINCIPLE, APPLIED.— Petitioners anchor their defense on the nature of their respective positions to prove that they acted within the bounds of their functions. However, Garcia and Brizuela only raised their functions as ARDC and Disbursing Officer, respectively, for the first time before the Sandiganbayan when they filed their separate Supplements to Motion for Reconsideration and after

a decision had already been rendered by the Sandiganbayan. The settled rule is that issues not raised in the court *a quo* cannot be raised for the first time on appeal — in this case, in a motion for reconsideration — for being offensive to the basic rules of fair play, justice and due process. Points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppel and cannot be considered by a reviewing court, as these cannot be raised for the first time on appeal.

APPEARANCES OF COUNSEL

Maria Nympha Mandagan for petitioners.
Office of the Special Prosecutor for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the Decision dated 14 October 2010[2] and Resolutions dated 9 March 2011[3] and 1 June 2011[4] of the Sandiganbayan in Criminal Case No. 20574 entitled "*People of the Philippines v. Dir. Gen. Cesar P. Nazareno, P/Dir. Guillermo T. Domondon, C/Supt. Armand D. Agbayani, P/Supt. Van D. Luspo, C/Insp. Joven SD. Brizuela, C/Insp. Juan G. Luna, and C/Insp. Danilo O. Garcia*."

The Facts

For the 3rd quarter of calendar year 1992, the PNP Office of the Directorate for Comptrollership issued and released two

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 96-128. Penned by Justice Rodolfo A. Ponferrada with Justices Efren N. de la Cruz and Alexander G. Gesmundo, concurring.

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

[4] *Id*. at 7-10.

Advice of Sub-Allotments[5] (ASA): (1) ASA No. 4363 dated 11 August 1992 for ₱5,000,000, and (2) ASA No. 4400 dated 18 August 1992 for ₱15,000,000, in the total amount of ₱20,000,000, for the purchase of combat clothing and individual equipment (CCIE) items of the Cordillera Regional Command (CRECOM) of the Philippine National Police (PNP) located at Camp Bado, Dangwa, La Trinidad, Benguet.

The ASAs were addressed "For the Chief, Philippine National Police; by Guillermo T. Domondon, Director." The PNP Chief and PNP Director for Comptrollership at the time were Cesar P. Nazareno (Nazareno) and Guillermo T. Domondon (Domondon), respectively. On behalf of Domondon, the ASAs were signed by P/Supt. Van Luspo (Luspo), then Chief, Fiscal Division, Budget and Fiscal Services of the PNP Directorate for Comptrollership, by virtue of a Memorandum[6] dated 31 January 1991, where Domondon gave Luspo and a certain Supt. Reynold Osia, the authority to sign for him and on his behalf, allotments for personal services in the amount not exceeding Five Million Pesos (₱5,000,000), and in his absence, the amount of Twenty Million Pesos (₱20,000,000). Thereafter, the proceeds of the two ASAs were transferred to CRECOM's deposit account with the Land Bank of the Philippines (LBP), Baguio Branch.

After receipt of the ASAs, petitioner Chief Inspector Danilo O. Garcia (Garcia), then CRECOM Assistant Regional Director for Comptrollership, directed the preparation of cash advances in the form of 15 disbursement vouchers,[7] 4 dated 12 August 1992 and 11 dated 21 August 1992, in the total amount of ₱20,000,000. The disbursement vouchers were signed and approved by either Garcia or Armand D. Agbayani (Agbayani), then CRECOM Regional Director, and issued in favor of petitioner Chief Inspector Joven SD. Brizuela (Brizuela), then CRECOM Disbursing Officer, as lone payee and claimant.

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[5] Records, Vol. II, pp. 55-56.

[6] *Id*. at 65.

[7] Records, Formal Offer of Documentary Exhibits for the Prosecution, stamped as Exhibits "G12" to "U12".

After the approval of the disbursement vouchers, Chief Inspector Juan Luna (Luna), then CRECOM Finance Officer, issued 250 LBP checks[8] (Check Nos. 037483-037533 and 037584-037783) of various dates, from 11 to 22 August 1992, in the amounts of ₱50,000 or ₱100,000 totalling to ₱20,000,000. Luna and Garcia were the signatories of the checks issued in the amount of ₱50,000, while Luna and Agbayani were the signatories of checks amounting to ₱100,000. The 250 LBP checks were all issued in favor of Brizuela as payee, in his capacity as disbursing officer.

On 13 August 1992, Brizuela encashed the check dated 11 August 1992 from the LBP, Baguio Branch. Again, on 26 August 1992, Brizuela encashed the checks dated 18, 19, 20, 21 and 22 August 1992. All the proceeds of the encashed checks amounting to ₱20,000,000 were turned over by Brizuela to Garcia in the presence of Luna.

For the purpose of liquidating the cash advances, CRECOM Regional Accountant Jocelyn Versoza-Hinanay received the following documents: (1) original copies of the disbursement vouchers; (2) 250 LBP checks; (3) corresponding Clothing Requirements and Certifications that were signed by the heads of the various commands and units of CRECOM; and (4) PNP Personnel Payrolls that were also signed by the various CRECOM command heads, "approved payable" by Luna, and certified by Brizuela that the amount of ₱11,270.00 representing CCIE for the 3rd quarter of 1992 was paid to each "payee whose name appears on the (above) payroll."

The various CRECOM command and unit heads, who allegedly signed the Clothing Requirements and Certifications and the PNP Personnel Payrolls, were identified as:

(1) Supt. Manuel T. Raval of PNP Abra;
(2) Supt. Rolando C. Garcia of PNP Benguet;

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[8] *Id.*, stamped as Exhibits "E" to "CC", Exhibits "DD" to "C3", Exhibits "D3" to "B5" (except "Q3" and "R3"), Exhibits "C5" to "E7", Exhibits "F7" to "T8", and Exhibits "U8" to "T10" (except "V8").

(3) C/Insp. Prospero C. Noble, Jr. of PNP Ifugao;
(4) Supt. Rodrigo F. Licudine of the Regional Mobile Force;
(5) Supt. Juan T. Refe of the Northern Luzon Training Center;
(6) Supt. Conrado R. Peregrino, Jr. of PNP Kalinga-Apayao; and
(7) Supt. Amparo C. Cabigas of the Headquarter Services.

Thereafter, for post-audit purposes, the documents were submitted to Adelaida C. Urbanozo (Urbanozo), State Auditor II of the Commission on Audit (COA) assigned at CRECOM PNP.

On 26 February 1993, after the post-audit, PNP Chief Inspector General Benjamin Valenton directed a PNP IG Fact-Finding Team to conduct an investigation on the alleged fictitious CCIE purchase of CRECOM PNP worth ₱20,000,000. The fact finding team was composed of team leader P/Supt. Rafael Jayme, P/C Insp. Ricardo M. Orot (Orot) and P/Sr. Insp. Evangeline L. Candia (Candia).

In the course of the investigation, the fact finding team invited for questioning and took the statements of the following:

(1) Supt. Manuel T. Raval who executed a Sworn Statement dated 23 March 1993 stating that Personnel Payrolls for PNP Abra were fabricated and that his signature indicated in said payrolls was not his;
(2) Supt. Rolando C. Garcia who executed a Sworn Statement dated 23 March 1993 stating that Personnel Payrolls for PNP Benguet were fabricated and that his signature indicated in said payrolls was not his;
(3) Ciriaco C. Wagan, then Regional and Supply Accountable Officer of CRECOM, who executed a Sworn Statement dated 17 February 1993 stating that CRECOM did not receive any CCIE for the 3rd quarter of 1992;
(4) Dominador Pamolar, Carlos D. Capinding, and Sanilo Dosdos, Jr., who executed a Joint-Affidavit dated 2 March 1993 stating that no CCIE, in cash or in kind, was received by CRECOM Headquarters for the 3rd quarter of 1992;

(5) SPO4 Romulo B. Rosido, Chief Clerk of the Office of the Regional Inspector, PNP CRECOM; SPO4 Wilson B. Pulido, Chief Clerk of the Office of the Regional Police Legal Service (RPLS); and SPO2 Jorge S. Benitez of the Office of the RPLS, who executed a Joint-Affidavit on 2 March 1993 stating that CRECOM did not receive any CCIE for the 3rd quarter of 1992;
(6) Brizuela who executed a Sworn Statement dated 22 February 1993;
(7) Garcia; and
(8) Luna who executed a Sworn Statement dated 4 March 1993.

The fact finding team also gathered Personnel Payrolls, covering the 3rd quarter of calendar year 1992, which contained the names of the members of the PNP in Abra, Benguet and Kalinga-Apayao. The payrolls were prepared by CRECOM and signed by Supt. Manuel T. Raval or Supt. Rolando C. Garcia and Brizuela.

In an Investigation Report[9] dated 2 April 1993, the fact finding team revealed the irregularity of the release of the ASAs worth ₱20,000,000 by the PNP Office of the Directorate for Comptrollership. Based on the documents collected and the sworn statements taken from CRECOM personnel and other witnesses, the fact finding team discovered the following: (1) that the ASAs were issued without the corresponding Personnel Program from the PNP Directorate of Personnel, the office which determines the needs of the units of the PNP; (2) that the ASAs were received by CRECOM Comptroller Garcia from PNP Headquarters; (3) that Garcia received the proceeds of the ASAs from CRECOM Disbursing Officer Brizuela in the presence of CRECOM Finance Officer Luna after Brizuela encashed the 250 LBP checks; and (4) that all the liquidating documents, consisting of the Clothing Requirement and Certifications and the list of the PNP Personnel Payrolls, supposedly signed by the various CRECOM command and unit

[9] Records, Vol. 1, pp. 73-84.

heads, were all fictitious. The signatures appearing in the liquidating documents were forged and the personnel listed in the respective Official Rosters of the officers' commands did not receive any CCIE for the 3rd quarter of 1992.

On 11 May 1993, the fact finding team filed its Investigation Report and recommended the filing of appropriate criminal charges with the Sandiganbayan against Nazareno, Domondon, Agbayani, Garcia, Luna, and Brizuela for (1) Malversation through Falsification of Public Documents, and (2) violation of Republic Act No. 3019 (RA 3019) or the Anti-Graft and Corrupt Practices Act.

After the preliminary investigation, the Office of the Ombudsman filed an Amended Information[10] dated 28 July 1997 for violation of Section 3(e) of RA 3019, docketed as Criminal Case No. 20574, against all the police personnel, as recommended by the fact finding team, allegedly involved in the procurement of the fraudulent CCIE purchase, including Luspo. The Amended Information states:

> That on or about August 1992, and for sometime prior or subsequent thereto, in Quezon City and Baguio City, Philippines, and within the jurisdiction of this Honorable Court, the said accused public officers, namely: Maj. Gen. Cesar Nazareno, then Director General, Philippine National Police (PNP); P/Dir. Guillermo Domondon, then Director for Comptrollership, PNP; C/Supt. Armand Agbayani, then Regional Director, Cordillera Regional Command (CRECOM), PNP; P/Supt. Van Luspo, then Chief, Fiscal Division, Budget and Fiscal Services, Office of the Director for Comptrollership, PNP; C/Insp. Joven Brizuela, then Disbursing Officer, CRECOM, PNP; C/Insp. Juan Luna, then Finance Officer, CRECOM, PNP; and C/Insp. Danilo Garcia, then Comptroller, CRECOM, PNP, **while in the performance of their official functions, committing the offense in relation to their office, conspiring and confederating with each other, did then and there, willfully, unlawfully and criminally, with evident bad faith, cause undue injury to the government** by: approving without budgetary basis the release of Advise of Sub-Allotment SN No. 4363 dated August 11, 1992 in the amount of PHP 5,000,000.00

[10] *Id.* at 456-459.

and Advise of Sub-Allotment SN No. 4400 dated August 18, 1992 in the amount of PHP 15,000,000.00 for the procurement of combat, clothing and individual equipment (CCIE) for the use of PNP personnel of CRECOM, La Trinidad, Benguet; causing to be issued and encashed Land Bank Check Nos. 037483 to 037533, 037584 to 037611, 037613, 037615 to 037777, 037779 to 037783, 137612 and 137614 with an aggregate amount of TWENTY MILLION PESOS (PHP 20,000,000.00), Philippine Currency, for payment of ghost purchases of the said CCIE items; falsifying the signatures of the military personnel listed in the payroll of CRECOM to make it appear therein that the military personnel of CRECOM have received the said CCIE items; and, thereafter, misappropriating the said amount of PHP 20,000,000.00 to the damage and prejudice of the government in the aforementioned amount.

CONTRARY TO LAW.[11] (Emphasis supplied)

All the accused, except Agbayani, who was still at large and beyond the jurisdiction of the Sandiganbayan, refused to enter any plea upon their separate arraignments. The Sandiganbayan entered a plea of not guilty for each of them.

In the Pre-Trial Order dated 17 May 2005 issued by the Sandiganbayan, all the accused agreed to the following stipulation of fact and issue:

III
Stipulation of Fact

The parties stipulated that all the accused were public officers, occupying their respective positions as described in the Information, at the time the matters of this case allegedly occurred.

IV
Issue

The ultimate issue to be resolved is whether or not the accused, individually or in conspiracy with one another, committed manifest partiality, evident bad faith or gross inexcusable negligence in the performance of their public functions in connection with the subject matter of the Information, thereby causing undue injury to the government.

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[11] *Id.* at 457-458.

Respondent People of the Philippines, as plaintiff in the case, presented the following witnesses:

(1) Retired Senior Supt. Rafael E. Jayme;
(2) Supt. Rolando C. Garcia;
(3) Supt. Manuel T. Raval;
(4) Candia;
(5) CRECOM Regional Accountant Jocelyn Versoza-Hinanay;
(6) COA State Auditor Adelaida Urbanozo;
(7) Gen. Nicasio Javier Radovan, Jr., then Provincial Commander of Mountain Province;
(8) SPO1 Carlos D. Capinding, a PNP officer assigned at CRECOM in 1992;
(9) Ret. PNP Officer Brigilio Balaba, then CRECOM's Assistant Regional Director for Logistic; and
(10) Ret. Gen. Rufino Ibay, the PNP Director for Comptrollership in April 1993.

During the trial held on 1 August 2006, the Sandiganbayan issued an Order containing the stipulations of the prosecution and defense on the testimonies of five police officers, intended to be called to the witness stand, and dispensed with their testimonies. The relevant portions of the Order state:

1. Gen. Prospero C. Noble, Jr., Provincial Commander, will testify that the signatures appearing on Exhibits "B43" up to "N47", consisting of payrolls, clothing requirements and certifications purporting to be his are actually not his signatures and that the listed personnel have not been paid their CCIE;

2. Supt. Rodrigo F. Licudine, then Commander of the Regional Mobile Force, will testify that the signatures appearing on Exhibits "C71" up to "T79", consisting of payrolls, clothing requirements and certifications purporting to be his are actually not his signatures and that the listed personnel have not been paid their CCIE;

3. Supt. Juan T. Refe II, Commander of the Northern Luzon Training Center, will testify that the signatures appearing on Exhibits "P33" up to "A13", consisting of payrolls, clothing requirements and certifications purporting to be his are actually not his signatures and that the listed personnel have not been paid their CCIE;

4. Supt. Conrado R. Peregrino, Jr., Provincial Commander of Kalinga-Apayao, will testify that the signatures appearing on Exhibits "R50" up to "C57", consisting of payrolls, clothing requirements and certifications purporting to be his are actually not his signatures and that the listed personnel have not been paid their CCIE; and

5. Supt. Amparo C. Cabigas, Camp Commander, Headquarters Service, will testify that the signatures appearing on Exhibits "U79" up to "H85", consisting of payrolls, clothing requirements purporting to be his are actually not his signatures.[12]

For the defense, accused Domondon and Luspo intended to present as witness Superintendent Leonilo Lapus Dalut (Dalut), the Program and Budget Officer of the PNP Directorate for Personnel from 1989 until 1993. However, since Dalut had already testified before another division of the Sandiganbayan in other cases, where some of the accused in this case were also the accused in the other cases, Domondon and Luspo merely adopted the testimony of Dalut in those cases, including the cross-examination conducted on Dalut.

Accused Brizuela presented the prosecution's witness, Candia, as his witness pursuant to a *subpoena* issued by the Sandiganbayan. After the presentation of Candia, Brizuela did not present any other testimonial evidence and merely adopted the testimonial and documentary evidence of the other accused.

Likewise, accused Garcia did not present any testimonial evidence and merely adopted the evidence of the other accused.

Accused Luna, on the other hand, testified on his behalf and presented documentary evidence.

On 8 December 2005, while this case was pending, Nazareno died. Upon motion to dismiss filed by counsel, with the original certificate of death issued by the Office of the Civil Registrar as basis, the Sandiganbayan issued an Order dated 3 February 2007 dismissing the case against Nazareno.

On 14 October 2010, the Sandiganbayan found Brizuela, Luna and Garcia guilty of the crime charged and acquitted

[12] *Rollo*, pp. 106-107.

Domondon and Luspo. The dispositive portion of the Decision states:

> WHEREFORE, judgment is hereby rendered finding accused JOVEN SD. BRIZUELA, JUAN G. LUNA, and DANILO O. GARCIA, GUILTY beyond reasonable doubt as charged in the Information and sentencing each of them to suffer [the] indeterminate penalty of six (6) years and one (1) month as minimum to ten (10) years as maximum, and to suffer perpetual disqualification from public office, and to indemnify, jointly and severally, the Government the total amount of ₱20 Million representing the losses that it suffered, and to proportionately pay the costs; and for insufficiency of evidence, ACQUITTING accused GUILLERMO T. DOMONDON and VAN D. LUSPO with cost *de oficio*. In this connection, the respective cash bonds posted by the said two (2) accused are hereby RELEASED to them subject to the usual accounting and auditing procedures, and the Hold Departure Orders issued against them are hereby LIFTED and SET ASIDE.
>
> With respect to accused ARMAND D. AGBAYANI, who is at-large and beyond the jurisdiction of the Court, this case is ordered ARCHIVED.
>
> SO ORDERED.[13]

Luna, Brizuela and Garcia filed their respective motions for reconsideration with the Sandiganbayan.[14] Later, Brizuela and Garcia filed separate supplements to their motions for reconsideration.[15] In a Resolution dated 9 March 2011, the Sandiganbayan denied the motions for reconsideration.

Thereafter, Garcia filed a *Manifestation and Motion to Take a Second Look*[16] dated 30 March 2011 and Brizuela filed a *Motion to Admit Second Motion for Reconsideration*[17] and

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[13] *Id.* at 127.

[14] *Id.* at 129-150.

[15] *Id.* at 151-176.

[16] *Id.* at 228-236.

[17] *Id.* at 240-244.

Second Motion for Reconsideration[18] dated 2 April 2011. In separate Resolutions[19] dated 1 June 2011, the Sandiganbayan denied the motions.

Hence, this petition.

The Issues

The issues are (1) whether the Sandiganbayan erred in convicting petitioners of the crime charged, and (2) whether the Sandiganbayan erred in denying their second motions for reconsideration.

The Court's Ruling

The petition lacks merit.

Petitioners submit that the prosecution failed to prove the second and third essential elements of Section 3(e) of RA 3019 to convict them of anti-graft and corrupt practices.

On the other hand, respondents maintain that all the essential elements of Section 3(e) of RA 3019 had been proven beyond reasonable doubt, and a second motion for reconsideration or a motion to take a second look is a prohibited pleading. Respondents also question petitioners' defense of regularity in the performance of their functions as Assistant Regional Director for Comptrollership and Disbursing Officer which was raised only for the first time before the Sandiganbayan when they filed their separate supplements to their motions for reconsideration.

Petitioners were charged for violation of Section 3(e) of RA 3019 which states:

> Section 3. *Corrupt practices of public officers*. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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[18] *Id.* at 245-252.

[19] *Id.* at 7-10 and 91-94.

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The three essential elements for violation of Section 3(e) of RA 3019 are: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[20]

On the first element, the records show that at the time the procurement of the CCIE occurred, petitioners Garcia and Brizuela were public officers discharging their officials functions in the Philippine National Police as Assistant Regional Director for Comptrollership and Disbursing Officer, respectively. In the course of the trial, the Sandiganbayan issued a Pre-Trial Order dated 17 May 2005 which contained the stipulation of fact that "all the accused were public officers, occupying their respective positions as described in the Information, at the time the matters of this case allegedly occurred." Thus, petitioners were public officials holding positions in the PNP on the questioned dates as clearly stipulated in the Amended Information filed by the Ombudsman. Indisputably, the first element was met.

With regard to the second element, that the public officer acted with manifest partiality, evident bad faith or gross inexcusable negligence, the case of *Albert v. Sandiganbayan*[21]

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[20] *Catindig v. People*, G.R. No. 183141, 18 September 2009, 600 SCRA 749; *Soriano v. Marcelo*, 610 Phil. 72 (2009); *People v. Pajaro*, 577 Phil. 441 (2008).

[21] 599 Phil. 439, 450-451 (2009).

explained the different modes by which the crime may be committed:

> The second element provides the different modes by which the crime may be committed, that is, through "manifest partiality," "evident bad faith," or "gross inexcusable negligence." In *Uriarte v. People*, this Court explained that Section 3(e) of RA 3019 may be committed either by *dolo,* as when the accused acted with evident bad faith or manifest partiality, or by *culpa,* as when the accused committed gross inexcusable negligence. There is "manifest partiality" when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. "Evident bad faith" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. "Evident bad faith" contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.

In this case, the Amended Information[22] filed by the Ombudsman specifically states "evident bad faith" as the mode by which the crime has been committed. As defined in *Albert,* **evident bad faith** connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self interest or ill will or for ulterior purposes.

In their petition, Garcia and Brizuela maintain that their duties and functions in the PNP show that they did not participate in the alleged crime. Garcia asserts that while he was the Assistant Regional Director for Comptrollership (ARDC) at the time of the purchase of the fictitious CCIE items, his functions as ARDC would show that he did not take part in the anomalous offense.

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[22] *Supra* note 10.

Garcia states that it was incumbent upon him, in his ministerial function as ARDC, to control and employ funds through the preparation of Request for Obligation of Allotment (ROA) and Regional Allotment Advice (RAA). Garcia emphasizes that he was not a signatory to the disbursement vouchers contrary to the allegation of the prosecution that he directed the preparation of the 15 disbursement vouchers totalling ₱20,000,000. Garcia states that it was only a matter of procedure that he affixed his signature at the dorsal portion of the disbursement vouchers to manifest that a pre-audit and inspection had been conducted. As ARDC, it was his management function to conduct the pre-audit and inspection before any payment or disbursement was made. Garcia adds that he merely complied with the directive when the ASAs were issued "For the Chief, Philippine National Police" by Domondon, although the ASAs were signed for Domondon by Luspo, then Chief of the Fiscal Division, Budget and Fiscal Services of the PNP Directorate for Comptrollership. Garcia further claims that he was not privy to and had no direct or implied participation in the payroll presentation although his name appeared in the payrolls submitted. Garcia alleges that his purported signatures affixed in the payrolls were forged.

On the other hand, petitioner Brizuela insists that while he was the payee indicated in the questioned disbursement vouchers and LBP checks, he was merely performing his duty as Disbursing Officer to disburse funds against approved expense vouchers. This assigned task was given by the Regional Director who had the authority and the right to command and demand compliance upon him as a subordinate. Brizuela adds that his compliance with a perceived lawful order does not connote that he committed the offense through manifest partiality, evident bad faith, or gross inexcusable negligence, as defined in the second element of Section 3(e) of RA 3019.

We are not convinced.

Petitioners anchor their defense on the nature of their respective positions to prove that they acted within the bounds of their functions. However, Garcia and Brizuela only raised their functions as ARDC and Disbursing Officer, respectively, for

the first time before the Sandiganbayan when they filed their separate Supplements to Motion for Reconsideration and after a decision had already been rendered by the Sandiganbayan.

The settled rule is that issues not raised in the court *a quo* cannot be raised for the first time on appeal[23] — in this case, in a motion for reconsideration — for being offensive to the basic rules of fair play, justice and due process.[24] Points of law, theories, issues, and arguments not brought to the attention of the trial court are barred by estoppel and cannot be considered by a reviewing court, as these cannot be raised for the first time on appeal. Also, in *United Special Watchman Agency v. Court of Appeals*,[25] we held that a second motion for reconsideration is a prohibited pleading under Section 5, Rule 37 of the Rules of Court.[26] The effect of filing a second motion for reconsideration is to make the questioned decision final and executory.

Nevertheless, we find that the defense of Garcia and Brizuela is weak since their defense mainly rests on the presumption of regularity in the discharge of their official functions.

As shown by the records, Garcia, after receipt of the ASAs, signed and approved the disbursement vouchers, together with Agbayani, as testified to by the Regional Accountant of CRECOM, Jocelyn Versoza-Hinanay. After the vouchers were signed and approved, Luna issued 250 LBP checks in the amounts of ₱50,000 and ₱100,000. Garcia and Luna were the signatories of the ₱50,000 checks and Luna and Agbayani were the signatories of the ₱100,000 checks. The table[27] below shows that Garcia

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[23] *Lim v. Queensland Tokyo Commodities, Inc.*, 424 Phil. 35 (2002), citing *Sanchez v. Court of Appeals*, 345 Phil. 155 (1997).

[24] *Imani v. Metropolitan Bank & Trust Company*, G.R. No. 187023, 17 November 2010, 635 SCRA 357.

[25] 453 Phil. 363 (2003).

[26] SEC. 5. *Second motion for new trial*. – x x x No party shall be allowed a second motion for reconsideration of a judgment or final order.

[27] Records, Vol. I, p. 18.

signed a total of 100 pieces of ₱50,000 checks issued on two dates, 18 and 19 August 1992, in the total amount of ₱5,000,000:

Date	Quantity of Checks	Number	Amount
08-11-92	51 pieces (₱100,000 each)	037483-037533	₱ 5,100,000
08-18-92	**41 pieces (₱50,000 each)**	**037584-037624**	**2,050,000**
08-19-92	**59 pieces (₱50,000 each)**	**037625-037683**	**2,950,000**
08-20-92	49 pieces (₱100,000 each)	037684-037732	4,900,000
08-21-92	26 pieces (₱100,000 each)	037733-037758	2,600,000
08-22-92	24 pieces (₱100,000 each)	037759-037783	2,400,000
	250 pieces		₱20,000,000

In his defense, Garcia maintains that he merely complied with the directive of the ASAs. Given that Garcia performed his duty from the preparation of the ROA and RAA until the approval of the disbursement vouchers in accordance with his regular duties and functions in the PNP, he did not refute the allegation made by Brizuela that he turned over the total amount of ₱20,000,000 to Garcia in the presence of Luna. As attested by the Sworn Statement[28] of Brizuela on 22 February 1993 taken by Candia in the presence of Orot at the Office of the PNP Inspector General, Camp Crame, Quezon City, Brizuela admitted that after encashing the 250 LBP checks in the total amount of ₱20,000,000, he gave the entire amount to Garcia:

> Candia: Showing you a list of checks and bundle of checks with a total of 250 checks submitted by Ms. Jocelyn S. Versoza, Chief PNP Regional Accountant issued on your name as payee, will you explain why these checks were issued on (sic) your name and the purpose of its issuance?
>
> Brizuela: Since I am the Disbursing Officer, the checks were issued on (sic) my name as payee and that the requisition voucher was on (sic) my name. I was informed by my CO, RFSU that the amount will be cash advanced for the procurement of CCIE.
>
> Candia: Except for [the] requisition voucher, is there [any] other document to support the claim for CCIE?
>
> Brizuela: None.

[28] Records, Formal Offer of Documentary Exhibits for the Prosecution, stamped as Exhibit "S11".

Candia: After encashment of the check, to whom did you give the money?
Brizuela: I gave the entire amount to the ARCDS6 for Comptrollership C/INSP DANILO GARCIA in the presence of C/INSP JUAN LUNA.
Candia: Was there a receipt to support your answer in par. 11?
Brizuela: There was no receipt but I gave the money due to trust and confidence. (Emphasis supplied)

Further, Garcia claimed that the signatures appearing above his names in the PNP Personnel Payrolls, as well as the issued LBP checks, were forged. However, Garcia did not endeavor to prove otherwise. Forgery cannot be presumed and must be proved by clear, positive and convincing evidence[29] and the burden of proof lies on the party alleging forgery.[30] In the present case, Garcia merely relied on the evidence of the other accused and did not present his own testimonial and documentary evidence to show that his signature in the personnel payrolls were falsified. Thus, the presumption of validity and regularity prevails over allegations of forgery and fraud.

Brizuela, on the other hand, insists that as the named payee in the questioned disbursement vouchers and LBP checks, he was merely performing his regular duty as disbursing officer to disburse funds against approved expense vouchers. However, contrary to his allegation, Brizuela admitted in his sworn statement that he gave the entire amount of ₱20,000,000 to Garcia after encashing the checks. Brizuela did not even question why the said amount should be turned over to Garcia nor did Brizuela report the unusual transaction to higher authorities. He even raised the defense of compliance with a superior's perceived lawful order and disowned accountability for funds he disbursed which were eventually used for illegal or unauthorized purposes. The facts as established show that Brizuela took part in the

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[29] *American Express International, Inc. v. Court of Appeals*, 367 Phil. 333 (1999), citing *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, 1 March 1994, 230 SCRA 550.

[30] *Ladignon v. Court of Appeals*, 390 Phil. 1161, 1170 (2000).

act of issuing and encashing government checks, then in misappropriating the funds by submitting documents showing that the funds were allegedly used to pay personnel in the payroll but the personnel later turned out to be fictitious persons. As CRECOM Disbursing Officer, Brizuela should have seen to it that the funds were legally and properly disbursed for the purpose for which they were released. Clearly, Brizuela's actions were tainted with evident bad faith.

Even Luna, in his Sworn Statement[31] on 4 March 1993 taken by Candia in the presence of Orot at the PNP Office of Complaint and Investigation Division, Camp Crame, Quezon City, admitted that he signed the 250 LBP checks and that he was present when the ₱20,000,000 cash was handed by Brizuela to Garcia. The relevant portions of Luna's Sworn Statement state:

Candia: It was mentioned in the sworn statement of P/CHIEF INSP JOVEN BRIZUELA PNP that you (C/INSP LUNA) told him that the amount will be cash advanced for the procurement of CCIE, what can you say about this?

Luna: That is true.

Candia: So, was the amount of Twenty Million Pesos intended for the CCIE for 1992 of CRECOM personnel, cash advanced and if so, who cash advanced [the] same?

Luna: Yes, it was requisitioned for cash advanced by CHIEF INSPECTOR BRIZUELA.

Candia: Were the checks worth ₱20,000,000 encashed? If encashed, who encashed [the] same, from what bank?

Luna: Yes, the checks were encashed by CHIEF INSPECTOR BRIZUELA from Land Bank Baguio City Branch.

Candia: After encashing the checks worth Twenty Million Pesos, where did the money go?

Luna: CHIEF INSPECTOR BRIZUELA personally delivered the ₱20,000,000 cash to C/INSPECTOR GARCIA in my presence.

Candia: What happened next, after C/INSP BRIZUELA handed the money to C/INSP GARCIA in your presence?

Luna: I have no more knowledge. (Emphasis supplied)

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[31] Records, Formal Offer of Documentary Exhibits for the Prosecution, stamped as Exhibit "T11".

Further, Brizuela certified, in the PNP Personnel Payroll submitted to CRECOM Chief Regional Accountant Jocelyn Versoza-Hinanay, that the amount of ₱11,270.00 representing CCIE for the 3rd quarter of 1992 was paid to each "payee whose name appears on the (above) payroll." In its Decision dated 14 October 2010, the Sandiganbayan found that the names in the payroll, who were the personnel who supposedly received the CCIE, were fictitious. The relevant portions of the Decision state:

> It appears, however, that the names of the personnel listed in the said *PNP Personnel Payrolls* who purportedly have each received the amount of ₱11,270.00 CCIE for the 3rd Quarter of 1992 are fabricated or fictitious because the names listed therein, when compared with the Official Rosters submitted by the heads of the different CRECOM commands, do not appear in the said official rosters. Besides, the heads of the different CRECOM commands, namely, Supt. Manuel Raval of PNP Abra, Supt. Rolando Garcia of PNP Benguet, C/Insp. Prospero Noble of PNP Ifugao, Supt. Rodrigo F. Licudine of the Regional Mobile Force, Supt. Juan T. Refe of Northern Luzon Training Center, Supt. Conrado R. Peregrino, Jr. of PNP Kalinga-Apayao, and Supt. Amparo Cabigas of the Headquarter Services testified that their respective signatures appearing in the Clothing Requirements and Certifications and in the said *PNP Personnel Payrolls* are forgeries because the signatures appearing above their typewritten names in said documents are not theirs and that the personnel of their respective commands listed in the Official Rosters submitted by them, never received any CCIE for the year 1992.
>
> Moreover, a close examination/scrutiny of the signatures of the personnel listed in the said *PNP Personnel Payrolls*, reveals that the said signatures were signed by one person as shown by the similarity of the style and strokes of the signatures therein which is a clear indication that said payrolls are fabricated and the personnel named therein are fictitious or non-existent.[32]

Here, Garcia and Luna were the ones who approved the PNP Personnel Payrolls containing the false entries and it was Brizuela who certified that the police personnel listed in the

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[32] *Rollo*, pp. 121-122.

payrolls received their intended CCIE when in fact they did not. Clearly, these are acts of evident bad faith at the least. In submitting fabricated and forged personnel payrolls as supporting and liquidating documents to cover up the illegal release of ₱20,000,000, petitioners orchestrated a conscious wrongdoing to serve some ulterior motive or self-interest.

Lastly, the third element of the offense — that the act of the accused caused undue injury to any party, including the Government, or gave any private party unwarranted benefit, advantage or preference in the discharge of the functions of the accused — was also established. Proof of the extent of damage is not essential, it being sufficient that the injury suffered or the benefit received is perceived to be substantial enough and not merely negligible.[33]

In the present case, the prosecution's evidence duly proved that petitioners, using their official positions, by dishonesty and breach of sworn duty, facilitated the approval and release of government funds amounting to ₱20,000,000 supposedly for the purchase of CCIE items of PNP personnel. However, the recipients of the ₱20,000,000 turned out to be fictitious PNP personnel, and up to now the ₱20,000,000 remains unaccounted for. Thus, petitioners should be made liable for their deceit and misrepresentation and should compensate the government for the actual damage the government has suffered.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 14 October 2010 and Resolutions dated 9 March 2011 and 1 June 2011 of the Sandiganbayan in Criminal Case No. 20574.

SO ORDERED.

Brion, del Castillo, Perez, and *Reyes,*[*] *JJ.,* concur.

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[33] *Reyes v. People of the Philippines*, G.R. Nos. 177105-06, 4 August 2010, 626 SCRA 782, citing *Fonacier v. Sandiganbayan*, G.R. No. 50691, 5 December 1994, 238 SCRA 655, 688.

[*] Designated acting member per Special Order No. 1650 dated 13 March 2014.

FIRST DIVISION

[G.R. Nos. 197942-43, 199528. March 26, 2014]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION, *petitioner, vs.* **THUNDERBIRD PILIPINAS HOTELS AND RESORTS, INC., EASTBAY RESORTS, INC., and HON. CICERO JURADO, JR., Presiding Judge, Regional Trial Court of Manila, Branch 11,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN EXTENDING THE 72-HOUR TEMPORARY RESTRAINING ORDER TO 20 DAYS.— [T]he Court does not now find that Judge Jurado acted in bad faith or with ill will or malicious motive when he granted the TRO extension and later the preliminary injunction. It would have been irregular and unreasonable for him to act on the extension of the 72-hour TRO on June 6, 2011 when the cases were first raffled to him, and besides, under Rule 58 he had 24 hours to act thereon. On the other hand, PAGCOR should have refrained, but deliberately did not, from serving its closure orders on the respondents on June 7, 2011, knowing very well that a summary hearing was to be held that same morning on their TRO application. Indeed, seen in light of the preceding acts of PAGCOR, it can hardly be said that it acted with fairness toward the respondents so as to be permitted now to blithely take issue with the extension of the 72-hour TRO. For truly, what is of compelling consideration here is that PAGCOR was accorded notice and a chance to be heard, and when the trial court later resolved to grant the writ of preliminary injunction, it did so after hearing it out, within the 20-day TRO.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WHERE A PARTY IS NOT JUSTIFIED IN FAILING TO FILE A REQUISITE MOTION FOR RECONSIDERATION.— While the question of whether to give due course to the petitions is addressed to the discretion of the Court, it behooves PAGCOR

to observe the applicable rules and keep in mind that the Court will not take lightly any non-observance of our settled rules as if they are mere technicalities. A motion for reconsideration is a condition *sine qua non* for the special civil action of *certiorari.* As we discussed in *Republic of the Philippines v. Abdulwahab A. Bayao, et al.*: The settled rule is that a Motion for Reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari.* Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case. x x x [T]here is no justification for PAGCOR dispensing with a motion for reconsideration, since an earlier case, *PAGCOR v. Fontana Development Corporation*, has delved into the same points it raised here.

3. ID.; ID.; ID.; HIERARCHY OF COURTS; A PARTY HAS NO UNRESTRICTED FREEDOM OF CHOICE OF FORUM, BUT MUST STRICTLY OBSERVE THE HIERARCHY OF THE COURTS.— [T]hese petitions deal with the manner PAGCOR has exercised its licensing and regulatory powers over the respondent casino operators. The Court sees no novel issues of transcendental importance to justify its action of skipping the hierarchy of the courts and coming directly to us *via certiorari* petition. As explained in *Emmanuel A. De Castro v. Emerson S. Carlos*, although Section 5(1) of Article VIII of the 1987 Constitution explicitly provides that the Supreme Court has original jurisdiction over petitions for *certiorari,* prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, the jurisdiction of the Supreme Court is not exclusive but concurrent with that of the CA and RTC. The petitioner has no unrestricted freedom of choice of forum, but must strictly observe the hierarchy of the courts.

4. CIVIL LAW; CONTRACTS; GOVERNMENT CONTRACT; WHERE THE AGREEMENTS OF THE PARTIES ARE NOT CONCERNED SOLELY WITH THE MATTER OF THE GRANT, RENEWAL OR EXTENSION OF A FRANCHISE TO OPERATE A CASINO, BUT THEY REQUIRE THE PROPONENT TO MAKE LONG-TERM, MULTI-BILLION INVESTMENTS.— [T]he instant petitions do not deal merely with the matter of renewal or extension of the respondents' casino franchises. The parties' MOAs, and the amendments

thereto, disclose without a doubt that the respondents' multi-billion investment commitment in their resort complexes is integrally conditioned upon the government's promise of a concomitant casino franchise, provided they comply with their investment timetables, among other things, a matter which is precisely the subject of PAGCOR's licensing and regulatory functions. The government's objectives or motives under its investment agreements with the respondents are plain. It wants to encourage large, long-term investments in tourism-oriented resorts and facilities, by offering the investor a franchise to operate a casino therein, should it choose, from which the government will also derive a hefty share in the gaming revenues. But it needs no elaboration that the new terms imposed by PAGCOR amply demonstrate the onerous nature of such an investment agreement to put up an entirely new casino hotel/resort complex. x x x [T]he respondents were made to understand that PAGCOR can always revoke their casino franchises for violation of their investment commitments or their license, and Thunderbird Pilipinas knew that it might even lose its shares in FCR to PAGCOR. But as it happened, without prior determination of violation by the respondents of their MOAs, PAGCOR simply informed the respondents on June 7, 2011 that it was closing their casino operations, after they refused to accede to its new terms of reference. Under the parties' MOAs, the court would clearly need to first determine if there are any factual bases for PAGCOR's closure order, pursuant to the court's duty to determine "*whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.*" PAGCOR is not then correct to insist that it is raising only a pure question of law, that is, whether or not the respondents have a clear and unquestioned legal right to continue operating a casino. This is only half of the issue, the other half being whether the respondents violated the terms of their MOAs.

5. ID.; ID.; ID.; ID.; THE ENFORCEABILITY OF THE FRANCHISE CONTAINED IN AN AGREEMENT COVERING AN INVESTMENT TO ESTABLISH AND OPERATE A CASINO RESORT COMPLEX HAS ALREADY BEEN UPHELD IN AN EARLIER CASE.— The Court held [in *PAGCOR v. Fontana Development Corporation*] that FDC's

complaint for injunction was based on a claim of violation of the MOA by PAGCOR, and under Section 19 of Batas Pambansa Bilang 129, the RTC of Manila has jurisdiction over FDC's complaint. The Court further held that PAGCOR "has no legal basis for nullifying or recalling the MOA with FDC and replacing it with its new Standard Authority to Operate (SAO). There is no infirmity in the MOA, as it was validly entered by PAGCOR under [P.D. No.] 1869 and remains valid until legally terminated in accordance with the MOA." x x x In stressing that PAGCOR is contractually bound by its MOA with FDC, the Court said: As parties to the MOA, FDC and PAGCOR bound themselves to all its provisions. After all, the terms of a contract have the force of law between the parties, and courts have no choice but to enforce such contract so long as they are not contrary to law, morals, good customs, or public policy. A stipulation for the **term or period** for the effectivity of the MOA to be **co-terminus with term of the franchise of PAGCOR including any extension** is not contrary to law, morals, good customs, or public policy. x x x In conclusion, PAGCOR's sole and exclusive authority to restrict and control the operation of gambling casinos in the country cannot be said to be absolute, but must be exercised with due regard to the terms of its agreement with the licensee. This is specially so when the grant of a particular franchise to operate a casino is hinged on an entire investment agreement to establish a resort complex requiring a significant infusion of capital, wherein the investor must invest not just in a casino operation but in a complete hotel/resort complex which would house it.

APPEARANCES OF COUNSEL

In-house Counsels PAGCOR Corporate Office and *Government Corporate Counsel* for petitioner.

Medialdea Ata Bello Guevarra & Suarez for respondents.

D E C I S I O N

REYES, *J.*:

Three consolidated petitions for *certiorari,* all between the same parties, are before us. Petitioner Philippine Amusement

and Gaming Corporation (PAGCOR), represented by the Office of the Government Corporate Counsel, claiming to interpose only pure questions of law, comes directly to this Court seeking to annul the Order[1] and Writ of Injunction[2] issued on June 23, 2011 by the Regional Trial Court (RTC) of Manila, Branch 11, in Civil Case Nos. 11-125832-33, as well as its Amended Order[3] dated October 13, 2011 and Writ of Preliminary Mandatory Injunction[4] dated October 18, 2011, for grave abuse of discretion amounting to lack or excess of jurisdiction.

Antecedent Facts

Presidential Decree (P.D.) No. 1067-A[5] created PAGCOR on January 1, 1977 with the task to "centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by laws." Then, under P.D. No. 1869, promulgated on July 11, 1983, all presidential decrees relative to the franchise and powers of PAGCOR, namely, P.D. Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, were consolidated into one statute and charter for PAGCOR. Sections 1(b) and 10 of P.D. No. 1869 provide:

SEC. 1. Declaration of Policy. – It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:

x x x x x x x x x

b) To establish and operate clubs and casinos, for amusement and recreation, including sports gaming pools (basketball, football, lotteries, *etc.*) and such other forms of amusement and recreation

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[1] Issued by Presiding Judge Cicero D. Jurado, Jr., *rollo* (G.R. Nos. 197942-43), pp. 50-55.

[2] *Id.* at 56-57.

[3] *Id.* at 452-458. *See* also *rollo* (G.R. No. 199528), pp. 58-64.

[4] *Rollo* (G.R. No. 199528), pp. 65-66.

[5] CREATING THE PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will: x x x (3) minimize, if not totally eradicate, the evils, malpractices and corruptions that are normally prevalent in the conduct and operation of gambling clubs and casinos without direct government involvement.

x x x x x x x x x

TITLE IV – GRANT OF FRANCHISE

SEC. 10. *Nature and Term of Franchise*. – Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privileges and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, *i.e.* basketball, football, lotteries, *etc.* whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.

On June 20, 2007, Republic Act (R.A.) No. 9487 amended P.D. No. 1869 by extending PAGCOR'S franchise by 25 years after July 11, 2008, renewable for another 25 years, while also expanding and circumscribing its corporate powers.[6]

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[6] Section 10 of P.D. No. 1869 would now read:

SEC. 10. *Nature and Term of Franchise*. – Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five (25) years, the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, *i.e.* basketball, football, bingo, *etc.* except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: *Provided*, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations.

The operation of slot machines and other gambling paraphernalia and equipment, shall not be allowed in establishments open or accessible to the general public unless the site of these operations are three-star hotels and resorts accredited by the Department of Tourism authorized by the corporation and by the local government unit concerned.

The authority and power of the PAGCOR to authorize, license and regulate games of chance, games of cards and games of numbers shall not extend to: (1) games of chance authorized, licensed and regulated or to be authorized, licensed and regulated by, in, and under existing franchises or other regulatory

Under Section 3(h) of P.D. No. 1869, PAGCOR is empowered "to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, x x x, whether as principal or as an agent, x x x with any person, firm, association, or corporation."[7] Thus, on November 9, 2004, respondent Eastbay Resorts, Inc. (ERI) and its foreign principal, International Thunderbird Gaming Corporation of Canada (Thunderbird), entered into a Memorandum of Agreement (MOA)[8] with PAGCOR whereby Thunderbird through ERI committed to invest the initial sum of US$7.5 Million in their gaming and leisure operations in Fiesta Hotel and Casino (FHC) in Eastbay Arts Recreational and Tourism Zone, Binangonan, Rizal. To secure ERI's compliance with the MOA, the amount was placed in escrow.

For its part, PAGCOR granted ERI a six-month provisional authority to operate (ATO) a casino in FHC, but maintained its "sole option" to revoke or terminate the said ATO should ERI and Thunderbird commit any material default of their undertakings, or violate any laws or rules relative to the operation

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bodies; (2) games of chance, games of cards and games of numbers authorized, licensed, regulated by, in, and under special laws such as Republic Act No. 7922; and (3) games of chance, games of cards and games of numbers like cockfighting, authorized, licensed and regulated by local government units. The conduct of such games of chance, games of cards and games of numbers covered by existing franchises, regulatory bodies or special laws, to the extent of the jurisdiction and powers granted under such franchises and special laws, shall be outside the licensing authority and regulatory powers of the PAGCOR.

[7] SEC. 3. *Corporate Powers*. –

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(h) to enter into, make, conclude, perform, and carry out contracts of every kind and nature and for any lawful purpose which are necessary, appropriate, proper or incidental to any business or purpose of the PAGCOR, including but not limited to investment agreements, joint venture agreements, management agreements, agency agreements, whether as principal or as an agent, manpower supply agreements, or any other similar agreements or arrangements with any person, firm, association or corporation.

[8] *Rollo* (G.R. Nos. 197942-43), pp. 190-197.

of a casino in FHC, or fail to remedy the same within 30 days, or become bankrupt, and for any other analogous situation.[9]

On May 19, 2005, in a document simply called Agreement,[10] PAGCOR granted ERI and Thunderbird a "permanent" ATO co-terminus with PAGCOR's franchise, or up to July 11, 2008, followed on January 18, 2006 by another document, Addendum to the Agreement,[11] wherein ERI agreed to invest ₱2.5 Billion (US$31.2 Million) more for Phases 1-2 of FHC over seven years ending in 2012, contingent on the following events:

- PAGCOR is given a new franchise or its present franchise is extended beyond July 11, 2008;
- The authority of PAGCOR to grant license to operate a private casino within special economic zones falls within the scope of the new franchise or the extended franchise, whichever is applicable; and
- PAGCOR grants unto [ERI] and THUNDERBIRD extension of the authority to operate the [FHC].[12]

On April 11, 2006, PAGCOR and respondent Thunderbird Pilipinas Hotel and Resorts, Inc. (Thunderbird Pilipinas), a newly-formed local affiliate of ERI now representing their foreign principal, Thunderbird, executed another MOA[13] whereby Thunderbird Pilipinas committed to invest a total of US$100 Million, or ₱5.2 Billion, in Fiesta Casino and Resort (FCR), a gaming and leisure complex in Poro Point Special Economic and Freeport Zone (PPSEFZ), San Fernando City, La Union. For Phase 1 of FCR, Thunderbird Pilipinas would deposit in escrow the initial amount of ₱162.3 Million, while PAGCOR would grant it a six-month provisional ATO a casino. And since Phases 2-5 of FCR to complete the US$100 Million investment would extend beyond July 11, 2008, it was also

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[9] *Id*.

[10] *Id.* at 200-210.

[11] *Id.* at 211-219.

[12] *Id.* at 212.

[13] *Id.* at 82-94.

agreed that Thunderbird Pilipinas' subsequent additional investments in FCR would be made contingent upon the following conditions happening:

- PAGCOR is given a new franchise or its present franchise is extended beyond July 11, 2008;
- The authority of PAGCOR to grant license to operate a private casino within special economic zones falls within the scope of the new franchise or the extended franchise, whichever is applicable; and
- PAGCOR grants unto THUNDERBIRD PILIPINAS extension of the authority to operate the [FCR].[14]

On October 31, 2006, the parties executed an Amendment to the Memorandum of Agreement,[15] whereby Thunderbird Pilipinas also agreed to issue a Corporate Guarantee to fund, develop and complete the FCR, failing which, it would cede and transfer over to PAGCOR its entire shares of stock in FCR, as well as lose its license to operate a casino in FCR. PAGCOR for its part granted Thunderbird Pilipinas an ATO for FCR of up to July 11, 2008, but extendible beyond the said date, under the following new provision:

> This Agreement shall be effective from the date of the execution of the Memorandum of Agreement [dated April 11, 2006] and shall be co-terminus with the present charter of PAGCOR or until July 11, 2008. The Memorandum of Agreement shall be extended for such period and under such terms and conditions as may be agreed upon by the parties in the event that PAGCOR is given a new franchise or its present franchise is extended by law beyond July 11, 2008, and that the authority of PAGCOR to grant license to operate a private casino within special economic zones falls within the scope of the new franchise or the extended franchise, whichever is applicable.[16]

In an accompanying document called License,[17] also dated October 31, 2006, Thunderbird Pilipinas' casino franchise in

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[14] *Id*. at 83.

[15] *Id.* at 96-98.

[16] *Id*. at 97.

[17] *Id*. at 99-108.

FCR was also stated to be co-terminus with PAGCOR, or until July 11, 2008, but extendible if and when PAGCOR's authority to issue licenses is extended. In the License, the terms and conditions for the operation of a gambling casino at PPSEFZ were specified, much like the earlier Agreement dated May 19, 2005 between PAGCOR, ERI and Thunderbird – the said Agreement also stated that the "grant of authority" to Thunderbird would be "co-terminus with the present charter of PAGCOR, or until July 11, 2008," but extendible if and when PAGCOR is given a new or extended franchise beyond July 11, 2008.

With the passage of R.A. No. 9487, Thunderbird Pilipinas and ERI (respondents) sought the formal extension of their ATOs to be made co-terminus with PAGCOR's new franchise, as well as extension of their development and investment schedules. On August 7, 2009, a year since the expiration of the respondents' previous ATOs, the Board of Directors of PAGCOR approved a retroactive month-to-month extension of their licenses from July 11, 2008, as well as a franchise extension of five years effective August 6, 2009. PAGCOR also extended ERI's investment timetable to July 2015, and that of Thunderbird Pilipinas to 2021.[18]

But to the disappointment of the respondents, on December 11 and 21, 2009 PAGCOR sent ERI and Thunderbird Pilipinas, respectively, separate blank renewal ATOs bearing a period of only six months retroactive to July 12, 2008.[19] Thunderbird Pilipinas' 4-page blank ATO, called Renewal of Authority to Operate, adverted to its investment commitment in their original MOA dated April 11, 2006, while the 12-page blank ATO of ERI, called Authority to Operate, contains similar terms of reference for casino operations as those stipulated in the October 31, 2006 license of Thunderbird Pilipinas. The respondents refused to accede to the blank ATOs, reiterating their understanding in their letter[20] dated March 30, 2010 that under their MOAs,

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[18] *Id*. at 109-110, 221-222.

[19] *Id.* at 111-115, 223-235.

[20] *Id.* at 116-119, 236-239.

their ATOs should be co-terminus with the new charter of PAGCOR. They maintained that a longer franchise was dictated by the size of their investments in the casino resorts, totaling ₱7.7 Billion; that these projects would spur tourism, economic activity and employment in Rizal and La Union; and, that an industry newcomer, Resorts World, was granted a casino franchise co-terminus with PAGCOR's, or up to 2033.

On June 2, 2010, PAGCOR wrote to Thunderbird Pilipinas that it had approved the automatic five-year extensions of its ATO up to 2033, conditioned on full and satisfactory compliance with its investment schedules.[21] The renewal ATO was to incorporate the following provision:

> The Authority to Operate is renewed commencing from the Effective Date and shall be valid for a period of five (5) years or until and including August 5, 2014. This Authority to Operate shall be automatically extended to be co-terminus with PAGCOR Charter which is until July 11, 2033 upon full compliance of THUNDERBIRD PILIPINAS of its Investment Commitment to the satisfaction of PAGCOR.[22]

Also on June 2, 2010, PAGCOR advised ERI that its revised ATO would incorporate a provision stipulating the new period, *viz*:

> **"Period"** refers to the five (5)[-]year period until and including August 5, 2014. This Authority to Operate shall be automatically extended to be co-terminus with the PAGCOR Charter which is until July 11, 2033 upon full compliance by [ERI] of its Investment Commitment, to the satisfaction of PAGCOR.[23]

On July 8, 2010, the respondents again wrote to ask for their renewal of ATOs;[24] but on November 2, 2010, now under a new Board of Directors appointed by newly-elected President

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[21] *Id.* at 120.

[22] *Id*.

[23] *Id.* at 240.

[24] *Id*. at 121, 241.

Benigno S. Aquino III, PAGCOR instructed them to submit updated investment plans because they allegedly missed their previous investment timetables.[25] The respondents wrote back on November 30, 2010 to assure PAGCOR that they were fully compliant with their investment commitments, and again pleaded for a longer ATO, which they said they needed to attract investors.[26] On February 16, 2011, PAGCOR wrote for clarifications while pointing out discrepancies in the capitalization and timetables of the respondents, noting in particular that their clients had been mostly local, not foreign, players.[27]

On May 30, 2011, insisting that the respondents' ATOs had expired on August 6, 2009 without a renewal, PAGCOR served notice upon the respondents to cease their casino operations, as well as gave them until June 3, 2011 to signify their unconditional acceptance of its new terms of reference for their new licenses, or "PAGCOR will have no choice but to initiate cessation proceedings."[28] Among the new terms of reference were:

a. The respondents' investment commitment must be completed within three years from issue date of the new license;
b. The resort's minimum floor area must be 25,000 square meters, not counting residential, office and parking spaces;
c. All gaming areas shall have a gross floor area of 5,000 sq m;
d. A minimum of 200 hotel rooms must be available;
e. There must be a maximum of 1 gaming table per 4 hotels rooms;
f. There must be a maximum of 3 slot machines per 2 hotel rooms;
g. A three-year provisional license will be issued pending full compliance with the investment commitment, while

[25] *Id*. at 122-123, 242-243.

[26] *Id*. at 124-126, 244-246.

[27] *Id*. at 152-154, 272-274.

[28] *Id*. at 155-156, 275-276.

the regular license shall have a period of seven years; and

h. PAGCOR's franchise fees based on gross gaming revenues shall be 40% from non-junket tables, 40% from slot machines and electronic gaming machines, and 15% from junket operations.[29]

On June 2, 2011, the respondents wrote to entreat PAGCOR to honor their previous agreements, pleading in particular that their new ATOs should expire only in 2033.[30] They reasoned that under their letter-agreements dated June 2, 2010, PAGCOR already recognized the subsistence of their new ATOs, which was why it: (a) accepted the sums of ₱230,918,586.00 and ₱238,970,180.00 from Thunderbird Pilipinas and ERI, respectively, representing its cumulative participation fee of 25% in their casino revenues from July 2010 to May 2011; (b) approved the respondents' compliance with their investment commitments; and (c) granted their applications for approval over myriad details relating to their casino operations, such as importation and installation of slot machines, machine movement, marketing and promotions, *etc.*

Proceedings before the RTC

Believing that they are entitled to a new franchise co-terminus with that of PAGCOR, on June 3, 2011, Thunderbird Pilipinas and ERI each filed separate complaints against PAGCOR with the RTC, docketed as Civil Case Nos. 11-125832 and 11-125833,[31] for specific performance and damages, with application for temporary restraining order (TRO) and writ of preliminary prohibitory injunction. They asked the court to enjoin PAGCOR from initiating cessation proceedings against them, and after trial, to direct it to grant them a new ATO under the terms and conditions stipulated in their previous agreements.

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[29] *Id*.

[30] *Id*. at 157-160, 277-280.

[31] *Id*. at 59-81, 166-189.

In the afternoon of June 3, 2011, a Friday, RTC Executive Judge Amor Reyes (Judge Reyes) issued an *ex-parte* 72-hour TRO, later extended to 20 days on June 7, 2011 by Presiding Judge Cicero D. Jurado, Jr. (Judge Jurado) of Branch 11, to whom the cases were raffled on June 6, 2011, Monday. Early on June 7, 2011, Tuesday, believing that the 72-hour TRO issued by Judge Reyes had expired on June 6, 2011, PAGCOR issued a **Closure Order** against the respondents, followed the next day by the withdrawal of its monitoring teams from their casinos. Incidentally, on July 19, 2011, PAGCOR also wrote the respondents to deny their pending requests to import playing cards because "*there are no PAGCOR Monitoring Teams (PMTs) inside the Fiesta Casinos in Binangonan, Rizal and Poro Point, La Union. Under existing policies and procedures, the processing and implementation of requests are hinged on the presence of the PMT. We have no established procedures to process and evaluate requests without the PMT inside the casinos*."[32]

On June 23, 2011, Judge Jurado issued a Writ of Preliminary Prohibitory Injunction, upon a bond of ₱1 Million, enjoining PAGCOR from pursuing cessation proceedings against the respondents, to wit:

> WHEREFORE, the foregoing premises considered, let a Writ of Preliminary Prohibitory Injunction be issued in favor of Thunderbird Pilipinas Hotels and Resorts, Inc. and Eastbay Resorts, Inc. ordering defendant Philippine Amusement and Gaming Corporation, its agents, assigns, representatives, and other persons acting for or on its behalf or under its direction, to refrain from initiating and completing cessation proceedings or other similar proceedings against plaintiff Thunderbird Pilipinas Hotels and Resorts, Inc.'s business operations in the Fiesta Casino Resort in Poro Point, La Union and plaintiff Eastbay Resorts, Inc.'s business operations in Fiesta Hotel and Casino in EARTZ, Binangonan, Rizal.
>
> Let the bond for the issuance of Writs of Preliminary Prohibitory Injunction be set at [₱]1,000,000.00.
>
> SO ORDERED.[33]

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[32] *Id*. at 409.

[33] *Id*. at 55.

Without seeking a reconsideration of the said order, on August 19, 2011, PAGCOR filed directly with this Court two *certiorari* petitions, **G.R. Nos. 197942** and **197943**. Pleading transcendental importance of the issues involved, as well as claiming to raise only pure questions of law, PAGCOR argued that the respondents' casino franchise is not a contractual and demandable right ***in esse*** but a mere privilege that it can revoke any time, and that this privilege had ceased since August 6, 2009 and the respondents have been operating by mere tolerance of PAGCOR. It then sought to provisionally stop Judge Jurado from hearing the complaints or granting temporary remedies to the respondents, such as ordering the consignment of the participating fees due to it. It also sought to bar them from filing a supplemental complaint and application for writ of preliminary mandatory injunction against the closure order, lest it render moot the instant petitions.

The Court declined to suspend the proceedings below, and ordered the respondents to file their comment. But meanwhile, however, the respondents on August 22, 2011 filed below a Supplemental Complaint[34] for actual damages of ₱35 Million with application for a writ of preliminary mandatory injunction, to direct PAGCOR to:

a. Return its Monitoring Teams to the gambling operations casinos of the respondents;
b. Act upon and approve the pending applications/requests of the respondents for importation of gambling equipment and paraphernalia as well as for other matters pertaining to their gambling operations; and
c. Act upon and approve any future applications/requests of the respondents on matters pertaining to their gambling operations.[35]

PAGCOR in its Comment and Opposition[36] maintained that the new reliefs sought below by the respondents did not merely

[34] *Id.* at 375-392.

[35] *Id.* at 386.

[36] *Id.* at 416-426.

aim to supplement those they were seeking in their original complaints, but were intended to re-litigate their application for preliminary mandatory injunction for issuance of their new ATOs, which the trial court already denied. It insisted that redeploying its monitoring teams to the respondents' casinos would be premature without first establishing that they have a valid license, the very factual issue below. Moreover, the RTC would be encroaching on its exclusive licensing and regulatory powers over casinos by ordering PAGCOR to permit them to import gambling paraphernalia and equipment.

After the hearing on October 3, 2011, the trial court issued its now assailed Amended Order dated October 13, 2011, finding *prima facie* evidence that a contract to operate the subject casinos had in fact been perfected between the respondents and PAGCOR, and ordered, thus:

> WHEREFORE, the foregoing premises considered, let a Writ of Preliminary Mandatory Injunction be issued in favor of Thunderbird Pilipinas Hotels and Resorts, Inc. and Eastbay Resorts, Inc., ordering defendant Philippine Amusement and Gaming Corporation, its agents, assigns, representatives and other persons acting for or on its behalf, or under its direction, to:
>
> a) Reinstate the monitoring teams in plaintiffs' casinos;
> b) Reasonably act upon and approve plaintiffs' pending requests on matters relative to their normal casino operations including but not limited to those contained in plaintiffs' letters dated 12 April 2011 (Exhibits "A-7-PMI" to "A-8-PMI"[)], 29 June 2011 (Exhibits "A-1-PMI" and "A-2-PMI")[,] and 12 July 2011 (Exhibits "A-3-PMI" and "A-4-PMI"); and
> c) Reasonably act upon and approve all similar requests that plaintiffs may file during the pendency of this suit.
>
> Let the bond for the issuance of Writs of Preliminary Mandatory Injunction be set at ₱1,000,000.00.
>
> SO ORDERED.[37]

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[37] *Id.* at 458.

PAGCOR received the said order on October 18, 2011, and on October 21, 2011, it filed with this Court a supplement to its urgent motion[38] reiterating its prayer for TRO and/or writ of preliminary injunction against the RTC Orders dated June 23, 2011 and October 13, 2011. On December 17, 2011, PAGCOR filed its third petition, **G.R. No. 199528**,[39] to set aside the aforesaid amended order. The Court again declined to issue a TRO or a writ of preliminary injunction but ordered the respondents to file a comment. The new petition was later consolidated with G.R. No. 197942-43. After several extensions, on April 3, 2012, the respondents filed their joint comment.

But in their Manifestation[40] dated September 11, 2012, the respondents disclosed that on May 15, 2012, the parties had submitted to the trial court a Joint Manifestation and Motion to Dismiss[41] the complaints below, and to release to PAGCOR all monies consigned in its favor. They also agreed to pay other franchise fees and tax liabilities found to be still due after audit. On May 21, 2012, the trial court approved the dismissal of Civil Case Nos. 11-125832 and 11-125833, and released to PAGCOR all monies consigned in its favor.[42]

Petitions for *Certiorari* in the Supreme Court

On October 4, 2012, PAGCOR filed its Reply[43] in G.R. No. 199528, admitting the Joint Manifestation and Motion to Dismiss, but still reiterating all its arguments and urging that the main issue in its petitions, whether Judge Jurado gravely abused his discretion in issuing the writs of preliminary injunction despite the respondents' lack of a clear and unquestioned legal right to continue operating a casino, must still be resolved, for the reason that the controversy below is capable of repetition yet evading

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[38] *Id.* at 446-450.

[39] *Rollo* (G.R. No. 199528), pp. 3-56.

[40] *Id.* at 571-574.

[41] *Id.* at 575-578.

[42] *Id.* at 581.

[43] *Id.* at 593-604.

review, citing *Prof. David v. Pres. Macapagal-Arroyo*.[44] [45] PAGCOR insisted that the RTC's amended order is a full adjudication of the respondents' complaints, as a result of which Judge Jurado effectively amended PAGCOR's Charter and took over its licensing mandate when he virtually ordered it to extend their franchises. PAGCOR also argued that a motion for reconsideration therefrom would have been entirely futile, citing *Domdom v. Third and Fifth Divisions of the Sandiganbayan*,[46] [47] to wit:

> The rule [requiring the filing of a motion for reconsideration] is, however, circumscribed by well-defined exceptions, such as where the order is a patent nullity because the court *a quo* had no jurisdiction; where **the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;** where **there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests** of the Government or **of the petitioner**, or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where the petitioner was deprived of due process and there is extreme urgency for relief; where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and where **the issue raised is one purely of law** or where public interest is involved.[48] (Citation omitted and emphasis supplied)

PAGCOR interposed two exceptions in *Domdom*: first, the prejudice against the government is clear, since it would lose millions in revenues from the respondents' casino operations

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[44] 522 Phil. 705 (2006).

[45] *Rollo* (G.R. No. 199528), p. 595.

[46] G.R. Nos. 182382-83, February 24, 2010, 613 SCRA 528.

[47] *Rollo* (G.R. No. 199528), p. 599.

[48] *Supra* note 46, at 533.

under the parties' earlier terms of reference; and second, whether Judge Jurado gravely abused his discretion in issuing the assailed orders involves purely questions of law.

PAGCOR further cited *Manila International Airport Authority, et al. v. Olongapo Maintenance Services, Inc., et al.*,[49] where the Court held that a mandatory injunction being an extreme remedy should be granted only upon a showing that: (a) the invasion of the right 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.[50] Moreover, in *China Banking Corp., et al. v. Co, et al.*,[51] we ruled that:

> Since a preliminary mandatory injunction commands the performance of an act, it does not preserve the *status quo* and is thus more cautiously regarded than a mere prohibitive injunction. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. **When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunction relief is improper**.[52] (Citations omitted and emphasis ours)

Our Ruling

The Court resolves to dismiss the instant petitions on several procedural and substantive grounds.

1. There is no more actual case or controversy to resolve, since the petitions have been mooted by the dismissal of the complaints below.

The Constitutional mandate of the courts in our triangular system of government is clear, so that as a necessary requisite

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[49] 567 Phil. 255 (2008).

[50] *Id.* at 272.

[51] 587 Phil. 380 (2008).

[52] *Id.* at 386-387.

of the exercise of judicial power there must be, with a few exceptions, an actual case or controversy involving a conflict of legal rights or an assertion of opposite legal claims susceptible of judicial resolution, not merely a hypothetical or abstract difference or dispute.[53] As Article VIII, Section 1 of the 1987 Constitution provides, "*[j]udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.*" As elaborated in *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), et al.*,[54] an actual case or controversy will assure that the courts will not intrude into areas committed to the other branches of government, to wit:

> The power of judicial review is limited to actual cases or controversies. Courts decline to issue advisory opinions or to resolve hypothetical or feigned problems, or mere academic questions. The limitation of the power of judicial review to actual cases and controversies defines the role assigned to the judiciary in a tripartite allocation of power, to assure that the courts will not intrude into areas committed to the other branches of government.
>
> An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. The Court can decide the constitutionality of an act or treaty only when a proper case between opposing parties is submitted for judicial determination.[55] (Citations omitted)

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[53] *Didipio Earth Savers' Multi-Purpose Association, Incorporated v. Sec. Gozun*, 520 Phil. 457 (2006).

[54] 589 Phil. 387 (2008).

[55] *Id.* at 480-481.

With the parties agreeing to end their differences before trial proper, the instant petitions have ceased to present a justiciable controversy for us to resolve.[56] However, as PAGCOR itself has importuned, there are procedural as well as substantive issues of such importance which it hopes this Court would help clarify for the guidance of future litigants. So shall We proceed.

2. The trial court did not abuse its discretion in extending the 72-hour TRO to 20 days.

On one particular point of controversy, PAGCOR has been insistent that the court *a quo* has no power to extend an "already" expired 72-hour *ex-parte* TRO. But the facts will clarify the matter. Civil Case Nos. 11-125832-33 were filed on June 3, 2011, a Friday, and at 4:30 that same afternoon, Judge Reyes issued an *ex-parte* 72-hour TRO to hold off any cessation proceedings threatened by PAGCOR against the respondents.[57] The next two days being a weekend, it was only on June 6, 2011, Monday, that the cases were raffled to Judge Jurado. The Court shall presume that notices, summons and copies of the complaints were duly served on PAGCOR, since it has been silent on the matter.

On June 7, 2011, Tuesday, Judge Jurado conducted a summary hearing on the respondents' TRO application, and when he granted the same,[58] PAGCOR verbally moved for reconsideration on the ground that Judge Reyes' 72-hour TRO had already expired and could no longer be extended. Judge Jurado denied the motion, saying that his TRO was based on his summary hearing wherein testimonies and documents were presented by the parties, whereas the 72-hour TRO issued by Judge Reyes was based merely on the respondents' initiatory

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[56] *Madriaga, Jr. v. China Banking Corporation*, G.R. No. 192377, July 25, 2012, 677 SCRA 560, 568-569, citing *Suplico v. National Economic and Development Authority, et al*., 580 Phil. 301, 323 (2008) and *Osmeña III v. Social Security System of the Philippines*, 559 Phil. 723, 735 (2007).

[57] *Rollo* (G.R. No. 199528), pp. 450-451.

[58] *Id.* at 452-455.

pleadings. However, as Judge Jurado noted in his assailed Order[59] of June 23, 2011, PAGCOR preempted his order extending the 72-hour TRO, which was the very subject of the hearing on June 7, 2011, when it served its closure orders upon the respondents at their offices that same morning.

On June 13 and 16, 2011, the trial court heard the respondents' applications for writ of preliminary prohibitory injunction against PAGCOR's cessation order. On June 23, 2011, the 20th and last day of the TRO, Judge Jurado issued the writ. As already noted, without moving for reconsideration, PAGCOR went up directly to this Court on *certiorari.*

Concerning the grant of a writ of preliminary injunction or a TRO, the pertinent provisions of the Rules of Court are found in Sections 4 and 5 of Rule 58, *viz*:

SEC. 4. x x x

x x x x x x x x x

(c) When an application for a writ of preliminary injunction or a temporary restraining order is included in a complaint or any initiatory pleading, the case, if filed in a multiple-sala court, shall be raffled only after notice to and in the presence of the adverse party or the person to be enjoined. In any event, such notice shall be preceded, or contemporaneously accompanied by service of summons, together with a copy of the complaint or initiatory pleading and the applicant's affidavit and bond, upon the adverse party in the Philippines.

However, where the summons could not be served personally or by substituted service despite diligent efforts, or the adverse party is a resident of the Philippines temporarily absent therefrom or is a non-resident thereof, the requirement of prior or contemporaneous service of summons shall not apply.

(d) **The application for a temporary restraining order shall thereafter be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the sheriff's return of service and/or the records**

[59] *Id.* at 606-611.

are received by the branch selected by raffle and to which the records shall be transmitted immediately.

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

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

x x x (Emphasis ours)

PAGCOR invoked as authority the case of *Lago v. Abul, Jr.*[60] to argue that Judge Jurado could not extend the 72-hour TRO granted by Judge Reyes. There, a case for injunction with TRO was filed on July 2, 2009 in the multi-sala RTC of

[60] A.M. No. RTJ-10-2255, January 17, 2011, 639 SCRA 509.

Gingoog City, but allegedly without notice to the adverse party and without raffle, Judge Godofredo Abul, Jr. (Judge Abul) assumed the case, and on July 7, 2009 (a Tuesday) issued a 72-hour TRO. It was only on July 14, 2009, or after seven days, that he issued the order extending the TRO, "for another period provided that the total period should not exceed twenty (20) days." But by then the 72-hour TRO had long expired.

At first, the Court agreed with the Court Administrator that Judge Abul was grossly ignorant of the law and violated Rule 58 of the Rules of Court, on account of the following acts: (1) when the civil complaint with prayer for a TRO was filed on July 2, 2009, he assumed jurisdiction, and without a raffle and notification and service of summons to the adverse party, issued a 72-hour TRO on July 7, 2009; (2) when he set the case for summary hearing on July 14, 2009 to determine whether the TRO could be extended for another period, whereas the hearing should have been conducted within the 72-hour TRO; (3) when he eventually granted an extension of an already expired TRO to a full 20-day period; and (4) when he issued a writ of preliminary injunction without prior notice to complainants and without hearing.

PAGCOR forgot to mention, however, that the Court eventually granted Judge Abul's motion for reconsideration,[61] and dismissed the complaint against him. The Court found that in fact he did order the service of summons to the defendants on July 7, 2009, which could however be served only on July 8, 2009 (Wednesday) because the law office of the adverse counsel was 144 kilometers from Gingoog City. Moreover, a summary hearing could not be held within the 72-hour TRO because Judge Abul had hearings scheduled on July 9 (Thursday), 10 (Friday) and 13 (Monday), 2009 in his permanent station in RTC, Branch 4, Butuan City. The Court said:

Under the circumstances, Judge Abul should not be penalized for failing to conduct the required summary hearing within 72 hours

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[61] *Lago v. Abul, Jr.*, A.M. No. RTJ-10-2255, February 8, 2012, 665 SCRA 247.

from the issuance of the original TRO. Though the Rules require the presiding judge to conduct a summary hearing before the expiration of the 72 hours, it could not, however, be complied with because of the remoteness and inaccessibility of the trial court from the parties' addresses. The importance of notice to all parties concerned is so basic that it could not be dispensed with. The trial court cannot proceed with the summary hearing without giving all parties the opportunity to be heard.

It is a settled doctrine that judges are not administratively responsible for what they may do in the exercise of their judicial functions when acting within their legal powers and jurisdiction. Not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.

To constitute gross ignorance of the law, it is not enough that the subject decision, order or actuation of the respondent judge in the performance of his official duties is contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty or corruption.

In this case, complainants failed to show that Judge Abul was motivated by bad faith, ill will or malicious motive when he granted the TRO and preliminary injunction. Complainants did not adduce any proof to show that impropriety and bias attended the actions of the respondent judge.[62] (Citations omitted)

As in *Lago*, the Court does not now find that Judge Jurado acted in bad faith or with ill will or malicious motive when he granted the TRO extension and later the preliminary injunction. It would have been irregular and unreasonable for him to act on the extension of the 72-hour TRO on June 6, 2011 when the cases were first raffled to him, and besides, under Rule 58 he had 24 hours to act thereon. On the other hand, PAGCOR should have refrained, but deliberately did not, from serving its closure orders on the respondents on June 7, 2011, knowing

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[62] *Id.* at 250-251.

very well that a summary hearing was to be held that same morning on their TRO application. Indeed, seen in light of the preceding acts of PAGCOR, it can hardly be said that it acted with fairness toward the respondents so as to be permitted now to blithely take issue with the extension of the 72-hour TRO. For truly, what is of compelling consideration here is that PAGCOR was accorded notice and a chance to be heard, and when the trial court later resolved to grant the writ of preliminary injunction, it did so after hearing it out, within the 20-day TRO.

3. PAGCOR is not justified in failing to file a requisite motion for reconsideration, and to observe the hierarchy of courts.

While the question of whether to give due course to the petitions is addressed to the discretion of the Court,[63] it behooves PAGCOR to observe the applicable rules and keep in mind that the Court will not take lightly any non-observance of our settled rules as if they are mere technicalities.[64] A motion for reconsideration is a condition *sine qua non* for the special civil action of *certiorari.* As we discussed in *Republic of the Philippines v. Abdulwahab A. Bayao, et al.*:[65]

> The settled rule is that a Motion for Reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari.* Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case.
>
> This rule admits well-defined exceptions as follows:
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> > Concededly, the settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.

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[63] *Chong v. Dela Cruz*, G.R. No. 184948, July 21, 2009, 593 SCRA 311, 313-314.

[64] *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603, 611 (2001).

[65] G.R. No. 179492, June 5, 2013.

> Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[66] (Citations omitted)

As will become more evident in our latter discussion, there is no justification for PAGCOR dispensing with a motion for reconsideration, since an earlier case, *PAGCOR v. Fontana Development Corporation*,[67] has delved into the same points it raised here.

At their roots, these petitions deal with the manner PAGCOR has exercised its licensing and regulatory powers over the respondent casino operators. The Court sees no novel issues of transcendental importance to justify its action of skipping the hierarchy of the courts and coming directly to us *via certiorari* petition. As explained in *Emmanuel A. De Castro v. Emerson*

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[66] *Id*.

[67] G.R. No. 187972, June 29, 2010, 622 SCRA 461.

S. Carlos,[68] although Section 5(1) of Article VIII of the 1987 Constitution explicitly provides that the Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, the jurisdiction of the Supreme Court is not exclusive but concurrent with that of the CA and RTC. The petitioner has no unrestricted freedom of choice of forum, but must strictly observe the hierarchy of the courts.

Settled is the rule that "the Supreme Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition." A disregard of the doctrine of hierarchy of courts warrants, as a rule, the outright dismissal of a petition.

A direct invocation of this Court's jurisdiction is allowed only when there are special and important reasons that are clearly and specifically set forth in a petition. The rationale behind this policy arises from the necessity of preventing (1) inordinate demands upon the time and attention of the Court, which is better devoted to those matters within its exclusive jurisdiction; and (2) further overcrowding of the Court's docket.

In this case, petitioner justified his act of directly filing with this Court only when he filed his Reply and after respondent had already raised the procedural infirmity that may cause the outright dismissal of the present Petition. Petitioner likewise cites stability in the civil service and protection of the rights of civil servants as rationale for disregarding the hierarchy of courts.

Petitioner's excuses are not special and important circumstances that would allow a direct recourse to this Court. More so, mere speculation and doubt to the exercise of judicial discretion of the lower courts are not and cannot be valid justifications to hurdle the hierarchy of courts. Thus, the Petition must be dismissed.[69] (Citations omitted)

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[68] G.R. No. 194994, April 16, 2013.

[69] *Id*.

4. The MOAs of the parties are not concerned solely with the matter of the grant, renewal or extension of a franchise to operate a casino, but they require as a concomitant condition that the proponents commit to make long-term, multi-billion investments in two resort complexes where they are to operate their casinos.

It is needless to state that a license[70] from PAGCOR to operate a casino is not absolute and unconditional as to constitute a right *in esse* which the licensee may enforce through a writ of injunction as a matter of law,[71] or treat as a property or a property right.[72] Truly, the licensee takes his license subject to such conditions as the grantor sees fit to impose, including its revocation at pleasure.[73] But the instant petitions do not deal merely with the matter of renewal or extension of the respondents' casino franchises. The parties' MOAs, and the amendments thereto, disclose without a doubt that the respondents' multi-billion investment commitment in their resort complexes is integrally conditioned upon the government's promise of a concomitant casino franchise, provided they comply with their investment timetables, among other things, a matter which is precisely the subject of PAGCOR's licensing and regulatory functions.

The government's objectives or motives under its investment agreements with the respondents are plain. It wants to encourage large, long-term investments in tourism-oriented resorts and facilities, by offering the investor a franchise to operate a casino

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[70] Below also referred to as a "franchise" or "authority to operate."

[71] *Secretary Boncodin v. National Power Corporation Employees Consolidated Union (NECU)*, 534 Phil. 741, 754 (2006).

[72] *Chavez v. Romulo*, G.R. No. 157036, June 9, 2004, 431 SCRA 534, 560; *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993, 224 SCRA 792, 811-812.

[73] *Chavez v. Romulo, id.*

therein, should it choose, from which the government will also derive a hefty share in the gaming revenues. But it needs no elaboration that the new terms imposed by PAGCOR amply demonstrate the onerous nature of such an investment agreement to put up an entirely new casino hotel/resort complex. Moreover, PAGCOR now demands that the respondents complete their investment commitments within a much-shortened period of three years, instead of up to 2015 or 2021; then, each resort must have a minimum of 200 hotel rooms, a minimum space of 25,000 sq m, not counting residential, office and parking spaces, and maximum gaming spaces of 5,000 sq m with a maximum of 1 gaming table per 4 hotel rooms and 3 slot machines per 2 hotel rooms; PAGCOR's share in the gaming receipts would be increased to 40% from non-junket tables, 40% from slot machines and electronic gaming machines, and 15% from junket operations; lastly, the respondents get a three-year provisional license pending full compliance with their investment commitments, while their regular license would be for seven years only, not up to 2033.

By the sheer amount of the investments required in FCR, in far-away Poro Point, San Fernando City, La Union, and in FHC, in remote Binangonan, Rizal, totaling some ₱7.7 Billion, the government needed to entice the respondents by allowing them to operate casinos in their said resorts, with the franchise periods made to depend on the actual progress of the development phases of the projects. Thus, the ATO was initially for six months; then it was up to July 11, 2008, the end of PAGCOR's original franchise; and finally, it would be made co-terminus with PAGCOR's new franchise, or up to 2033.

Nonetheless, the respondents were made to understand that PAGCOR can always revoke their casino franchises for violation of their investment commitments or their license, and Thunderbird Pilipinas knew that it might even lose its shares in FCR to PAGCOR. But as it happened, without prior determination of violation by the respondents of their MOAs, PAGCOR simply informed the respondents on June 7, 2011 that it was closing their casino operations, after they refused to accede to its new terms of reference. Under the parties' MOAs, the court would

clearly need to first determine if there are any factual bases for PAGCOR's closure order, pursuant to the court's duty to determine *"whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."*[74] PAGCOR is not then correct to insist that it is raising only a pure question of law, that is, whether or not the respondents have a clear and unquestioned legal right to continue operating a casino. This is only half of the issue, the other half being whether the respondents violated the terms of their MOAs.

5. The enforceability of the franchise contained in a MOA covering an investment agreement to establish and operate a casino resort complex has been upheld in *PAGCOR v. Fontana Development Corporation*.

In an earlier and very similar case, *PAGCOR v. Fontana Development Corporation*,[75] PAGCOR on December 23, 1999, granted Fontana Development Corporation (FDC) a non-exclusive license to engage in casino gaming and amusement operations inside the Clark Special Economic Zone (CSEZ), under a MOA provision that its license shall be *"co-terminus with the Charter of PAGCOR, or any extension thereof, and shall be for the period hereinabove defined."* But on July 18, 2008, now with its franchise extended for 25 years, PAGCOR informed FDC that it was renewing its MOA on a month-to-month basis only until the renewal of its ATO is finalized, to which FDC protested, insisting that its franchise was co-terminus with that of PAGCOR. On October 6, 2008, PAGCOR notified FDC that its new standard 10-year ATO would now regulate its casino operations in place of the previous MOA. On November 5, 2008, PAGCOR instructed FDC to remit its franchise fees in accordance with the ATO. FDC filed an injunction suit in the RTC, claiming its franchise is co-terminus with that of PAGCOR. It also claimed that it

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[74] 1987 CONSTITUTION, Article VIII, Section 1.

[75] *Supra* note 67.

had faithfully complied with the conditions of its MOA, and had already spent ₱1 Billion in its hotel-casino complex in CSEZ, adopted a marketing strategy to attract high roller casino players from Asia, and met all its obligations to PAGCOR and other government agencies.

The Court held that FDC's complaint for injunction was based on a claim of violation of the MOA by PAGCOR, and under Section 19 of Batas Pambansa Bilang 129, the RTC of Manila has jurisdiction over FDC's complaint. The Court further held that PAGCOR "has no legal basis for nullifying or recalling the MOA with FDC and replacing it with its new Standard Authority to Operate (SAO). There is no infirmity in the MOA, as it was validly entered by PAGCOR under [P.D. No.] 1869 and remains valid until legally terminated in accordance with the MOA."[76] Concerning the invalidity of the 10-year SAO which PAGCOR offered to FDC, the Court was emphatic:

> Lastly, the Court has to point out that the issuance of the 10-year SAO by PAGCOR in lieu of the MOA with FDC is a breach of the MOA. The MOA in question was validly entered into by PAGCOR and FDC on December 23, 1999. It embodied the license and authority to operate a casino, the nature and extent of PAGCOR's regulatory powers over the casino, and the rights and obligations of FDC. Thus, the MOA is a valid contract with all the essential elements required under the Civil Code. The parties are then bound by the stipulations of the MOA subject to the regulatory powers of PAGCOR. Well-settled is the rule that a contract voluntarily entered into by the parties is the law between them and all issues or controversies shall be resolved mainly by the provisions thereof.[77] (Citation omitted)

In stressing that PAGCOR is contractually bound by its MOA with FDC, the Court said:

> As parties to the MOA, FDC and PAGCOR bound themselves to all its provisions. After all, the terms of a contract have the force of law between the parties, and courts have no choice but to enforce such contract so long as they are not contrary to law, morals, good

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[76] *Id.* at 480.

[77] *Id.* at 481.

customs, or public policy. A stipulation for the **term or period** for the effectivity of the MOA to be **co-terminus with term of the franchise of PAGCOR including any extension** is not contrary to law, morals, good customs, or public policy.

It is beyond doubt that PAGCOR did not revoke or terminate the MOA based on any of the grounds enumerated in No. 1 of Title VI, nor did it terminate it based on the period of effectivity of the MOA specified in Title I and Title II, No. 4 of the MOA. Without explicitly terminating the MOA, PAGCOR simply informed FDC on July 18, 2008 that it is giving the latter an extension of the MOA on a month-to-month basis in gross contravention of the MOA. Worse, PAGCOR informed FDC only on October 6, 2008 that the MOA is deemed expired on July 11, 2008 without an automatic renewal and is replaced with a 10-year SAO. Clearly it is in breach of the MOA's stipulated effectivity period which is co-terminus with that of the franchise granted to PAGCOR in accordance with Sec. 10 of PD 1869 **including any extension**. Hence, PAGCOR's disregard of the MOA is without legal basis and must be nullified. PAGCOR has to respect the December 23, 1999 MOA it entered into with FDC, especially considering the huge investment poured into the project by the latter in reliance and pursuant to the MOA in question.[78] (Citation omitted and emphasis supplied)

In conclusion, PAGCOR's sole and exclusive authority to restrict and control the operation of gambling casinos in the country cannot be said to be absolute, but must be exercised with due regard to the terms of its agreement with the licensee. This is specially so when the grant of a particular franchise to operate a casino is hinged on an entire investment agreement to establish a resort complex requiring a significant infusion of capital, wherein the investor must invest not just in a casino operation but in a complete hotel/resort complex which would house it.

WHEREFORE, premises considered, the petitions are **DISMISSED**.

SO ORDERED.

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

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[78] *Id.* at 483-484.

FIRST DIVISION

[G.R. No. 201732. March 26, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESUS BURCE,** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; QUALIFIED RAPE; EVERY CHARGE OF RAPE IS SEPARATE AND DISTINCT; ACQUITTAL IN OTHER RAPE CASES DOES NOT NECESSARILY RESULT IN ACQUITTAL IN ALL CASES.— We stress, at the outset, that each and every charge of rape is a separate and distinct crime so that each of them should be proven beyond reasonable doubt. The prosecution is required to establish, by the necessary quantum of proof, the elements of rape for each charge. Therefore, Burce's acquittal in RTC'08-0170 to RTC'08-0173 does not necessarily result in his acquittal in RTC'08-0169. While the prosecution presented the same witnesses for all the cases, the content, credibility, and weight of their testimonies differ for each charge.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT.— Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon us. As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.

3. ID.; ID.; ID.; THE NARRATION OF THE WITNESS AND HER POSITIVE IDENTIFICATION OF THE ACCUSED ARE WORTHY OF BELIEF.— Burce's conviction in RTC'08-0169 is essentially dependent upon AAA's testimony recounting how her father raped her on December 10, 2005. The RTC, as affirmed by the Court of Appeals, gave more weight to AAA's testimony rather than Burce's denial and alibi. x x x After a careful review, this Court is convinced that AAA's unwavering narration of how she was raped on December 10, 2005, together with her positive identification of her own father as the one who raped her, are worthy of belief. With tears in her eyes, a clear indication that she was telling the truth[.]

4. ID.; ID.; DEFENSE OF ALIBI; PHYSICAL IMPOSSIBILITY TO BE AT THE CRIME SCENE, NOT ESTABLISHED IN CASE AT BAR.— For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more importantly, the facility of access between the two places. Burce failed to demonstrate that it was physically impossible for him to have been home on the night of December 10, 2005. Not only was Burce's alibi uncorroborated, Burce's work as tricycle driver would have allowed him to go home with ease anytime he wanted. In fact, BBB, his own wife, testified that Burce would go home late at night to sleep and just leave early in the morning to work again[.]

5. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS, DULY ALLEGED IN THE INFORMATION AND PROVED DURING THE TRIAL.— The elements of rape under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended, are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation. But when the offender is the victim's father, there need not be actual force, threat, or intimidation. x x x In this case, Burce's carnal knowledge of AAA was established by AAA's testimony, corroborated by Dr. Alcantara's finding

of blunt force injuries to AAA's hymen, probably caused by penetration by an erect male organ. Also based on AAA's testimony, Burce used force against her by holding both her hands and pinning her legs beneath his so he could successfully have carnal knowledge of her. Moreover, Burce is AAA's father and his moral ascendancy over his minor daughter is sufficient to take the place of actual force, threat, or intimidation. x x x The qualifying circumstances of relationship (father and daughter) and minority (AAA was only 14 years old, 5 months, and 13 days old on December 10, 2005, when the rape occurred) were duly alleged in the Information, proved during the trial, and even admitted by Burce himself.

6. ID.; ID.; THE PROPER PENALTY IS *RECLUSION PERPETUA* IN LIEU OF DEATH.— Notwithstanding the provisions of Article 266-B of the Revised Penal Code, as amended, the RTC and the Court of Appeals correctly held that the appropriate penalty that should be imposed upon Burce is *reclusion perpetua*. This is in accordance with the provisions of Republic Act No. 9346, entitled an Act Prohibiting the Imposition of Death Penalty in the Philippines, which took effect on June 30, 2006. Section 2 of Republic Act No. 9346 imposes the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code. Section 3 of Republic Act No. 9346 further provides that persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

7. ID.; ID.; CIVIL LIABILITY.— As for the monetary awards, we affirm the award of civil indemnity and moral damages, each in the amount of ₱75,000.00; but increases the award of exemplary damages from ₱25,000.00 to ₱30,000.00. We further subject the indemnity and damages thus awarded to interest at the rate of 6% per annum from the date of finality of this judgment until fully paid, in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For Our resolution is the appeal of the Decision[1] dated June 3, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03906, which affirmed with modification the Decision[2] dated April 2, 2009 of the Regional Trial Court (RTC) of Naga City, Branch 28, in Criminal Case Nos. RTC'08-0169-RTC'08-0173, finding accused-appellant Jesus Burce (Burce) guilty beyond reasonable doubt of the qualified rape of his own daughter AAA,[3] as defined under Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended by Republic Act No. 8353.

Upon the sworn complaint of AAA's mother, the Assistant Prosecutor of Naga City filed with the RTC five Informations, all dated May 7, 2007, charging Burce with raping AAA on five separate occasions. The first Information, docketed as RTC'08-0169, reads:

> That on or about 10 December 2005, in the City of Naga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, father of the herein private complainant, [AAA], 14 years old, 5 mos. and 13 days, having been born on June 27, 1991, by means of force and intimidation, did then and there, willfully, unlawfully and feloniously have sexual intercourse with the said complaining witness, against her will and consent, to her damage and prejudice.[4]

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier, concurring.

[2] Records, pp. 109-120; penned by Judge Rosita L. Lalwani.

[3] The real name of the victim is withheld to protect her identity and privacy pursuant to Section 29 of Republic Act No. 7610, Section 44 of Republic Act No. 9262, and Section 40 of A.M. No. 04-10-11-SC. *See* our ruling in *People v. Cabalquinto*, 533 Phil. 703 (2006).

[4] Records, p. 1.

The other four Informations filed in RTC'08-0170 to RTC'08-0173 were similarly worded as above, except for the alleged date of the commission of the rape, how the rape was committed, and age of AAA who was still a minor at the time the rape occurred.[5]

The five cases were consolidated and jointly tried.

When arraigned on June 19, 2008, Burce pleaded not guilty to all five rape charges.[6]

During pre-trial, the parties admitted that AAA was a minor and Burce's daughter; that AAA has a sister, DDD, who is also Burce's daughter; and that AAA was born on June 27, 1991 per her Birth Certificate, marked as one of the exhibits of the prosecution.[7]

The prosecution presented the following witnesses during trial: (1) AAA, the victim;[8] (2) BBB, AAA's mother and Burce's wife;[9] (3) CCC, AAA's sister-in-law;[10] and (4) Dr. Raoul V. Alcantara (Alcantara), physician-medico legal officer of the National Bureau of Investigation (NBI), Daraga, Albay.[11] The prosecution also submitted several documentary evidence including AAA's Birth Certificate[12] and the NBI Preliminary Report[13] dated November 8, 2007 of Dr. Alcantara stating that

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[5] No copies of the Informations in RTC'08-0170 to RTC'08-0173 were attached to the records of the case elevated to this Court, resultantly, the details were lifted from the said Informations as quoted in the RTC Decision dated April 2, 2009. (Records. pp. 109-111.)

[6] Records, pp. 33-34.

[7] *Id*. at 36-37.

[8] TSN, September 11, 2008, September 16, 2008, October 27, 2008 and February 23, 2009.

[9] TSN, February 16, 2009.

[10] TSN, August 5, 2008 and August 11, 2008.

[11] TSN, July 28, 2008.

[12] Records, p. 58; Exhibit "A".

[13] *Id*. at 59; Exhibit "C".

(1) no extra-genital physical injury was noted at the time of examination, and (2) the medico-genital findings show definitive signs of previous blunt force injury to the hymen.

Evidence for the defense solely consisted of accused-appellant's testimony.[14]

The RTC rendered its Decision on April 2, 2009, convicting Burce of rape only in Criminal Case No. RTC'08-0169 and acquitting him of the four other charges in Criminal Case Nos. RTC'08-0170 to RTC'08-0173. The RTC decreed:

> In Criminal Case Nos. RTC'08-0170, RTC'08-0171, RTC'08-0172 and RTC'08-0173, the prosecution, having failed to establish the guilt of the accused beyond reasonable doubt, accused, Jesus Burce, is hereby ordered ACQUITTED of the offense charged.
>
> In Criminal Case No. RTC'08-0169, the prosecution having established the guilt of accused, Jesus Burce, beyond reasonable doubt, he is hereby ordered CONVICTED of the offense charged and is hereby ordered to suffer the penalty of *RECLUSION PERPETUA*, without eligibility of parole.
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> Accused Jesus Burce, is likewise ordered to pay the private complainant the following damages:
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> a. Seventy-Five Thousand (₱75,000.00) Pesos as civil indemnity;
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> b. Seventy-Five Thousand (₱75,000.00) Pesos as moral damages;
>
> c. Twenty-Five Thousand (₱25,000.00) Pesos as exemplary damages.[15]

Burce appealed his conviction by the RTC in RTC'08-0169 before the Court of Appeals.

The Court of Appeals summarized the prosecution's version of events, thus:

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[14] TSN, January 16, 2009, February 9, 2009 and February 23, 2009.

[15] Records, p. 120.

At midnight of December 10, 2005, the victim, [AAA], was sound asleep in a house located somewhere in the vicinity of x x x, Naga City when she was awakened by appellant who removed her shorts and panty, and went on to sexually ravish her. [AAA] easily recognized appellant since the light was turned on.

[AAA] resisted by pushing appellant away, but he immediately held her hands, pinned her legs with his legs and inserted his penis into her vagina. While he was inside her, [AAA] fought and pushed him. Thereafter, she felt pain in her vagina and pitied herself for what her own father had done to her.

Thereafter, appellant repeated his dastardly acts against [AAA] on several occasions more. The last rape incident was on September 16, 2007 and was witnessed by [CCC], the victim's sister-in-law, through a five (5)-inch hole in a divider made of old plywood. [CCC] clearly witnessed the whole incident as she was only four (4) meters away and the room was well-illumined by a 7-watt fluorescent.

CCC reported what she had seen to [BBB], mother of the victim. [AAA] was eventually constrained to reveal to them appellant's sexual forays on her body. Forthwith, [BBB] and [CCC], along with the victim, went to the *barangay* hall to report the rape incidents to *Barangay* Captain Regmalos.

On November 8, 2007, the victim was examined by Dr. Raoul Alcantara. The results of her medico-genital examination revealed definitive signs of previous blunt force injury in her hymen, probably caused by the penetration of an erect male organ.[16]

The appellate court likewise gave the following gist of Burce's defense:

[Burce] vehemently denied raping his daughter [AAA] on December 10, 2005, claiming that he was always out at night, driving a tricycle as a source of living. He insinuated that [AAA] pursued the rape cases against him as she was interested in getting the ₱10,000.00 victim's compensation, similar to what was purportedly awarded to her sister [DDD] in connection with another rape case filed against him wherein he pled guilty out of remorse. Considering that he was acquitted in the four (4) other rape charges (Criminal Case Nos. RTC 08-0170, RTC 08-0171, RTC 08-0172 and RTC 08-0173), where

[16] *Rollo*, pp. 4-5.

the same witnesses, whose credibility was impeached by numerous flaws, testified, he contended that he should likewise be acquitted in the present case on appeal.[17] (Citations omitted.)

In its Decision dated June 3, 2011, the Court of Appeals affirmed with modification the RTC judgment of conviction against Burce, to wit:

WHEREFORE, with the **MODIFICATION** declaring appellant ineligible for parole, the decision dated April 2, 2009 of the Regional Trial Court of Naga City, Branch 28, in Criminal Case No. RTC 08-0169 is **AFFIRMED** in all other respects.[18]

Hence, the instant appeal.

Both parties manifested that they would no longer file supplemental briefs before us and adopting instead their respective briefs before the Court of Appeals.[19]

Burce raises a lone assignment of error in his Brief:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF ONE COUNT OF QUALIFIED RAPE.[20]

Burce faults the RTC for finding him guilty beyond reasonable doubt of raping AAA on December 10, 2005. Burce insists that he should be acquitted of said rape charge, just as he was acquitted of the other four rape charges, given the numerous flaws in the testimonies of the prosecution witnesses. Burce, in particular, highlighted the following RTC findings which were the bases for his acquittal of the four rape charges:

[I]n the other incidents of carnal knowledge upon [AAA] by the accused, other than the December 10, 2005 incident, the Court noted the following findings, culled from the testimony of [AAA] herself and of prosecution witness [CCC].

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

[18] *Id*. at 16.

[19] *Id*. at 28-34.

[20] CA *rollo*, p. 52.

According to [AAA], she did not shout for the people in their place are loquacious. She was afraid that it will be the subject of grapevine in the neighborhood because she was concerned with what they will say than her safety.

The Court further finds that the filing of these cases came about when according to [AAA], a week after September 16, 2007, she was told by [CCC] that her father was raping her whenever she was fast asleep, which information, [CCC] first divulged to [EEE[21]], and thereafter, it came to the knowledge of [AAA's] mother, [BBB].

Moreover, the Court finds that [AAA] even tried to stop [CCC] from reporting to her mother because the latter might side with her father because a similar thing was done to her sister [EEE] but nothing happened as they agreed to forgive her father.

Further, the Court finds that according to [CCC], during the September 16, 2007 incident, [AAA] was not doing anything, thus, she did not know if [AAA] was asleep. On the following day, [CCC] asked [AAA] if it was painful but the latter responded by asking which one is painful. When asked by [CCC] whether her head is painful, [AAA] answered that her head is not painful.

In view of the testimony of [AAA] that during the September 16, 2007 incident, she was not totally asleep but just kept quiet when her father who was having carnal knowledge of her, this Court cannot but wonder why [AAA], when asked by [CCC] whether it was painful, evaded the question by shifting the question back to her by asking which one is painful. The Court however believes that [AAA] knew to what part of her body was [CCC] referring to when the latter asked her which one is painful.

On the September 16, 2007 incident, the Court further finds that [AAA] was using loose panty and shorts which she just tied because her lower garments had no garter.

Moreover, the Court finds that the family, twelve in all, sleeps side by side in one long mat, thus according to [AAA], her body touches the arms of the one sleeping on her left and right side, which testimony was corroborated by [CCC]. As a matter of fact, according to [CCC], during the September 16, 2007 incident, the accused lifted and took away [GGG], the youngest child, who was then one year

[21] Another sister of AAA and DDD.

old, thus, creating a space for the accused before he placed himself on top of [AAA].

The Court believes that, during these incidents other than the December 10, 2005 incident, [AAA] had all the opportunity to vindicate her honor but it appears to the Court that she chose to take a passive stance. Strangely enough, instead of, at least, donning herself with something that would have spared her from the swift and easy access of the accused, she opted to wear an ungarterized shorts and panty.[22]

Burce's appeal has no merit.

We stress, at the outset, that each and every charge of rape is a separate and distinct crime so that each of them should be proven beyond reasonable doubt. The prosecution is required to establish, by the necessary quantum of proof, the elements of rape for each charge.[23] Therefore, Burce's acquittal in RTC'08-0170 to RTC'08-0173 does not necessarily result in his acquittal in RTC'08-0169. While the prosecution presented the same witnesses for all the cases, the content, credibility, and weight of their testimonies differ for each charge.

It is also important to note that only Burce's conviction in RTC'08-0169, *i.e.*, for the rape that occurred on December 10, 2005, that is the subject of the appeal before us. We can no longer touch upon the findings of fact and conclusions of law of the RTC in its final and executory decision in RTC'08-0170 to RTC'08-0173 acquitting Burce even though the same markedly demonstrate the gross gender insensitivity of the trial court judge and her deplorable unmindfulness of the plight of the underprivileged or poor minor victim whom the said judge even faulted for the dastardly acts of her own father.

Burce's conviction in RTC'08-0169 is essentially dependent upon AAA's testimony recounting how her father raped her on December 10, 2005. The RTC, as affirmed by the Court of Appeals, gave more weight to AAA's testimony rather than Burce's denial and alibi.

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[22] Records, pp. 117-118.

[23] *People v. De la Torre*, 464 Phil. 23, 45 (2004).

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon us. As a general rule, on the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth.[24] Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, the rule should not be disturbed.[25]

After a careful review, this Court is convinced that AAA's unwavering narration of how she was raped on December 10, 2005, together with her positive identification of her own father as the one who raped her, are worthy of belief. With tears in her eyes, a clear indication that she was telling the truth,[26] AAA recounted the rape incident on December 10, 2005:

PROS. DELA CRUZ:

Q On December 10, 2005[,] it was the first time that your father molested or raped you, where and what time did it happen?

x x x x x x x x x

A That was the first time he did that thing to me and it happened in our house.

Q What time?
A Midnight.

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[24] *People v. Lolos*, G.R. No. 189092, August 9, 2010, 627 SCRA 509, 516.

[25] *People v. Basao and Apol*e, G.R. No. 189820, October 10, 2012, 683 SCRA 529, 543.

[26] *People v. Ancheta*, 464 Phil. 360, 371 (2004).

Q How did he rape you on that date and time?
A I was sleeping soundly during that time because during that time I used to sleep like that but when I was already in the custody of the DSWD we are trained not to sleep like that.

Q How did you know that you were raped by your father at that time?
A I came to know about that because he was (sic) then removed my shorts and panty and the light was bright during that time.

Q What did you do to resist while he was removing your shorts and panty?
A I was trying to fight him by pushing him.

Q Despite your resistance, what did your father do next?
A That was the time that he held my both hands and held my both legs with his legs.

Q And that time your father has no more underwear?
A No more, sir.

Q And after that, what happened?
A While I was fighting back as I stated he pressed both my hands and held both my legs and inserted his penis into my vagina.

Q While he was doing that while his penis was inside your vagina, what did you do to resist him?
A I pushed him, sir.

Q What happened after your (sic) push him?
A When I pushed him he then left after removing his penis into (sic) my vagina.

Q Where did he go?
A He went out of the room, sir.

x x x x x x x x x

Q On this December 10, 2005 the first time your father did that to you when your father left you, what did you feel?
A During that time because it was the first time I felt pain and I could not believe it because he was my father and he do (sic) that to me as his daughter.

x x x x x x x x x

For the record the witness is crying then wiping [her] tears with the blue handkerchief.[27]

In contrast to AAA's straightforward and positive testimony, Burce's defenses consisted of denial and alibi. Burce claims he was out of the house at the time of the alleged rape, driving a tricycle to make a living.

For the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired, but more importantly, the facility of access between the two places.[28]

Burce failed to demonstrate that it was physically impossible for him to have been home on the night of December 10, 2005. Not only was Burce's alibi uncorroborated, Burce's work as tricycle driver would have allowed him to go home with ease anytime he wanted. In fact, BBB, his own wife, testified that Burce would go home late at night to sleep and just leave early in the morning to work again:

PROS. DELA CRUZ:

Q Mrs. Witness, your husband, the accused in this case, testified that he never goes (sic) to your house every time that he has work as a tricycle driver at night. What do you say to that?
A He used to go home every night, sir.

Q At what time did he arrive at your house?
A Sometimes 11:30 or 12:00, Sir.

Q And at what time did he leave?
A About 4:00 or 5:00 of the following day, Sir.[29]

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[27] TSN, September 16, 2008, pp. 5-7.

[28] *People v. Viojela*, G.R. No. 177140, October 17, 2012, 684 SCRA 241, 257-258.

[29] TSN, February 16, 2009, p. 3.

Equally baseless is Burce's contention that AAA is only charging him with rape because she is interested in getting monetary compensation. Burce insinuates that AAA got the idea when her sister, DDD, earlier lodged a rape complaint against Burce, and after Burce admitted his guilt in said case, he paid ₱10,000.00 as victim's compensation to DDD.

Once more, other than Burce's bare allegations, there is no evidence that his minor daughter, AAA, could be so induced by malice and materialism as to concoct a rape charge against her own father, that would destroy her own and her father's honor, as well as tear her family apart, all for ₱10,000.00. We have held that no young girl would concoct a sordid tale of so serious a crime as rape at the hands of her own father, undergo medical examination, then subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice.[30] Being young and guileless, AAA had no ill motive to falsely testify and impute such a serious crime against her own father.[31]

All told, we find no reason to reverse the judgment of conviction rendered against Burce by the RTC, and affirmed by the Court of Appeals.

Rape is defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended, which provide:

Art. 266-A. *Rape, When and How Committed*. – Rape is committed -

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

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[30] *People v. Isang*, 593 Phil. 549, 559 (2008).

[31] *People v. Martin*, 567 Phil. 138, 149 (2008).

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.

Art. 266-B. *Penalties*. – x x x.

x x x x x x x x x

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

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

The elements of rape under Article 266-A, paragraph (1)(a) of the Revised Penal Code, as amended, are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat, or intimidation.[32] But when the offender is the victim's father, there need not be actual force, threat, or intimidation. The reason for this rule was explained in *People v. Chua*,[33] through former Mr. Chief Justice Renato S. Puno, and we quote:

In Philippine society, the father is considered the head of the family, and the children are taught not to defy the father's authority even when this is abused. They are taught to respect the sanctity of marriage and to value the family above everything else. Hence, when the abuse begins, the victim sees no reason or need to question the righteousness of the father whom she had trusted right from the start. The value of respect and obedience to parents instilled among Filipino children is transferred into the very same value that exposes them to risks of exploitation by their own parents. The sexual relationship could begin so subtly that the child does not realize

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[32] *People v. Atadero*, G.R. No. 183455, October 20, 2010, 634 SCRA 327, 337.

[33] 418 Phil. 565, 582 (2001).

that it is abnormal. Physical force then becomes unnecessary. The perpetrator takes full advantage of this blood relationship. Most daughters cooperate and this is one reason why they suffer tremendous guilt later on. It is almost impossible for a daughter to reject her father's advances, for children seldom question what grown-ups tell them to do. (Citations omitted.)

In this case, Burce's carnal knowledge of AAA was established by AAA's testimony, corroborated by Dr. Alcantara's finding of blunt force injuries to AAA's hymen, probably caused by penetration by an erect male organ. Also based on AAA's testimony, Burce used force against her by holding both her hands and pinning her legs beneath his so he could successfully have carnal knowledge of her. Moreover, Burce is AAA's father and his moral ascendancy over his minor daughter is sufficient to take the place of actual force, threat, or intimidation.

To warrant the imposition of the death penalty, the following additional elements must be present: (1) that the victim is under eighteen years of age at the time of the rape, and (2) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[34]

The qualifying circumstances of relationship (father and daughter) and minority (AAA was only 14 years old, 5 months, and 13 days old on December 10, 2005, when the rape occurred) were duly alleged in the Information, proved during the trial, and even admitted by Burce himself.

Notwithstanding the provisions of Article 266-B of the Revised Penal Code, as amended, the RTC and the Court of Appeals correctly held that the appropriate penalty that should be imposed upon Burce is *reclusion perpetua*. This is in accordance with the provisions of Republic Act No. 9346, entitled an Act Prohibiting the Imposition of Death Penalty in the Philippines, which took effect on June 30, 2006. Section 2 of Republic Act No. 9346 imposes the penalty of *reclusion perpetua* in lieu of death, when the law violated makes use of the nomenclature of

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[34] *People v. Candellada*, G.R. No. 189293, July 10, 2013, 701 SCRA 19, 30.

the penalties of the Revised Penal Code. Section 3 of Republic Act No. 9346 further provides that persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

As for the monetary awards, we affirm the award of civil indemnity and moral damages, each in the amount of ₱75,000.00; but increases the award of exemplary damages from ₱25,000.00 to ₱30,000.00. We further subject the indemnity and damages thus awarded to interest at the rate of 6% per annum from the date of finality of this judgment until fully paid, in line with prevailing jurisprudence.[35]

WHEREFORE, premises considered, the Decision dated June 3, 2011 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03906, is hereby **AFFIRMED with MODIFICATION**S, increasing the award of exemplary damages to ₱30,000.00 and imposing interest upon the amounts of indemnity and damages awarded at the rate of 6% per annum from the date of finality of this judgment. No costs.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

[35] *People v. Vitero,* G.R. No. 175327, April 3, 2013, 695 SCRA 54.

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ABUSE OF RIGHTS

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Illegal possession of prohibited drugs — Elements of the offense are: (1) the accused was in possession of an item or object, which is identified to be a prohibited or dangerous drug; (2) such possession was not authorized by law; and (3) the accused freely and consciously possessed the drug. (Lanier *vs*. People, G.R. No. 189176, Mar. 19, 2014) p. 143

CONSPIRACY

Liability of co-conspirators — The act of one is the act of all the conspirators, and a conspirator may be held liable as a principal even if he did not participate in the actual commission of every act constituting the offense. (Castillo *vs*. Prudentialife Plans, Inc., G.R. No. 196142, Mar. 26, 2014) p. 497

CONTEMPT

Concept — Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative of its character. (Saint Louis University, Inc. *vs*. Olairez, G.R. No. 162299, March 26, 2014) p. 444

— The act must be done wilfully and for an illegitimate or improper purpose. *(Id.)*

— Where the inaction of the school officials on the disputed writ of execution does not constitute contumacious conduct. *(Id.)*

Contempt of court — The act must be done wilfully and for an illegitimate or improper purpose. (Sesbreño *vs*. CA, G.R. No. 160689, Mar. 26, 2014) p. 428

Power of contempt — The power to declare a person in contempt of court and in dealing with him accordingly is an inherent power lodged in courts of justice, to be used as a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein and the administration of justice from callous misbehavior, offensive personalities and contumacious refusal to comply with court orders. (Saint Louis University, Inc. *vs*. Olairez, G.R. No. 162299, March 26, 2014) p. 444

— Plenary it may seem, the power of contempt however, must be exercised judiciously and sparingly with highest self-restraint with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retribution or vindication. *(Id.)*

Power to punish for contempt — Inherent in all courts, it must be used as a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein and the administration of justice from callous misbehaviour, offensive personalities and contumacious refusal to comply with court orders. (Sesbreño *vs*. CA, G.R. No. 160689, Mar. 26, 2014) p. 428

CONTRACTS

Effect of — The terms of a contract have the force of law between the parties, and courts have no choice but to enforce such contract so long as they are not contrary to law, morals, good customs, or public policy. (Phil. Amusement and Gaming Corp. *vs*. Thunderbird Pilipinas Hotels and Resorts, Inc., G.R. Nos. 197942-43, Mar. 26, 2014) p. 543

CO-OWNERSHIP

Rights of co-owners — Co-owners cannot be ordered to sell their portion of the co-owned properties; the remedy of the prejudiced co-owners is to bring an action for partition. (Arambulo *vs.* Nolasco, G.R. No. 189420, Mar. 26, 2014) p. 464

COURT PERSONNEL

Administrative case against — The Court can freely access employee's Daily Time Records even without her/his consent. (Anonymous Complaint Against Otelia Lyn G. Maceda, A.M. No. P-12-3093, Mar. 26, 2014) p. 401

Conduct of — From the Presiding Judge to the lowliest clerk, their conduct must always be beyond reproach and must be circumscribed with the heavy burden of responsibility as to let them be free from any suspicion that may taint the judiciary. (P/Sr. Insp. Rosqueta *vs.* Judge Asuncion, A.M. No. MTJ-13-1823, Mar. 19, 2014) p. 64

Dishonesty — Defined as the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. (Anonymous Complaint Against Otelia Lyn G. Maceda, A.M. No. P-12-3093, Mar. 26, 2014) p. 401

— Falsification or irregularities in the keeping of time records will render the guilty officer or employee administratively liable, for truthfulness and accuracy in the Daily Time Record (DTR) should be complied with in any office, government office most especially. *(Id.)*

— The Rules on the Administrative Offense of Dishonesty classifies the offense into (1) serious dishonesty; (2) less serious dishonesty, and (3) simple dishonesty, depending on the attendant circumstances. *(Id.)*

Grave misconduct — Knowingly allowing the tampering of the records of a case to make it appear that the notice of appeal has complied with the requirements of the Rules. (Office of the Court Administrator *vs.* Atty. Miranda, A.M. No. P-09-2648, Mar. 26, 2014) p. 378

— Violation of the Code of Judicial Conduct is classified as gross misconduct. (P/Sr. Insp. Rosqueta *vs*. Judge Asuncion, A.M. o. MTJ-13-1823, Mar. 19, 2014) p. 64

Less serious dishonesty — Deemed a grave offense punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense. (Anonymous Complaint Against Otelia Lyn G. Maceda, A.M. No. P-12-3093, Mar. 26, 2014) p. 401

— The presence of any of the following attendant circumstances in the commission of the dishonest act would constitute the offense of less serious dishonesty: (1) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify under serious dishonesty; (2) the respondent did not take advantage of his/her position in committing the dishonest act; and (3) other analogous circumstances. *(Id.)*

COURTS

Hierarchy of courts — A party has no unrestricted freedom of choice of forum, but must strictly observe the hierarchy of courts. (Garcia *vs*. Sandiganbayan, G.R. No. 197204, Mar. 26, 2014) p. 521

DAMAGES

Actual damages — Compensation for an injury that will put the injured party in the position where it was before the injury. (International Container Terminal Services, Inc. *vs*. Chua, G.R. No. 195031, Mar. 26, 2014) p. 475

— Pertain to such injuries or losses that are actually sustained and susceptible of measurement. *(Id.)*

— To recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. *(Id.)*

Attorney's fees — Not awarded to the prevailing party as a matter of course; even if a party is compelled to litigate with third persons or to incur expenses to protect his rights, it will not be awarded if no bad faith could be reflected in a party's persistence in a case. (International Container Terminal Services, Inc. *vs.* Chua, G.R. No. 195031, Mar. 26, 2014) p. 475

Moral damages — Must be disallowed in the absence of a clear showing that the claimant actually experienced emotional and mental sufferings. (International Container Terminal Services, Inc. *vs.* Chua, G.R. No. 195031, Mar. 26, 2014) p. 475

Nominal damages — Proper and equitable in the absence of competent proof of actual damages. (International Container Terminal Services, Inc. *vs*. Chua, G.R. No. 195031, Mar. 26, 2014) p. 475

EMPLOYER-EMPLOYEE RELATIONSHIP

Management prerogative — The power to dismiss an employee is a recognized prerogative inherent in the employer's right to freely manage and regulate his business. (Sutherland Global Services (Philippines), Inc. *vs.* Labrador, G.R. No. 193107, March 24, 2014) p. 295

EMPLOYMENT, TERMINATION OF

Cessation or closure of business operation — Employees are not considered illegally dismissed; since there was no illegal dismissal, employees are not entitled to backwages; if the dismissal, however, is by virtue of a just or authorized cause, but without due process, the dismissed workers are entitled to an indemnity in the form of nominal damages. (Navotas Shipyard Corp. *vs*. Montallana, G.R. No. 190053, Mar. 24, 2014) p. 279

— If company's closure was due to serious financial reverses, it is not legally bound to give the separated employees separation pay. *(Id.)*

Dishonesty — A serious offense and a sufficient ground for employees' dismissal. (Castillo *vs*. Prudentialife Plans, Inc., G.R. No. 196142, Mar. 26, 2014) p. 497

Failure to faithfully comply with company rules and regulations — Considered to be just cause in terminating one's employment. (Sutherland Global Services (Philippines), Inc. *vs.* Labrador, G.R. No. 193107, March 24, 2014) p. 295

Grounds for — The failure to faithfully comply with the company rules and regulations is considered to be a just cause in terminating one's employment. (Navotas Shipyard Corp. *vs*. Montallana, G.R. No. 190053, Mar. 24, 2014) p. 279

Security of tenure — The worker's right thereto is not an absolute right, for the law provides that he may be dismissed for cause. (Navotas Shipyard Corp. *vs*. Montallana, G.R. No. 190053, Mar. 24, 2014) p. 279

(Sutherland Global Services (Philippines), Inc. *vs.* Labrador, G.R. No. 193107, March 24, 2014) p. 295

EVIDENCE

Burden of proof — It is also basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence. (BJDC Construction *vs*. Lanuzo, G.R. No. 161151, Mar. 24, 2014) p. 240

— It is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. (Arguelles *vs*. Malarayat Rural Bank, Inc., G.R. No. 200468, Mar. 19, 2014) p. 226

Preponderance of evidence — Means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. (Atty. De Jesus *vs*. Atty. Risos-Vidal, A.C. No. 7961, Mar. 19, 2014) p. 47

FORUM SHOPPING

Concept — The Rules of Civil Procedure on forum shopping are not always applied with inflexibility. (Macedonio *vs*. Ramo, G.R. No. 193516, Mar. 24, 2014) p. 308

JUDGES

Duties — A judge is obliged to perform all judicial duties, including delivery of reserved decisions, efficiently, fairly and with reasonable promptness. (*Re*: Judicial Audit Conducted in the RTC, Br. 20, Cagayan de Oro City, Misamis Oriental, A.M. No. 07-9-454-RTC, Mar. 18, 2014) p. 23

— The proper and efficient management of his court is the responsibility of every Presiding Judge. *(Id.)*

Gross misconduct — Submitting a false certificate of service where the judge certified that he did not have any unresolved cases and matters pending in his court's docket makes him guilty of grave misconduct. (*Re*: Judicial Audit Conducted in the RTC, Br. 20, Cagayan de Oro City, Misamis Oriental, A.M. No. 07-9-454-RTC, Mar. 18, 2014) p. 23

Undue delay in the disposition of cases — Considered a less serious charge, with the following administrative sanctions: (1) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (2) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. (*Re*: Judicial Audit Conducted in the RTC, Br. 20, Cagayan de Oro City, Misamis Oriental, A.M. No. 07-9-454-RTC, Mar. 18, 2014) p. 23

JUDICIAL DEPARTMENT

Judicial power — Once a criminal complaint or information is filed in court, any disposition of the case or dismissal or conviction of the accused rests within the exclusive jurisdiction, competence, and discretion of the trial court. (Lanier *vs.* People, G.R. No. 189176, Mar. 19, 2014) p. 143

— When the trial court's order rests entirely on the assessment of the Department of Justice without doing its own independent evaluation, the trial court effectively abdicates its judicial power and refuses to perform a positive duty enjoined by law while the DOJ Secretary's ruling is persuasive, it is not binding on the courts. *(Id.)*

JURISDICTION

Jurisdiction over the defendant — Acquired either upon a valid service of summons or the defendant's voluntary appearance in court. (Pacific Rehouse Corp. *vs*. CA, G.R. No. 199687, Mar. 24, 2014) p. 325

— The act of the accused in posting bail or in filing a motion seeking affirmative relief is tantamount to submission of his person to the jurisdiction of the court. (People *vs*. Go, G.R. No. 168539, Mar. 25, 2014) p. 362

Jurisdiction over the parties — If the court has no jurisdiction over the corporation, it follows that the court has no business in piercing the veil of corporate fiction because such action offends the corporation's right to due process. (Pacific Rehouse Corp. *vs*. CA, G.R. No. 199687, Mar. 24, 2014) p. 325

MORTGAGES

Obligations of mortgagee — Where the mortgagor is not the registered owner of the property but is merely an attorney-in-fact of the same, it is incumbent upon the mortgagee to exercise greater care and a higher degree of prudence in dealing with such mortgagor. (Arguelles *vs*. Malarayat Rural Bank, Inc., G.R. No. 200468, Mar. 19, 2014) p. 226

MOTIONS

Motion for extension of time to file petition — It is not necessary that the contents of a motion for extension should be similar to a petition for *certiorari*. (Lanier *vs*. People, G.R. No. 189176, Mar. 19, 2014) p. 143

— It is sufficient that the motion for extension state the material dates, showing the timeliness of its filing. *(Id.)*

NATIONAL LABOR RELATIONS COMMISSION

Appeals — Failure to state material dates is not fatal in an appeal before the National Labor Relations Commission (NLRC) because technical rules can be liberally applied, and all the things being equal, any doubt or ambiguity

would be resolved in favor of labor. (Sutherland Global Services (Philippines), Inc. *vs.* Labrador, G.R. No. 193107, March 24, 2014) p. 295

NEGLIGENCE

Proximate cause — 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. (BJDC Construction *vs.* Lanuzo, G.R. No. 161151, Mar. 24, 2014) p. 240

PIERCING THE VEIL OF CORPORATE FICTION

Alter ego doctrine — Three (3)-pronged test to establish when the alter ego doctrine should be operative: (1) control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) such control must have been used by the defendant to commit fraud or wrong to perpetuate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal right; and (3) the aforesaid control and breach of duty must have proximately caused the injury or unjust loss complained of. (Pacific Rehouse Corp. *vs*. CA, G.R. No. 199687, Mar. 24, 2014) p. 325

Doctrine of — An equitable doctrine developed to address situations where the separate corporate personality of a corporation is abused or used for wrongful purposes. (Livesey *vs.* Binswanger Phils., Inc., G.R. No. 177493, Mar. 19, 2014) p. 99

— The corporate existence may be disregarded where the entity is formed or used for non-legitimate purposes, such as to evade a just and due obligation, or to justify a wrong, to shield or perpetrate fraud or to carry out similar or inequitable considerations, other unjustifiable aims or

intentions, in which case, the fiction will be disregarded and the individuals composing it and the two corporations will be treated as identical. *(Id.)*

— The court must be certain that the corporate fiction was misused to such an extent that injustice, fraud or crime was committed against another, in disregard of its rights; the wrongdoing must be clearly and convincingly established and cannot be presumed. (Pacific Rehouse Corp. *vs*. CA, G.R. No. 199687, Mar. 24, 2014) p. 325

— There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. *(Id.)*

POEA-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Disability benefits — The degree of a seafarer's disability cannot be determined on the basis solely of the 120-day rule or in total disregard of the seafarer's employment contract, the parties collective bargaining agreement if there is one, and Philippine law or rules in case of any unresolved dispute, claim or grievance arising out or in connection with the POEA-Standard Employment Contract. (Splash Phils., Inc. *vs.* Ruizo, G.R. No. 193628, Mar. 19, 2014) p. 162

— The 120-day rule cannot be used as a cure-all formula for all maritime compensation cases; its application must depend on the circumstances of the case, including especially compliance with the parties' contractual duties and obligations as laid down in the POEA-SEC and/or their CBA, if one exists. *(Id.)*

— The schedule of disability compensation under Section 32 of the POEA-SEC must be seriously observed considering that disability is not measured in terms of number of days but by grading only. *(Id.)*

PRELIMINARY INJUNCTION

Writ of preliminary injunction — May be extended after the other party was accorded notice and a chance to be heard. (Phil. Amusement and Gaming Corp. *vs*. Thunderbird Pilipinas Hotels and Resorts, Inc., G.R. Nos. 197942-43, Mar. 26, 2014) p. 543

PRELIMINARY INVESTIGATION

Probable cause — Findings of the existence or non-existence of probable cause are generally not subject to review by the court except: (1) when necessary to afford adequate protection to the constitutional rights of the accused; (2) when necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question which is sub judice; (4) where the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance, or regulation; (6) when double jeopardy is clearly apparent; (7) where the court has no jurisdiction over the offense; (8) where it is a case of persecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; (10) where there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied. (Securities and Exchange Commission *vs*. Santos, G.R. No. 195542, Mar. 19, 2014) p. 181

(Lanier *vs*. People, G.R. No. 189176, Mar. 19, 2014) p. 143

— Implies mere probability of guilt, a finding based on more than bare suspicion but less than evidence that would justify a conviction. *(Id.)*

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application for registration — An application for registration based on Section 14 (2) of the Decree must establish that the land had already been declared converted to or declared as patrimonial property of the state at the beginning of

the 10-year or 30-year period of possession. (Rep. of the Phils. *vs*. Zurbaran Realty and Dev't. Corp., G.R. No. 164408, Mar. 24, 2014) p. 263

— Claimants have the burden to identify a positive act of the government declassifying public land into disposable land. (Rep. of the Phils. *vs*. Heirs of Maxima Lachica Sin, G.R. No. 157485, Mar. 26, 2014) p. 414

— Failure of the Republic to show proof that the subject land was declared timberland does not lead to the presumption that said land was alienable and disposable. *(Id.)*

— The following persons may file in the proper RTC 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, and (2) those who have acquired ownership of private lands by prescription under the provision of existing laws. *(Id.)*

Judicial confirmation of imperfect or incomplete title — Applicants for registration of title must sufficiently establish (1) that the subject land forms part of the disposable and alienable lands of the public domain; (2) that the applicant and his predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of the same; and (3) that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier. (Rep. of the Phils. *vs*. Zurbaran Realty and Dev't. Corp., G.R. No. 164408, Mar. 24, 2014) p. 263

Registration proceeding under Section 14 (1) and Section 14 (2), distinguished — Sec. 14 (1) mandates registration on the basis of possession, while Section 14 (2) entitles registration on the basis of prescription; registration under Sec. 14 (1) is extended under the aegis of the Property

Registration Decree and the Public Land Act while registration under Section 14 (2) is made available both by the Property Registration Decree and the Civil Code. (Rep. of the Phils. *vs*. Zurbaran Realty and Dev't. Corp., G.R. No. 164408, Mar. 24, 2014) p. 263

PUBLIC OFFICERS AND EMPLOYEES

Grave misconduct — Classified as a grave offense punishable by dismissal even for the first offense. (Office of the Court Administrator *vs*. Atty. Miranda, A.M. No. P-09-2648, Mar. 26, 2014) p. 378

— Corruption as an element of grave misconduct consists in the act of an official or employee who unlawfully or wrongfully uses her station or character to procure some benefits for herself or for another, contrary to the rights of others. *(Id.)*

— Implies wrongful intention and a mere error of judgment. *(Id.)*

— Misconduct is grave if it involves any of the additional elements of corruption, wilful intent to violate the law, or to disregard established rules, all of which must be established by substantial evidence, and must necessarily be manifest in a charge of grave misconduct. *(Id.)*

Loafing — Defined as frequent unauthorized absences from duty during office hours. (Office of the Court Administrator *vs*. Runes, A.M. No. P-12-3055, Mar. 26, 2014) p. 391

— Imposable penalty. *(Id.)*

Misconduct — Defined as a transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by a public officer. (Office of the Court Administrator *vs*. Atty. Miranda, A.M. No. P-09-2648, Mar. 26, 2014) p. 378

QUIETING OF TITLE

Case of — Having established that the disputed property is a public land, the trial court is correct in dismissing the complaint to quiet title for lack of jurisdiction. (Heirs of Pacifico Pocdo *vs.* Avila, G.R. No. 199146, Mar. 19, 2014) p. 215

— It is indispensable in an action to quiet title that the complainant has a legal or equitable title to or interest in the real property subject of the action. *(Id.)*

RAPE

Prosecution of — Every charge of rape is separate and distinct; acquittal in other rape cases does not necessarily result in acquittal in all cases. (People *vs.* Burce, G.R. No. 201732, Mar. 26, 2014) p. 576

— Lone testimony of a rape victim may be the basis of conviction. *(Id.)*

— The victim's mental disability could not be considered as a qualifying circumstance because the information failed to alleged that appellant knew of such mental condition at the time of the commission of the crime. (People *vs.* Obogne, G.R. No. 199740, Mar. 24, 2014) p. 354

Qualified rape by sexual intercourse — Elements of the crime are: (1) that the offender had carnal knowledge of a woman; and (2) that such act was accomplished through force, threat and intimidation; but when the offender is the victim's father, there need not be actual force, threat, or intimidation. (People *vs.* Burce, G.R. No. 201732, Mar. 26, 2014) p. 576

— Imposable penalty. *(Id.)*

RES IPSA LOQUITUR

Doctrine of — 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. (BJDC Construction *vs*. Lanuzo, G.R. No. 161151, Mar. 24, 2014) p. 240

— 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. (International Container Terminal Services, Inc. *vs*. Chua, G.R. No. 195031, Mar. 26, 2014) p. 475

RES JUDICATA

Conclusiveness of judgment — Finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. (Heirs of Cornelio Miguel *vs*. Heirs of Angel Miguel, G.R. No. 158916, Mar. 19, 2014) p. 79

Doctrine of — Embraces two concepts: (1) bar by prior judgment, and (2) conclusiveness of judgment. (Heirs of Cornelio Miguel *vs*. Heirs of Angel Miguel, G.R. No. 158916, Mar. 19, 2014) p. 79

— Has the following elements: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties, of subject matter and cause of action. *(Id.)*

Identity of issues — Means that the right, fact, or matter in issue has previously been either directly adjudicated or necessarily involved in the determination of an action. (Heirs of Cornelio Miguel *vs*. Heirs of Angel Miguel, G.R. No. 158916, Mar. 19, 2014) p. 79

SANDIGANBAYAN

Jurisdiction of — The death of the public officer-offender does not follow that the Sandiganbayan is already divested of its jurisdiction over the person of the public officer and the case involving the private person; to rule otherwise would mean that the power of the court to decide a case would no longer be based on the law defining its jurisdiction but on other factors, such as the death of one of the offenders. (People *vs*. Go, G.R. No. 168539, Mar. 25, 2014) p. 362

SEARCH AND SEIZURE

Right against unreasonable search and seizure — Entry and inspection of the premises by the inspectors and authorized representative of an electric company does not constitute a violation of the guaranty. (Sesbreño *vs*. CA, G.R. No. 160689, Mar. 26, 2014) p. 428

SECURITIES REGULATION CODE

Sale of securities — The elements for violation of Section 28 of the Code, are: (1) engaging in the business of buying and selling securities in the Philippines as a broker or dealer; or (2) acting as a salesman; or (3) acting as an associated person of any broker or dealer, unless registered as such with the Securities Exchange Commission. (Securities and Exchange Commission *vs*. Santos, G.R. No. 195542, Mar. 19, 2014) p. 181

WITNESSES

Credibility — Findings of trial court, especially affirmed by the Court of Appeals are respected, in the absence of any clear showing that trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. (BJDC Construction *vs*. Lanuzo, G.R. No. 161151, Mar. 24, 2014) p. 240

— Mental retardation *per se* does not affect a witness' credibility. (People *vs*. Obogne, G.R. No. 199740, Mar. 24, 2014) p. 354

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